



# **AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING**

**3 May 2021 - 6.00pm**

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## ORDER OF BUSINESS

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### APOLOGIES AND DECLARATIONS

### CONFIRMATION OF MINUTES OF PREVIOUS MEETING

### CANTERBURY WARD

- 1        59A and 98 King Street, Canterbury**  
ORIGINAL CONSENT: Night Racing & Installation of Lighting Structures.  
  
PROPOSED AMENDMENT: Modification to amend the consent relating to the carpark in Area 6 (South East corner of King and Princess Streets known as 59A King Street, Canterbury), to not be required for car parking for Canterbury Racecourse Night Racing. 3
- 2        12 Riverview Road, Earlwood**  
Alterations and additions to the existing dwelling including construction of a garage at ground level, re-establishment of the original topography of the site, construction of new terrace and floor areas below the level of the existing dwelling and the addition of a floor above. 39

### ROSELANDS WARD

- 3        460-462 Burwood Road Belmore**  
Demolition of existing structures, construction of a six storey shop top housing development with four commercial tenancies, 22 apartments and two levels of basement car park. 83

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## Canterbury Bankstown Local Planning Panel - 03 May 2021

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<b>ITEM 1</b>	<b>59A and 98 King Street, Canterbury</b>  <b>ORIGINAL CONSENT: Night Racing &amp; Installation of Lighting Structures.</b>  <b>PROPOSED AMENDMENT: Modification to amend the consent relating to the carpark in Area 6 (South East corner of King and Princess Streets known as 59A King Street, Canterbury), to not be required for car parking for Canterbury Racecourse Night Racing.</b>
<b>FILE</b>	<b>DA-8910/1997/B – Canterbury</b>
<b>ZONING</b>	<b>RE2 Private Recreation</b>
<b>DATE OF LODGEMENT</b>	<b>9 July 2019</b>
<b>APPLICANT</b>	<b>Australian Turf Club Limited</b>
<b>OWNERS</b>	<b>Australian Turf Club Limited</b>
<b>ESTIMATED VALUE</b>	<b>Nil</b>
<b>AUTHOR</b>	<b>Planning</b>

### **REPORT**

This matter is reported to the Local Planning Panel due to the application being a section 4.55(2) pursuant to the Environmental Planning and Assessment Act, 1979 with more than ten unique submissions.

Development Application No. DA-8910/1997/B seeks to modify the original development consent DA-8910/1997 by amending conditions relating to the carpark in King Street known as Area 6 (located at the South East corner of King and Princess Streets known as 59A King Street, Canterbury), to not be required for car parking for Canterbury Racecourse Night Racing.

The application has been assessed against Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012 (Part B1 Transport and Parking) and failed to conclusively show that the removal of 'Area 6' car park will not detrimentally affect the parking and traffic conditions in the surrounding streets and neighbourhood and therefore failed to meet the objectives of Part B1 Transport and Parking Development Control Plan 2012.

The application was notified in the local newspaper and by letters to neighbouring residents between 23 July 2019 and 13 August 2019. A total of 140 submissions were received during this period.

The additional information relating to the parking surveys and Event Management Plan received on the 10 August 2020 was re-notified in the local newspaper, letters to neighbouring residents and anyone who had made a submission to the original notification between 20 January 2021 and 9 February 2021. 45 submissions were received during this period.

The submissions raised concerns relating to:

- Public Transport;
- Current Traffic Situation;
- Parking Situation;
- Infield carparking;
- 'Area 6' carpark generally;
- Illegally restricting access to 'Area 6' carpark;
- Traffic Hazard;
- Environmental Impacts;
- Pedestrian Traffic;
- Survey/Traffic Management Plan (TMP);
- Street Impacts;
- Future Use/redevelopment;
- Green space/open area;
- Infrastructure;
- Ashbury Heritage Conservation Area/Heritage generally;
- Pollution; and
- Damage to vehicles.

## **POLICY IMPACT**

This matter has no direct policy implications.

## **FINANCIAL IMPACT**

This matter has no direct financial implications.

## **RECOMMENDATION**

It is recommended that the application be refused, for the reasons contained in attachment B.

## **ATTACHMENTS**

- A. Assessment Report
- B. Reasons for Refusal

## **DA-8910/1997/B ASSESSMENT REPORT**

### **BACKGROUND/HISTORY**

On the 12 June 1997 the former Canterbury City Council's (City Development Committee) considered DA- 8910/1997 which sought approval for twelve night racing meetings per year, installation of lighting towers around the perimeter of the track and alterations to the ground floor of the existing grandstand building. At this meeting it was resolved that:

- The application be deferred.
- Council considered that the application in its current form cannot be supported but is of the view that there may be solutions to the various issues and problems that have been raised. Therefore, it was prepared to work with the Club, various authorities and local residents and other stakeholder to try and resolve the various issues.
- Council meet with the residents to identify the issues to be addressed and seek three resident representatives to meet and examine the various issues in an attempt to find an acceptable solution.
- Council meet with the applicant, Police, RTA, a representative of the trainers and three resident representatives to investigate a solution to the environmental planning issues/problems likely to be created by the proposed night racing.
- Correspondence be forwarded to the Minister for Gaming and Racing seeking his intervention to ensure consideration is given to the needs of trainers at Canterbury Racecourse.

On the 6 November 1997 a further report was prepared following the Council resolution of 12 June 1997. This report concluded that a deferred commencement consent be issued to allow the applicant six months to comply with a number of conditions as follows:

- 1.1 The submission of evidence from the NSW Police Service that it will provide Traffic Control Officers (either at its cost or at the cost to the STC) to supervise/control traffic management at the access/exit points to the major carparks (two in King Street, one in John Street and one in Princess Street), as deemed necessary by the Police Service, to ensure safe, and efficient traffic management at these points.
- 1.2 The submission of a clear statement that the number of race meetings will be limited to 12 night meetings per year.
- 1.3 Submission of full details of the proposed location of the horse transport vehicle parking area with a clear indication of how:
  - 1.3.1 Compliance with the 60 metre distance from residential boundaries will be maintained and enforced.
  - 1.3.2 Compliance with the 30 and 50 metre distance for the location of carparking from residential areas will be maintained and enforced.
- 1.4 Investigate the requirements, in terms of soundproofing, necessary to overcome the "excessive noise" for residents projected in the vicinity of the exit driveway to the infield carpark. Such investigation to establish a criteria based on maintaining a reasonable level of amenity for these residents so that they will not be seriously disadvantaged.
- 1.5 The submission of undertakings by the Sydney Turf Club to:
  - Bear the full cost of traffic management facilities specified in the consent.
  - Bear the reasonable costs associated with Council engaging (if required) independent experts to monitor compliance with conditions associated with noise and lighting for one race meeting, within the first year of operations of night meetings.
  - Pay the full cost of implementation and ongoing administration of a resident parking scheme, for streets affected by on-street parking from the racecourse operation during night meetings. This undertaking to include a commitment to bear the cost of extending the residents' parking scheme, should this be warranted because cars associated with the night race meetings are parking in residential streets.
  - Bear reasonable costs associated with assisting residents identified (in condition 1.4) in close proximity to the infield exit driveway to overcome excessive noise associated with existing vehicles late at night from the racecourse.
  - Bear the reasonable legal costs of the preparation of legal documentation associated with any undertakings required with Council in connection with the night racing proposal.
  - Appoint a night manager at the course at all times when race meetings are being held; this person to be responsible for the receipt of any resident complaints regarding the operation of the meetings, the recording of complaints and taking reasonable action to overcome the complaints. A dedicated complaint's phone "hot line" is to be provided for this purpose. A record of any complaint received and action taken is to be made available to Council if requested.

On the 18 December 1997, Council resolved that the application be deferred as per the recommendation made in the officer's report as outlined above.

The notice of determination as a deferred commencement was issued on the 7 January 1998.

On the 14 May 1998 Council considered a report that outlined that the pre-conditions of the deferred commencement had been met.

It was resolved that notice be given to the applicant that the consent for night racing commences operation from 14 May 1998 and that Council will require full compliance with all conditions to ensure that the amenity of residential areas is maintained at an acceptable level.

On the 21 October 1998, a modification application (DA-M8910/1997) was approved relating to the location of the lighting towers.

On the 7 September 2000, the City Development Committee considered a report in relation to condition 5 of the development consent that required further documentation to be provided.

*“The applicant has since complied with the deferred commencement conditions and 12 night racing meetings have been held at the racecourse between 23 September 1999 and 20 April 2000. However, Condition 5 of the Consent requires some follow up work to be carried out and stated, in part, that the Sydney Turf Club would need to submit undertakings which required them to:*

*“Bear the reasonable costs associated with Council engaging (if required) independent experts to monitor compliance with conditions associated with noise and lighting for one race meeting, within the first year of operations of night meetings.”*

*“Appoint a night manager at the course at all times when race meetings are being held; this person to be responsible for the receipt of any resident complaints regarding the operation of the meetings, the recording of complaints and taking reasonable action to overcome the complaints. A dedicated complaints’ phone “hot line” is to be provided for this purpose. A record of any complaint received, and action taken is to be made available to Council if requested.”*

It was resolved that the intent of point 2 of condition 5 in Development Consent 8910/1997 had been fulfilled and no further action was required regarding compliance with the conditions.

On the 5 December 2017, a modification application was lodged seeking to amend conditions relating to the ‘Area 6’ carpark so as no to be required for carparking for Canterbury Racecourse night racing.

As part of the assessment of the modification, Council’s traffic engineers requested that a parking survey be carried out which was to include all in site car parks associated with the racecourse, and the surrounding road network during a night race meeting, a non-race meeting night, preferably when Little Athletics was in progress. Council also provided a list of streets to be surveyed.

On the 9 April 2018, the application was withdrawn as the night racing had concluded for the season and therefore the traffic studies could not be undertaken.



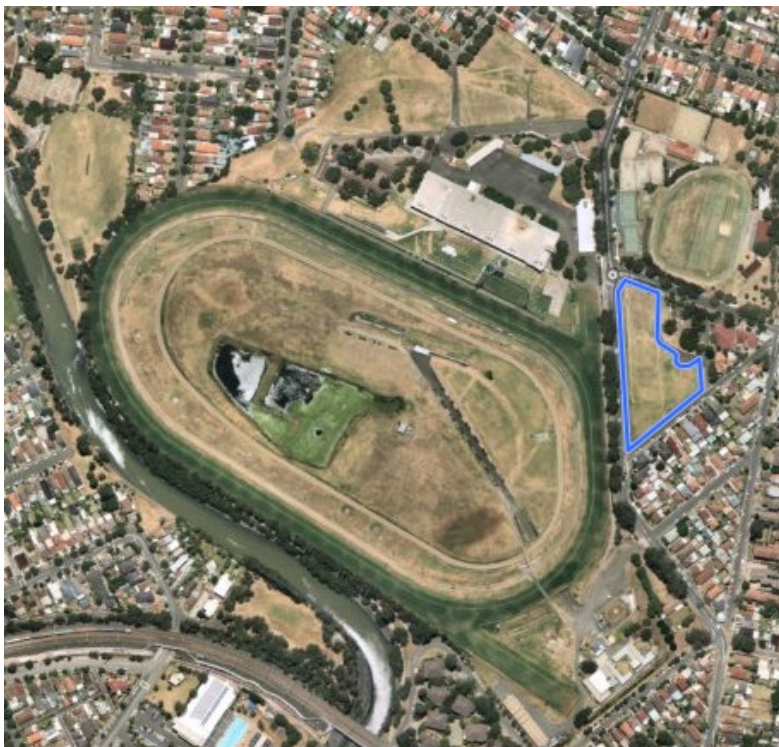
On the 9 July 2019, the application was re-lodged and seeks to modify the original development consent DA-8910/1997 by amending conditions relating to the carpark in King Street known as Area 6 (located at the South East corner of King and Princess Streets known as 59A King Street, Canterbury), to not be required for car parking for Canterbury Racecourse Night Racing.

### **SITE & LOCALITY DESCRIPTION**

The subject site is known as 59A King Street, Canterbury and forms part of the Canterbury Park Racecourse (98 King Street, Canterbury).

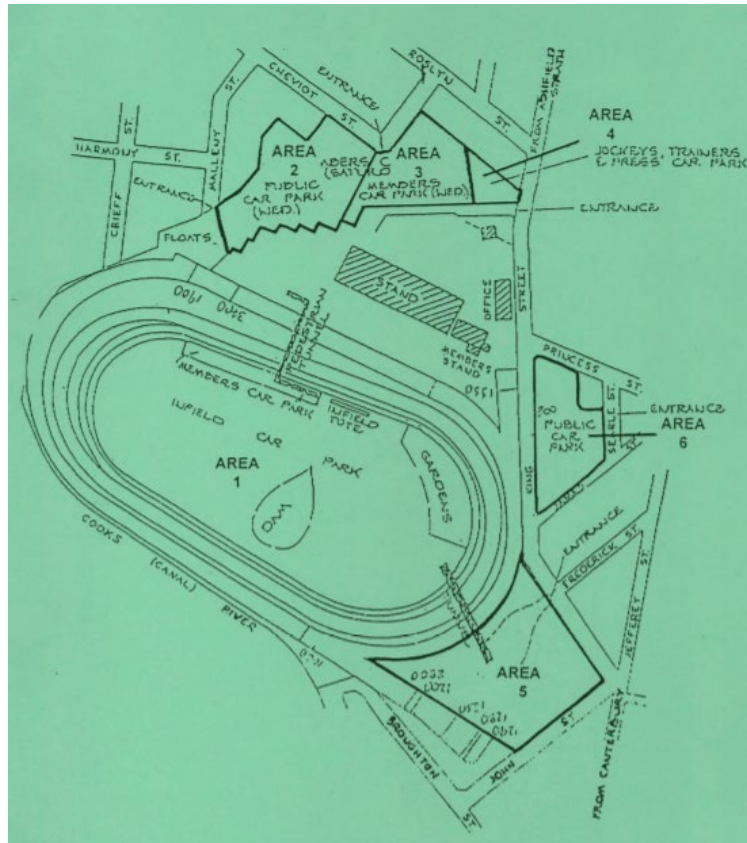
The site to which this application relates is located on the South East corner of King and Princess Streets and is an irregular allotment that is cleared of any structures and significant vegetation. It is zoned RE2 Private Recreation under the Canterbury Local Environmental Plan 2012. The Area 6 car park is a grassed area that can accommodate approximately 240 vehicles and traffic controllers are present on race meetings.

The surrounding development consists of residential development, with the predominant form being single and two-storey dwellings. To the north of the subject site is Campbell Athletic Field and directly to the east of the site is Ashbury Senior Citizen's Centre. The Racecourse is located to the west/south-west of the site.



**Figure 1:** Aerial of subject site in blue. **Source:** NearMaps 2021





**Figure 2 – Off Street Carparking areas** Source: Council Assessment Report June 1997

## **PROPOSED DEVELOPMENT**

Development Application No. DA-8910/1997/B seeks to modify the original development consent DA-8910/1997 which was for 'Night Racing and installation of lighting structures'. The original consent included the following condition which relates to the carparking associated with the night racing:

3. *Carparking as shown on the plans submitted being freely available and at no cost to those attending race meeting at all times.*

The modification proposes to modify the original consent relating to the carpark in King Street Car Park known as Area 6 (located at the South East corner of King and Princess Streets), to not be required for car parking for Canterbury Racecourse Night Racing.

The applicant seeks the following condition be included on the development consent, should the application be supported:

*"Notwithstanding any other condition of this consent, the 'Area 6 Car Park located on King Street' is not required for car parking."*

## SECTION 4.55(2) ASSESSMENT

The proposed modifications have been assessed pursuant to section 4.55(2) Other modifications of the *Environmental Planning and Assessment Act, 1979*.

**(2) *Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—***

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

The application seeks to modify the original development application which was for 'Night racing and installation of lighting structures'.

The subject modification application relates to to the carpark in King Street known as Area 6 (located at the south-east corner of King and Princess Streets, known as 59A King Street, Canterbury), to be exluded from the required car parking for Night Racing.

The proposal does not seek to make any modifications to the use of the Racecourse as originally approved and the 'Area 6' car park will remain as existing and therefore the development as modified is considered to be substantially the same development to which consent was originally granted.

**(b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

Consultation with the minister, public authority or approval body is not required for this application.

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

The application was advertised on two separate occasions in accordance with the notification requirements of the Canterbury Development Control Plan and Community Participation Plan.

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

Over the two notification periods a total of one hundred and eight five (185) submissions were made in relation to the proposed modification. The submissions are discussed in detail under the heading of Matters for Consideration - 'Submissions [section 4.15(1)(d)]' of the Environmental Planning and Assessment Act, 1979.

### **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, codes and policies are relevant:

- State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

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

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

Given the application only seeks to modify conditions of consent and no development is being proposed, Clause 7 of the SEPP 55 is not applicable to this application.

### **SECTION 4.15 ASSESSMENT**

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

#### **Environmental planning instruments [section 4.15(1)(a)(i)]**

The following clauses of the Canterbury Local Environmental Plan 2012 were taken into consideration:

This site is zoned RE2 Private Recreation under the CLEP 2012. The controls applicable to this application are discussed below.

Clause 1.2 Aims of Plan

The proposed development is consistent with the relevant aims of the CLEP 2012:

Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the RE2 Private Recreation are as follows:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposed modification is consistent with the objectives of the RE2 zone.

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 2 Permitted or Prohibited Development</b>			
2.1-2.3 Zoning	RE2 Private Recreation	Modify the original development consent DA-8910/1997 by the development consent relating to the carpark in King Street known as 'Area 6' (located at the South East corner of King and Princess Streets), to not be required for car parking for Canterbury Racecourse Night Racing.	No change to permissibility
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	The subject site is clear of any structures and no demolition required or proposed.	N/A
<b>Part 4 Principal Development Standards</b>			
4.3 Height of Buildings	Not applicable	Not applicable	N/A
4.4 Floor Space Ratio	Not applicable	Not Applicable	N/A
4.6 Exception to development standard	Not applicable		

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 5 Miscellaneous provisions</b>			
5.10(4) Effect of proposed development on heritage significance	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).	<p>The subject site known as 59A King Street, Canterbury has not been identified as a heritage item under the CLEP 2012, however it is in the vicinity of a heritage item being 98 King Street Canterbury (Canterbury Park Racecourse).</p> <p>The proposal seeks to make changes to a DA that would not affect the significance of the heritage item within the vicinity of the site, to which the subject site is part of, given the proposal seeks to maintain the status quo, which is an open grassed area.</p> <p>Having regard to the above the proposal is considered to be acceptable from a heritage point of view and as such is supported.</p>	Yes
5.10(5) Heritage Assessment	<p>The consent authority may, before granting consent to any development—</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	Refer to comment above.	Yes

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 6 Local Provisions</b>			
6.1 Acid Sulfate Soils	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	Class 4 and 5 Acid Sulfate Soils.  No excavation proposed	N/A
6.2 Earthworks	Before granting consent to development including earthworks, the following must be considered: (a) drainage patterns and soil stability (b) the likely future use or redevelopment of the land, (c) quality of the fill or the soil to be excavated, or both, (d) effect of development on existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	No earthworks proposed	N/A

Provision/ Standard	Requirement	Proposal	Complies
6.3 Flood Planning	<p>This clause applies to land at or below the flood planning level.</p> <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <ul style="list-style-type: none"> <li>(a) is compatible with the flood hazard of the land, and</li> <li>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</li> <li>(c) incorporates appropriate measures to manage risk to life from flood, and</li> <li>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</li> <li>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</li> </ul>	The proposal does not seek development consent for works or development on the site	N/A
6.4 Stormwater Management	<p>Consent must not be granted unless:</p> <ul style="list-style-type: none"> <li>(a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration.</li> <li>(b) Includes on-site detention if practical as an alternative means of water supply.</li> <li>(c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.</li> </ul>	The proposed modification will not alter the stormwater management to the site	N/A



Provision/ Standard	Requirement	Proposal	Complies
6.6 Essential Services	<p>Essential services must be available or adequate arrangements have been made to make them available, including:</p> <ul style="list-style-type: none"> <li>- the supply of water;</li> <li>- the supply of electricity <b>(substation)</b>;</li> <li>- the disposal and - management of sewage;</li> <li>- stormwater drainage or on-site conservation;</li> <li>- suitable vehicular access.</li> </ul>	The proposed modification will not alter the availability of essential services to the site	N/A

An assessment of the Modification Application revealed that the proposal complies with the matters raised in each of the above clauses of Canterbury Local Environmental Plan 2012.

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

On 30 June 2020 the Canterbury Bankstown Local Planning Panel endorsed the Planning Proposal (PP\_2019\_CBANK\_005) to proceed to the Department of Planning, Industry and Environment for finalisation and making. The Planning Proposal seeks to produce a single set of planning rules and align the Bankstown LEP 2015 and Canterbury LEP 2012 into a consolidated Local Environmental Plan.

The Planning Proposal however does not propose any change to the planning or development provisions relating to this site. As the Planning Proposal has been exhibited it must be considered under Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act, 1979.

The Draft CBLEP also seeks to insert a saving provision “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies, and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced”.

**Development control plans [section 4.15(1)(a)(iii)]**

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

**Part B1 Transport and Parking**

As per Council’s letter of 19 September 2019, the applicant was required by Council’s Traffic Engineer to undertake a parking survey by a suitably qualified Traffic Engineer of all of the on-site car parks of the racecourse and the surrounding road network during a night race meeting and a non-race meeting night (preferably when Little Athletics is in progress).

Further information was requested to be provided which outlined the capacity of each individual car park (Grandstand Car Park, In-field Car Park and Area 6/King St Car Park) and the number of occupied spaces during the parking survey. Figure 3 below outlines the On-street carparking Study Area undertaken by the applicant's traffic engineer. Council's traffic engineer provides a discussion on these survey.



**Figure 3:** On-street carparking Study Area **Source:** ptc Survey Results Summary

### AREA 1

1. Andrews Ave, 2. Third St, 3. Second St, 4. First St, 5. King St, 6. Roslyn St, 7. Ettrick St, 8. Cheviot St, 9. Kelvin St, 10. Ayr St, 11. Crieff St, 12. Malleny St, 13. Harmony St.

### AREA 2

14. Princess St, 15. James St, 16. Jeffrey St, 17. Frederick St, 18. John St, 19. Robert St, 20. Broughton St.

The applicant's traffic engineer PTC undertook the required surveys on 15 November 2019, 22 November 2019 and 28 February 2020 and submitted the documentation to support their application.

#### Council's Traffic Engineer

The Parking Surveys were reviewed by Council's Traffic Engineer who provided the following comments:

- It is clear from the survey that the patrons do prefer the opportunity to park on the neighbouring streets during race nights. The survey shows close to 100% capacity in the streets surrounding the racecourse, whilst there is significant capacity still within the racecourse infield parking area.
- The survey showed an indication, particularly in James Street, that residents were avoiding parking in their street on race nights. James Street is a narrow road and residents may have chosen not to expose their vehicles to the congested race meeting parking and traffic.
- It is clear that Broughton Street is not utilised for racecourse parking. This could be due to the street being more than 900m from the racecourse entrance. In addition, the on-street parking survey stated there are 108 spaces available, however on Council review, due to bus zones, no stopping and bus turning restrictions, there is, at most 78 spaces available.
- Whilst a parallel car space in the Australian Standard is 6m, which could be reduced to 5.4m for end locations, actual on street space availability would likely be less due to the spaces not being marked and drivers parking in non-standard relationships. This is especially likely in streets that are not heavily utilised in normal conditions, whereas in streets that are heavily utilised in normal conditions the pressure from neighbours tends to make drivers maximise the spaces available.

#### *PTC Car Park Occupancy survey*

The survey states that there is an 87% occupancy of the car spaces within the survey area on a race meeting night, leaving 13% available, equating to 145 car spaces. This is an estimate that relates to the maximum available car spaces available, and as stated above, this relies on the behaviour of the drivers to maximise these spaces. In addition, as stated above, Broughton Street spaces were over estimated by 30 spaces, and is in a location that is not utilised for parking during night racing is considered that the estimated vacancy is an over estimation.

The On-street Parking survey indicates that the streets within 500m of the racecourse entrance are near or fully utilised, with Broughton Street, some 900m away, is not utilised at all.

The information does indicate that there may be parking in streets outside the survey area and the on-site parking survey would support this conclusion.

The survey shows that in the November 2019 race meeting there were 8874 patrons and 888 cars parked within the premises and an estimated 433 cars parked on street.

In the February 2020 race meeting there were 7458 patrons and 1342 cars parked within the premises and an estimated 448 cars parked on street.

The February 2020 race meeting thus attracted 1790 parked cars, some 469 more cars parked, or 33% increase yet had a patronage of 19% less than the November 2019 race meeting.

The February 2020 race meeting attracted 1790 cars, this with a 19% patronage increase for the November 2019 race meeting, the cars parked would be 2130.

The above figures have been summarised in the table below:

Survey Date	Patrons	Cars parked on street	Cars parked within premises	Change of pattern %	Estimate of total cars parked on street and within the premises
November 2019	8874	433 (approx.)	888	0	0
February 2020	7458	448	1342	-19%	2130

Again, this is a conservative estimate given the parking for the February 2020 race meeting is likely to extend past the survey area.

The data indicates that there is a distinct likelihood that there are significantly more cars parked in the surrounding streets, predominantly, west, north and east, outside the nominated survey area.

#### *Proposed Mechanism to Increase parking within the site*

The on-field site parking has constrained access capability, both inbound and outbound due to the tunnel beneath the track itself and the access conditions onto King Street.

These impediments no doubt hinder the viability of attracting patrons to utilise this parking area in lieu of on street parking in the surrounding streets.

The traffic surveys indicate that the preference for parking is to utilise the local streets and adjacent parking areas outside the site, instead of the infield carpark, and in some cases walk 10 to 15 minutes to access the facility. The parking outside the facility illustrates that it is preferable for the patrons to park and walk some distance to get to the facility knowing that the time to leave after the event is a known time, and not affected by delays experienced when leaving a confined infield carpark.



To increase the utilisation of the infield carpark a change in human behaviour is required, which is difficult to change without implementing some firm and proven strategies, which has not been provided.

The Area 6 carpark, identified as required in the original consent, is convenient for patrons as being directly across the road from the entrance to the facility, and is easily assessable by car being on the intersection of Princess Street and King Street. The other advantage of this carpark is that after the event patrons can access the road network quickly and depart in numerous directions.

### *Conclusion*

The survey results indicate that whilst there may have been an increase in infield parking for the 28 February 2020 race meeting, it is evident that there was no significant change to the on-street parking in the survey area. The survey illustrates that the preference for patrons is still to park outside the confines of the infield parking area.

The survey indicates that with the implementation of the traffic/parking management strategy, the competition for parking spaces between the patrons and the residents still exists.

The parking reports also indicate that there is a distinct likelihood that the actual parking required for the night race meetings is actually greater than those reported in the parking surveys, with on-street parking occurring in streets past the on-street parking survey area.

**The proposal fails to meet Transport and Parking objectives of the Canterbury DCP, in particular it fails to minimise overflow parking and other traffic impacts in the residential streets and neighbourhoods.**

**The proposal failed to conclusively show that the removal of Area 6 carpark will not detrimentally affect the parking and traffic conditions in the surrounding streets and neighbourhood.**

As outlined earlier in the report the proposal seeks to modify the original development consent DA-8910/1997 by amending the consent to remove the carpark in King Street known as Area 6 (located at the South East corner of King and Princess Streets), from the required car parking for Canterbury Racecourse Night Racing.

After the initial report to Council of 12 June 1997, which recommended that Council meet with residents a working party was held with the applicant, Police, RTA and community representatives. Following this working party, a subsequent report was prepared to the City Development Committee and reported on the 6 November 1997 addressing a number of issues with suggested solutions. The most relevant issue raised in this report was "*parking in streets, congestion of residential streets, illegal parking etc*" this is one that was raised initially by the residents and has also been raised as part of this modification. A copy of the issue from the 6 November 1997 report is provided below for clarity.

• **Parking in streets, congestion of residential streets, illegal parking etc.**

Solution

The applicant has suggested that Council might consider implementation of a residents parking scheme and has demonstrated ample capacity for carparking areas within its own property to in theory accommodate for the necessary parking associated with night racing. The Club has indicated that it is prepared to pay for the administration of this scheme.

Comment

Certainly the provision of resident parking only on race nights would force people to park in the parking areas provided. The difficulty is to assess the extent to which a resident parking scheme would be required. The downside of a resident parking scheme is that it does create some inconvenience for residents in that they need to seek parking permits and there could be problems for their visitors, although a majority of houses in the area do have their own onsite parking. The provision of resident parking signs in the street detract from the residential nature of these streets, which would be unfortunate. The Club has indicated it was prepared to pay for the administration of such a scheme, however, there would be substantial costs in the implementation, provision of signs and maintenance of these signs that should not necessarily have to borne by the community.

**C T D**

**15 C T D**

The provision of noise buffer zones in the existing carparking areas will substantially reduce the capacity of these carparking areas, therefore forcing cars to park elsewhere. There maybe a degree of reluctance to park in the infield carparking area because of the time required to empty this carpark at the conclusion of race meetings. People are prepared to walk considerable distances to reduce the problems and inconvenience of exiting large public carparks at the end of events.

On the 18 December 1997 Council considered the report (of 6 November 1997) and it was recommended that a deferred commencement be issued to allow ATC to comply with certain conditions (refer to these conditions under the heading "Background/history of this report).

The initial report considered by Council was based on assumptions in the order of 7,000 to 8,000 patrons. The current application states that in recent years, patronage at night racing events had progressively declined and was well below 7,000. However, the 2019 Annual Report page 2 states that *"Like our Longines Golden Slipper strategy, we have over several seasons continued to build on crowds, which peaked at almost 8000 people on some nights at Canterbury Park"*. Therefore, based on these statements and the conclusions made by Council's Traffic Engineer it has not been demonstrated that the removal of 'Area 6' car park would not detrimentally impact the traffic conditions in surrounding streets and neighbourhood.

It should also be noted that as part of the original application (in 1998), 'Area 6' carpark formed part of the consideration and subsequent approval of the application.

The proposed modification does not eliminate the issues outlined by Council's traffic engineer and the concerns raised in the assessment of the original application relating to the preference for patrons to park outside the confines of the infield parking area. As such, the application cannot be supported on the information currently before Council.

#### Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

The proposed modification seeks to modify the existing consent and will therefore not attract any development contributions.

#### **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 not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000.

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

Having regard to impacts on the overflow parking and impacts to the surrounding residential streets, approval of the modification to remove 'Area 6' from the development consent will result in unacceptable impacts on the locality and therefore is not supported.

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

Although, the removal of the 'Area 6' car park from the proposal will not alter the permissibility of the use, approval of the modification will result in a detrimental impact on the surrounding streets and neighbourhood. The application has not satisfactorily demonstrated that removal of 'Area 6' car park will not detrimentally affect the parking and traffic conditions in the surrounding streets and neighbourhood and therefore removal of 'Area 6' car park from the development consent would not be suitable for the site and existing development.

#### **Submissions [section 4.15(1)(d)]**

The application was notified in the local newspaper and by letters to neighbouring residents between 23 July 2019 and 13 August 2019 and a total of one hundred and forty (140) submissions were received during this period.

The additional information received in August 2020 was re-notified in the local newspaper, letters to neighbouring residents and anyone who had made a submission to the original notification between 20 January 2021 and 9 February 2021. Forty-five (45) submissions were received during this period.



*Submission: Public transport:*

- *Less capacity for passengers on Metro services, and there will be no station at Redfern – busy station.*
- *Broughton/Canterbury Road pressure in relation to buses.*
- *I have been catching the 413 bus for the last 35 years and can attest to the fact that the 413 is probably the worst bus route in Sydney. This is the only bus that takes residents directly to the CBD. It is very unreliable and is extremely limited on Sundays (9:30 - 17:30 only). Also during the weekdays there isn't a bus in the direction of Campsite until 7:15 am. For this development, there is the 491 which will take residents to Ashfield station (or Canterbury station in the other direction) but I do not have much experience with this service. There needs to be a significant improvement in the 413 bus route to service the expected increase in the number of residents in the area.*
- *The only public transport which runs along King Street is the bus 491. This bus service has become even more unreliable and late because of the traffic on Canterbury road which it is required to cross coming from Earlwood, and having to cross Parramatta and Liverpool roads coming from Five Dock. To what public transport is the DA amendment referring?*

**Response:** The proposal does not seek to make any modifications to the existing bus services.

*Submission: Current Traffic Situation:*

- *Traffic in the area has increased due to higher occupancy rates in nearby high-rise buildings.*
- *Only 2 roads leading out of the Canterbury precinct, traffic along King Street has significantly increased.*
- *A childcare centre is proposed for the corner of Canterbury Road and Watkin Street and any additional traffic mixed with parents trying to drop off and pick up children will be potentially dangerous.*
- *Princess Street is too narrow to accommodate additional traffic. This is especially so at the section between Hardy Street and Canterbury Road which can handle only one lane of traffic.*
- *Princess Street cannot handle existing traffic since the large-scale developments along Canterbury Road near the Station and in Charles Street have come on line. Traffic now uses Watkin Street and other streets off Hardy Street as a rat run to access Canterbury Road. It is not uncommon to see up to a dozen cars line up in Watkin Street trying to access Canterbury Road in the peak.*
- *During the morning and afternoon peak hours, the amount of traffic on King and Roslyn Streets make it virtually impossible for elderly residents and those of limited mobility to cross these streets. In addition, I have noticed a significant increase in traffic on Hay, Leith and Melville streets caused by drivers trying to avoid congestion at the roundabout at the intersection of Roslyn and King Streets. The proposed Canterbury*

*Racecourse development will no doubt significantly increase the amount of traffic in the area.*

- *Furthermore, please note that the traffic in Princess Street has considerably increased since First, Second, Third and Fourth Streets were made for local residents only and all general traffic is then forced to use Princess Street and the proposed development will make this bad situation much worse.*
- *Princess Street is already very busy in the mornings as it is the main road used to get from King St to Canterbury Rd.*
- *Reducing parking for night-racing and other events will likely lead to greater pressure on local residential streets.*
- *Detrimental to the residents with congestion.*
- *Many apartments being built without thought for increasing throughput capacity. Road users are using residential streets to navigate, and roads are not being improved.*

**Response:** As concluded by Council's Traffic Engineers, the information before Council does not conclude that the removal 'Area 6' car park will not detrimentally impact the parking and traffic conditions in the locality. Over the past 20 years the area has undergone a change and increase to development, and therefore as outlined within this report it has not demonstrated that the removal of the 'Area 6' carpark would not impact the surrounding streets in their current form and the application is not supported.

**Submission:** *Parking Situation:*

- *Residents in Princess Street are near three public schools, Racecourse, Tennis complex, Blick Oval, Campbell Oval and Ashbury Seniors Club. All above noted venues attract incredible amount of traffic and this is making life difficult for residents living nearby and people attending these venues. To cross the road is almost impossible due to build-up of traffic on race days, Spots athletic Carnival and Little athletics. The buses dropping the children off are forced to double park causing extremely dangerous situations. The proposed development would make this already bad situation much worse.*
- *Residents living in Princess Street, James Street, Cheviot Street, First Street, Second Street can attest that the main issue is parking, and not traffic management.*
- *Availability of parking on surrounding streets including Jeffrey St, Frederick St, James St and King St is affected for the residents.*
- *As a local resident I often have to park street away from my residence. The loss of Area 6 will particularly impact my family as parking will become even harder to find.*
- *Road rage and dangerous manoeuvres across roads and intersections will increase due to drivers fighting for even more limited car parking spaces, in all the nearby residential streets.*
- *Cheviot Street – significant numbers of cars parked in street and closure of a car park can only exacerbate this.*

- *Street parking on Princess and Holden Streets which is currently used by parents taking their children to these sporting events will be used by race goers, making these venues more difficult and potentially dangerous to access.*
- *The flow on effects of increased peaking demand to the infield site to King Street is unknown. King Street has seen huge increases to traffic due to the many new apartments in the area and having additional demands of an influx of race goers entering the site around peak traffic time is of concern.*
- *Competition for street parking near the race course entrance is often intensified during Night Racing putting more pressure on residents – Athletics field across from the entrance of the race course and Area 6 is used for sports events regularly on Friday nights.*
- *The park opposite the car park is used extensively 7 days a week with school carnivals and little athletics. Parking is already at a premium with cars and school buses competing for spaces.*

**Response:** As concluded by Council's Traffic Engineers, the information before Council does not conclude that the removal 'Area 6' car park will not detrimentally impact the parking and traffic conditions in the locality and therefore as outlined within this report it has not demonstrated that the removal of the 'Area 6' carpark would not impact the surrounding streets and the application is not supported.

**Submission:** *Infield carpark:*

- *is a long way from the main entrance, making it difficult for less mobile to access.*
- *Alternative parking infield is difficult to find, not convenient for most patrons, has limited accessibility for mobility impaired people, is often muddy, unsure under foot and a long way from the main entrance to the race course. Cars will likely try to use nearby residential street parking if they can, and residents' observations verify this.*
- *Car park in centre of racecourse is not practical, excessive noise for nearby residences*
- *With cars wanting to enter and exit the Infield car park at the same time, this will create an unreasonable build-up of traffic, with cars banked back, trying to turn on to King Street, which becomes extremely busy and can be congested at the best of times.*
- *The entrances and exits to the in-field carpark have not been improved and no changes have been made to the streets surrounding the racecourse which would better manage the flow of traffic in and out of the carpark.*
- *To accommodate up to 7000 people, the surrounding streets will be congested.*

- *If the in-field car park is used to take up the excess parking that would have been in Area 6, the intersection of King St and James St will be ridiculously dangerous, both for foot traffic from locals and for the cars leaving the races at the end of the night.*

**Response:** The traffic surveys indicate that the preference for parking is to utilise the local streets and adjacent parking areas outside the site, rather than the infield carpark. The parking outside the facility illustrates that it is preferable for the patrons to park and walk some distance to get to the facility knowing that the time to leave after the event is a known time, and not affected by delays experienced when leaving a confined infield carpark. The concerns with parking and exiting the infield carpark were also raised in the original application in 1997.

**Submission:** 'Area 6' carpark generally:

*Historical Parking Requirement*

- *There is a historical requirement for the Australian Turf Club to provide sufficient parking during night-racing events.*

*Original DA condition says every effort should be made to provide sufficient parking so as to minimise the impact on local residents. This proposal does not adequately address the impact of the loss of Area 6 parking for up to 250 cars.*

*Current Arrangements*

- *Residents of Canterbury are fine with current arrangements where Area 6 used for car parking on Canterbury race meet days, and green space at other times.*

*Necessity of Area 6*

- *Princess Street Parking (Area 6) is necessary as it is full and overflowing almost every Night Race meeting. Residents have been monitoring this and found that the Princess Street parking area is usually full from quite early in the evening. Closing the carpark will guarantee more chaos.*
- *Parking is clearly needed on race evenings and on evenings the neighbouring sports facility has its activities. Residential streets are not capable of coping with that amount of parking.*
- *Reducing parking for night-racing and other events will likely lead to greater pressure on local residential streets.*
- *Closing the car park – excess strain on street parking*

**Response:** As outlined in the report, the information before Council does not conclude that the removal 'Area 6' car park will not detrimentally impact the parking and traffic conditions in the locality and therefore the application cannot be supported.

**Submission:** *Illegally restricting access to 'Area 6' carpark '*

- *Trust in administrative procedures eroded – Blocking patrons from legally parking and ignoring directives from authorities on numerous occasions.*
- *Against legislation to block parking of patrons in the car parks.*
- *Blocking of patrons from using Area 6 car park for night racing was unacceptable and against the spirit of the event. Using electric signs, boards, witches' hats and staff members to stop and redirect racing night patrons from parking in Area 6 car park and grandstand parking area was unacceptable. Using signs, witches' hats, closed gates and staff to block patron entry into car parks will reduce number of cars parked in the car park.*
- *Cars are parked in all of the local streets even when carpark is open. Popularity of Night Racing has seen an increase in crowds and the need for dedicated off street parking. When Area 6 is closed, it has been proven inadequate to the parking needs of patrons, resulting in clogged local streets.*

**Response:** Council received a number of complaints in February 2020 that the 'Area 6' car park was closed and not being made available for the use of patrons attending the night racing. Council contacted the applicant and advised that the application (i.e DA-8910/1997/B) was still under assessment and was undetermined and therefore the 'Area 6' car park shall remain freely available and at no cost to those attending the race meeting at all times as per the conditions of consent under DA-8910/1997. The applicant then adhered to this request.

**Submission:** *Traffic Hazard:*

- *Cumbersome infield carpark entrance is a traffic hazard at the entry/exit point on King St which is just around from a blind bend at the point where James St meets King St. It contravenes RMS guidelines for designing large Event carparks, so cramming another 250+ cars into the infield by closing Princess St carpark should not be encouraged.*
- *Safety as exit point from racecourse is poorly situated and may cause accidents.*
- *Road Safety*  
*Approving this DA will lead to greater use of infield parking, posing an increased risk to road users given safety constraints at the King Street entrance and exit to infield parking.*
- *Children crossing new driveways is also a safety concern.*

**Response:** Council's traffic engineers stated that the surveys indicate it is preferable for the patrons to park and walk some distance to get to the facility knowing that the time to leave after the event is a known time, and not affected by delays experienced when leaving a confined infield carpark. Therefore, based on the information before Council, the application cannot be supported.

**Submission: Environmental Impacts:**

- *The Ethos Urban report dated 5 July 2019, 4.0 & 5.4 comment is made that their proposed revised DA results in a position that is substantially the same, that there is no environmental impact & other off-street car parking can accommodate. This is a repeat of the erroneous statement made in the last submission. The environmental impacts are not substantiated & can only be done with a specific environmental study. The car park study is flawed.*
- *King Street is already facing the very real threat of increased traffic from the Chubb site development, and a much bigger problem with traffic when the metro is being constructed. Car drivers will engage in rat runs through Canterbury and Ashbury as they endeavour to commute to other train lines.*
- *We have seen a huge upsurge in apartments (many of which are still vacant) around Canterbury Station and already traffic, especially each weekend, is a nightmare as the traffic lights on the corner of Jeffery Street and Canterbury Road only allow 3 to 4 cars at a time moving from Jeffery Street onto Canterbury Road, and the backup of waiting traffic on Jeffery Street already goes back to the Racecourse. Increased traffic will only push this same traffic back to Roslyn Street and eventually right up King Street and to Georges River Road.*

**Response:** Over the past 20 years the area has undergone a change with a number of new developments, and therefore as outlined within this report it has not demonstrated that the removal of the 'Area 6' carpark would not impact the surrounding streets. To increase the utilisation of the infield carpark a change in human behaviour is required and this has not been demonstrated.

**Submission: Pedestrian Traffic**

- *Existing traffic management systems on King St adjacent to the Racecourse is significantly wanting and poses a risk to pedestrian traffic. There are no pedestrian facilities anywhere along King St adjacent to the Racecourse, even near the Ashbury Bowling Panarcadian Federation Club or the Trinity Tennis Centre, which also includes the 490 & 491 Bus service line. I have regularly seen children cross King St during Friday Race Night and Little Athletics competitions, when traffic conditions were substantively congested. Imprudent development of the Area 6 land parcel will amplify that congestion and unilaterally increase risk to local residents and pedestrian traffic.*

**Response:** The traffic surveys indicate that the preference for parking is to utilise the local streets and adjacent parking areas outside the site, in lieu of the infield carpark and as outlined earlier in this report the application cannot be supported.



*Submission: Surveys/Traffic Management Plan (TMP)*

- *Documents and analysis did not mention or take into account very high amount of traffic along Princess Street and surrounding streets during Friday night racing / Little Athletics.*
- *Due to the air quality surrounding bushfires, and COVID-19 it is unfair to judge expected patronage on the dates selected, where numbers were much lower than expected due to poor air quality and social distancing etc.*
- *To be meaningful they need to occur throughout the peak Dec / Jan period, when the air quality is otherwise very good, when there's no rain, when there's no COVID19, and when the Little Athletics is being held. As it is these results carry zero value.*
- *Surveys undertaken on days where there is no competing use for on-street parking from Little Athletics.*  
*Any TMP has to be coordinated with Little Athletics to be accurate.*
- *Absolute car parking demand needs to be considered more than a TMP. How can they demonstrate that a TMP will change patron's behaviours?*
- *ATC should proactively engage with the local community regarding traffic impacts.*
- *When Campbell Athletic Field is being used, the situation gets a lot worse with kids running across the streets during busy Friday night traffic. Participation numbers will be impacted at Campbell Field.*
- *The methodology of conducting a survey while restricting and changing management of traffic is in question. It was conducted by illegally closing the Area 6 car park. Survey was conducted illegally, Council cannot accept the results of the survey. Streets were full of parked cars.*
- *Princess Street has been recorded in February, 2020 full capacity, even when there was no Little Athletics scheduled, due to school holidays. ATC management were at the time continuing to restrict parking in the car parks and conducting a survey.*
- *Traffic and Parking Report findings are illegal and Council should not in any way accept its findings as a result: ATC's traffic and parking report relied on illegal closure of Area 6 carpark during two of the last and biggest race meetings on the 2019/2020 season, putting pressure on local resident parking and inconveniencing patrons. ATC did not have permission from Council to do this, it contravened their 1998 Night Racing Approval clause. Evidence submitted to a legal court shall be inadmissible if collected illegally.*
- *Asserting that parking on streets surrounding the car park was not at capacity is laughable considering patrons have photos showing all streets full. Keeping Area 6 car park closed during night racing sessions when data was collected is in direct conflict with consent granted for night racing.*
- *Additionally, findings stating that patronage had dropped were because of the bad weather.*



- *Canterbury Road is only two lanes both ways when clearway is activated. That section of Canterbury Rd is nowhere near the racecourse and there is not that much traffic in that section.*
- *Traffic study says it should be read in conjunction with another letter dated 6 November 2018 yet this letter has not been provided, and Section H regarding the ATC's relationship to CBC has not been completed.*

**Response:** A detailed assessment of the Surveys and Traffic Management Plan was made by Council's Traffic Engineer's and is discussed in detailed under the heading of Canterbury Development Control Plan 2012 of this report.

**Submission:** *Street Impacts*

- *Access for emergency vehicles also becomes very limited and on some occasions with elderly neighbours, young children and frail this has been a real and terrifying issue.*

*James Street*

- *Impossible for residents to drive down their own street by parking on both sides of James Street – which is designed to fit cars only on one side.*

*Princess/Searle Streets*

- *As a frequent visitor to the Senior Citizens Hall which is on the corner of Princess and Searle streets, in very close proximity to the overflow parking area, I am very aware of the inadequacy of parking and the impact of increased traffic in that immediate area.*
- *Princess Street is already very busy in the mornings as it is the main road used to get from King St to Canterbury Rd.*
- *The on-street parking on Princess Street is always full and cars are illegally parked in the no stopping zone between 58-60 and the adjacent space near the refuge island every Friday night.*

*Surrounding Areas*

- *Area directly surrounding Canterbury Racecourse is not commercial nor industrial, it is almost exclusively residential and filled with family homes. Reclassification and subsequent removal of the car park will result in greater competition in local streets for reduced number of parking spaces.*
- *The suggestion that the parking is not necessary does not reflect my personal experiences on Friday nights. Due to the races combined with Little Athletics on Friday nights I now attempt to not use my car on a Friday. When I do I have to park some distance from Princess Street and then walk back to collect my car in the dark after events have ended.*

**Response:** A detailed assessment of the Surveys and Traffic Management Plan was made by Council's Traffic Engineer's and is discussed in detailed under the heading of Canterbury Development Control Plan 2012 of this report.

*Submission: Future Use/re-development*

- *Canterbury Park Racecourse Planning Strategy shall be finalised before considering this proposal.*
- *Approval of this DA will re-designate the carpark as “surplus” to racing needs and enable the disposal of the site to private developers for high rise development.*
- *Changing Area 6 zoning to allow for future residential developments will impact local residents and add additional pressures to the environmental. It will also impact local residents by increasing traffic, to an already high traffic area with the local schools and drivers wanting to bypass Canterbury Rd traffic.*
- *What is Area 6 going to be used for? If the proposal is for the use to be removed, a new use shall also be proposed.*
- *DA missing real reason for amendment - Plan to later build high rises. Overdevelopment concerns. Apartments will inevitably lead to more cars wanting to park on the street.*
- *Partnering with Mirvac to develop high rise apartments, which will be catastrophic for our suburb.*
- *There is already overdevelopment along the Cooks River.*
- *Reclassification of Area 6 as surplus land and an amendment to the zoning to remove its status as a public car park, provides no public benefit to the community and is fraught only with dangers and deterioration of local amenity.*
- *Future development is selfishly high for surrounding houses. Concerns for future tenants ability to look into other people’s houses, as well as overshadowing from future development onto residential dwellings.*
- *Construction workers starting early, creating noise throughout the day will largely disturb the community.*
- *There are already a number of apartments in this area which look horrible. This type of housing creates and promotes the growth of ghettos as well.*
- *It is not in keeping with the area, inappropriate development for the surrounding area, does not support the aesthetics of the area, does not take into account the impact on existing infrastructure / capacity, affect on property values.*
- *We are losing our light and skyline with monstrous towers being constructed.*

*Once Mirvac have added a development, it will be an easy move to acquire the rest of the racecourse, which would be disastrous for the community.*

- *In the ptc report dated 22 January 2019, comment is also made, "In light of the above, the redevelopment of the King St Car Park is not expected to result in any impact to the existing on-street parking conditions in the locality." Just like the first submission (whilst we know this is the ultimate intent, having publicly announced that they have partnered with property developer Mirvac) why is there any reference to the future development of*

*the car park - that is not the purpose of the Applicants application. How can they make this comment in any event without any evidence (what are they proposing, residential units, a shopping centre, an office building & therefore what studies have they done).*

- *DA does not exist separately to the longer-term future of the Canterbury Racecourse site and must not be assessed in isolation. Given the well-documented partnership with Mirvac to develop the carpark site, it is clear that approving changes to the use of the carpark will lead to further pressure for residential development.*
- *Impact to local residents with extra 250 cars looking for parking spots in our streets on Race nights, and the end game is to rezone land for a proposed large residential apartment development.*

**Response:** Council is currently undertaking a number of masterplans for land in the vicinity of the rail corridor to guide the planning process for these areas. The importance of the Canterbury Racecourse and its potential to deliver much needed open space to the community has been recognised as a key element in this planning process.

Council is now preparing a place strategy for the Australian Turf Club lands and this is the proper planning process to inform the future of the site.

The modification application before Council seeks to remove the use of 'Area 6' carpark for night race, this will have no impact on the long-term vision that is currently being prepared for Canterbury Racecourse. The modification application does not seek to change the existing RE2 Private Recreation zoning of the land. For the zoning to be changed, a planning proposal application would need to be lodged and assessed by Council and the State Government with consideration of the strategic planning framework which Council is currently developing. Such an application will be notified, and the community will be given an opportunity to provide comment.

**Submission:** *Green space/open area*

- *We need the Princess St carpark and the green space that is Canterbury Racecourse*
- *Canterbury Racecourse should be a parkland space for the community. Green space is essential.*
- *Adding more concrete buildings with no plan to add green spaces around or within them, is making suburbs look less appealing but have a negative effect on residents' wellbeing.*
- *The Race Course is around 4% of total open space in Canterbury Bankstown LGA. This DA acts as a precursor to future high-rise apartment developments and would wreck a beautiful piece of open space.*

- *International and domestic studies have shown direct links between residents' mental stability, ability and willingness to engage in physical activity (and the many health benefits of doing so, including cardiovascular health and reduced obesity), improved social interactions and sustained relaxation and the provision of urban green space. A sense of community can only successfully be established when open space is available to use and enjoy.*
- *You can often see families using area 6 (when it's not being used as a car park) to walk their dogs, to exercise, or for small children to play. This area 6 is very much needed for parking and very valued by the community.*
- *The area surrounding Canterbury racecourse is peaceful and quiet. Enjoyed by many residents who walk, run and cycle in the area. Let's keep this area quiet, family friendly and a safe place to live.*
- *The proposal will remove parkland for our children to play in and stay healthy and happy*
- *If the developers can present a reasonable explanation as to why this intended development would benefit the area without damaging the culture and heritage and provide a plan of development using sustainably sourced materials and not damaging the environment, it would give me reason to reconsider my judgement.*

**Response:** The modification application does not seek to change the existing zoning of the property which is currently RE2 Private Recreation under the Canterbury Local Environmental Plan 2012.

**Submission:** *Infrastructure:*

- *There will probably be issues accommodating the added requirement for school places following the proposed development. There is only one public primary school in the immediate vicinity (Ashbury Public) with already pressure on enrolments at this school. Consideration needs to be given to which school the primary school children residing in the proposed development will attend particularly as the Milton Street development will already be placing additional pressure for school places at Ashbury Public.*
- *The services infrastructure is not adequate to cope with additional multistorey development, footpaths are not wide enough with inadequate lighting and local schools and childcare centres are at the stretch, not to mention added stress on local Hospital.*
- *It is our opinion that Council should request independent review by the Urban planners, Department of planning, RMS and other relevant authorities heaving jurisdiction over infrastructure services, schools, hospitals and roads and provide comment if this area is suitable for further high density development.*
- *Particularly roads are already choked and this rezoning along with the Chubb site and Tyres For Us site will make the local roads become car parks, creating problems for residents.*

- *No future infrastructure to address schools, hospitals and other health facilities have been addressed.*
- *Last construction work (in James Street) has visible cracks created by heavy trucks driving down the road.*

**Response:** The modification application before Council seeks to remove the use of 'Area 6' carpark for night racing, the proposal will have no impact on the current infrastructure. If the proposal seeks to change the zoning a planning proposal application would need to be lodged and assessed by Council and the State Government and consideration of access to appropriate infrastructure to accommodate the proposal.

**Submission:** *Ashbury Heritage Conservation Area/Heritage generally*

- *Any development will be unsympathetic to Ashbury Heritage Conservation Area.*
- *A Heritage Impact Statement is also required to be included with this DA as Area 6 borders the "Ashbury Heritage Conservation Area". Please refer to Canterbury DCP, section B8.2.1 (g) "Land in the vicinity of a heritage item or a Heritage Conservation Area."*
- *This part of Canterbury Racecourse directly abuts the southern edge of Ashbury. Development of this site for apartments would begin to erode the character, uniformity and consistency of design which makes Ashbury unique. While the area is not part of Ashbury, its close proximity will ensure that tall buildings overshadow houses, increased population will put pressure on roads and public transport and reduce open space.*

**Response:** The application was referred to Council's Heritage Advisor for comment.

Council's Heritage Advisor stated that as the proposal seeks to make changes to the application that would not affect the significance of the heritage item nor would it affect the setting or visual curtilage of the place, to which the subject site is part of and that the proposal seeks to maintain the status quo, which is an open grassed area. The proposal is considered to be acceptable from a heritage point of view and as such is supported.

**Submission:** *History of the acquisition of the site by the ATC – is it from an early land grant, and if so, shouldn't the ATC return it to the Government if it is no longer used for the original purpose?*

**Response:** There is no evidence in the original application that the site was acquired from an early land grant.

**Submission:** *Pollution*

- *Increased parking in side streets, will inevitably increase pollution/rubbish in local streets, impacting residents.*

- *There will be increased air pollution, a danger to health which recent health reports have emphasised.*

Response: As outlined within the assessment of the application, it has not been demonstrated that the removal of 'Area 6' car park will not detrimentally impact the surrounding streets. The proposal is therefore recommended for refusal.

*Submission: On many occasions cars have been damaged and scratched.*

Response: The refusal of the application on this ground is not a matter under Section 4.15 of the Environmental Planning and Assessment Act, 1979. Any damages to private property/vehicles should be reported to the Police.

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

The approval of the proposed modification would not be in the public interest in terms of parking and traffic conditions. As outlined throughout this report, the removal of 'Area 6' car park from this consent will result in a detrimental impact on the parking and traffic conditions in the surrounding streets and neighbourhood. The matters raised in the public submissions, which are also similar to those raised by Council, reinforce that approval of the modification will result in unreasonable impacts on the locality and is therefore not in the public interest.

### **CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012, codes and policies.

The proposal fails to demonstrate compliance with the objectives of Part B1 Transport and Parking Development Control Plan 2012 and as outlined within the body of the report, it is considered that the removal of 'Area 6' carpark from DA-8910/1997 would detrimentally impact the parking and traffic conditions in the surrounding streets and neighbourhood.

### **RECOMMENDATION**

It is recommended that the development application DA-8910/1997/B be REFUSED, for the reasons outlined in Appendix B.





## REASONS FOR REFUSAL

1. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives of the Canterbury Development Control Plan 2012, Part B1 Transport and Parking, including:
  - B1.1 General Objectives:

*O3 To minimise overflow parking and other traffic impacts in residential streets and neighbourhoods.*
2. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory as the removal of 'Area 6' carpark at 59A King Street Canterbury from the original development consent has failed to conclusively show that its removal will not detrimentally affect the parking and traffic conditions in the surrounding streets and neighbourhood. This will impact on the on-street carparking in the locality.
3. Having regard to the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

-END-



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## Canterbury Bankstown Local Planning Panel - 03 May 2021

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<b>ITEM 2</b>	<b>12 Riverview Road, Earlwood</b>
	<b>Alterations and additions to the existing dwelling including construction of a garage at ground level, re-establishment of the original topography of the site, construction of new terrace and floor areas below the level of the existing dwelling and the addition of a floor above.</b>
<b>FILE</b>	<b>DA-93/2019 – Canterbury</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>16 April 2019</b>
<b>AMENDED PLANS RECEIVED</b>	<b>11 March 2020 6 October 2020 22 February 2021</b>
<b>APPLICANT</b>	<b>Mr. Stephen J Urch</b>
<b>OWNERS</b>	<b>Mr. Stephen J Urch</b>
<b>ESTIMATED VALUE</b>	<b>\$943,546</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

This matter is reported to Council's Local Planning Panel due to the proposed departure of a numerical development standard by greater than 30%. The determination of the Development Application is outside of the delegation of Council officers.

Development Application No. DA-93/2019 proposes alterations and additions to the existing dwelling which is located on a steeply sloping site that has been severely over-excavated as part of previous works that had commenced on site, which have since stopped. The proposed works include the construction of a garage at ground level, re-establishment of the original topography of the site, construction of a new terrace and floor areas below the level of the existing dwelling and the addition of a floor above. The development application has been assessed against *State Environmental Planning Policy (Building Sustainability Index: BASIX)*

*2004, State Environmental Planning Policy No 55 – Remediation of Land, Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012. The application is generally compliant with the exception of building height (under Canterbury LEP 2012), built form and setbacks (under Canterbury DCP 2012).*

The application was notified for 14 days from 10 May 2019 to 24 May 2019. Five objections were received during this period. The following concerns were raised in the submissions:

- Height
- Scale and character
- Deep soil
- Privacy
- Solar access
- Usage of the site
- Cost of works
- Building footprint and site coverage
- Illegal dumping

The concerns raised in the submissions have been addressed in this report and do not warrant refusal or further amendments to the proposed development.

The development as currently proposed provides for an acceptable outcome and is worthy of support based on a merit assessment. It is recommended that the application be approved, subject to the conditions of consent attached in the report.

## **POLICY IMPACT**

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There are no direct policy implications.

## **FINANCIAL IMPACT**

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There are no direct financial impacts as a result of the subject Development Application.

## **RECOMMENDATION**

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

## **ATTACHMENTS**

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- A. Assessment Report
- B. Conditions of Consent

## **DA-93/2019 ASSESSMENT REPORT**

### **Background**

On 9 January 2003, Council approved DA-835/2002 for 'alterations and additions to an existing dwelling and garage', subject to conditions. This application approved an additional storey to the existing dwelling, balcony, internal alterations and a garage extension. Works associated with this consent commenced including some internal alterations to the existing dwelling and the excavation of the site. They were stopped largely due to the unauthorised excavation of the site.

On 2 June 2012, Council issued an order to demolish or remove the crib retaining wall measuring approximately 6m in length x 1.5m in height and located between the dwelling and Riverview Road under the supervision and instructions of the project engineer. When undertaking these works, further unauthorised excavation works were also undertaken.

On 2 July 2013, Council approved modification to development consent DA-835/2002 (X835/02) for the extension of the approved garage, subject to conditions.

On 20 December 2016, Council refused DA-463/2016 for 'alterations and additions to existing dwelling' based on insufficient information. A meeting was held between Council Officers and the applicant on 31 January 2017 to discuss how to move forward with the site. A number of matters were discussed at the meeting, however the key matter raised was in relation to the unauthorised excavation of the site. The applicant was strongly recommended to ensure that any future application included re-instating the cliff face and natural features of the site.

On 25 May 2018, application DA-104/2018 for 'alterations and additions to existing dwelling' was withdrawn after several issues were raised in a letter to the applicant.

The subject application was submitted on 16 April 2019 for 'alterations and additions to the existing dwelling'.

## **SITE & LOCALITY DESCRIPTION**

The subject site is known as 12 Riverview Road, Earlwood, identified as Lot B in DP 420152. The site is zoned R2 Low Density Residential with a site area of 531.1m<sup>2</sup> and a frontage of 18.525m to Riverview Road.

This property is a regular shaped allotment, originally with a steep fall from the rear boundary to Riverview Road (approximately 12.52m over 31.86m). The land has since been heavily excavated while works that were commenced for the construction of previously approved alterations and additions. Those works were stopped as the excavation was unauthorised. That has since left a half-excavated site, with the remnants of the previous dwelling at the rear, unexcavated portion of the site.



Figure 1: Aerial of subject site in blue. Source: Near Maps 2021





**Figure 2: From site inspection**

The surrounding development is primarily low-density residential dwellings, with the occasional dual occupancy and a residential flat building to the west of the site.

### **PROPOSED DEVELOPMENT**

The Development Application proposes alterations and additions to the existing dwelling. This consists of the construction of a garage at ground level, re-instatement of original levels of the site with a new terrace and alterations and additions to the existing dwelling including a storey below and above the existing dwelling. The development includes associated works including, partial filling of the site, landscaping and drainage works.

A detailed breakdown of the proposal is as follows:

<b>Floor</b>	<b>Description</b>
Basement Level 0	Double car garage with bin storage area
Level 1	Outdoor entertainment area and landscaping
Level 2 (existing with alterations proposed)	Living, kitchen, dining, bathroom and outdoor landscaped deck area
Level 3 (existing with alterations proposed)	Bedrooms 1,2 and 3 with ensuites, lounge, laundry & bathroom, balcony and rear private open space
Level 4	Master bedroom with wardrobe & ensuite, terrace

## Statutory Considerations

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

- State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)
- Draft Canterbury Bankstown Local Environmental Plan 2020

### **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)]**

##### ***State Environmental Planning Policy No. 55 – Remediation of Land***

The provisions of Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

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

The applicant has stated that the subject site has long been used for residential purposes with no history of contamination. Given the site history, and no evidence to suggest otherwise, it is considered that the site is not contaminated. The provisions contained within Clause 7(1) of the SEPP are therefore deemed to have been satisfied.

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

In accordance with BASIX SEPP, a BASIX Certificate accompanies this application. The Certificate makes a number of energy/resource commitments relating to water, energy and thermal comfort. The relevant commitments indicated on the BASIX Certificate have been shown on the plans in order to satisfy objectives of the SEPP. The BASIX Certificate requirements have been incorporated into conditions of consent.

**Canterbury Local Environmental Plan 2012**

The following clauses of the *Canterbury Local Environmental Plan 2012* were taken into consideration:

Clause 1.2 Aims of Plan

Clause 1.2 of the CLEP 2012 addresses the aims of the plan as follows:

*2) The particular aims of this Plan are as follows:*

- aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- a) to provide for a range of development that promotes housing, employment and recreation opportunities for the existing and future residents of Canterbury,*
- b) to promote a variety of housing types to meet population demand,*
- c) to ensure that development is of a design and type that supports the amenity and character of an area and enhances the quality of life of the community,*
- d) to create vibrant town centres by focusing employment and residential uses around existing centres and public transport nodes,*
- e) to revitalise Canterbury Road by encouraging a mix of land uses that does not detract from the economic viability of existing town centres,*
- f) to retain industrial areas and promote a range of employment opportunities and services,*
- g) to promote healthy lifestyles by providing open space that supports a variety of leisure and recreational facilities and encouraging an increased use of public transport, walking and cycling,*
- h) to protect the natural environment for future generations and implement ecological sustainability in the planning and development process,*
- i) to protect and promote the environmental and cultural heritage values of Canterbury.*

The subject proposal seeks approval for alterations and addition to an existing dwelling house, and the reinstatement of the site to the natural topography. This is considered to support the amenity and character of the area and is in accordance with the aims of the CLEP 2012.

### Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R2 Low Density Residential Zone are as follows:

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

The proposed development meets the objectives of the R2 zone as it provides low density housing to the area. An assessment of the Canterbury Local Environmental Plan 2012 is provided below:

Standard	Requirement	Proposal	Complies
<b>2.1-2.3 Zoning</b>	R2 Low Density Residential	Alterations and additions to an existing dwelling house	Yes
<b>4.3 Building height</b>	9.5m building height	17.42m	No – See below
<b>4.4 Floor Space Ratio</b>	0.55:1	Site area: 531.1m <sup>2</sup>  Level 0 = 5.6m <sup>2</sup> Level 1 = nil Level 2 = 104.1m <sup>2</sup> Level 3 = 147.2m <sup>2</sup> Level 4 = 37.3m <sup>2</sup> Total = 294.2m <sup>2</sup>  FSR = 0.55:1	Yes
<b>5.10 Heritage Conservation</b>	To conserve the environmental heritage of Canterbury	The site is not a heritage item and is not in the vicinity of a heritage item.	NA
<b>6.1 Acid Sulfate Soil</b>	The site is identified as Class 5 Acid Sulfate Soil	The development does not propose excavation and will not lower the water table by more than 1m.  As such no additional information is required.	Yes
<b>6.3 Flood Planning</b>	The site is not identified on the flood planning map and is not affected by overland flow.	N/A	Yes

Standard	Requirement	Proposal	Complies
<b>6.4 Stormwater Management</b>	<p>Consent must not be granted unless:</p> <p>(a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration.</p> <p>(b) Includes on-site detention if practical as an alternative means of water supply.</p> <p>(c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.</p>	The application was referred to Council's Development Engineer who has not raised any objections with the proposed stormwater plans subject to conditions of consent.	Yes
<b>6.6 Essential Services</b>	<p>Essential services must be available or adequate arrangements have been made to make them available, including:</p> <ul style="list-style-type: none"> <li>- the supply of water;</li> <li>- the supply of electricity;</li> <li>- the disposal and management of sewage;</li> <li>- stormwater drainage or on-site conservation;</li> <li>- suitable vehicular access.</li> </ul>	Sewer and potable water connections exist and are anticipated to have adequate capacity to serve the proposed development.	Yes

As demonstrated above, the proposal is generally consistent with the 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 variation submission.

### Clause 4.3 – Height of buildings

The Height of Buildings Map prescribes a maximum building height of 9.5m on the subject allotment. Clause 4.3 is as follows:

#### **4.3 Height of Buildings**

- 1) *The objectives of this clause are as follows:*
  - (a) *to establish and maintain the desirable attributes and character of an area,*
  - (b) *to minimize overshadowing and ensure there is a desired level of solar access and public open space,*
  - (c) *to support building design that contributes positively to the streetscape and visual amenity of an area,*
  - (d) *to reinforce important road frontages in specific localities.*
- 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) *Despite subclause (2), the height of a dwelling house or dual occupancy must not exceed 8.5m if the dwelling house or dual occupancy is to be located on land in Zone R4 High Density residential.*



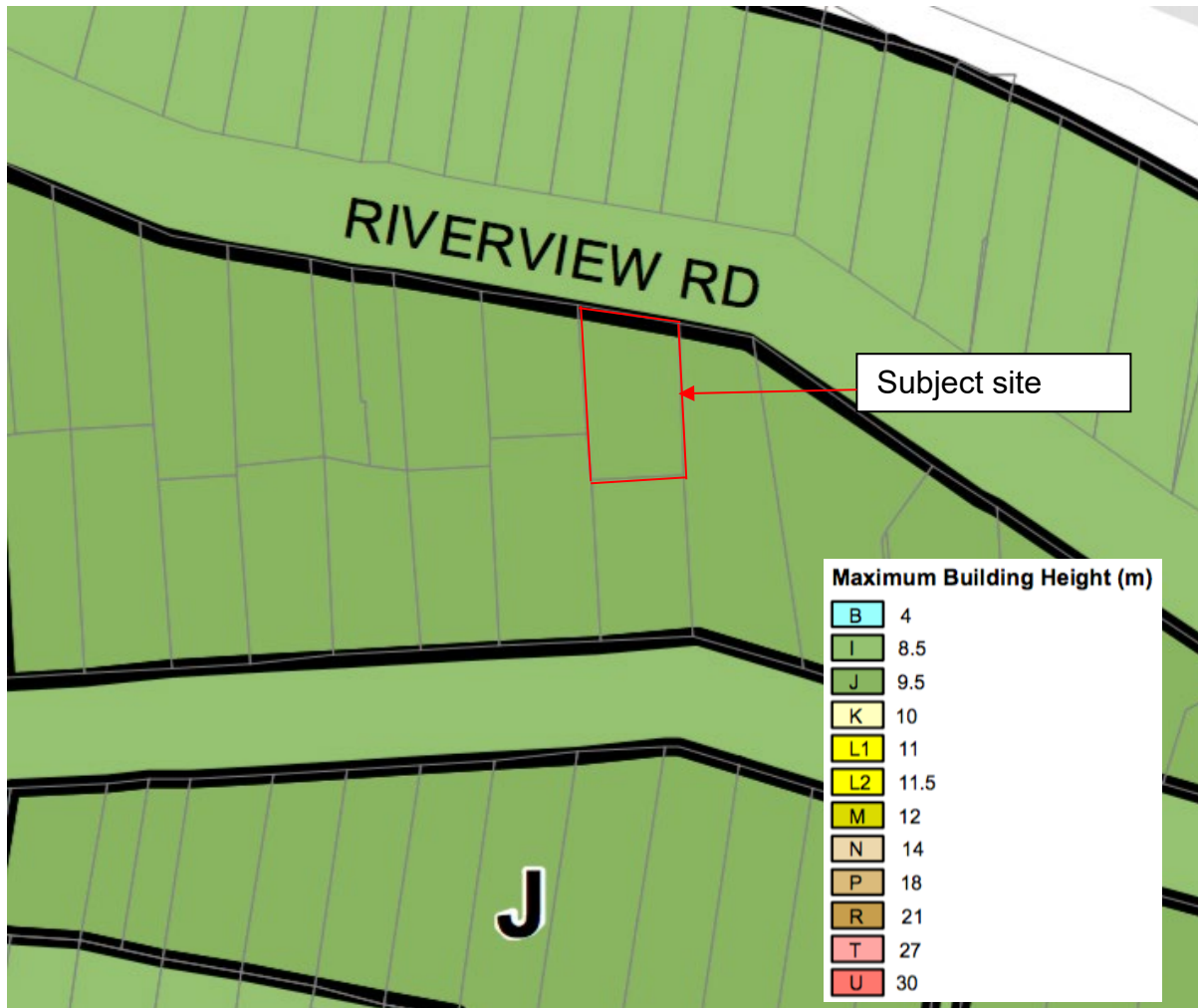


Figure 3: Excerpt from CLEP Height of Buildings Map

The height of building control for the site is 9.5m (refer to **Figure 3**).

The development standard to be varied is Clause 4.3(2), Height of Buildings. The Clause 4.6 variation request is assessed 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.***

The development standard to be varied is Clause 4.3, Height of Building, which is not expressly excluded from the operation of Clause 4.6.

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

***a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,***

The applicant has submitted a written request seeking a variation to the height of buildings development standard, being Clause 4.3(2) of the Canterbury Local Environmental Plan 2012. A summary of the Applicant's written request states that the proposed breach to the building height is unnecessary or unreasonable as:

- The building is stepped to follow the topography of the site;
- The height breach is as a result of the excavation that has occurred on the site;
- The building height non-compliance was originally approved by Council under DA-835/2002;
- The top level of the building is substantially setback from the perimeter of the main original dwelling and its appearance from the Riverview Road streetscape will be minimal;
- Adequate solar access and privacy will be maintained to neighbouring residents;
- Design will contribute positively to the streetscape;
- Substantial landscaping will result in an improvement to the previous approval; and
- Bulk is reduced by landscaping, increased front setback and reduction of garage from two to single storey.

Comment

The built form extends up to 17.64m from the newly created ground level as a result of the unauthorised excavation of the site, which represents a variation of 86%. If the excavation had not occurred, the building height would achieve compliance with the previous natural ground level.

Due to the extensive unauthorised excavation, the purpose of this application is to return the site to reflect the previous natural topography and construct a built form similar to DA-835/2002 approved 9 January 2003 for a new storey, balcony, internal alterations and garage extension.

As the site has a considerable slope (falling approximately 12.52m from the rear to the front over a site depth of 31.86m), the building has been stepped in order follow the previous natural topography and keep the dwelling under the previous maximum building height of 9.5m as indicated in red on the plans.

If the building height controls of 9.5m are strictly applied to this site from the excavated and new natural ground level, it would result in a building that would not be functional and would be out of character with the surrounding development. The existing dwelling and upper portion of the site would remain inaccessible and unusable.



The landscaping onsite is reflective of the previous natural landscaping that existed, especially in the eastern portion of the front setback. Substantial landscaping of the front setback area softens the retaining walls that are required to reproduce the natural topography of the site and reduces the bulk and scale of the development. Additional landscaping proposed when compared to DA-835/2002 and is an overall improvement for the site. The application was referred to Councils landscape architect who was satisfied subject to conditions of consent.



**Figure 6: Proposed Landscaping**

As outlined by the Applicant, the proposed building will not impact the solar access, privacy or amenity to the neighbouring residential developments. The increased front setback and reduction in height of the garage further reduces the bulk and scale of the development and has a positive impact on the streetscape.

The over-excavation of the property has left the site as an unusable eyesore in the streetscape for years, pending a suitable design solution to integrate the two distinctive levels that have resulted on the site. Given the above, the written request has therefore adequately addressed that compliance with the development standard is unnecessary or unreasonable in the circumstances of this case.



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

The Applicant's written request (outlined in part) gives the following reasons that there are sufficient 'environmental planning grounds' to justify contravening the building height development standard:

- The total resulting height of the proposed building is the same as that approved under DA-835/2002;
- The non-compliant aspects of the building were previously approved under DA-835/2002;
- The level 3 balcony is reduced in bulk in comparison to the previous consent through the deletion of the balcony roof;
- The site is constrained due to the slope;
- Existing precedence of similar built forms along Riverview Road and Homer Street;
- The non-compliance is a result of the excavation that has occurred on the site;
- The building follows the topography of the site;
- The top level of the building is substantially setback and its appearance from Riverview Road will be minimal;
- Solar access and privacy to neighbouring residents will be maintained;
- The proposed development is of good design and will contribute positively to the streetscape;
- The landscaped embankment with substantial planting will be re-instated on the site;
- A development that strictly complies with the control would result in a new development constructed from the new existing ground level. This would result in the loss of the reinstatement of the embankment and vegetation.

Comment

Council generally agrees with the reasons and justifications provided by the applicant. If a dwelling was constructed to be compliant with the new natural ground level, the upper portion of the site where the existing dwelling is located, would be inaccessible and unusable. Further, the excavation has created a streetscape that is out of character and unnatural in its appearance. The proposed development seeks to reinstate the excavated area to the level and topography that previously existed onsite.

As per *Four2Five Pty Ltd v Ashfield* [2015], the written request has justified that the development standard breach based on the specific circumstances of the particular development on the particular site. Had the site not been excavated, the height of the proposed alterations and additions to the dwelling would be under 9.5m in building height (specified by CLEP 2012). Approval of the variation will result in an environmental outcome that is consistent with the intent of the CLEP 2012 and the future desired character of the local area. Further, the non-compliance does not result in adverse impacts on the adjoining properties in terms of overshadowing, privacy issues and bulk and scale.

As the subject development achieves the required open space, floor space ratio, car parking provisions, solar access and visual privacy controls, it is justified that the proposed development is capable of achieving an acceptable environmental outcome.

The written request has adequately addressed that there are sufficient environmental planning grounds to support the proposed variation to the maximum permitted height of buildings 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***

As detailed above, the written request has adequately addressed the matters required in subclause 3 above.

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

The objectives of the height of buildings standard include establishing and maintaining the desirable character of an area whilst minimising overshadowing impacts, supporting building design which positively contributes to the streetscape and reinforcing important road frontages. The proposal is considered to be consistent with the objectives of this standard and as demonstrated above, it achieves compliance with the relevant planning controls within CLEP 2012 and CDCP 2012.

The proposed development is consistent with the R2 Low Density Residential zone's objectives which are:

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

The proposed development will contribute to the housing needs of the community within a low-density residential area and is in keeping with the objectives of the zone. Approval of the subject application would not create an undesirable precedent and is therefore considered to be in the public interest.

Based on the above, the proposal adequately demonstrates that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case, has demonstrated environmental planning grounds and the proposal is consistent with the objectives of the zone and the height of buildings development standard.



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

The Draft Canterbury Bankstown Local Environmental Plan (CBLEP) applies to the subject site. The Draft CBLEP has been publicly exhibited and was adopted by the Canterbury Bankstown Local Planning Panel on 30 June 2020 and is now under review by the Department of Planning Industry and Environment. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft CBLEP provides for an administrative conversion of both the BLEP 2015 and CLEP 2012 into a combined document under the Standard Instrument LEP template.

With respect to the proposed development, the proposal remains consistent with the aims, objectives and development standards contained within the draft instrument, which are identical to the provisions contained in the current applicable local environmental plan.

**Development control plans [section 4.15(1)(a)(iii)]**

The following table provides a summary of the development application against the controls contained in Part C1 of Canterbury Development Control Plan 2012.

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS						
Standard	Requirement	Proposed	Compliance			
			Y	N	NA	
C1.2 Site Planning						
C1.2.1.1	The minimum primary street frontage width for dwelling houses is 15m.	18.57m	Yes			
C1.2.1.2	Lots must be generally rectangular.	Subject site is generally rectangular.	Yes			
C1.2.1.7	Nothing in this section prevents Council giving consideration to the erection of a dwelling house on an allotment of land which existed as of 1/1/2013.	This allotment existed prior to 1/1/2013	Yes			

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS								
Standard	Requirement				Proposed	Compliance		
						Y	N	NA
C1.2.2	Site Area	Max Area of Building Footprint	Max Floor Area of all Outbuildings	Max Site Coverage of all Structures on a Site				
Site Coverage								
Table C1.1: Maximum Building Footprint, Floor Area of Outbuildings and Site Coverage	450 m <sup>2</sup> to 599 m <sup>2</sup>	330m <sup>2</sup>	45m <sup>2</sup>	50%	<ul style="list-style-type: none"><li>• Site area = 531.3m2</li><li>• Building footprint = 302.2m2</li><li>• Site coverage = 267.4m2 (50%)</li></ul>	Yes		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS													
Standard	Requirement	Proposed	Compliance										
			Y	N	NA								
C1.2.3.1	Neighbouring properties are not to be isolated so that the property will be unable to reasonably accommodate redevelopment.	The proposed development does not result in a neighbouring property being isolated	Yes										
C1.2.4 Landscaping													
C1.2.4.1	<div>Deep soil permeable areas must be provided in accordance with the table below:</div> <table><thead><tr><th>Site Area</th><th>Minimum Deep Soil Area (% of site area)</th></tr></thead><tbody><tr><td>Up to 449m2</td><td>15%</td></tr><tr><td>450m2 to 599m2</td><td>20% (106.2m<sup>2</sup>)</td></tr><tr><td>600m2 or above</td><td>25%</td></tr></tbody></table> <div>Table C1.2: Minimum Deep Soil Areas</div>	Site Area	Minimum Deep Soil Area (% of site area)	Up to 449m2	15%	450m2 to 599m2	20% (106.2m <sup>2</sup> )	600m2 or above	25%	Deep Soil = 116.3m <sup>2</sup> or 21.9%.	Yes		
Site Area	Minimum Deep Soil Area (% of site area)												
Up to 449m2	15%												
450m2 to 599m2	20% (106.2m <sup>2</sup> )												
600m2 or above	25%												
C1.2.4.2	Deep soil areas must have a minimum dimension of 2.5m.	Achieved.	Yes										
C1.2.4.3	For dwelling houses on lots with a street frontage greater than 12.5m, 50% of the deep soil area should be located adjacent to the rear boundary.	73% of deep soil is located in the rear setback	Yes										
C1.2.5 Layout and Orientation													
C1.2.5.1	Orientate development to maximise solar access and natural lighting, without unduly increasing the building's heat load.	The proposed development is orientated to the north to maximise solar access.	Yes										
C1.2.5.2	Site the development to avoid casting shadows onto a neighbouring dwelling's primary living area, private open space and solar cells.	The development is sited as to avoid casting shadows on the neighboring dwellings primary living area and private open space	Yes										
C1.2.5.3	Coordinate design for natural ventilation with passive solar design techniques.	Designed to allow natural ventilation and solar access	Yes										

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	NA
C1.2.5.4	Site new development and private open space to avoid existing shadows cast from nearby buildings.	Open space areas distributed along the front and rear of the site and allow for solar access at different times of the day	Yes		
C1.2.5.5	Site a building to take maximum benefit from cross-breezes and prevailing winds.	Building siting and window locations allow for building to take advantage of cross-breezes and prevailing winds	Yes		
C1.2.5.6	Do not compromise the creation of casual surveillance of the street, communal space and parking areas, through the required orientation.	The proposed development has direct site lines onto Riverview Road on each storey.	Yes		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	N/A
C1.3.2.1 Height	<p>Development for the purposes of dwelling houses must not exceed the following numerical requirements:</p> <p>(a) A maximum two storey built form.</p> <p>(b) A maximum external wall height of 7m where the maximum height of buildings standard under the LEP is 8.5m.</p> <p>(c) A maximum external wall height of 8m where the maximum height of building standard under the LEP is 9.5m.</p> <p>(d) Finished ground floor level is not to exceed 1m above the natural ground level.</p> <p><b>Note:</b> Skillion and flat roof forms will be considered on merit.</p>	<p>(a) Presents as 3 storeys [see comment 1 below]</p> <p>(c) Max wall height = 17.42m (from existing ground)</p> <p>(d) FFL &lt;1m</p>	No – see comment [1]		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	N/A
C1.3.2.2 Basement and Sub-floor Projection	Any part of a basement or sub-floor area that projects greater than 1m above ground level comprises a storey.	No basement or subfloor area proposed. The garage is now at new ground level	Yes		
C1.3.2.3 Attics and Roof Terraces	Attics and mezzanine floors do not comprise a storey.	Noted.	Yes		
C1.3.2.4	Roof top terraces are not acceptable on any building or outbuilding in any residential zone.	None proposed.	Yes		
C1.3.2.5 Basement and Sub-floor	Dwelling houses may provide basement or subfloor parking where site constraints warrant, and it can be demonstrated that there will be no adverse impacts on amenity, streetscape or public domain.	No basement or subfloor area proposed.	Yes		
C1.3.2.6	Basement and sub-floor parking is only suitable where compliance with Chapter B1 Transport and Parking of this DCP can be demonstrated.	No basement or subfloor area proposed.	Yes		
C1.3.2.7 Retaining Walls – Development Without Basement Parking	Walls that would enclose a sub-floor area:  (a) Maximum 2m for steeply sloping land; and  (b) Maximum 1m for all other land.	No basement or subfloor area proposed.	Yes		
C1.3.2.8	Retaining walls that would be located along, or immediately adjacent to, any boundary:  (a) Maximum 3m for steeply sloping land, but only to accommodate a garage that would be located at street level; and  (b) Maximum 1m for all other land.	The plans do not indicate any retaining walls, however, given the extensive fill on the site some retaining walls may be required for structural purposes along the side boundaries.  These retaining walls are up to 8.86m in height.  Council’s development engineer has provided conditions of consent in relation to this.	No – See comment [2]		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS						
Standard	Requirement		Proposed	Compliance		
				Y	N	N/A
C1.3.2.9 Cut and fill – Development Without Basement Parking	Maximum 1m cut below ground level where it will extend beyond an exterior wall of the building.		The existing cut is to be substantially filled, no new cutting proposed.	Yes		
C1.3.2.10	No limit to cut below ground level where it will be contained entirely within the exterior walls of a building, however, excavated area is not to accommodate any habitable room that would be located substantially below ground level.		The existing cut is to be substantially filled, no new cutting proposed.	Yes		
C1.3.2.11	Maximum 600mm fill above ground level where it would extend beyond an exterior wall of a building.		The existing cut is to be substantially filled, to accord with previous natural ground levels	Yes		
C1.3.2.12	If proposed cut and fill, or a retaining wall, would be deeper or higher than 1m, structural viability must be confirmed by suitably qualified engineers’ reports.		The application has been referred to Councils development engineer who has provided comments. The proposed fill is satisfactory subject to conditions of consent.	Yes		
C1.3.3 Setbacks						
C1.3.3.1 Front, Side and Rear Setbacks	Development, including basement and sub-floor areas, fronting a major road must have a minimum front setback of 9m.		Not a major road.	N/A		
C1.3.3.2	Development must comply with the minimum front, side and rear setbacks as detailed in the following tables:  <i>Table C1.4: Dwelling Houses with frontages widths of 12.5m or greater</i>					
	Setback	• Controls	• 10.3m (5m to deck area), refer to C1.3.3.12 below	Yes		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS						
Standard	Requirement		Proposed	Compliance		
				Y	N	N/A
	<b>Front Setback</b>	<ul style="list-style-type: none"><li>Minimum setback of 6m or the average of the existing setback of the nearest dwelling house to either side of the site.</li><li>Maximum 2m recess for the main entrance from the front building line.</li></ul>	<ul style="list-style-type: none"><li>530mm setback to garage, refer to C1.3.3.11 below.</li><li>Front door is setback 200mm from the deck area above.</li></ul>			
	<b>Side Setbacks</b>	Minimum setback of minimum setback of 1m from side boundaries.  Corner lots: minimum setback of 2m from the secondary street frontage (the longer street boundary).	East side = 1.230m  West side = 1.3m  Not a corner lot.	Yes		
	<b>Rear Setbacks</b>	Minimum setback of 6m from the rear boundary.	4.9m [see comment 2 below]	No - see comment [3]		
<b>Exceptions and Other Requirements</b>						
C1.3.3.3	External walls that enclose rooms, storage areas and/or garages are not to encroach beyond the specified setbacks.		Noted.	Yes		
C1.3.3.4	For first floor additions, front and side setbacks may match the ground floor wall alignment of the existing dwelling for a depth of 10m or 50% of the length of the façade, whichever is the greater.		Noted but not applicable in this instance.	N/A		
C1.3.3.5	Minimum setback of 1m from any side or rear boundary for swimming pools and associated terraces. Landscaping shall be provided in the setback area to screen the pool from neighbours.		Achieved	Yes		
C1.3.3.6	Swimming pools must not be located within any front setback.		Not proposed	NA		



CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	N/A
C1.3.3.7	One garage or carport may be constructed with a nil rear setback for sites that adjoin a rear laneway. The garage or carport must not comprise more than 50% of the rear boundary frontage to a lane and not be wider than 6m.  (Zero setback across no more than 50% of rear boundary with a maximum width of 6m)	Site does not adjoin a rear lane.	N/A		
C1.3.3.8	For a residential building that does not have basement parking lightweight carports may extend beyond the required side boundary setback.	Noted.	Yes		
C1.3.3.9	Car parking structures must satisfy BCA requirements.	Associated conditions of consent included.	Yes		
C1.3.3.10	For existing dwellings one single space carport may encroach beyond the minimum front setback, where it can be demonstrated that vehicular access cannot be provided behind the building line given that side driveway access is less than 2.7m. Carports must not be wider than 3m.	No carport proposed.	N/A		
C1.3.3.11	On land identified as having a height of 9.5m on the Map, the following parking structures may encroach beyond the minimum front or side setback:  One carport that is not wider than 6m.  On sites that rise from the street frontage, one garage that is not wider than 6m and no higher than 3m above street level.	The site is identified as having a height of 9.5m on the map. The site rises from the street  Garage is 5m wide.  530mm setback to garage	Yes		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	N/A
C1.3.3.12	<p>The following minor building elements may project up to 1m into the minimum side setback area:</p> <p>Roof eaves, awnings, pergolas and patios;</p> <p>Stair or ramp access to the ground floor;</p> <p>Rainwater tanks; and</p> <p>Terraces above basement parking that are no higher than 1m above ground level (except dwelling houses, semi-detached dwellings and dual occupancy).</p>	The proposed external stairs project 1m into the side setback.	Yes		
C1.3.3.13	Elements that articulate a front elevation of a dwelling house, such as awnings, balconies, patios, pergolas, porches, porticoes and verandas, may project up to 1.5m into the required front setback articulation zone.	The level 1 and level 2 deck areas project 1m into the front setback.	Yes		
C1.3.4 Building Separation					
C1.3.4.1	<p>The following controls apply to alterations and additions to dwelling houses:</p> <p>(a) The top storey of any two-storey building should be designed, as a series of connected pavilion elements.</p> <p>(b) Pavilion elements shall have a depth between 10m to 15m.</p> <p>(c) Articulate pavilion elements by an additional side boundary setback and identified by separate roofs.</p>	Achieved	Yes		
C1.5 Solar Access					
C1.5, C1	Min 2 hours to living room window of dwelling & adjoining dwellings between 9am-3pm at mid-winter solstice	The primary dwelling and adjoining dwellings at 10 and 14 Riverview Road receive solar access between 9am and 3pm	Yes		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	N/A
C1.5, C2	Min 2 hours to min 50% of required POS for proposed & adjoining dwellings between 9am-3pm at the Solstice	<p>The principal POS for the primary dwelling is located in the front setback area, as such the dwelling achieves solar access between 9am and 3pm.</p> <p>The dwelling at 14 Riverview Road receives solar access to its rear POS between 12pm and 3pm.</p> <p>The dwelling at 10 Riverview Road receives solar access to its rear POS between 9am and 12pm.</p> <p>The dwelling at 61 Homer Street receives solar access to its rear POS between 9am and 12pm.</p>	Yes		
C1.5, C4 & C7	Min 2 hours to clothes drying primary living areas and private open space of adjoining dwellings between 9am-3pm at mid-winter solstice	The adjoining dwellings receive a minimum 2 hours of solar access to the clothes drying area. 14 Riverview road is not overshadowed by the development between 12pm and 3pm. 57 Homer Street receives solar access between 9am and 12pm. 61 Homer street receives solar access at 9am and 2pm.	Yes		
C1.5, C6	Avoids overshadowing of existing solar hot water systems or other solar collections on the site and adjoining site	No neighbouring dwellings have solar hot water or solar panels.	Yes		
C1.5.2 Open Space					
C1.5.2	<p>Must be behind the front building line Located adjacent to the main living areas</p> <p><u>Visual Privacy</u> If windows overlook adjoining property: Are windows offset or, sill height of 1.5m or, use windows &lt;600mm wide</p>	The subject site provides POS in both the rear setback on the fourth storey from the ground level up to level three. The garage is considered to be the front of the building and due to the topography of the site, POS is situated towards Riverview Road. This is consistent with the characteristic of the street.	Yes		

CANTERBURY DCP 2012 CHAPTER C1 - DWELLING HOUSES AND OUTBUILDINGS					
Standard	Requirement	Proposed	Compliance		
			Y	N	N/A
C1.5.3 Acoustic Privacy					
C1.5.3	Product sensitive rooms such as bedrooms from likely sources of noise such as major roads, neighbours' living areas and building lobbies	Achieved	Yes		

### [1] Height

The DCP requires that the maximum wall height be maintained at 8m and the built form achieves a maximum two storeys at any point. The proposal exceeds the maximum wall height due to the over excavation of the site. The proposed building height has been designed to mimic the sites previous natural ground level resulting in the noncompliance. A stepped built form as been proposed to respond to the steeply sloping (natural) topography of the site. The dwelling maintains a two storey built form apart from a portion of the top most storey addition. This addition also formed a part of the previously approved application DA-835/2002. The building element remains compliant within the maximum building height specified in CLEP 2012 and is stepped back significantly from the street frontage as to not add significant bulk and scale to the development. The storey limit variation does not result in any unfavourable impacts in terms of overshadowing, bulk and scale or visual privacy issues between the development and adjoining properties. The objective of height in Part C1.3.2 in CDCP 2012 is as follows:

***O1 To ensure that development is of a scale that is visually compatible with adjacent buildings, character of the area, and the objectives of the zone.***

The development is consistent with this objective and is considered worthy of approval in this case.

### [2] Retaining Walls

Proposal involves retaining walls up to a height of 8.86m, to retain the new fill that will be brought into the site, to bring the site to the previous levels. A variation is suitable in this circumstance as it will allow the development to return the site to the previous natural topography. This contributes positively to design of the development and fits into the character of the streetscape. The proposed variation is considered worthy of approval in this case.

### [3] Rear setback

The proposed rear setback of 4.9m is less than the numerical setback requirement of 6m. The proposed rear setback is in line with DA-835/2002. Further, adequate privacy and deep soil landscaping is maintained onsite. As the topography continues to rise to the south (rear) of the site, the rear adjoining property is set up above the private open space of 12 Riverview Road. This allows both dwellings maintain adequate building separation and the rear setback is considered worthy of support.

Part B5 – Stormwater and Flood Management

The application is capable of complying with Part B5 of the CDCP 2012 and should the application be approved appropriate conditions have been imposed.

Part B2 – Landscaping and Part B3 – Tree Preservation

The application provided a landscape plan the proposal was referred to Council's Landscape Architect who raised no objections to the proposal subject to conditions.

***Canterbury Development Contributions Plan***

The Canterbury Development Contributions Plan applies to the site and requires a contribution \$9,435.06. This is included as a condition of consent.

***Planning agreements [section 4.15(1)(a)(iia)]***

There are no planning agreements applicable to the development application.

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

The proposal satisfactorily addresses the relevant provisions of the regulations.

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

The key potential impacts of the development have been discussed through-out this report. Apart from those matters already addressed, the following likely impacts are considered:

Loss of Views

No submissions were received in regard to the loss of view from the two adjoining western properties. However, as assessment was undertaken following guidance from the judgement NSWLEC-140 Tenacity Consulting v Warringah Shire Council, which is a planning principle, where it was concluded that a four-step process should be followed, as listed below:

- Step 1: Assessment of the views affected

The view which is affected by parts of the dwelling are located to the South West of the site. That being the dwelling at 63-65 Homer Street. This dwelling enjoys distant views of Sydney CBD to the north east.

- Step 2: Consider from which part of the property the views are affected (i.e.: front views are more highly valued than side views)

The affected view is across the side boundary of the property at 63-65 Homer Street. The current dwelling at 12 Riverview Road blocks most of the view 63-65 Homer Street would receive of the Sydney CBD. There is a very small portion of the CBD that is visible over the side boundary from a standing position. It is noted in the judgement handed down in the referenced case that it is often unrealistic to expect to retain views obtained across side boundaries.



Figure 7 View taken in a north easterly direction from the side balcony of 63-65 Homer Street

- Step 3: Assess the extent of the impact

The impact of the view loss will be minimal. The additional floor proposed at 12 Riverview road will block the view to the north east of the dwelling at 63-65 Homer Street. However, as only a very small portion of the CBD is currently visible from a standing position, the loss of views is negligible. It is noted that DA-835/2002 was approved by Council on the subject site with the same building height proposed.

- Step 4: Assess the reasonableness of the proposal causing the impact

The proposed development is considered to be reasonable and is generally compliant with the numerical requirements of Part 2 of Canterbury Development Control Plan 2012. The proposal is an improvement on the previously approved design and has been designed to be in keeping with the streetscape and the original topography of the site. The view impact of the development is considered acceptable and the view sharing reasonable.

The proposed development is not considered likely to result in any significant detrimental environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development controls are proposed, they are considered to be reasonable and justified in this case. Further, no objections were raised in relation to the loss of views. As such, it is considered that the impact of the proposed development on the locality is 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 future character of the locality. The application has been assessed under Section 4.15 of the Act, and as demonstrated throughout the body of this report, the proposal generally complies with the relevant development controls. The proposed variations to the maximum height of buildings development standard contained within CLEP 2012 has been assessed on merit and is acceptable for the reasons outlined within the body of the report.

**Submissions [section 4.15(1)(d)]**

The application was notified for a period of fourteen (14) days from 10 May 2019 to 24 May 2019. Five objections were received during this period, one of which was signed by parties from 3 different addresses. They raise concerns relating to the following:

**Issue:** *Exceeds maximum wall and building height listed in Councils controls*

**Response:** The development seeks to fill the site to its previous topography prior to the unauthorised excavation. As such, the proposed building height is consistent with the required building height and only breaches the height control when measured from the new natural ground level. A variation to Councils controls is considered to be appropriate in order to return the site to the previous topography.

**Issue:** *Dominance of character, excessive bulk, scale and built form*

**Response:** The development is located on a steeply sloping site. The building has a stepped design that follows the topography of the site prior to the unauthorised excavation. This stepped design is consistent with the built form of neighbouring dwellings and surrounding character.

**Issue:** *Five storey built form*

**Response:** The proposed development maintains a built form of not more than two storeys at any point apart from one small portion at the rear of the site which aligns with a previous approved built form.

**Issue:** *Unwanted precedence for excavation*

**Response:** The proposed development includes the reinstatement of the excavated area to reflect the sites original topography.

**Issue:** *Development exceeds the maximum floor area*



**Response:** The development application originally submitted breached the maximum floor area on site. The applicant has since amended the plans and reduced the floor area to within the required maximum floor space ratio.

**Issue:** *Excessive parking and potential business activity*

**Response:** The applicant was required to amend the garage and storage area. It has since been reduced in size and only has space for the 2 required car parking spaces on site. No approval for a business forms a part of this application.

**Issue:** *Removal of waste on site and illegal dumping.*

**Response:** The applicant has provided a waste management plan as a part of this application which details the removal of the waste on site. The application will be conditioned to ensure that appropriate measures are taken to ensure waste is suitably removed. Any illegal dumping should be reported to Councils compliance team or the relevant government agency.

**Issue:** *In accurate and under estimated cost of works*

**Response:** A quantity surveyors report was submitted by the applicant to ensure that the cost of works is accurate. As a result of this the proposed cost of works was higher than the original estimate provided to Council. The applicant was required to pay the additional lodgment fees required.

**Issue:** *Privacy and acoustic concerns from entertainment deck area*

**Response:** The applicant has addressed privacy and acoustic impacts from the level 1 and level 2 deck areas by providing 1.8m high screening along the east and west sides of the decks. This will ensure that impacts on the adjoining dwellings are minimised.

**Issue:** *The development exceeds Councils maximum building footprint and site coverage controls*

**Response:** The applicant has amended the design and has clearly shown that the development is within the maximum site coverage and building footprint controls, in line with the requirements of part C1.2.2 of CDCP.

**Issue:** *Natural deep soil cannot be provided onsite due to the excavation.*

**Response:** Significant excavation of the front setback of the site has occurred. However, deep soil can be provided in this area as indicated in the amended landscape plan provided. The applicant has demonstrated deep soil in excess of the minimum 20% required onsite, as per part C1.2.4 of CDCP.

***Issue: Limited solar access to neighboring dwellings***

**Response:** The applicant has provided solar diagrams that ensure the living areas and private open space receive at least the minimum required 2 hours of direct solar access on 21 June to the neighbouring dwellings in accordance with the provisions of part C1.5.1 C4 of CDCP.

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

The public interest is served through the consistent and measured application of the relevant plans, policies and standards. The proposal is generally consistent with these policies and, as such, is in the public interest.

Objections were received in relation to this application. However, determining whether a matter is contrary to the public interest is not solely based on the fact objections were received.

Council generally considers that the proposal meets the relevant development standards and planning controls and would remain in the public interest thus, the proposal should be supported.

**CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Canterbury Local Environmental Plan 2012* and *Canterbury Development Control Plan 2012*.

The proposed development and variation to building height, allows for an appropriate built form for the site. The proposal generally returns the site to its previous topography that existed prior to the unauthorised excavation that occurred and is in character with the surrounding developments. As such, the development satisfies the objectives of the relevant planning controls.

**RECOMMENDATION**

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



## SCHEDULE 1 – CONDITIONS OF CONSENT

- 1) The building work/s must comply with the conditions of this Determination Notice. A Construction Certificate must not be issued until the plans and specifications satisfy the required technical standards and the consent conditions of this Determination Notice. In the event of an inconsistency between this Determination Notice, the approved plans and supplementary documentation, this Determination Notice shall prevail.
- 2) The building work/s must be carried out in accordance with the approved plans and supplementary documentation set out in the table below, except where amended by the conditions specified in this Determination Notice.

Plan No.	Plan Name	Date	Revision	Prepared By
A101	Site Analysis Plan	2/2/2021	C	Cad Draft P/L
A102	Site Roof Plan	2/2/2021	C	Cad Draft P/L
A103	Garage Level Plan	2/2/2021	C	Cad Draft P/L
A104	Entertainment Level plan	2/2/2021	C	Cad Draft P/L
A105	Ground Floor Plan	2/2/2021	C	Cad Draft P/L
A106	First Floor Plan	2/2/2021	C	Cad Draft P/L
A107	Second Floor Plan	2/2/2021	C	Cad Draft P/L
A108	Eastern Elevation	2/2/2021	C	Cad Draft P/L
A109	Western Elevation	2/2/2021	C	Cad Draft P/L
A110	Northern Elevation	2/2/2021	C	Cad Draft P/L
A111	Southern Elevation + Section 1	2/2/2021	C	Cad Draft P/L
A112	Section 2	2/2/2021	C	Cad Draft P/L
A113	Section 3	2/2/2021	C	Cad Draft P/L
A114	Section 4	2/2/2021	C	Cad Draft P/L
A115	Section 5	2/2/2021	C	Cad Draft P/L
A116	External Material Finishes	2/2/2021	C	Cad Draft P/L
	Waste Management Plan	18/4/2019		
LDA-101	Landscape Site Plan	8/2/2021	E	Geoscapes
LDA-102	Landscape Level 1	8/2/2021	E	Geoscapes
LDA-201	Landscape Elevation North	8/2/2021	E	Geoscapes
LDA-601	Landscape Specification & Details	8/2/2021	E	Geoscapes
LDA-602	Plant Schedule & Images	8/2/2021	E	Geoscapes

Prior to the issue of a Construction Certificate, the approved development documents as specified in the table above must be amended as follows:

- a) The waste management plan is to be amended to include the removal of all waste onsite, including any dumped rubbish and the dumped vehicle onsite. This is to be in accordance with the relevant legislation. Verifiable records of all waste materials leaving the site and their destination must be kept until the Occupation Certificate is issued.
- 3) Upon activation of this consent, no further works associated with Development Consent No. 835/2002 is permitted to be undertaken.

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

- 4) The Principal Certifier must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 5) All aspects of the landscaping must be completed according to the submitted landscape plan (drawn by Geoscapes, Specification and Construction Details, submitted to council on 22<sup>th</sup> February 2020) except where amended by the conditions of consent. The landscaping and deep soil areas are to be maintained at all times to the Council's satisfaction.
  - a) 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 ([will.a.qin@cbc.city.nsw.gov.au](mailto:willa.qin@cbc.city.nsw.gov.au) or PH 02 9707 5401), prior to issue of any Construction Certificate. The order confirmation shall include name, address and contact details of supplier; and expected supply date.
  - b) A replacement should be considered for *Acacia longifolia* as it is a short-lived tree (only live up to 10-15 years). *Acacia longifolia* is not recommended for this site (shown on LDA101).
  - c) Unless one metre soil depth can be achieved on top of the garage for trees' survival, no middle or large size trees are suggested to be planted on top of the garage, except *Bursaria Spinosa*, which can be counted as a shrub. Alternatives such as native small shrubs can be considered for same visual and ecological affect.
  - d) 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).
  - e) A thorough maintenance schedule period of 12 months is to be applied to this development. During this maintenance period, the landscaping must be maintained in accordance with the details specified on the submitted landscape plan. It should also consider the maintenance for the garden bed on top of the garage to avoid drainage and leakage issues.

- 6) Approval in accordance with Council's Tree Management Order (TMO) is granted to lop or remove only those trees identified to be lopped or removed on the approved plans. If not indicated on the approved plans, separate approval must be obtained to prune or remove trees on adjoining properties or other trees located on the site. A person(s) who contravenes or causes or permits the TMO to be breached shall be guilty of an offence and liable for prosecution.
- 7) A Soil Erosion and Sedimentation Control Plan must be prepared prior to the issue of a Construction Certificate. The plan must be prepared by a professional engineer as defined by the Building Code of Australia and approved by the Principal Certifier. The plan must state that the capacity and effectiveness of erosion and sediment control devices must always be maintained throughout the construction period.
- 8) The Council approved plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) will affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap inTM.

Refer to [www.sydneywater.com.au/tapin](http://www.sydneywater.com.au/tapin) for Sydney Water's Guidelines for building over or next to assets, visit [www.sydneywater.com.au](http://www.sydneywater.com.au) 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPINTM.

Sydney Water must issue either a Building Plan Assessment letter which states that the application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 9) All fees, levies, bonds and/or contributions as required by this Determination Notice must be paid to the relevant authority/entity.
- 10) A long service levy payment which is calculated to be 0.35% of the total cost of the building work/s must be paid to the Building and Construction Industry Long Service Payments Corporation.
- 11) Council has identified an additional demand for public amenities and services as a consequence of this development. Pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979 and Canterbury Development Contributions Plan 2013, a levy of \$9,435.06 must be paid to the Council to meet the cost of providing , extending or augmenting various public amenities and services.

The levy amount is based on the estimate of the proposed cost of development being \$943,506.

2013 Plan – Section 7.12	
• Section 7.12 Contributions	\$ 9,435.06



Note: The contributions payable may be adjusted, at the time of payment, to reflect Consumer Price Index increases (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

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

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

- 12) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on relevant Construction Certificate plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 13) The developer shall apply for a Work Permit and obtain approval from Council, for the following engineering works in front of the site, at the applicant's expense:
  - a) A medium duty VFC of maximum width of 5.0 metres at the property boundary (similar to previous approval)
  - b) Drainage connection to Council's kerb & gutter system.
  - 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

- 14) For this development, Council requires that the stormwater runoff from within the development site shall be collected and controlled by means of an **on-site stormwater detention system**, in accordance with Council's Canterbury Development Control Plan 2012 Part B5. The developer shall engage a suitably qualified Engineer to prepare a final stormwater drainage and on-site detention system plan to be generally in accordance with the concept plan D1018A/2016 – Sheet 1 of 1, 13 February 2019, by N. KOLOFF & ASSOCIATES Civil & Structural Engineers, and in accordance with the requirements contained in Council's Canterbury Development Control Plan 2012 Part B5. The

Engineer shall certify that the design and plans comply with Council's Canterbury Development Control Plan 2012 Part B5 and the relevant Australian Standards with the following additional amendments;

- a) All subsoil drainage for the retaining walls associated with the proposed fill/cut will need to be clearly defined in the stormwater plan.
  - b) The proposed on-site detention tank features such access lids, steps and maintenance features must be reflected on the amended plans and must comply with AS 3500.3 and the relevant Australian confined space standards and regulations.
- 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) A photographic survey must be prepared of the adjoining properties at 14 Riverview Road and 57 Homer Street, Earlwood detailing the physical condition of those properties, 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 and Canterbury Bankstown Council if Council is not the Principal Certifying Authority, prior to the issue of the relevant Construction Certificate. On completion of the excavation and building works and prior to the occupation of the building, a certificate stating to the effect that no damage has resulted to adjoining premises is to be provided to the Principal Certifying Authority and Canterbury Bankstown Council if Council is not 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 the occupation of the development. All costs incurred in achieving compliance with this condition shall be borne by the persons entitled to act on this Consent.

- 17) A dilapidation report prepared by an Accredited Engineer, detailing the structural adequacy of the adjoining properties at 506 Burwood Road and 2 Wilson Avenue, Belmore and their ability to withstand the proposed excavation, and any measures required to be incorporated into the work to ensure that no damage will occur during the course of the works, shall be submitted to Council, or the Principal Certifying Authority prior to the issue of a Construction Certificate. All costs to be borne by the applicant.
- 18) 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.
- 19) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires the developer to obtain a Works Permit and or a Roadway/Footpath Building Occupation Permit prior to issue of any Construction Certificate for this development being issued where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

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

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

The developer shall ensure the person or company carrying out the work will carry public liability insurance to a minimum value of twenty million dollars. The developer shall provide proof of the policy, to Council, prior to commencing any work approved by the Work Permit including the Road Opening Permit. The policy must remain valid for the duration of the works.

- 20) The development must be carried out in accordance with the commitments shown on the submitted BASIX Certificate. The BASIX commitments must 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.

#### **CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION**

- 21) A Construction Certificate is required for the erection of a building in accordance with this Determination Notice.

This Determination Notice does not authorise building work until a Principal Certifier has been appointed as the Principal Certifier for the work by (or with the approval of) the person having the benefit of this Determination Notice.

The following requirements apply before the commencement of building work in accordance with this Determination Notice:

- a) the Principal Certifier has, no later than 2 days before the building work commences, notified the Consent Authority and the Council (if the council is not the Consent Authority) of his or her appointment as the Principal Certifier,
- b) the Principal Certifier has, no later than 2 days before the building work commences, notified the person having the benefit of this Determination Notice of any inspections that are required to be carried out in respect of the building work,
- c) the person carrying out the building work has notified the Principal Certifier that the person will carry out the building work as an owner-builder, if that is the case,
- d) the person having the benefit of this Determination Notice, if not carrying out the 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 involve, and
  - ii. notified the Principal Certifier of the appointment, and
  - iii. unless that person is the principal contractor, notified the principal contractor of any inspections that are required to be carried out in respect of the building work,

- e) the person having the benefit of this Determination Notice has given at least a 2-day notice to the Council, and the Principal Certifier if not the Council, of the person's intention to commence the erection of the building.
- 22) Existing trees within the vicinity of the development site or paths of travel of construction vehicles accessing the development site that are to be retained must be protected with temporary fencing. This must be of a type that prevents injury to tree roots, placed 2 metres away from the trunk base of the existing tree to prevent damage during construction and retained in accordance with Council's Tree Management Order (TMO). There must not be any stockpiling of materials within the 2-metre fenced zone whilst the construction of the building work/s is being undertaken and must always be maintained throughout the construction period.
- 23) A Soil Erosion and Sedimentation Control Plan must be prepared prior to the issue of a Construction Certificate. The plan must be prepared by a professional engineer as defined by the Building Code of Australia and approved by the Principal Certifier. The plan must state that the capacity and effectiveness of erosion and sediment control devices must always be maintained throughout the construction period.
- 24) Council's warning sign for Soil and Water Management must be displayed throughout the construction period at the most prominent point of the site, visible to both the street and site.
- 25) Prior to the commencement of work, the person having the benefit of this Determination Notice must provide a temporary on-site toilet if access to existing toilets on site is not adequate/available. Temporary on-site toilet facilities must be installed and be adequately maintained throughout the construction period.
- 26) A fence must be erected around the area of the development site, except where an existing 1.8 metres high boundary fence is in good condition and can secure the area. Any new fencing must be temporary and at least 1.8 metres high. All fencing must be maintained throughout the construction period 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 work proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of building work/s.

- 27) 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 that Act and that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

- 28) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifier 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 Certifier 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 carried out 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 carrying out the residential building work are changed while the work is in progress, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- 29) A sign must be erected in a prominent position at the development site and must clearly show the following information:
- a) the name, address and telephone numbers (both during and outside of normal working hours) of the Principal Certifier for the work the person responsible for the site,
  - b) the name of the licenced builder / owner-builder and a telephone number on which that person may be contacted outside working hours, and
  - c) that unauthorised entry to the development site is prohibited.

Any such sign must be maintained while the building work is being carried out and must be removed when the building work has been completed.

#### **CONDITIONS TO BE SATISFIED DURING CONSTRUCTION**

- 30) Building work, or demolition work may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.
- 31) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 32) A report as prepared by a registered surveyor must be submitted to the Principal Certifier prior to the construction of any floor level of the development verifying that the proposed finished floor level and the wall setbacks to the property boundary conform to the approved plans.



- 33) All civil and hydraulic engineering works on site must be carried out in accordance with Council's Canterbury Development Control Plan 2012 Part B5. 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.
- 34) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.

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.

This consent condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

The owner of any affected buildings is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on an adjoining allotment of land.

- 35) The stormwater drainage system shall be constructed in accordance with Council's Canterbury Development Control Plan 2012 Part B5 and the engineering plans and details approved by the Principal Certifier. Should the person having benefit of this Determination Notice encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, then he / she must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at his / her own expense.
- 36) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, 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**

- 37) The occupation or use of the building must not commence unless an Occupation Certificate has been issued.

- 38) A registered surveyor shall prepare a Work As Executed Plan, and a suitably qualified Hydraulic Engineer shall provide certification of the constructed on-site stormwater detention system.

The Work As Executed information shall be shown in red on a copy of the approved stormwater plan and shall include all information specified in Council's Canterbury Development Control Plan 2012 Part B5. The Work As Executed plan shall be submitted to the Hydraulic Engineer prior to certification of the on-site stormwater detention system.

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

- 39) An Occupation Certificate for the completed development must not be issued until all conditions relating to demolition, building and subdivision works have been satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).
- 40) The developer shall register, on the title of the subject property, a Restriction on the Use of Land and Positive Covenant, in accordance with the standard terms for "Registration of OSD on title", as outlined in Council's Canterbury Development Control Plan 2012 Part B5 and in accordance with the appropriate provisions of the Conveyancing Act. Where subdivision is not proposed, the surveyor shall show the location of the "On-Site Stormwater Detention System" on an A4 size site plan attached to the Section 88E Instrument to be registered, on the title of the subject property, prior to the issue of the Final Occupation Certificate. Alternatively, where subdivision is proposed, the developer shall register, on the title of the subject property, a Restriction on the Use of Land and Positive Covenant, in accordance with the standard terms for "Registration of OSD on title", as outlined in Council's Bankstown Development Engineering Standards and in accordance with the appropriate provisions of the Conveyancing Act. The surveyor shall show the location of the "On-Site Stormwater Detention System" on the plan of subdivision. The developer shall submit evidence of the final registration of the Restriction and Positive Covenant on the title of the property, to Council.
- 41) The dwelling must be readily identified from the street with the allocated house numbers. An official "house numbering" letter is issued to the person having benefit of this Determination Notice indicating the proposed numbering of the new development. House numbering without Council's written approval is not permitted.

-END-



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## Canterbury Bankstown Local Planning Panel - 03 May 2021

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<b>ITEM 3</b>	<b>460-462 Burwood Road Belmore</b>
	<b>Demolition of existing structures, construction of a six storey shop top housing development with four commercial tenancies, 22 apartments and two levels of basement car park.</b>
<b>FILE</b>	<b>DA-205/2019 – Roselands</b>
<b>ZONING</b>	<b>B2 Local Centre</b>
<b>DATE OF LODGEMENT</b>	<b>23 April 2019 (Amended Plans received 11 November 2020)</b>
<b>APPLICANT</b>	<b>The Site Foreman (NSW) Pty Ltd</b>
<b>OWNERS</b>	<b>Steve Banis and Peter Banis</b>
<b>ESTIMATED VALUE</b>	<b>\$8,978,523.00</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

This matter is reported to Council's Local Planning Panel as the application seeks consent for a development for which State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies and is four or more storeys in height.

Development Application No. DA-205/2019 proposes demolition of existing structures, construction of a six storey shop top housing development with four commercial tenancies, 22 apartments and two levels of basement car park.

DA-205/2019 has been assessed against the relevant provisions of 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 (Infrastructure) 2007, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012.

The application was advertised from the 15 May 2019-5 June 2019 (including newspaper advertising) a period of 21 days (7 submissions and one petition with 20 signatories) were received during this period.

Amended Plans were received on 11 November 2020 and the application was re-notified for from 16 December 2020-27 January 2021 (including newspaper advertising). Due to an administrative error, the plans were re-notified from the 17 February 2021 – 9 March 2021 (including newspaper advertising). During these two notification periods one submission was received.

A summary of the submissions is outlined below:

- *The proposal will directly impact the solar access and cross ventilation of the adjoining units to the south of the subject site. The location of the building will close in the adjoining open area. The proposed building should line up their void/open area with the adjoining property.*
- *Preservation and protection of the existing buildings on site.*
- *Retention of existing facades.*
- *Driveway is a dominant feature on this proposal,*
- *Objection to the Clause 4.6. The height definition of the CLEP 2012 includes lift overrun, the intention is for a 5 storey (not a 6 storey building)*
- *Overdevelopment of the site.*
- *Additional traffic generation and congestion.*
- *Concerns with the number of balconies facing the west and east elevation. Loss of privacy to residents in York and Drummond St.*
- *Concern with building mass.*
- *Lack of open space and landscaping.*
- *Little infrastructure to support the increase in population.*
- *Balconies should be treated with frosted glass to ensure privacy.*
- *Failure to be classified shop top housing – front facade is taken up by driveway, energy box, a lobby for entry (the high rise does not appear to have a shop front).*

*The petition raised the following concerns:*

- *The development is out of character for the area and an overdevelopment.*
- *Object to the Clause 4.6 to vary one or more of Council's development standards.*
- *Council to enforce the 18metres for the site and to include the lift overrun in the building height.*
- *Preserve the heritage façade of this art deco buildings.*

## **POLICY IMPACT**

This matter has no direct policy implications.

## **FINANCIAL IMPACT**

This matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that the application be refused for the reasons contained in attachment B.

## **ATTACHMENTS**

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- A. Assessment Report
- B. Reasons for Refusal





## **DA-205/2019 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is known as 460-462 Burwood Road, Belmore. The sites are a regular allotment that is zoned B2 Local Centre under the Canterbury Local Environmental Plan 2012.

The site currently contains two buildings which are detached at the front and attached at the rear with a shared driveway and what appears to be common areas within the open areas between the two buildings. There is an existing six storey shop top housing development directly to the south of the site and a two storey commercial building with an open carpark in front, directly to the north. Surrounding land uses are a mix of commercial and residential to the north, east and south with industrial building to the west.



**Figure 1:** Aerial of subject site in blue. **Source:** NearMaps 2021



**Figure 2:** From site inspection

### **PROPOSED DEVELOPMENT**

The Development Application proposes the demolition existing structures and construction of a six-storey shop-top housing development comprising 4 commercial tenancies on the ground floor, twenty-two residential units and two levels of basement car park.

The specifics of the development are as follows:

<b>Floor</b>	<b>Description</b>
Basement Level 2	20 x residential car spaces 1 x carwash bay Apartment storage cages 2 x Fire exit stairs
Basement Level 1	8 x commercial car spaces (including 1x adaptable car space) 1 x courier space 6 x residential car spaces (including 2 x adaptable car spaces)
Ground Floor	4 x commercial tenancies Bin store room Communal open space
Level 01	2 x 1 bedroom apartments (including 1 adaptable unit) 4 x 2 bedroom apartments
Level 02	2 x 1 bedroom apartments (including 1 adaptable unit) 4 x 2 bedroom apartment
Level 03	1 x 1 bedroom apartments 3 x 2 bedroom apartments 1 x 3 bedroom apartments
Level 04	2 x 2 bedroom apartments 2 x 3 bedroom apartment (maisonette – Levels 4 and 5)
Level 05	1 x 3 bedroom apartment

**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, codes and policies are relevant:

- State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007)
- State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)
- Draft Canterbury Bankstown Local Environmental Plan

**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 – Contaminated Land (SEPP 55)**

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

The applicant has submitted a Detailed Site Investigation report dated 1 April 2020 as prepared by Geotechnical Consultants Australia. The report contains recommendations with regard to future excavation, building foundations and contamination management. Council's Environmental Health Officer has reviewed the documents and is satisfied subject to the imposition of suitable conditions of consent. Accordingly, the submitted reports demonstrate that the site is suitable for the purpose of the proposed development in accordance with SEPP 55 – Remediation of Land.

**State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007)****Ausgrid**

The proposed development involves works within 5m of overhead power lines and requires the installation of a new substation. In accordance with clause 45 of SEPP (Infrastructure), a referral to the electricity supply authority for the area was required.

Ausgrid have assessed the plans lodged in support of the application, and advise that they consent to the proposed development subject to conditions relating to certain matters including the supply of electricity to the site, infrastructure installation, and managing any impacts on existing electricity network assets.

### **Transport for NSW (TfNSW)**

#### Vehicle access

As the site has a frontage to a classified road Clause 101 of the SEPP is relevant and requires Council to be satisfied that vehicular access to the land is provided by a road other than the classified road where practical. The subject site only has access from Burwood Road.

The application was referred to Transport for NSW (TfNSW), who provided concurrence subject to conditions.

#### Traffic generation

The development does not constitute a traffic generating development as it has less than 75 dwellings.

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

An updated BASIX Certificate has not been submitted with the amended plans.

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

This policy applies to residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component. The development must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least 3 or more storeys and contain at least 4 or more dwellings. Residential apartment development does not include boarding houses or serviced apartments.

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



### Principle 1: Context and Neighbourhood Character

The development is generally consistent with Council's height controls however will not align with the desired future character of the locality. The floor to floor ceiling heights rely on a 200mm thick slab with no supporting engineering documentation which indicates that there is likely to be a need to increase the height of the building. The ground floor commercial tenancies will also require an increased in height which will further add to the likely height breach, while the design fails to satisfactorily contribute and activate the street.

The proposal cannot be supported in its current form.

### Principle 2: Built Form and Scale

No maximum floor space ratio (FSR) development standard applies to the site. Although the development is consistent with Council's maximum 18m building height standard. the proposed design in its current form seeks a number of variations to the ADG and the CDCP 2012 and is not supported.

### Principle 3: Density

Given the number of variations proposed to key development controls to achieve the proposed density, the proposal is not supported in its current form and would not achieve a reasonable response to the desired future context and built form.

### Principle 4: Sustainability

An updated BASIX Certificate has been submitted to Council with the amended plans and therefore the application cannot be assessed against the resource, energy and water efficiency measures.

### Principle 5: Landscape

The proposed landscaping is in keeping with the nature of the Business Zone.

### Principle 6: Amenity

The proposed development fails to meet the minimum requirements for solar access, visual privacy acoustic amenity and communal open space. Overall, the amenity afforded to the development is poor.

### Principle 7: Safety

The applicant has considered Crime Prevention through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The development includes blind corners particularly in the ground floor circulation areas, parts of communal open space do not receive natural surveillance, and entries are not clearly visible.

### Principle 8: Housing Diversity and Social Interaction

The proposed design incorporates various dwelling sizes and provides 1, 2 and 3 bedroom apartments and includes adaptable units promoting diversity, affordability and access to housing choice.

**Principle 9: Aesthetics**

The proposed development fails to satisfactorily provide a ground floor that contributes to the activation of the local centre with a well-designed shop/commercial spaces on the ground floor

**Apartment Design Guide**

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



Section	Design Criteria	Proposed	Complies
<b>Part 3 Siting the Development</b>			
<b>3B-Orientation</b>	<ul style="list-style-type: none"> <li>- Solar access to living rooms, balconies and private open spaces of neighbours should be considered • Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20% (CDCP 2012 – Part C4 Shop top housing states that the minimum solar access for neighboring development is as follows:</li> <li>- C2 Proposed development must retain a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.</li> <li>- C3 If a neighbouring dwelling currently receives less than 3 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property</li> <li>- • If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy and overshadowing should be minimised to the south or downhill by increased upper level setbacks.</li> </ul>	Insufficient information has been provided to determine any impacts to the adjoining property. The solar diagrams have not indicated the location of the adjoining neighbours windows.	No

Section	Design Criteria	Proposed	Complies
3C Public Domain Interface	<ul style="list-style-type: none"> <li>- Avoid long, high blank walls and fences</li> <li>- Direct access from the street to ground floor apartments and windows overlooking the street improve safety and social interaction;</li> <li>- Key components to consider when designing the interface include entries, private terraces or balconies, fence and walls, changes in level, services location and planting.</li> <li>- Safety considerations (real or perceived) and consideration of social interaction opportunities when viewed from the public domain.</li> <li>- Terraces, balconies and courtyard apartments to have direct street level entry where possible;</li> <li>- Changes in levels between ground floor and terraces to balance passive surveillance and privacy;</li> <li>- Provide seating at building entries, letter boxes and private courtyards adjacent the street.</li> <li>- Multiple building entrances to be clearly defined through architectural detailing, changes in materials, plant species and colours;</li> <li>- Concealment opportunities minimized.</li> </ul>	<ul style="list-style-type: none"> <li>- interaction with Burwood Rd dominated by driveway</li> </ul>	No
		<ul style="list-style-type: none"> <li>- ground floor commercial units at rear have minimal interaction with Burwood Rd</li> <li>- Communal areas for residential component on the ground floor shared with accessways to commercial units at rear which raises safety and security issues (reciprocal)</li> <li>- No ground floor residential apartments.</li> </ul>	No
3D Communal and Public Open Space	<p>Communal open space has a minimum area equal to 25% of the site. Total site area is 961.2m<sup>2</sup>, requiring a minimum 240.3m<sup>2</sup>)</p> <p>Min 3m dimension.</p>	245.5m <sup>2</sup>	Yes

Section	Design Criteria	Proposed	Complies
	<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 9 am and 3 pm on 21 June (mid-winter).</p> <p>50% of principle useable area = 78.35m<sup>2</sup></p>	<p>Proposal does not achieve 50% for a minimum of 2 hours.</p> <p>12pm -72.9m<sup>2</sup>  1pm – 82.8m<sup>2</sup>  2pm – 57.8m<sup>2</sup></p>	No

Section	Design Criteria			Proposed	Complies
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions:			<p>The site has an area of 961.2m<sup>2</sup> which requires 67.284m<sup>2</sup> (7%) deep soil zone.</p> <p>The site is located in a business zone, with the site to be fully developed.</p> <p>Notwithstanding the numerical non-compliance the proposal also seeks to provide some plantings along the northern and western boundary of the site.</p> <p>In addition, the Apartment Design Guide allows for reduced provision in areas where 100% site coverage or non-residential uses on the ground level locations on the provision that acceptable stormwater management is achieved, however Council's Development Engineer has raised some concerns with the stormwater and this has not been satisfactorily resolved.</p>	No
	Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)		
	Less than 650m <sup>2</sup>	-	7%		
	650m <sup>2</sup> - 1,500m <sup>2</sup>	3m			
	Greater than 1,500m <sup>2</sup>	6m			
	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m			
	Required: 67.284m <sup>2</sup> (minimum dimension 3m)				

Section	Design Criteria	Proposed	Complies
3F Visual Privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	<u>Rear Setbacks:</u>	No
		Level 1	Levels 1-4 do not comply with the required rear building separation.  Level 5 (6 <sup>th</sup> storey) meets the required rear building separation.
		6m – 7.176m to balcony	
		8.129m-8.902m to building	
		Level 2	
		6m to balcony	
		8.3m to 9m to building	
		Level 3	
		7.074m-7.112m to balcony	
		8.5m – 9m to building	
	Level 4		
	8.664m – 9.177m to balcony		
	11.2m – 12.1m to building		
	Level 5		
	12.555m-13.322m to balcony		
	13m to building		
	The proposal does Not meet the conditions within a development. In particular the apartments to the rear of the site.	No	

Section	Design Criteria	Proposed	Complies
<b>3J Bicycle and Car Parking</b>	For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements as set out in the table below. Otherwise, the CDCP 2012	Car parking provided off -street. Refer to car parking assessment under DCP 2012	Yes
	The car parking needs for a development must be provided off street.	Car parking is provided off street	Yes
<b>3G Pedestrian Access and Entries</b>	<p>Multiples entries should be provided to activate the street edge.</p> <p>Entry locations relate to the street and subdivision pattern / existing pedestrian network.</p> <p>Building entries should be clearly distinguishable from private entries.</p> <p>Building access areas (lift lobbies, stairwells and hallways) should be clearly visible from public domain and communal spaces.</p> <p>Minimise ground floor and underground level changes along pathways and entries. Steps and ramps integrated into design.</p> <p>Provide way finding maps for large developments. Electronic access and audio/video intercoms required.</p> <p>Provide pedestrian links to streets and destinations with clear sight lines.</p>	<p>One main entry area for all users of the building including residential and commercial which is likely to cause overcrowding and safety/security issues.</p> <p>Building access areas not clearly visible from public domain.</p> <p>The pedestrian linkages through the ground floor in particular do not provide clear sight lines and are mixed with the shop/commercial component for the building.</p>	No

Section	Design Criteria	Proposed	Complies
<b>Part 4 Designing the Building</b>			
<b>4A Solar and Daylight Access</b>	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	The proposal provides 9/22 (i.e. 41%) apartments meeting the 2 hour solar access requirement.	No
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter		
<b>4B Natural Ventilation</b>	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartment at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	77% of units cross ventilated (17 of 22)	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	>18m glass line to glass line	Yes
<b>4C Ceiling Heights</b>	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Proposal nominates 2.7m-2.8m (Habitable rooms) and 2.4m (non-habitable rooms) ceiling heights with 200mm slab thicknesses that it is less than the typical slab thickness with no supporting engineering documentation, leading to a lack of confidence that the slab thickness is adequate.	No
	<b>Minimum Ceiling Height for Apartment and Mixed Use Buildings</b>		
	Habitable rooms		
	Non-habitable		
	For 2 storey apartments		
	These minimums do not preclude higher ceilings if desired.		



Section	Design Criteria	Proposed	Complies										
4D Apartment Size and Layout	Apartment are required to have the following minimum internal areas:	Minimum 1 bedroom size 56.5m <sup>2</sup>	Complies.										
	<table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table>	Apartment Type		Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	Minimum 2 bedroom size 76.6m <sup>2</sup>
	Apartment Type	Minimum Internal Area											
	Studio	35m <sup>2</sup>											
	1 bedroom	50m <sup>2</sup>											
	2 bedroom	70m <sup>2</sup>											
	3 bedroom	90m <sup>2</sup>											
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.												
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.													
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.													
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.													
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).		Achieved	Yes										
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).		Achieved	Yes										
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>		All units meet the minimum living room width	Yes										

Section	Design Criteria	Proposed	Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	All apartments provide min 4m width	Yes															
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Some of the apartments (3.13 and 4.21) have balconies that do not meet the minimum area.  It is also noted that the three-bedroom apartments have balconies that are not functional spaces given the size of the apartments.	No															
	<table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table>			Dwelling type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m
	Dwelling type			Minimum Area	Minimum Depth													
	Studio apartments			4m <sup>2</sup>	-													
	1 bedroom apartments			8m <sup>2</sup>	2m													
	2 bedroom apartments			10m <sup>2</sup>	2m													
	3+ bedroom apartments			12m <sup>2</sup>	2.4m													
The minimum balcony depth to be counted as contributing to the balcony area is 1m.																		
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.																		
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	>8/level	Yes															

Section	Design Criteria	Proposed	Complies										
4G Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Storage areas unrealistically proposed in living rooms where normally occupants would locate entertainment units, tv's and the like	No										
	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>3</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>3</sup></td></tr></table>			Dwelling type	Storage size volume	Studio apartments	4m <sup>3</sup>	1 bedroom apartments	6m <sup>3</sup>	2 bedroom apartments	8m <sup>3</sup>	3+ bedroom apartments	10m <sup>3</sup>
	Dwelling type			Storage size volume									
	Studio apartments			4m <sup>3</sup>									
	1 bedroom apartments			6m <sup>3</sup>									
	2 bedroom apartments			8m <sup>3</sup>									
	3+ bedroom apartments			10m <sup>3</sup>									
At least 50% of the required storage is to be located within the apartment.													
4H Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Rooms with similar noise requirements are grouped together</p> <p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms</p>	<p>Minimal building separation provided due to town centre location.</p> <p>Rooms with similar noise requirements grouped together.</p>	Yes										

Section	Design Criteria	Proposed	Complies
<b>4Q – Universal design</b>	<p>Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</p> <p><u>Required</u> 20% of 22 apartments = 4.4 (4) apartments required to be universally designed.</p>	Details have not been provided to enable assessment	No
<b>4S Mixed Use</b>	<p>Mixed use developments positively contribute to the public domain. Design solutions may include:</p> <ul style="list-style-type: none"> <li>• development addresses the street</li> <li>• active frontages are provided</li> <li>• avoiding blank walls at the ground level</li> </ul> <p>Residential circulation areas should be clearly defined. Design solutions may include:</p> <ul style="list-style-type: none"> <li>• residential entries are separated from commercial entries and directly accessible from the street</li> <li>• commercial service areas are separated from residential components</li> <li>• residential car parking and communal facilities are separated or secured</li> <li>• security at entries and safe pedestrian routes are provided</li> <li>• concealment opportunities are avoided</li> </ul> <p>Landscaped communal open space should be provided at and commercial podium or roof levels</p>	Minimal street activation, ground floor front elevation dominated by accessways.	No

Section	Design Criteria	Proposed	Complies
<b>4T Awning and Signage</b>	<p>Awnings should be located along streets with high pedestrian activity and active frontages.</p> <p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> <li>• continuous awnings are maintained and provided in areas with an existing pattern</li> <li>• height, depth, material and form complements the existing street character</li> <li>• protection from the sun and rain is provided</li> <li>• awnings are wrapped around the secondary frontages of corner sites</li> <li>• awnings are retractable in areas without an established pattern</li> </ul> <p>Awnings should be located over building entries for building address and public domain amenity</p> <p>Awnings relate to residential windows, balconies, street tree planting, power poles and street infrastructure</p> <p>Gutters and down pipes should be integrated and concealed</p> <p>Lighting under awnings should be provided for pedestrian safety</p>	<p>The proposal incorporates an awning at street level and is consistent with Part D1 of the CDCP 2012</p>	Yes

Section	Design Criteria	Proposed	Complies
<b>4U Energy efficiency</b>	<p>Adequate natural light is provided to habitable rooms (see 4A Solar and daylight access)</p> <p>Well located, screened outdoor areas should be provided for clothes drying.</p>	An amended BASIX certificate has not been provided for assessment	No
<b>4V Water management and conservation</b>	<p>Water efficient fittings, appliances and wastewater reuse should be incorporated</p> <p>Apartments should be individually metered</p> <p>Rainwater should be collected, stored and reused on site</p> <p>Drought tolerant, low water use plants should be used within landscaped areas</p>	The application was referred to Council's Development Engineer who has raised a number of issues relating to stormwater and are addressed under the heading: Canterbury Development Control Plan 2012 (CDCP 2012)	No
<b>4W Waste management</b>	<p>Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park</p> <p>Waste and recycling storage areas should be well ventilated</p> <p>Circulation design allows bins to be easily manoeuvred between storage and collection points</p> <p>Temporary storage should be provided for large bulk items such as mattresses</p> <p>A waste management plan should be prepared</p>	Refer to comments made by Council's Resource Recovery team	No

The proposed development fails to comply with a number requirements of the ADG and is not supported in its current form.

## Canterbury Local Environmental Plan 2012

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

### Clause 1.2 Aims of Plan

The proposed development is consistent with the relevant aims of the CLEP 2012.

### Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the B2 Local Centre Zone are as follows:

- *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 proposed development fails to meet the objectives of the zone in that it will not satisfactorily provide a development that contributes to the activation of the centre with well-designed shop/commercial spaces on the ground floor.

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 2 Permitted or Prohibited Development</b>			
2.1-2.3 Zoning	B2 Local Centre	Shop top housing	Yes
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Demolition of existing structures	Yes



Provision/ Standard	Requirement	Proposal	Complies
<b>Part 4 Principal Development Standards</b>			
4.3 Height of Buildings	18m	18m	Yes. However, the basement mechanical ventilation has not been shown on the plans and may result in a height breach as well as the 200mm thick slab thickness that is less than the typical thickness with no supporting engineering documentation
4.4 Floor Space Ratio	N/A	N/A	N/A
5.6 Architectural roof features	Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.	The proposed development does not include an architectural roof feature	N/A
5.10 Heritage Conservation	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	No objections raised by Council's heritage advisor	Yes

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 6 Local Provisions</b>			
6.1 Acid Sulfate Soils	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	N/A	N/A
6.2 Earthworks	<p>Before granting consent to development including earthworks, the following must be considered:</p> <ul style="list-style-type: none"> <li>(a) drainage patterns and soil stability</li> <li>(b) the likely future use or redevelopment of the land,</li> <li>(c) quality of the fill or the soil to be excavated, or both,</li> <li>(d) effect of development on existing and likely amenity of adjoining properties,</li> <li>(e) the source of any fill material and the destination of any excavated material,</li> <li>(f) the likelihood of disturbing relics,</li> <li>(g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</li> <li>(h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</li> </ul>	Detailed Site Investigation prepared by Geotechnical Consultants Australia Pty Ltd, and Hazardous Material Survey Report prepared by Geotechnical Consultants Australia Pty Ltd reviewed by Council's Environmental Health Officer and have been found satisfactory subject to conditions.	Yes

Provision/ Standard	Requirement	Proposal	Complies
6.4 Stormwater Management	Consent must not be granted unless: (a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration. (b) Includes on-site detention if practical as an alternative means of water supply. (c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.	Council's Development Engineer reviewed the application and has found it to be unsatisfactory and are discussed under the heading Part B5 of the Canterbury Development Control Plan 2012 (CDCP 2012).	No
6.6 Essential Services	Essential services must be available or adequate arrangements have been made to make them available, including: - the supply of water; - the supply of electricity ( <b>substation</b> ); - the disposal and - management of sewage; - stormwater drainage or on-site conservation; - suitable vehicular access.	The Applicant has provided a letter from Ausgrid stating that that the Applicant can apply to Ausgrid for a Pioneer Scheme Contribution for the use of substation (S.77874) installed at the adjacent property at 466 Burwood Road	Yes

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

On 30 June 2020 the Canterbury Bankstown Local Planning Panel endorsed the Planning Proposal (PP\_2019\_CBANK\_005) to proceed to the Department of Planning, Industry and Environment for finalisation and making. The Planning Proposal seeks to produce a single set of planning rules and align the Bankstown LEP 2015 and Canterbury LEP 2012 into a consolidated Local Environmental Plan.

The Planning Proposal however does not propose any change to the planning or development provisions relating to this site. As the Planning Proposal has been exhibited it must be considered under Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The CBLEP also seeks to insert a Design Quality Clause which reads:

## **Draft Design Quality Clause**

### **6.14 Design Quality**

- (1) *The objective of this clause is to ensure that development achieves good urban design and supports quality places for people.*
- (2) *This clause applies to the following development: residential flat buildings, multi dwelling housing, boarding houses, seniors living, mixed use development, shop top housing, commercial premises, industrial buildings, warehouse or distribution centres, centre-based child care facilities, schools, places of worship, registered clubs, community facilities, in relation to:*
- *the erection of a new building, or*
  - *in the Council's opinion, significant alterations or additions that are visible from the public domain.*
- (3) *Before granting consent for development, the consent authority must have regard to the following matters, to the extent it considers them relevant to the proposed development:*
- (a) *whether the development positively contributes to the urban context and site conditions in terms of natural features, built form, streetscape, street wall height, building separation, setbacks, amenity, building bulk and modulation,*
  - (b) *whether the development positively contributes to the quality and amenity of the public domain in terms of landscaping, passive surveillance, visual interest and the interface of public and private domain,*
  - (c) *whether the development uses external materials that are good quality, durable and low-maintenance,*
  - (d) *whether the development achieves a high standard of architectural detailing and colours that are appropriate to the building type and location,*
  - (e) *whether the development achieves the principles of ecologically sustainable development,*
  - (f) *whether the development achieves internal layouts that are functional, efficient and fit for purpose,*
  - (g) *whether the development integrates a high quality landscape design with the built form,*
  - (h) *how the development satisfactorily addresses the following matters:*
    - *impacts on heritage items, heritage conservation areas or historically significant buildings on the site or in the vicinity of the site,*
    - *environmental impacts such as solar access, visual and acoustic privacy, wind, reflectivity, urban heat and water sensitive urban design,*
    - *pedestrian, cycle, vehicular and service access and circulation requirements,*
    - *the integration of waste management infrastructure in the site layout and building design.*

Given, the assessment made throughout this report, the proposal would not be in line with the envisaged design quality and would be inconsistent with the Draft CBLEP relating to the draft Design Quality Clause.

The Draft CBLEP also seeks to insert a saving provision “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies, and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced”.

**Development control plans [section 4.15(1)(a)(iii)]**

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

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

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

**Part B1 – Transport and Parking**

An assessment of the proposal against the car and bicycle parking rates in Part B1 of CDCP 2012 is provided below:

Standard	Requirement	Proposal	Complies
<b>Car Parking</b>	<ul style="list-style-type: none"> <li><b>1 bedroom:</b> 0.8 space per dwelling (4 spaces required).</li> <li><b>2 bedroom:</b> 1space per dwelling (13 x 1 = 13 spaces required).</li> <li><b>3 bedroom:</b> 1 space per dwelling (4 x 2 = 4 spaces required).</li> <li><b>Visitor:</b> 1 space per 5 dwellings 22/5 = 4 spaces required). Note: 1 per 3 required in some instances.</li> <li><b>Car wash bay:</b> 1 car wash bay.</li> </ul> <p><b>Total:</b> 21 residential spaces, 4 visitor spaces plus 1 x car wash bay required.</p> <p>RMS Guideline Rates:</p> <ul style="list-style-type: none"> <li><b>1 bedroom:</b> 0.4 space per dwelling (0.4x5 = 2 spaces required).</li> </ul>	20 Residential spaces in Basement 2 + car wash bay	Yes (with RMS Guideline Rates)

	<ul style="list-style-type: none"> <li>• <b>2 bedroom:</b> 0.7spaces per dwelling (13 x 0.7 = 9 spaces required).</li> <li>• <b>3 bedroom:</b> 1.2 space per dwelling (4 x 1.2 = 5 spaces required).</li> <li>• <b>Visitor:</b> 1 space per 7 dwellings 22/7 = 3 spaces required). Note: 1 per 3 required in some instances.</li> <li>• <b>Car wash bay:</b> N/A</li> </ul> <p>Total: 19 spaces</p>		
<b>Bicycle Parking</b>	<ul style="list-style-type: none"> <li>• <b>Residents:</b> 1 space per 5 dwellings (4) spaces required).</li> <li>• <b>Visitors:</b> 1 space per 10 dwellings (2) spaces required)</li> </ul> <p><b>Total:</b> 6 spaces required.</p> <ul style="list-style-type: none"> <li>• Shops (staff): 1 space/300sqm</li> <li>• Shops (patrons): 1 space /500sqm</li> </ul> <p>Total: 2 spaces</p>	<p>6/11 in Basement 1 (however all spaces are on commercial level of parking and are not separated)</p> <p>2/11 in Basement 1</p>	Yes
<b>Shop parking</b>	<ul style="list-style-type: none"> <li>• <b>1 space/33sqm (227/33 = 7 spaces)</b></li> </ul> <p>Loading/unloading</p>	<p>9 spaces</p> <p>1 courier parking space</p>	<p>Yes</p> <p>Yes</p>

#### Part B2 – Landscaping and Part B3 – Tree Preservation

The application submitted a Landscape Plan prepared by a qualified Landscape Architect in accordance with the requirements of Part B2 of CDCP 2012, however has not been updated to reflect the amended plans.

#### Part B4 – Accessible and Adaptable Design

The access report prepared by Matt Shuter and Associates was submitted as part of the original DA. An updated accessible and adaptable report has not been provided with the amended plans.

#### Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised a number of issues with the current design and are as follows:

1. The car wash bay has been equipped with an oil separation filter. However, the drain discharge cannot be connected to stormwater pump-out as it must be directed to the sewer system.

2. The On-site Stormwater Detention (OSD) system has proposed side access via grate 600x900. It is recommended that access is increased to 900x900 to allow safe entry which would require a person turning around at the entry point to reach the internal set of steps.

In the event of an emergency Council would have to be able to access the OSD via grate opening with all necessary equipment and carry out any work required to ensure the safe and efficient operations of the system. Therefore, the OSD's access point must not be placed behind the door or gate and shall be relocated to comply with the above requirement.

3. The proposed headroom clearance on the ramp under the OSD is inconsistent along the ramp and it is less than the required clearance of 2.3m. The headroom clearance was achieved with the previous design shown on plan N° DA-0220/7 (dated 21.12.2018). Therefore, the plans shall be amended, and if the minimum clearance is to be provided along the ramp a warning sign must be included.
4. The proposed stormwater discharge point to kerb and gutter is within the area of future vehicular footpath crossing (VFC) serving the subject development. This issue has been raised before and it must be resolved on the amended plans. The next-door property at 458 Burwood Rd has existing VFC layback extended within the frontage of the subject development. According to the Traffic report, the driveway is to be Category 2 (Burwood Road is a Regional Road) and the width shall be between 6.0 - 9.0 m. To address the current circumstances and the above requirements the proposed driveway shall be designed as a continuous layback with the existing VFC (fronting 458 Burwood Rd). The driveway width and proposed levels shall be revised and shown on plans.

The driveway design shall be supported with a minimum of two longitudinal sections taken from the ridge point of Burwood road and up to 5.0 m within the property. The sections shall include existing and proposed levels, and the minimum required ground clearance must be clearly shown along the sections for B85. Regarding drainage discharge, it is necessary to consider all elements of the proposed infrastructure within the road reserve when redesigning the connection of the site drainage to Council's system. Please refer to the survey plan, and Council's existing drainage network map in the vicinity of the site

5. It is noted that previously requested amendments were not addressed. Therefore, they are repeated below:
  - a) Stormwater overflow is at a similar level as the bottom of the grate. That can subsequently cause the overflow to inundate the corridor area during severe stormwater events. Therefore, it is not supported.
  - b) The grated drain shown on the property boundary along the main entry is not supported.



6. The pedestrian entry shall be amended at the property boundary alignment to match the existing slope of the road reserve and footpath. The existing levels along the property boundary shall be included in the plan Stormwater Drainage Conceptual Design - D4 and the Ground Floor (DA-0201), and the proposed levels shall be adjusted to meet the above requirement (including fire exit).

The above will require some work in order to meet compliance. These issues have been included in the reasons for refusal.

#### Part B7 – Crime Prevention and Safety

An assessment of the proposed design against the relevant provisions of Part B7 is provided in the table below:

Standard	Requirement	Proposal	Complies
Crime Prevention through Environmental Design	Avoid blind corners	The ground floor areas surrounding the shops and access ways include a series of blind corners	No
	Provide natural surveillance for communal and public areas.	Only rear portion of communal open space receives natural surveillance	No
	Provide clearly visible entries.	Lifts to residential levels concealed	No
	Design the fence to maximise natural surveillance from the street to the building.	N/A	N/A
	Avoid landscaping that obstructs natural surveillance.	No obstruction by landscaping	Yes
	Ensure buildings are clearly identified by street numbers.	Can be imposed as a condition	Yes* via condition
	Use materials that reduce the opportunity for vandalism.	Can be imposed as a condition	Yes * via condition
	Provide an appropriate level of security for individual dwellings and communal areas through use of intercoms, self closing doors and signage.	Can be imposed as a condition	Yes * via condition

#### Part B9 - Waste

The application was referred to Council's Project Officer – Resource Recovery who has raised issues with the current design.

### **Waste Management Plan**

A revised WMP has been submitted, however is not satisfactory. Areas to address:

- To be updated to reflect the allocated residential bins.

### **Bin Storage Area**

Areas to address:

- Commercial and residential bin storage rooms must be separate, with access restricted to the other group to prevent misuse;
- The allocated bins (13 x 660L bins and 3 x 240L bins) are to be shown on the site plans. Bins are to be side-by-side (not stacked) with equal and convenient access to all bins by users;
- 1.5m aisle between bin rows;
- 2m doorways.

### **Bin Carting Route**

Areas to address:

- Collection crews will not enter a building to collect and return the bins, the access to the bin storage room should be at the side of the building;
- To be direct and less than 10 metres;
- Include a layback at the nominated collection point;
- Minimum 2m wide hard surface;
- Non-slip, free from obstacles and steps;
- A maximum grade of 1:30 (3%).

### **Commercial Waste and Recycling Requirements**

This development, containing 4 commercial tenancies, requires allocation of waste and recycling bins based on the generation rates as per the NSW EPA's 'Better practise guide for resource recovery in residential developments 2019' (Table F3, page 95). This has been included in the Revised Waste Management Plan dated 18/11/20.

The Waste Management Plan proposes that commercial waste bins are collected three times a week. This collection frequency is unacceptable, as it does not allow for flexibility when the businesses are operational, with missed services impacting storage capacity. In addition, the high number of collections per week would impact on the amenity of the surrounding neighbourhood and an increase in carbon emissions.

The best practice collection frequency is once or twice per week. The commercial waste storage room is to be designed for this storage capacity and the Waste Management Plan updated.

**Bin Storage Area:**

Areas to address:

- Commercial and residential bin storage rooms must be separate, with access restricted to the other group to prevent misuse
- The allocated bins are to be shown on the site plans. Bins are to be side-by-side (not stacked) with equal and convenient access to all bins by users;
- 1.5m aisle between bin rows;
- 2m doorways.

**Bin Carting Route:**

The commercial waste bins should be collected directly from the storage area by the private contractor and returned once emptied.

Areas to address for bin carting route from the collection vehicle (at the kerbside) to the bin storage area:

- To be direct and less than 10 metres,
- Minimum 2m wide hard surface;
- Non-slip, free from obstacles and steps;
- A maximum grade of 1:30 (3%).

In order to achieve compliance with the above requirements may require significant modifications to the ground floor elements of the building which will further impact the street activation facing Burwood Road.

The above outstanding matters have been included in the reasons of refusal.

**Part C5 Shop Top Housing**

Control	Requirement	Proposed	Complies
C5.2.1.3 Balconies and Communal 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 5.2.1.3 of the CDCP is therefore not relevant to the assessment of this application and open space and balcony matters have been assessed only in relation to part 4E of the ADG (as detailed in the ADG table above).</p>		
C5.2.1.4 Layout and Orientation	<ul style="list-style-type: none"> <li>• Orientate development to maximise solar access and natural lighting, without unduly increasing the building's heat load.</li> <li>• Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.</li> </ul>	The subject site has a north-south orientation. The proposed development has been designed to maximise solar access and natural ventilation.	Yes

Control	Requirement	Proposed	Complies
	<ul style="list-style-type: none"> <li>Coordinate design for natural ventilation with passive solar design techniques</li> <li>Site new development and private open space to avoid existing shadows cast from nearby buildings.</li> <li>Site a building to take maximum benefit from cross-breezes and prevailing winds.</li> <li>Do not compromise the creation of active street frontage or casual surveillance of the street, communal space and parking areas, through the required orientation.</li> </ul>		
C5.2.2.2 Floor to Ceiling Height	<p>Refer to 4C Ceiling Heights of the ADG made under SEPP 65 for objectives, design criteria and design guidance in relation to minimum ceiling heights.</p> <p>Clause C5.2.2.2 of the CDCP is therefore not relevant to the assessment of this application and the ceiling height matters have been assessed against part 4C of the ADG (as detailed in the table above).</p>		
C5.2.2.3 Setbacks	A minimum side boundary setback of 4.5m is required for the residential component in the B5 zone. SEPP 65 separation requirements will apply for buildings with a height of 4 storeys and above.	N/A	N/A
C5.2.2.4 Building Depth	<p>The ADG sets the objectives and controls for building depth in the LGA for shop top housing to which SEPP 65 relates. Refer to 4B Natural Ventilation of the ADG for objectives, design criteria and design guidance.</p> <p>Clause C5.2.2.4 of the CDCP is therefore not relevant to the assessment of this application and the ceiling height matters have been assessed against part 4B of the ADG (as detailed in the ADG table above).</p>		
C5.2.2.5 Building Separation and Visual Privacy	<p>The ADG sets the objectives and controls for building separation in the LGA for shop top housing to which SEPP 65 relates. Refer to 3F Visual Privacy of the ADG for objectives, design criteria and design guidance.</p> <p>Clause C5.2.2.5 of the CDCP is therefore not relevant to the assessment of this application and visual privacy matters have been assessed only in relation to part 3F of the ADG (as detailed in the ADG table above).</p>		
C5.2.3.1 Built Form	<ul style="list-style-type: none"> <li>Provide accessible entries for all potential use such as the transporting of furniture.</li> <li>Face habitable rooms towards the street, private open space, communal space, internal driveway or pedestrian ways in order to promote positive social</li> </ul>	<p>Area in front of lifts at ground level limited.</p> <p>Habitable rooms have been designed to face the street, private open spaces and communal areas.</p>	No

Control	Requirement	Proposed	Complies
	interaction and community safety.		
C5.2.3.2 Roof Design and Features	<ul style="list-style-type: none"> <li>Roof terraces are permitted with consent in all business zones except the B1 Zone.</li> <li>A management strategy is required, and must be approved by Council as part of the development application, for any proposed roof terrace.</li> <li>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.</li> <li>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.</li> <li>Allow for views and passive surveillance of streets and public open space from roof terraces.</li> </ul>	Not proposed	N/A
C5.2.3.3 Dwelling Layout and Mix	<p>The ADG sets the objectives and controls for dwelling layout in the LGA for residential flat buildings to which SEPP 65 applies. Refer to 4D Apartment Size and Layout of the ADG for objectives, design criteria and design guidance. An additional objective and control in relation to the mix of dwellings are provided below.</p> <p>Refer to the ADG table above for an assessment against 4D Apartment size and layout of the ADG.</p>		
	<ul style="list-style-type: none"> <li>10% of dwellings in any development must be accessible or adaptable to suit current or future residents with special needs.</li> </ul>	<p>10% of 20 apartments = min 2</p> <p>Units 1.08 and 2.08 nominated as adaptable units.</p>	<p>Yes. However, an updated access/adaptable report has not been provided</p>

Control	Requirement	Proposed	Complies
			for assessment
C5.2.3.4 Building Services	<ul style="list-style-type: none"> <li>All letterboxes be installed to meet Australia Post standards.</li> <li>Design and provide discretely located mailboxes at the front of the property.</li> <li>Integrate systems, services and utility areas (such as plant rooms, hydrants, equipment and the like) with the design of the whole development – coordinate materials with those of the building and integrate with landscaping.</li> <li>Facilities should not be visually obtrusive and should not detract from soft-landscaped areas that are located within the required setbacks or building separations.</li> <li>Appliances that are fitted to the exterior of a building, and enclosures for service meters, do not detract from the desired architectural quality of new building, or the desired green character of streetscapes.</li> <li>Unscreened appliances and meters should not be attached to any facade that would be visible from a street or driveway within the site: <ul style="list-style-type: none"> <li>(a) Screen air conditioning units behind balcony balustrades;</li> <li>(b) Provide screened recesses for water heaters rather than surface- mounting them on exterior walls; and</li> <li>(c) Locate meters in service cabinets.</li> </ul> </li> <li>Screen or treat air conditioning units, TV antennae, satellite dishes, ventilation ducts and other like structures so they are not visible on the street elevation.</li> <li>Coordinate and integrate building services, such as</li> </ul>	<p>Letterboxes have been shown on the plans</p> <p>The proposal has incorporated the fire hydrant within the built form within a cupboard facing Burwood Road.</p> <p>The Applicant has advised that they are able to use the substation located in the adjacent building. Therefore, a condition has been imposed that this application does not grant approval to a substation.</p> <p>No details shown pertaining to other services.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Control	Requirement	Proposed	Complies
	<p>drainage pipes, with overall façade and balcony design.</p> <ul style="list-style-type: none"> <li>Location and design of service areas should include:               <ol style="list-style-type: none"> <li>Screening of clothes drying areas from public and semi-public places; and</li> <li>Space for storage that is screened or integrated with the building design.</li> </ol> </li> </ul> <p>Minimise visual impact of solar hot water systems by:</p> <ol style="list-style-type: none"> <li>Placing the system as unobtrusively as possible, both to the street and neighbouring properties;</li> <li>Using a colour that is consistent with the colour of roof materials;</li> <li>Designing solar panels, where possible, as part of the roof;</li> <li>Setting the solar panels back from the street frontage and position below the ridgeline; and</li> <li>Separate the water storage tank from the solar collectors and place on a less visually obtrusive part of the roof, or within the building (for example, the roof space or laundry).</li> </ol>		
C5.2.4.1 Solar Access and Overshadowing	<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 5.2.4.1 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>		
	Daylight is to be provided to all common circulation areas (including lift wells) that are above ground.	Voids incorporated in the design of the development to allow natural light access to common circulation areas.	Yes
Solar Access to Neighbouring Development	C1 Proposed development must retain a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.	Insufficient information provided to determine compliance with the solar access. The view from the sun diagrams do not provide	No



Control	Requirement	Proposed	Complies
	<p>C2 If a neighbouring dwelling currently receives less than 3 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property.</p> <p>C3 Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following:</p> <p>(c) Systems must receive at least 3 hours of direct sunlight between 8.00am and 4.00pm on 21 June.</p> <p>(d) If a system currently receives less than 3 hours sunlight, then proposed development must not reduce the existing level of sunlight.</p> <p>C4 Clothes drying areas on adjoining residential properties must receive a minimum of 3 hours of sunlight on 21 June.</p>	the location of the windows to the adjoining property.	
C5.2.4.2 Acoustic Privacy	<ul style="list-style-type: none"> <li>• Locate sensitive rooms, such as bedrooms, from likely sources of noise such as major roads and neighbouring' living areas.</li> <li>• Above ground access to new dwellings must not include communal balconies that would be located immediately next to a bedroom window.</li> <li>• Bedroom windows in new dwellings that would be located at or close to ground level are be raised above, or screened from, any shared pedestrian pathway.</li> <li>• -Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp.</li> <li>• On land adjoining railway or busy roads, address all requirements in 'Development Near Rail Corridors and Busy Roads - Interim Guideline' which has been published by the NSW Department of Planning and Environment.</li> <li>• Design the layout of lower levels facing the road or rail to:</li> </ul>	Acoustic privacy has been assessed against the requirements of SEPP 2007 earlier within this report. However an updated acoustic report has not been provided.	No

Control	Requirement	Proposed	Complies
	<p>(a) The position of windows facing the noise source and ensure that total unprotected window area is minimal so as to limit the amount of airborne noise entering the built fabric;</p> <p>(b) Ensure that the detailing of the window types addressing the corridors are designed and constructed to attenuate excessive noise - (double and triple glazing and insulated to manufacturers standards); and</p> <p>(c) Ensure that balcony parapet walls are constructed of solid masonry or materials of similar sound attenuating qualities.</p> <ul style="list-style-type: none"> <li>When designing the public spaces fronting busy roads and the rail corridor at ground level, consider the use of elements such as moving water and screens to achieve sound attenuation.</li> </ul>		
C5.2.5 Parking and Access	<p>Under clause 3J of the ADG, development within 800 metres of a railway station in the Canterbury Bankstown LGA must provide the minimum car parking requirement for residents and visitors that is the lesser of that set out within the RMS's Guide to Traffic Generating Developments or Council's requirements.</p> <p>Refer to discussion above relating to compliance with the minimum parking requirements (3J Car Parking of the ADG compliance table).</p> <p>In addition to the above, the application was referred to Council's Development Engineer and Team Leader Traffic and Transportation who raised issues with the application, these have formed part of the reasons for refusal.</p>		

#### Part D Business Centres

Control	Requirement	Proposed	Complies
Minimum frontage	18m	20.12m	Yes
Site isolation	Neighbouring properties are not to be isolated so that the property will be unable to reasonably accommodate redevelopment.	No isolation.	Yes  No

Control	Requirement	Proposed	Complies
Floor to Ceiling Height	Floor to ceiling heights Ground Floor: 3.3m	Ground Floor: 3.3m - issue with slab thickness and ceiling finishes and the design needs to take into consideration the retrofitting of these spaces for future uses to ensure the area can maintain a minimum of 3.3m FFL to ceiling height when the services attached to the slab are screened with a ceiling. Therefore, the floor to ceiling height proposed on the ground floor is considered to be inadequate.	
	Residential Floors: 2.7m	Residential floors: 2.7m-2.8m (ADG Compliant) * issue with slab thickness	No
	Basement car parking must meet AS2890.1 requirements.	Achieved	Yes
Front setback	1-3 storeys build to front boundary	1-3 (ground – Level 2) storeys nil setback on street	Yes
	Fourth storey - 3m setback	Storey 4 (Level 3) = Balconies in required 5m setback. Consistent with adjoining approval.	Yes
	Greater than four storeys – 5m (all storeys to be set back this distance including the fourth storey)	Storey 5 (Level 4) = 5m	Yes
Side Setbacks	Except where a proposed development adjoins a residential boundary, setbacks are not required in the B1 or B2 zones when the desired character is for a continuous street frontage.	Not required	Yes
Rear setbacks	<ul style="list-style-type: none"> <li>45° building height plane projected at 1.8m at the residential boundary</li> <li>Minimum 6m setback to residential boundary</li> <li>Two-storey limit on residential boundary</li> <li>A setback to a rear lane is not required.</li> </ul>	Adjoins a residential zone to the rear-45° building height plane project at 1.8m	Yes

Control	Requirement	Proposed	Complies
Building depth	Minimum 10m – commercial Maximum street frontage wall length of 50m	Some shops do not achieve 10m	No
Solar	Design and site development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	Shadow diagrams do not depict the shadows of this development only – impacts of this development alone not legible	No
Ground Level Interface	<u>Building entries</u> Locate entries so they relate to the existing street, subdivision pattern, street tree planting and pedestrian access network and are clearly visible. Provide entries to upper levels from the street front facade to encourage activities on the ground floor.  Ground level awnings the façade of the building shall be built to the front street boundary; A cantilevered awning from the building facade shall overhang the footpath at a minimum width of 3m; Cantilevered awning height is to be in the range of 3.2m - 4.2m from natural ground level; Posted awnings or colonnades will not be support.	Ground level shops at rear do not interact with street and fail to satisfactorily contribute to the town centre  Awning proposed with a height of 3.2m with a depth of 3m.	No  Yes.
Façade treatment	To encourage articulated building design to reduce the appearance of scale, enhance visual interest and ensure a diversity of built form.  To encourage vertical and horizontal building elements that contribute to streetscape modulation and enhance the pedestrian experience.  Define a base, middle and top	Achieved	Yes

Control	Requirement	Proposed	Complies
	<p>Period Facades:</p> <p>(a) Traditional facades should be integrated into the overall design of new development.</p> <p>(b) Pre-1950 shop front facades are to be maintained in the parts of the B2 Zone where building height is five (5) storeys or less (infill development is permitted behind so that the traditional main street character of the centres is maintained).</p> <p>(c) Where the permitted height is greater than five (5) storeys, facades do not need to be retained.</p>	The proposal seeks the demolition of the existing structures, there has been no attempt to retain the existing facades.	No
	Adopt requirements of 'Development near rail corridors and busy roads – Interim Guideline' (NSW Dept. of Planning and Environment)	An updated acoustic report has not been provided with the amended plans.	No
Roof design	Must not exceed a pitch of 10°	< 10°	Yes
Performance controls			
Visual Privacy	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to visual privacy have no effect in the assessment of residential apartment development applications. The CDCP 2012 identifies SEPP 65 as the relevant control in this regard.		
Solar and daylight access	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. The CDCP 2012 identifies SEPP 65 as the relevant control in this regard.		
Common circulation and spaces	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to common circulation and spaces have no effect in the assessment of residential apartment development applications.		
Apartment size and layout	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 layout have no effect in the assessment of residential apartment development applications. The CDCP 2012 identifies SEPP 65 as the relevant control in this regard.		
Ceiling heights	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to ceiling heights have no effect in the assessment of residential apartment development applications. The CDCP 2012 identifies SEPP 65 as the relevant control in this regard.		
Private open space and balconies	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to private open space and balconies have no effect in the assessment of residential apartment development applications. The CDCP 2012 identifies SEPP 65 as the relevant control in this regard.		
Natural ventilation	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. The CDCP 2012		

Control	Requirement	Proposed	Complies
	identifies SEPP 65 as the relevant control in this regard.		
Storage	Clause 6A of SEPP 65 states that development control plans that have provisions that are inconsistent with the ADG in relation to storage have no effect in the assessment of residential apartment development applications. The CDCP 2012 identifies SEPP 65 as the relevant control in this regard.		

## D7.2 Belmore Local Centre

### Controls

- C1 Development in the Belmore Local Centre is to be in accordance with the structure plan shown in Figure D7.1.



Figure D7.1: Belmore Local Centre Structure Plan

Although the proposed development is generally in accordance with the structure plan for the Belmore town centre, the development fails to comply with the relevant provisions of the CDCP 2012 and will not make a positive contribution to the local centre in its current form.



External Referrals	Comments Received
Transport for NSW	No objections – subject to conditions
Ausgrid	No objections – subject to conditions
Internal Referrals	Comments Received
Urban Design	<p>Recommendations that remain unsatisfactorily resolved from previous Council's advice:</p> <p><u>Finished Floor-to-Floor Heights</u></p> <ul style="list-style-type: none"> <li>The proposal fails to comply with the CDCP and ADG recommended floor to ceiling heights for the ground floor level and all above ground floor levels. It also fails to comply with AS2890.6-2009 Car Parking for People with Disabilities provisions.</li> <li>The proposal provides for only 3.5m floor to floor height on the ground floor level, resulting in achieving less than 3.3m floor to ceiling height within all commercial suites and consequently, hindering service needs and limiting flexibility of use. It's highly recommended that the applicant should allow for greater ceiling heights of 3.3 - 4m on the ground floor level to promote more flexibility and possible future conversion of use to retail, cafes and restaurants. - The proposal provides for only 3m floor to floor height on all above ground floor levels, which will likely result in achieving less than 2.7m floor to ceiling height in all the residential units. It's highly recommended that the applicant provides for adequate floor to ceiling heights on all above ground floor levels to ensure the provision of adequate levels of amenity to all residential units.</li> <li>The proposal provides for only 2.8m floor to floor height on Basement 1, which will likely result in achieving less than 2.5m clear floor to ceiling height above accessible parking spaces and under overhead mechanical services. It's highly recommended that the proposal allows for sufficient headroom in line with AS2890.6-2009 Car Parking for People with Disabilities in Basements 1 where all adaptable car spaces are located.</li> </ul> <p><u>Built form and setback</u></p> <ul style="list-style-type: none"> <li>The proposed stepped built form at both the front and rear facades is not supported. It's recommended that the proposal simplifies the upper setbacks and aligns both level 4 and level 5 to avoid a 'ziggurat' appearance.</li> </ul> <p><u>Streetscape character</u></p> <p>The Proposal fails to comply with CDCP C5.3.3.1 Built Form Objectives to protect features of existing buildings that influence streetscape and local character:</p> <ul style="list-style-type: none"> <li>The proposal provides for the demolition of the existing building at 460 Burwood Road that is regarded as a character building. It's acknowledged that the said building,</li> </ul>

	<p>together with other character buildings in the vicinity, makes a positive contribution to the streetscape character.</p> <ul style="list-style-type: none"> <li>It is recommended that the proposal retain the first bay of the building (approximately 6 m from the front façade) including the chimney and work out ways to incorporate it into the building design.</li> </ul> <p><u>Additional urban design comments:</u></p> <p><u>Legibility and security issues</u></p> <p>The proposal has significant legibility and security issues in terms of residential access and car park.</p> <ul style="list-style-type: none"> <li>The Proposed building entry is about 14m away from the street, which raises significant safety and security issues for residents. It's highly recommended to push the true entrance forward towards the street to be clearly visible and easily identifiable from the public domain.</li> <li>The proposal fails to provide an identifiable residential entrance that is clearly distinguished from the communal entry. The combined commercial / residential proposed entry from Burwood Rd lacks both legibility and spatial quality. It is highly recommended to provide a separate pedestrian entry with clear sight lines from Burwood Road and adequate space to accommodate a waiting area, mailboxes and an air lock, if required.</li> <li>The proposal fails to comply with CDCP B1.4.6, Basement Parking Requirements in shop-top housing development, to separate the long term (resident and employee) and short-term (shopper and visitor) car parking. It's highly recommended that the proposal allows for separate residential and non-residential users car parks and provides for a secured access to long-term parking.</li> </ul> <p><u>Presentation to the Public Domain</u></p> <ul style="list-style-type: none"> <li>The proposed art-deco inspired awning above the building entry appears to be inconsistent with the typical awning design along Burwood Rd. It's highly recommended that the proposal provides for a simpler awning form that is more sympathetic and harmonious to the prevailing architectural composition along Burwood Road.</li> </ul> <p><u>Internal amenity</u></p> <ul style="list-style-type: none"> <li>The application has significant issues regarding the outlook and cross ventilation for several units overlooking the eastern and western courtyards, resulting in extremely poor amenity within those units.</li> <li>The proposal provides for an elongated courtyard / light well with true effective area of 3m wide and 12m long along the eastern and western boundary, presumably to allow for daylight and ventilation to habitable areas (bedrooms) for several apartments. As per the ADG 4A-2,</li> </ul>
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	<p>light wells are only to be used as a secondary light source (not the primary source of natural light and ventilation for habitable areas), and should only be restricted to kitchens, bathrooms and service areas.</p> <ul style="list-style-type: none"> <li>• Additionally, the proposed proportions don't comply with ADG objective (4B-2) that requires courtyards to have a width to depth ratio of 2:1 or 3:1 to ensure air circulation and avoid trapped smells.</li> <li>• It's also recommended that all bedroom windows should have windowsills of approximately 1.0m high. Using high level windows is considered unsatisfactory as it eliminates the view and reduces solar access to the units.</li> </ul> <p><u>Circulation within adaptable units</u></p> <ul style="list-style-type: none"> <li>• The Adaptable Units Diagram in DA-0260 shows an obstructed access to the balcony in units 1.02 and 2.08 post adaptation.</li> <li>• Access from the bedroom is obstructed due to the design shape of the balcony that hinders the wheelchair manoeuvring</li> <li>• Access from the living room is also obstructed due to the furniture location in the balcony that blocks the wheelchair circulation path.</li> <li>• It's recommended that the applicant seeks better design solutions and allow for better access and functional circulation within the adaptable units to allow for a safe and easy wheelchair manoeuvring.</li> </ul> <p><u>Inaccurate and incorrect shadow diagrams</u></p> <ul style="list-style-type: none"> <li>• The Shadow diagrams provided by the applicant do not provide accurate information for Council to assess the impact of the proposed development on the adjoining properties, particularly, property at No.22 Kent Street adjoining the western boundary of the site that seems to be immersed with shadow all day.</li> <li>• The proposal should seek more accuracy when casting the shadows and consider both the site topography and the surrounding existing buildings to allow for proper assessment.</li> <li>• The Shadow diagram should also highlight the additional and reduction of shadow caused by the proposed development compared to the existing condition.</li> <li>• In all cases, the proposal should comply with CDCP C5 Shop top housing - Solar Access and overshadowing provisions - and avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar roof top systems.</li> </ul>
Traffic	<p>1. <u>Traffic generation</u></p> <ul style="list-style-type: none"> <li>• The Traffic Report provides the following traffic generation based on RMS Guide (October 2002): AM peak hour movements are estimated to be 5-Vehicle</li> </ul>

	<p>Trips per Hour and the PM Peak Hour, 9-Vehicle Trips per Hour.</p> <ul style="list-style-type: none"> <li>The applicant is to be advised that Council does not install No Stopping or No Parking signs across driveways. Businesses can apply to Council for driveway linemarking beside their driveway in accordance with the conditions in the Driveway Linemarking Application form available on Council's website. This could be conditioned if the application was to be supported.</li> </ul> <p>2. <u>Driveway Ramps to Underground Car Parking</u></p> <ul style="list-style-type: none"> <li>Insufficient information in regards to elevations and lengths of ramp section to the underground carparks so that the ramp grades and changes in ramp grades can be checked – starting from the kerb line on Burwood Road.</li> </ul> <p>3. <u>Redundant Driveways &amp; Footpath</u></p> <ul style="list-style-type: none"> <li>Redundant driveway sections across the frontage of the site are to be removed and replaced with new kerb and gutter to match the existing areas, and footpath reconstructed at Applicant's cost. This could be conditioned if the application was to be supported.</li> </ul> <p>4. <u>Access to Underground Carparking.</u></p> <ul style="list-style-type: none"> <li>The queuing area between the vehicle control point (ramp traffic signal control) and the property boundary shall be sufficient to allow a free influx of vehicles which will not adversely affect traffic or pedestrian flows in the frontage road (Burwood Road). Based on Section 3.4 and Table 3.3, AS/NZS 2890.1:2004, the queuing area must be able to accommodate two vehicles (allow a length of 6m per vehicles for a total queuing length of 12m). The queuing length not clearly shown in the report, does not appear to be sufficient.</li> </ul> <p>5. <u>Waste Collection</u></p> <ul style="list-style-type: none"> <li>The Traffic Report mentions that waste bins will be transported to the road kerbside for collection on waste collection days.</li> <li>A Traffic Management Plan (TMP) outlining details for collecting the waste bins. For example what length of kerb will be required to store the bins and how many days a week waste is to be collected.</li> </ul> <p>6. <u>Pedestrian Sight Lines</u></p> <ol style="list-style-type: none"> <li>Traffic Report mentions the proposed driveway crossing provides a splay (2.5m x 2m) at the front boundary for exiting vehicles in accordance with</li> </ol>
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	<p>Figure 3.3 of AS2890.1.2004. This space could be conditioned to be kept clear of any obstruction at all times. This could be conditioned if the application was to be supported.</p> <p>7. <u>Construction Traffic Management Plan</u></p> <p>b) A Construction Traffic Management Plan is required to be submitted. If the application was to be supported this could be conditioned.</p>
Resource Recovery (Waste)	This is discussed under the heading Part B9 of Canterbury Development Control Plan 2012 (CDCP 2012)
Development Engineer	This is discussed under the heading Part B5 of Canterbury Development Control Plan 2012 (CDCP 2012)
Environmental Health Officer	No objections – subject to conditions
Building Surveyor	<ol style="list-style-type: none"> <li>1. The access ramp linking the street level to the main entrance exceeds 10m and should be redesigned to comply with AS1428 (noting that the grade must not be steeper than 1:14 and landings every 9m (also noted that the entry ramp will also need to be provided with assessable handrails to each side and TGSIs at the top and base).</li> <li>2. The building must comply with the Category 1 fire safety provisions as are applicable to the building's proposed use. Fire Engineered Performance solutions prepared by an accredited Fire Safety Engineer (C10) must be provided to address any non-compliances has identified in the National Construction Code Report requested above. This could be conditioned if the application was to be supported.</li> </ol>

### Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

The Canterbury Development Contributions Plan 2013 applies to the site and if the application was recommended for approval would generate section 7.11 contributions.

#### **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 not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000.

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

Given the number of variations sought to the proposal this will result in unacceptable impacts on the subject site, on the amenity of the occupants and on the locality and therefore the proposal is cannot be supported.

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

Based on the information submitted, it has not been satisfactorily demonstrated that the site is suitable for the proposed development. In addition to planning issues, internal stakeholders do not support the application for the reasons detailed within this report. As a result of the number of variations sought and lack of information submitted, the site is not considered suitable for the proposal in its current form.

**Submissions [section 4.15(1)(d)]**

The application was advertised from the 15 May 2019 to 5 June 2019 (including newspaper advertising) (7 submissions and one petition with 20 signatories) were received during this period.

Amended Plans were received on 11 November 2020 and the application was re-notified for from 16 December 2020-27 January 2021 (including newspaper advertising). The plans were re-notified from the 17 February 2021 – 9 March 2021 (including newspaper advertising). During these three notification periods one submission was received.

*Submission: Never informed by Council of changes to building density and height.*

*Comment: The subject site has a maximum 18m building height identified under Canterbury Local Environmental Plan 2012, which has been in force for 9 years.*

*Submission: The frontage is taken up by a fair amount of driveway, lobby and some form of energy box.*

*Comment: It is acknowledged that the front elevation together with the ground level shops at rear do not achieve a satisfactory contribution to the local centre. This is one of the reasons for the recommended refusal.*

*Submission: Demolition of art deco building, these facades should be retained.*

*Comment: Despite the loss of the art deco buildings, the existing buildings are not listed as a heritage item. Council's Urban Design team indicated that the existing building is a character building and recommended that the proposal retain the first bay of the building (approximately 6 m from the front façade) including the chimney and work out ways to incorporate it into the building design*

*Submission: 18 metre height should be complied with. Objections raised to Clause 4.6 to building height.*

*Comment: The proposal has been amended to comply with the 18m building height standard as per the Canterbury Local Environmental Plan 2012. However, there are still concerns raised that the variations sought and the less than the typical slab thickness with no supporting engineering documentation which may result in the building being raised to comply and will result in a height breach.*

*Submission: Concerns with the number of balconies facing west and east. Should the application be approved the balconies should be enclosed with louvres.*

**Comment:** The proposal does not comply with part 3F Visual privacy of the Apartment Guide relating to building separation and therefore is not supported.

*Submission: Lack of open space for occupants.*

**Comment:** The subject site meets the minimum requirements for communal open space under the Apartment Design Guide.

*Submission: Proposal not to use lollipop colours of orange, red, green and yellow. Any balconies with glass should be frosted for privacy.*

**Comment:** The proposal seeks the use of render with a vivid white paint. In regards to the balustrades if the application was being recommended for approval a condition would be imposed requiring the use obscure glazing.

*Submission: 6 storeys is out of character with the area and building mass.*

**Comment:** The subject site is located within an 18m building height limit under the Canterbury Local Environmental Plan 2012, which allows for 5-6 storey buildings. The proposal is consistent with the number of storeys of the adjoining development to the south. However, the lack of adequate floor to ceiling heights for the ground floor level tenancies and the lack of adequate engineering details to support reduced slab thicknesses, means that the eventual height of the development may indeed be different to what is depicted on the plans and will therefore not be consistent with the neighbouring development.

*Submission: Traffic generation  
Concerns with the unsightly and dangerous driveway facing Burwood Road.*

**Comment:** The application was referred to Transport for New South Wales (TfNSW) and Council's traffic engineers. TfNSW did not raise any objections with the development subject to conditions. Council's traffic engineer however does not support the proposal in its current form and the matters raised by the traffic engineer have formed part of the reasons for refusal.

*Submission: Little infrastructure to support increase in population to the suburb.*

**Comment:** The proposal seeks re-development of the site which is consistent with the objectives of the zone. Consideration of the existing and future infrastructure form part of the wider planning framework for this area.



*Submission: Loss of solar access, overshadowing and ventilation.  
The proposed development should match up with the adjoining neighbours open area/void.*

**Comment:** The information provided to Council does not allow full and proper assessment of the loss of solar access to the adjoining properties and therefore is not supported in its current form.

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

The public interest is served through the detailed assessment of this application under the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Environmental Planning Instruments and Development Control Plans. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by ensuring that any adverse impacts on the surrounding area and the environment are avoided. Based on the above assessment, approval of the proposed development would not be in the public interest.

**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 State Environmental Planning Policies, Local Environmental Plan 2012, development control plan, codes and policies.

As outlined within the body of the report, the current design seeks a departure from a number of planning controls to the Apartment Design Guide and Canterbury Development Control Plan 2012.

Furthermore, the outstanding matters raised by Traffic, Development Engineer, Waste and Urban Design departments would likely result in further and likely significant redesign of the proposal to achieve compliance.

**RECOMMENDATION**

It is recommended that the development application DA-205/2019 be **REFUSED**, for the reasons outlined in Appendix B.



## REASONS FOR REFUSAL

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application is not consistent with State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development with respect to Schedule 1 Design Quality Principles. The proposed development does not meet Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 4: Sustainability, Principle 6: Amenity, Principle 7: Safety and Principle 9 Aesthetics.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to satisfactorily demonstrate compliance with the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development for the following:
  - a) 3B Orientation: As there is insufficient information to determine any loss of solar access to the adjoining neighbour.
  - b) 3C Public Domain: As the development does not provide a satisfactory interface with Burwood Road to the ground floor shops, while the residential and non-residential uses on the site are not adequately separated at the ground level.
  - c) 3D Communal Open Space:
    - i. The communal open space does not achieve a minimum of 50% direct sunlight to the principal usable part of the communal area for 2 hours between 9am and 3pm on the 21 June as required by Objective 3D-1, Design Criteria 2.
    - ii. The location of the communal open space is not exclusive to the residential component of the building and is not provided with safe access.
  - d) 3F Visual Privacy:
    - i. The rear setbacks do not meet the minimum requirement for a development that adjoins a lower density residential zone.
    - ii. 3F Visual Privacy: The separation between the habitable areas (interface conditions) within the development do not meet the requirements and will impact on the visual privacy between occupants within the development.
  - e) 3G Pedestrian Access and Entries: The street edge is not adequately activated with one main pedestrian access point to all of the building, the rear shops are not clearly visible from the street and pedestrian linkages through the ground floor in particular do not provide clear sight lines and are mixed with the shop/commercial component for the building causing safety and security concerns.

- f) 4A Solar and Daylight Access: There is insufficient information to determine compliance with the solar access. The proposal does not achieve at least 70% of apartments in a building receiving 2 hours direct sunlight between 9am and 3pm at mid-winter. The windows to some of the apartments are also obscured with louvres which may impact the solar access entering the apartment.
  - g) 4C Ceiling Heights: The minimum ceiling heights are not likely to be realised as the plans are based on slab thickness of 200mm which is structurally unrealistic.
  - h) 4D: Apartment Size and Layout: A number of apartments exceed 8m in habitable room depth from a window.
  - i) 4E Private Open Space and Balconies: Some balconies do not meet the minimum area. The three-bedroom apartments have balconies that are not functional spaces given the size of the apartments.
  - j) 4G Storage: Storage areas unrealistically proposed in living rooms where normally occupants would locate entertainment units, tv's and the like.
  - k) 4Q Universal Design: Details have not been provided to enable assessment under this control.
  - l) 4S Mixed use: The proposal includes minimal street activation with the ground floor front elevation dominated by accessways.
  - m) 4U Energy Efficiency: An amended BASIX Certificate has not been provided and therefore compliance could not be determined.
  - n) 4V Water Management and Conservation: The proposed water management methods are not satisfactory.
  - o) 4W Waste Management: Adequate waste management facilities are not provided.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application does not comply with the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 as the proposed development is a BASIX affected development and an amended BASIX Certificate has not been provided.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives contained in the Canterbury LEP 2012 for development in the B2 Local Centre zone.

5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the following Clauses of the Canterbury LEP 2012 :
  - a) 6.4 Stormwater Management: As the development fails to satisfactorily manage and dispose stormwater from the site.
6. Pursuant to the provisions of Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is not consistent with the Draft Canterbury Bankstown Consolidated Local Environmental Plan, Clause 6.14 'Design Quality'.
7. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of the Canterbury DCP 2012, including:
  - a) Part B2 Landscaping, as an updated landscape plan has not been provided in accordance with the Canterbury Development Control Plan 2012.
  - b) Part B4 Accessible and Adaptable Design, as an updated report has not been provided for assessment.
  - c) Part B5 Stormwater and Flood Management, as the development fails to satisfactorily manage and dispose stormwater from the site.
  - d) Part B7.2.1 as the development includes blind corners particularly in the ground floor circulation areas, parts of communal open space do not receive natural surveillance, and entries are not clearly visible.
  - e) Part B9 Waste – as the proposed waste management plan, waste storage areas and design and access thereto do not comply.
  - f) Part C5.2.3.1 as the accessways to the residential component do not allow all potential use such as the transporting of furniture.
  - g) Part C5.2.4.1 as there is insufficient information to determine any impacts to the solar access to the neighbouring property.
  - h) Part C5.2.4.2 as an updated acoustic report has not been provided to allow assessment.
  - i) Part D1.3.5 as the shop does not comply with the minimum 10m depth
  - j) Part D1.3.3, C1(a) and(b) relating to the floor to ceiling heights.
  - k) Part D1.4.2 as the Ground level shops at rear do not interact with street and fail to satisfactorily contribute to the local centre.
  - l) Part D1.4.3 as the proposed development does not retain the existing period façades.
8. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development.
  - a) Amended BASIX Certificate
  - b) Updated acoustic report.
  - c) Updated Accessibility Report.

- d) Amended Landscape plan.
  - e) Insufficient information provided with the submitted with the Traffic Report.
9. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is unsatisfactory and is likely to adversely impact on the privacy and amenity issues of the future residents of the development.
10. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

-END-