



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

12 April 2021 - 6.00pm

ORDER OF BUSINESS

ORDER OF BUSINESS

APOLOGIES AND DECLARATIONS

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

REVESBY WARD

- 1 229 Tower Street, Panania**
- Demolition of all existing structures and the construction of a four storey shop top housing development comprising basement carparking, four ground floor retail/commercial premises and 34 residential units at the upper levels. 3

ROSELANDS WARD

- 2 684-700 Canterbury Road, Belmore**
- Proposed construction of a six storey shop top housing development comprising 39 residential units, commercial tenancy, two basement levels and associated landscape and site works. 45

NEW PROCEDURES LOCAL PLANNING PANEL

- 3 Procedures - Canterbury Bankstown Local Planning Panel 111**

Canterbury Bankstown Local Planning Panel - 12 April 2021

ITEM 1	229 Tower Street, Panania
	Demolition of all existing structures and the construction of a four storey shop top housing development comprising basement carparking, four ground floor retail/commercial premises and 34 residential units at the upper levels.
FILE	DA-1326/2015 – Revesby
ZONING	B2 – Local Centre
DATE OF LODGEMENT	4 November 2015
APPLICANT	Mr Dugald Mackenzie
OWNERS	Panania Pty Ltd
ESTIMATED VALUE	\$9,103,192.00
AUTHOR	Planning

REPORT

This matter is reported to Council's Local Planning Panel as the proposal is development to which State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development applies and is four or more storey's in height which is listed as a development that is to be determined by the local planning panel.

Development Application No. DA-1326/2015 proposes the demolition of all existing structures and the construction of a four storey shop top housing development comprising basement carparking, four ground floor retail/commercial premises and 34 residential units at the upper levels.

DA-1326/2015 has been assessed, amongst other things, against the provisions contained within *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy No 55 – Remediation of Land*, *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)*, *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*, *Bankstown Local Environmental Plan 2015*, *Draft Canterbury Bankstown Local Environmental Plan 2020* and *Bankstown Development Control Plan 2015*. The application fails to comply in regards to

Apartment Design Guide (overshadowing adjoining properties, transitions, amenity of public domain, communal space, visual privacy, pedestrian access and entries, vehicle access, solar access, natural cross-ventilation, ceiling heights, visible windows in each room, storage, façade & building entries, roof design and concealment opportunities) and BDCP 2015 – Part B2 with regard to storey limit, solar access, setbacks and visual privacy.

The application was initially notified for 14 days and amended plans were subsequently re-notified for 14 days. During the notification periods a total of four submissions were received. The following concerns were raised in the submissions:

- Proposed apartments only receive 2 hours solar access during mid-winter – they will be dark and cold
- The proposal is for four storeys however only three storeys are permitted
- Development exceeds the 14m height limit
- Insufficient car parking
- Location of air-conditioning units not shown on the plan – may increase overall building height
- Disruption during construction
- Privacy and overshadowing residential properties at the rear
- Increased pressure on facilities in the area - what provisions or resources are Council and the developers putting in place to sustain a high number of population being introduced?
- Traffic congestion

POLICY IMPACT

The Development Application proposes a number of extensive variations to the relevant policies, namely *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)*, *Bankstown Local Environmental Plan 2015* and the *Bankstown Development Control Plan 2015*. Support of the proposed variations would undermine the intent of the policies and their future application.

FINANCIAL IMPACT

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

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-1326/2015 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 229 Tower Street, Panania and is identified as Lot 1 in DP 1157398. The site has a combined area of 2034.2m² and frontage of 38.71m to Eddie Avenue and 49.065m to Tower Street and has a fall of approximately 1m from front north-western corner to the rear south-eastern corner of the site.

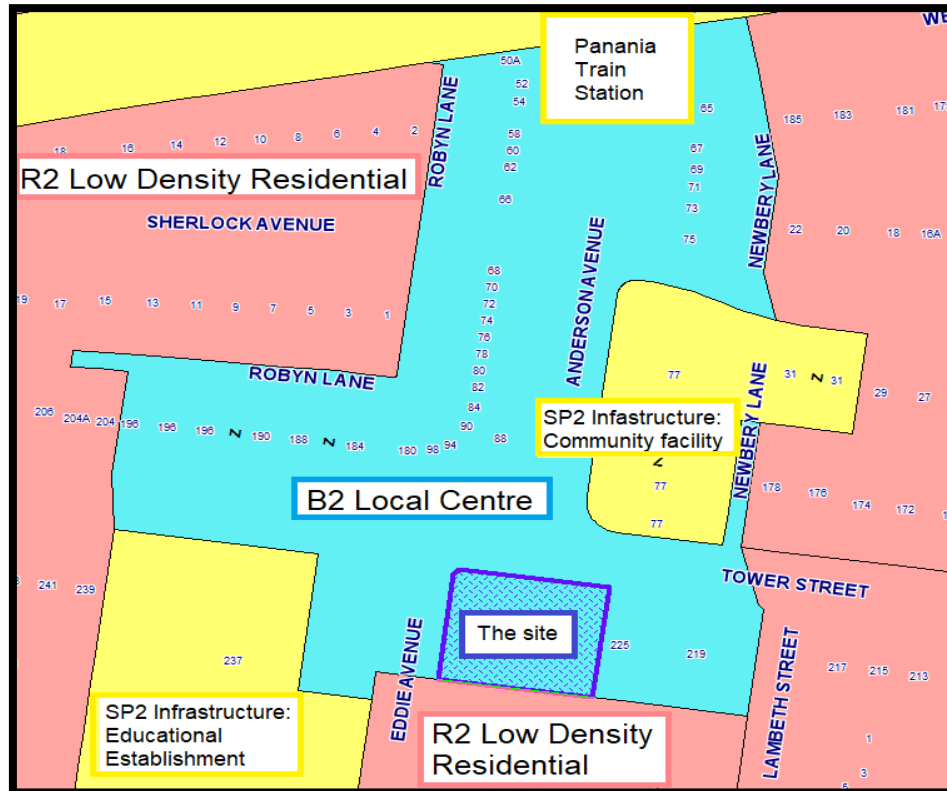
The site is zoned B2 Local Centre and is located approximately 200m to the south of Panania Train Station. The surrounding development generally comprises commercial development to the north and east, with low density residential housing to the south. To the west, on the opposite side of Eddie Avenue is St Christopher's Primary School. To the north east, on the opposite side of Tower Street is Panania Library.

The existing development on the site includes five shops facing and accessed off Tower Street with a carpark at the rear accessed from Eddie Avenue.

The context of the subject site is illustrated in the aerial photo below:



Aerial of subject site in yellow. **Source:** NearMaps 2020



PROPOSED DEVELOPMENT

The Development Application proposes the demolition of existing structures and the construction of a four storey shop top housing development comprising basement car parking, four ground floor retail/commercial premises and 34 residential apartments above.

- Ground floor: four (4) retail/commercial premises
- Level one (1): Twelve (12) residential apartments
- Level two (2): Twelve (12) residential apartments
- Level three (3): Ten (10) residential apartments

A photo montage of the proposed development is provided below:



SECTION 4.15 ASSESSMENT

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

Statutory Considerations

When determining a development application, the consent authority is to take into consideration the matters for consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*. In this regard, the following environmental planning instruments, draft environmental planning instruments, development control plans, codes and policies are relevant:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment ('Deemed SEPP')
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)
- Bankstown Local Environmental Plan 2015 (BLEP 2015)
- Draft Canterbury Bankstown Consolidated Local Environmental Plan 2020
- Bankstown Development Control Plan 2015 (BDCP 2015)
- Bankstown Section 94A Development Contributions Plan
- Bankstown Development Engineering Standards

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

Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (deemed SEPP)

The site is located within land identified as being affected by Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment (being a deemed SEPP from 1 July 2009). The GMREP No 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications.

An assessment of the proposal indicates that the development is generally consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of the GMREP No 2.

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

A BASIX Certificate has been prepared in support of the application, which details the thermal, energy and water commitments associated with the development. The proposal satisfies the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* and is supported in this instance.

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 site is currently occupied by a commercial development. Whilst this does not contain uses identified in Table 1 of the Managing Land Contamination Guidelines as activities that may cause contamination, the application has failed to adequately address the provisions of the SEPP in order to enable Council to assess the suitability of the site. Therefore, it cannot be confidently concluded that the provisions of SEPP No. 55 have been satisfied.

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

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) aims to improve the design quality of residential flat buildings and provides an assessment framework - the 'Apartment Design Guide' for the assessment of applications under which this is considered. The proposal is inconsistent with the design quality principles contained within the policy, which promotes development that is of good design, appropriate context, scale and density given the desired future character of the area.

Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification statement from the building designer at lodgement of the development application. This document has been submitted with the development application. The statement does not address the requirements of Clause 50 (1AB) of the Environmental Planning & Assessment Regulation 2000 which requires the statement addressing how the design quality principles are achieved and demonstrate in terms of the Apartment Design Guide, how the objectives of parts 3 and 4 have been achieved.

The application generally fails a number of 'Design Criteria' contained in the Apartment Design Guide, as detailed further in the table below.

'DESIGN CRITERIA'	PROPOSED	COMPLIES?
<p>3B – Overshadowing of adjoining properties</p> <p><u>Design Guidance:</u></p> <ul style="list-style-type: none"> 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% (BDCP 2015 – Part B2 Commercial Centres states that the minimum solar access for adjoining dwelling houses are as follows: <ul style="list-style-type: none"> <i>5.24 The living areas of a dwelling on an adjoining allotment must receive a minimum sum of 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.</i> 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 down hill by increased upper level setbacks. 	<p>The adjoining dwelling to the south at No. 2 Lambeth Street currently receives 4 hours solar access to a living area (on the rear western elevation) between 12.00pm and 4.00pm at the mid–winter solstice, which will be reduced to approximately 2.5 hours.</p> <p>It is noted that the existing dwelling at No. 2 Lambeth Street is a small brick cottage, which is likely to be redeveloped at some point in the near future. In this regard, the land size is approximately 1011m² with a frontage of 20m.</p> <p>If this adjoining residential site was to be redeveloped, any new development (likely to be a dual occupancy development), would allow for compliant solar access to be achieved to a living area with regard to the sites orientation and the shadows cast from the proposed development.</p> <p>Building separation/setbacks have been increased from the ADG minimum of 6m to 9m, however the development still results in impacts on the adjoining southern properties in terms of solar access to a living area (as mentioned above) and reduced visual privacy.</p> <p>With regard to privacy, the southern elevation has numerous large windows and balconies overlooking the adjoining low-density residential dwellings (in particular No. 1 Eddie Avenue) with very limited use of privacy screening to mitigate privacy impacts.</p>	<p>No.</p> <p>No.</p>

	<p>The applicants comment in relation to privacy (provided below) is not considered sufficient to mitigate potential privacy impacts.</p> <p>It is considered that the development will result in unreasonable adverse impacts on the adjoining southern properties in terms of privacy. In this regard, the design could be amended incorporate additional screening and the use of high sill windows to mitigate potential privacy issues.</p> <p><u>Applicants statement with regard to privacy impacts on the adjoining low density residential properties to the rear:</u></p> <p><i>“The potential visual privacy impacts resulting from the development proposal are mitigated noting the setback to the rear boundary, and screening designed to create non-habitable conditions where appropriate. In addition to physical separation the landscape plan submitted with the development application including screening planting on the side and rear boundaries including canopy trees and shrubs.</i></p> <p><i>The proposed rear setback has been designed to comply with the requirements of the ADG, with 9m separation from the R2 Low Density residential zone adjoining the site to the south. The fenestration and balconies at the rear elevation contained screens/louvre elements to mitigate overlooking upon the rear adjoining dwelling, with screen planting – canopy trees at a maximum height of 10m and 25m further obstructing sightlines from</i></p>	N/A
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<ul style="list-style-type: none"> A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings 	<p><i>these openings to the rear adjoining dwelling."</i></p> <p>No solar collectors are currently located on the southern residential properties at the rear.</p>	
<p>3C –1 Transition / Public Domain Interface <u>Design Guidance:</u></p> <ul style="list-style-type: none"> Direct street entry (terraces, balconies, courtyards) where appropriate and changes in levels from street to private courtyards – improve surveillance and visual privacy Upper level balconies and windows should overlook the public domain Solid walls should be limited along street frontages. Fences permeable materials, solid fences max 1m. Opportunities should be provided for casual interaction between residents and the public domain – seating at entries, near letter boxes and private courtyard adjacent to streets Multiple entries should be differentiated using architectural detailing, changes in materials, plants species and colour and there should be limited areas for people to be concealed 	<ul style="list-style-type: none"> No courtyards provided along the street. Upper level balconies and windows overlook the street. The commercial tenancies have glazing along the street frontage to maximise casual surveillance. No front fences are proposed. No casual interaction opportunities provided. The residential entries on Tower Street are not clearly defined and the corridor to the residential lift via residential entry 2 off Tower Street (lobby 2) is not clear and straight – it has unnecessary kinks which provides areas for people to be concealed. <p>It is considered that the undefined entries (in particular the residential entries) and the long irregular corridor (with concealment opportunities) is an unacceptable design outcome.</p>	<p>N/A</p> <p>Yes.</p> <p>Yes.</p> <p>N/A.</p> <p>No.</p> <p>No.</p>
<p>3C – 2 Amenity of public domain <u>Design Guidance:</u></p> <ul style="list-style-type: none"> Minimise visual prominence of underground carpark Substations, pump rooms, garbage areas etc. to be in basement or out of view. 	<p>The visual prominence of the basement car park has been minimised by locating the entry at the rear of the building within the</p>	<p>Yes.</p>

<ul style="list-style-type: none"> Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels. 	<p>at grade carpark. It does not dominate the streetscape.</p> <p>No details have been submitted to Council with regards to substations. Other service rooms/areas such as garbage areas have been shown on the plans and the location and design are considered to be satisfactory.</p> <p>With regard setting ground floor levels in relation to footpath levels, the footpath level at the commercial entry on Tower Street is between RL22.61-RL23.14, however the ground floor levels on Tower Street are between RL22.1-RL22.6 being a substantial change in level/step between footpath and the commercial premises (which is a step down of approximately 500mm into the commercial premises).</p>	<p>No.</p> <p>No.</p>
<p>3D – Communal open space</p> <p><u>Design Criteria:</u> 25% of the site area is to be communal open space, and 50% of the COS must receive at least 2 hours direct sunlight between 9am-3pm on 21 June.</p> <p><u>Design Guidance:</u></p> <ul style="list-style-type: none"> Minimum dimension 3m Co-located with deep soil zones Direct access to communal area from entries, lobbies & circulation areas. Where communal open space cannot be provided at ground level, provide at podium or roof Where unable to achieve design criteria (small lots, business zones, dense urban areas) should: <ul style="list-style-type: none"> provide COS elsewhere (landscape roof top, terrace or common room), provide larger balconies or provide larger balconies/POS demonstrate good proximity to public open space and facilities 	<p><u>Required:</u> The site has an area of 2034.2m² which equates to 508.55m² communal open space required (25%).</p> <p><u>Provided:</u> On the third floor 188.16m² communal open space is provided, this equates to 9.2% and not 25% as required by the ADG.</p> <p>The mid-winter shadow diagrams for 12pm, 1pm, 2pm, 3pm and 4pm incorrectly show the communal open space area with a roof (all other plans show this communal open space with no roof) and in full shadow at mid-winter.</p> <p>With regard to solar access to the communal open space, given the inaccurate shadow diagrams, it has not been demonstrated that any</p>	<p>No.</p>

	<p>sunlight is achieved to this space during mid-winter. A communal space on the southern side of the building with no direct sunlight during mid-winter is considered to be an unacceptable outcome.</p> <p>Given the applicants justification below for a variation to the minimum COS requirements of the ADG, the size of the communal open space is considered to be reasonable. However, as previously mentioned lack of direct sunlight during mid-winter is considered to be unacceptable.</p> <p><u>Applicants justification for non-compliance:</u></p> <p><i>"The proposed communal open space on the roof terrace does not meet the minimum 25% of the site as contained within Design Criteria 1 of Objective 3D-1 of the ADG. In this regard, the proposed rooftop communal open space is consistent with the relevant design guidance of Objective 3D-1 as follows:</i></p> <ul style="list-style-type: none"> <i>- The subject site is located in a more dense urban location, being within a business zone in the Panania Town Centre – B2 Local Centre zone.</i> <i>- The proposal provides communal open space on a landscaped rooftop terrace which contains provides a good level of amenity for the future residents of the development including covered seating, outdoor BBQ/cooking facilities, and bathrooms.</i> <i>- The proposed development provides generous apartment areas beyond the minimum requirements of the ADG, with balconies/private open space areas up to 39.14m² allowing for a high level of internal amenity for residents.</i> 	
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<ul style="list-style-type: none"> Facilities are provided within communal open spaces and common spaces for a range of age groups and can incorporate seating, BBQ areas, play equipment/areas, swimming pools, gyms, tennis courts or common rooms Communal open space is to be visible from habitable rooms and private open spaces while maintaining privacy, bay windows, corner windows or balconies. Safe - fenced/contained for young children. Connect to public street along one edge and clear boundaries between public and private open space. 	<p>- The subject site is within close proximity to public open space and facilities including Smith Park (800m south-west), Edward Park (300m north) and Max Park Leisure & Aquatic Centre and Amour Park (1km to the north-east)."</p> <ul style="list-style-type: none"> Seating and BBQ facilities proposed. The communal open space is not visible from any habitable rooms or private open space areas. Yes, the communal open space area is fenced. N/A located on the third floor at the rear. 	<p>Yes.</p> <p>No.</p> <p>Yes.</p> <p>N/A</p>
<p>3E – 1 Deep Soil Zones</p> <p><u>Design Criteria:</u></p> <p>Sites with an area of between 6m² and 1,500m² is to provide 7% of the site as deep soil zone with a minimum dimension of 6m</p> <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> The location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres). There is 100% site coverage or non-residential uses at ground floor level. <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved, and alternative forms of planting provided such as on structure.</p>	<p>The site has an area of 2034.2m² which requires 142.4m² (7%) deep soil zone required.</p> <p>The site is located in a business zone, with the site currently fully developed with no landscaping (other than several small shrubs along the rear boundary). The proposed development provides for an increase in landscaping with approximately 80m² (or 4%) deep soil zone proposed along the rear boundary with additional landscaping provided within the communal open space area on level 3.</p> <p>Notwithstanding the numerical non-compliance the proposal meets the objectives for deep soil planting. In addition, the Apartment Design Guide allows for reduced provision in areas were 100% site coverage or non-</p>	<p>No.</p>

	residential uses on the ground level locations on the provision that acceptable stormwater management is achieved, and alternative forms of planting provided such as on-structure planting. On-slab planting is proposed on the communal open space that provides an effective planted space and meets the objectives of the Apartment Design Guide. This outcome is considered acceptable and consistent with other sites the B2 – Local Centre Zone.													
<p>3F – 1 Visual Privacy (Building separation)</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms & balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should be combine required building separations depending on the type of room.</p> <p>Apartment buildings should have an increase separation distance of 3m (in addition to the requirements in the table) when adjacent to a different zone that permits a lower density</p>	Building height	Habitable rooms & balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The following building separation non-compliance have been identified:</p> <ul style="list-style-type: none"> On the second floor (at the rear) the bedroom windows between units 22 and 23 propose a 5.3m separation, however 12m is required. On the first floor (at the rear) the blank walls between units 10 and 11 propose a 5.3m separation, however 6m is required. On the first floor, second floor and third floor, the main bedroom window of units 8, 20 and 32 (facing east) are setback 3.2m from the eastern boundary, however a 6m setback is required. <p>The above mentioned non-compliances are considered to result in unacceptable adverse privacy issues.</p> <p>Building separation/setbacks have been increased from the ADG minimum of 6m to 9m along the rear boundary as it adjoins R2 Low Density Residential land. However, the development still results in</p>	<p>No.</p> <p>No.</p>
Building height	Habitable rooms & balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

<p>residential development to provide for a transition in scale and increased landscaping</p>	<p>unreasonable adverse impacts on the adjoining southern properties in terms of solar access to a living area and reduced visual privacy. In this regard, the adjoining dwelling to the south at No. 2 Lambeth Street currently receives 4 hours solar access to a living area (on the rear western elevation) between 12.00pm and 4.00pm at the mid-winter solstice, which will be reduced to approximately 2.5 hours (BDCP 2015 – Part B2 requires 3 hours).</p> <p>With regard to privacy, the southern elevation has numerous large windows and balconies overlooking the adjoining low-density residential dwellings (in particular No. 1 Eddie Avenue) with very limited use of privacy screening to mitigate privacy impacts.</p> <p>It is considered that the development will result in unreasonable adverse impacts on the adjoining southern properties in terms of privacy. In this regard, the design could be amended incorporate additional screening and the use of high sill windows to mitigate potential privacy issues.</p>	
<p>3G – 1 & 2 Pedestrian access and entries</p> <ul style="list-style-type: none"> • Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries. Access, entries, and pathways are accessible and easy to identify. Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces. • The design of the ground floors and underground car parks minimise level changes along pathways along pathways and entries. 	<p>Neither the commercial or the residential entries are clearly defined. It is considered that the undefined entries (in particular the residential entries) and the long irregular corridor to residential lift and lobby 2 is an unacceptable design outcome as it is not clear and straight.</p> <p>As mentioned previously in this report, there is approximately a 500mm stepdown from the footpath into each of the commercial tenancies off Tower Street.</p>	<p>No.</p> <p>No.</p>

<p>3H – Vehicle access</p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and creates high quality streetscapes.</p>	<p>The location of the driveway is satisfactory. However, the proposed development fails to demonstrate that sight triangles for pedestrian safety at the driveway exits comply with AS2890.1:2004 – Fig 3.3. In this regard, there is an existing boundary fence on the southern end of the exit driveway (on the boundary shared with No. 1 Eddie Avenue) which obstructs sight lines.</p> <p>Note: Fences forward of the front building line (5.5m in from the front boundary of No. 1 Eddie Avenue) are permitted to be a maximum height of 1m.</p>	<p>No.</p>
<p>3J – Car parking, bicycles and scooters</p> <p>Minimum car parking requirement must be provided on site</p> <p><i>BDCP 2015 – Part B5 Carparking requires shop to housing to provide the following car parking spaces:</i></p> <ul style="list-style-type: none"> - 1 car space per dwelling - 1 car space per 40m² of gross commercial floor area. <p>• Parking is to be provided for other modes of transport – conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters.</p>	<p><u>Residential</u> Required: 34 spaces Provided: 41 spaces</p> <p><u>Commercial</u> Required: 18 spaces Provided: 23</p> <p><u>Visitors</u> Required: 0 Provided: 7</p> <p>14 bicycle spaces provided in a convenient location</p>	<p>Yes.</p> <p>Yes.</p>
<p>4A – 1 Solar access</p> <ul style="list-style-type: none"> • 70% of apartments should receive 2hrs solar access between 9am – 3pm mid-winter. • A maximum of 15% of apartments in a building receive no direct solar access between 9am and 3pm at mid-winter 	<p>70% apartments receive a minimum of 2hrs solar access between 9am – 3pm mid-winter.</p> <p>21% of apartments receive no direct solar access between 9am and 3pm at mid-winter. This is not considered to be an acceptable</p>	<p>Yes.</p> <p>No.</p>

	design outcome and not a variation that would be typically supported.	
4B – 3 Natural cross-ventilation 60% of apartments to be naturally cross-ventilated.	52% of apartments are naturally cross ventilated. This is not considered to be an acceptable design outcome and not a variation that would be typically supported.	No.
4C – 1 Ceiling heights In mixed use areas minimum 3.3m ceiling height for ground and first floor to promote future flexibility for use.	<p>The objective of ceiling heights is to achieve sufficient natural ventilation and daylight access. However, in a mixed-use development the ground and first floor levels should have increased ceiling heights to ensure long term adaptability and flexibility for other uses.</p> <p>The proposed development proposes four commercial tenancies on the ground floor with residential apartments above on the first floor.</p> <p>The ground floor commercial tenancies are provided with a floor to ceiling height of 3.2m and not 3.3m which is deemed as being the minimum acceptable floor to ceiling heights under the ADG to promote future flexibility for uses. It is considered that the applicant's justification for the proposed variation (provided below) does not give sufficient reasoning for the non-compliance.</p> <p>The first floor contains 12 residential apartments all with floor to ceiling heights of 2.7m. While it is noted that a 3.3m floor to ceiling height is required for the first floor to allow for future flexibility for uses on this level, given the location and site context</p>	No.

<p>All other habitable rooms minimum 2.7m ceiling height.</p>	<p>it is highly unlikely that the first floor would see a demand to change its future use from residential to a business use. In this regard, the 2.7m ceiling height to the first floor is considered acceptable in this case.</p> <p><u>Applicants justification for non-compliance:</u></p> <p><i>"The proposed ceiling heights at the ground floor commercial units of 3.2m varies the required ceiling height contained within Design Criteria 1 of Objective 4C-1 which states: 'if located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use'.</i></p> <p><i>It is noted the subject site is not located within a mixed use zone noting the proposal is for a shop top housing development with ground floor commercial/retail premises and upper level apartments. The ground floor ceiling heights allow for flexible commercial uses that will activate the street frontage consistent with the objectives of the B2 Local Centre zone."</i></p> <p>2.7m floor to ceiling heights provided for all apartments.</p>	<p>Yes</p>
<p>4D – 1 Unit size 1 bed – min. 50m² 2 bed – min. 70m² 3 bed – min. 90m² Add 5m² for each additional bathroom/WC</p> <p>A window should be visible from any point in a habitable room.</p>	<p>All apartment's meet the minimum size. The two-bedroom apartments are 70m² and 76m² and the three-bedroom apartment is 95m².</p> <p>Although the study rooms comply with the BCA in terms of light and ventilation, the study rooms provided within units 03, 06, 15, 18, 27 and 30 do not have a visible window from each point of the room.</p>	<p>Yes.</p> <p>No.</p>

4D – 3 Apartment layouts <ul style="list-style-type: none"> • Master Beds: 10m² min • Other beds: 9m² min • Bedrooms min dimension of 3m • Living rooms at least 4m wide 	<p>All apartments main bedrooms are at least 10m² and other bedrooms are a minimum of 9m² with a minimum dimension of 3m.</p> <p>All living rooms within the apartments have a minimum dimension of 4m.</p>	Yes.
4E -1 Private Open Space 2 bed: Min. 10m ² , 2m depth to primary balconies. 3 bed: Min 12m ² , 2.4m depth to primary balconies. Ground level units: Min 15m ² , 3m depth	All apartments meet the minimum private open space requirements.	Yes.
4F – 1 Internal circulation Max. 8 units accessed from a single corridor.	A maximum of 6 apartments are accessed from a single corridor.	Yes.
4G – 1 Storage 1 bed: 6m ³ 2 beds: 8m ³ 3 beds: 10m ³ (At least half to be provided within the apartment)	Minimum storage requirements have not been provided.	No.
4H – Acoustic privacy Acoustic privacy is about protecting sound transmission between external and internal spaces, between apartments and communal areas and between apartments within a building	An acoustic report was prepared and submitted for the proposed development that detailed the development's impact on the adjoining properties in relation to noise. During the assessment process, Council's Environmental Health Officer reviewed the proposal and the associated acoustic report. The acoustic assessment found that the development is considered satisfactory subject to conditions of consent.	Yes.
4K – Apartment mix A mix of apartment choice provides housing choice and supports equitable housing access	The development provides for an appropriate level of housing choice in accordance with the ADG.	Yes.
4M – Facades The design of facade contributes greatly to the visual interest of the building and the	The building lacks definition of base, middle and top of the	No.

<p>character of the local area. Facades that face the street have an impact on the public domain, while side and rear facades often influence the amenity of neighbouring buildings and communal and private open spaces.</p> <p>Building entries are to be well defined.</p>	<p>building and fails to use a range or vertical and horizontal elements to break up the repetitive façade.</p> <p>The building entries are not well defined. The design of the building entries result in an unacceptable design outcome.</p>	No.
<p>4N – Roof design</p> <ul style="list-style-type: none"> • Roof design relates to the street. Design features may include: <ul style="list-style-type: none"> - Special roof features and strong corners - Use of skillion or very low pitch hipped roofs - Breaking down the massing of the roof by using smaller elements to avoid bulk - Using materials or a pitched form complementary to adjacent buildings. • Roof treatments are integrated into the building design and positively respond to the street • Opportunities to use roof space for residential accommodation and open space are maximised • Roof design incorporates sustainability features 	<p>With regard to the curved corner feature element (located on the corner of Tower Street and Eddie Avenue) the opportunity has been lost to emphasise this architectural feature. It is considered that the architectural design element should be emphasised and strengthened by extending it to protrude above the roofline (as displayed on the existing St Christophers Church building on the opposite side of Eddie Avenue).</p>	No.
<p>4O – Landscaping</p> <p>Sites greater than 1,500m² to have 1 large tree or 2 medium trees per 80m² deep soil zone</p>	<p>80m² provided containing 8 medium sized trees.</p>	Yes.
<p>4P – Planting on structures</p> <p>Planting on structures can provide amenity, improve air quality and microclimate and reduces direct energy use and stormwater runoff. It can also supplement deep soil planting on site where opportunities for this area limited or restricted, e.g. in high density areas.</p>	<p>The proposed development incorporates landscaping within the communal open space areas on the upper floor. The landscaping proposed is consistent with the design guidance for planting on structures.</p>	Yes.

<p>4Q – Universal design</p> <p>Universal design is an international design philosophy that enables people to continue living in the same home by ensuring that apartments are able to change with the needs of the occupants. Universally designed apartments are safer and easier to enter, move around and live in. They benefit all members of the community, from young families to older people, their visitors, as well as those with permanent or temporary disabilities.</p> <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 34 apartments = 6.8</p> <p><u>Provided</u></p> <p>The Statement of Compliance Access for People with a Disability submitted with the application states that 7 livable apartments provided.</p> <p>The development is satisfactory with regard to the universal design principles.</p>	<p>Yes.</p>
<p>4S – Mixed use</p> <ul style="list-style-type: none"> Residential entries and services to be separated to commercial entries. Concealment opportunities are avoided. Landscaped communal open space areas should be provided at podium or roof levels. 	<p>The residential areas and the commercial entries and services are separate.</p> <p>Concealment opportunities provided in residential lobby 2 and the main walkway through from Tower Street to car park at the rear. This is considered to be an unacceptable design outcome.</p> <p>The communal open space areas provide areas dedicated to landscaping.</p>	<p>Yes.</p> <p>No.</p> <p>Yes.</p>
<p>4T – Awnings and signage</p> <ul style="list-style-type: none"> Awnings should be provided along street with high pedestrian activity and active street frontages. Signage to respond to the context and desired streetscape character. 	<p>The proposal incorporates an awning along the front façade of the building.</p> <p>There is no signage proposed as part of the development application.</p>	<p>Yes.</p>
<p>4U – Energy efficiency</p> <ul style="list-style-type: none"> The development incorporates passive environmental design. Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer Adequate natural ventilation minimises the need for mechanical ventilation 	<p>The development application complies with the requirements of <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> and the development application was accompanied with a Nationwide</p>	<p>Yes.</p>

	House Energy Rating Scheme Certificate. The development meets the objectives and design guidance that relates to energy efficiency.	
4V – Water management and conservation <ul style="list-style-type: none"> • Potable water use is minimised • Urban stormwater is treated on site before being discharged to receiving waters. • Flood management systems are integrated into the site design. 	The development application complies with the requirements of <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> . The development meets the objectives and design guidance that relate to water management and conservation.	Yes.
4W – Waste <ul style="list-style-type: none"> • Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents. • Domestic waste is minimised by providing safe and convenient separation and recycling. 	The development meets the requirements of Council's Waste Management Guide for New Developments and BDCP 2015 – Part B13 <i>Waste Management and Minimisation</i> . Council's waste team have reviewed the proposal and consider it to be satisfactory in this regard.	Yes.

Bankstown Local Environmental Plan 2015

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

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition requires development consent
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 5.6 – Architectural roof features
- Clause 6.2 – Earthworks

An assessment of the Development Application revealed that the proposal fails to comply with a number of provisions contained in *Bankstown Local Environmental Plan 2015*. Specifically, clause 1.2 Aims of Plan, and the objectives of the zone.

An assessment against the zoning, environmental and numerical development standards contained in the abovementioned clauses is provided below.

Clause 1.2 Aims of Plan

The proposed development is consistent with the relevant aims of the BLEP 2015, which provides as follows:

1.2 Aims of Plan:

- (a) *to manage growth in a way that contributes to the sustainability of Bankstown, and minimizes the needs and aspirations of the community,*
- (b) *to protect and enhance the landform and vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Bankstown,*
- (c) *to protect the natural, cultural and built heritage of Bankstown,*
- (d) *to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (e) *to minimize risk to the community in areas subject to environmental hazards by restricting development in sensitive areas,*
- (f) *(to provide a range of housing opportunities to cater for changing demographics and population needs,*
- (g) *to provide a range of business and industrial opportunities to encourage local employment and economic growth,*
- (h) *to provide a range of recreational and community service opportunities to meet the needs of residents of and visitors to Bankstown,*
- (i) *to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*
- (j) *to concentrate intensive trip-generating activities in locations most accessible to rail transport to reduce car dependence and to limit the potential for additional traffic on the road network,*
- (k) *to consider the cumulative impact of development on the natural environment and waterways and on the capacity of infrastructure and the road network,*
- (l) *to enhance the quality of life and the social well-being and amenity of the community.*

Comment: The proposal is inconsistent with Clause 1.2(i) and (l) above, as the development will result in reduced visual privacy for the low-density residential properties at the rear of the site. In this regard, the southern elevation has numerous large windows and balconies overlooking the adjoining dwellings to the south with very limited use of privacy screening to mitigate privacy impacts.

Clause 2.3 Zone objectives and Land Use Table

The site is located in the B2 Local Centre zone, in which development for the purposes of 'shop top housing' is permitted. The objectives of the B2 Local Centre 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 provide for certain residential uses that are compatible with the mix of uses in local centres.*

Comment: The proposal is inconsistent the fourth objective of the B2 Local Business zone which is *“To provide for certain residential uses that are compatible with the mix of uses in local centres”* as the proposed development is considered to be inconsistent with the adjoining low-density residential land uses in terms of reduced solar access and privacy.

Clause 4.3 Height of buildings

The subject site has a prescribed height of 14m in accordance with the LEP Height of Buildings Map. The proposed development does not exceed 14m in height.

Clause 4.4 Floor space ratio

In accordance with BLEP 2015 Floor Space Ratio Map, the maximum permitted floor space ratio for the subject site is 2:1. The proposed FSR for the development is 2:1 and is therefore compliant with the maximum floor space ratio set by BLEP 2015.

Clause 5.6 – Architectural roof features

Clause 5.6 of BLEP 2015 provides as follows:

5.6 Architectural roof features

- (1) *The objectives of this clause are as follows—*
 - (a) *to enable minor roof features to exceed the maximum height for a building,*
 - (b) *to provide opportunities for architectural roof features that form an integral part of the building’s design.*
- (2) *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.*
- (3) *Development consent must not be granted to any such development unless the consent authority is satisfied that—*
 - (a) *the architectural roof feature—*
 - (i) *comprises a decorative element on the uppermost portion of a building, and*
 - (ii) *is not an advertising structure, and*
 - (iii) *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) *will cause minimal overshadowing, and*
 - (b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

Comment: The proposal is consistent with this clause. In this regard, the development has been designed with an architectural roof feature/timber look ventilation louvres located above lift overrun.

Clause 6.2 Earthworks

In accordance with clause 6.2, in deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), Council must consider the following matters:

- a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- b) *the effect of the development on the likely future use or redevelopment of the land,*
- c) *the quality of the fill or the soil to be excavated, or both,*
- d) *the effect of the development on the 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 proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- h) *any appropriate measures proposed to avoid, minimize or mitigate the impacts of the development.*

The development is not considered to be inconsistent with this clause.

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

The following draft environmental planning instrument applies to this development.

Draft Canterbury Bankstown Consolidated Local Environmental Plan 2020

The Draft Canterbury Bankstown Local Environmental Plan 2020 (CBLEP 2020) applies to the subject site. The Draft CBLEP 2020 has been publicly exhibited and adopted by the Canterbury Bankstown Local Planning Panel on 30 June 2020 and is now to be reviewed by the Department of Planning. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft CBLEP 2020 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 inconsistent with the aims of the draft instrument (being identical to the provisions contained in the current applicable local environmental plan).

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

The following section provides assessment and compliance tables with a summary of the development application against the applicable controls contained within Bankstown Development Control Plan 2015 - Part B2 Commercial Centres and Part B5 Parking.

PART B2 – COMMERCIAL CENTRES

As the development application proposes a shop top housing development within the B2 Local Centre it is subject to assessment under BDCP 2015 – Part B2 Commercial Centres and Part B5 Parking. The proposals compliance with the controls contained within Part B2 of the BDCP 2015 is detailed in the table below.

PART B2 – COMMERCIAL CENTRES	
CONTROL	COMPLIES?/COMMENT
Section 3 – Village and Small Village Centres	
<p>The objectives are:</p> <ul style="list-style-type: none"> (a) To have development that is compatible with the desired character and role of the particular centre. (b) To have development that achieves good urban design in terms of building form, bulk, architectural treatment and visual amenity. (c) To have development that provides adequate amenity to people who live in, work in and visit the village centres and small village centres. (d) To ensure the building form and building design of development provide appropriate amenity to neighbouring residential development in terms of access to sunlight and privacy. 	<p>No.</p> <p><u>Urban Design</u></p> <p>The building lacks definition of base, middle and top of the building and fails to use a range of vertical and horizontal elements to break up the repetitive façade.</p> <p>The building entries are not well defined. In this regard, the design of the building entries result in an unacceptable design outcome.</p> <p>With regard to the curved corner feature element (located on the corner of Tower Street and Eddie Avenue) the opportunity has been lost to emphasise this architectural feature. It is considered that the architectural design element should be emphasised and strengthened by extending it to protrude above the roofline (as displayed on the existing St Christophers Church building on the opposite side of Eddie Avenue).</p>

	<p><u>Amenity to neighbouring residential development</u></p> <p>With regard to privacy, the southern elevation has numerous large windows and balconies overlooking the adjoining low-density residential dwellings (in particular No. 1 Eddie Avenue) with very limited use of privacy screening to mitigate privacy impacts.</p> <p>It is considered that the development will result in unreasonable adverse impacts on the adjoining southern properties in terms of privacy. In this regard, the design could be amended incorporate additional screening and the use of high sill windows to mitigate potential privacy issues.</p>
<p>Lot width</p> <p>3.2 The minimum primary frontage for shop top housing and missed used development with 3 or more storey is 26 metres. This clause applies to mixed use development that contains dwellings.</p>	<p>Yes, the site has a primary frontage of 38.71m to Eddie Avenue and 49.065m to Tower Street.</p>
<p>Storey limit (not including basements)</p> <p>3.4 The storey limit for development is 3 storeys (plus attic).</p> <p>3.5 The minimum floor to ceiling height for a living area is 2.7m</p>	<p>No, the development proposes 4 storeys (no attic).</p> <p>While it is noted that previous approvals have been granted for the top floor to be a storey and not an attic in other locations in Canterbury Bankstown, the setback would need to be increased (on the top floor), particularly on the western elevation so that the bulk of the development is not too dissimilar to an attic.</p> <p>Yes.</p>

<p>Setbacks to the primary and secondary frontages of allotments</p> <p>3.6 The minimum setbacks to the primary and secondary frontages of an allotment are:</p> <ul style="list-style-type: none"> (a) zero setback for the basement level, the first storey (i.e. the ground floor), and the second storey; and (b) 3 metres for the third storey (a balcony may occupy this setback provided the roof or parapet of the second storey screens the balcony when viewed from the street); and (c) 5 metres for the fourth and fifth storeys. 	<p>Yes.</p> <p>No. The western wall of units 4 and 25 (on the third and fourth floor) are located on the boundary with a zero setback to Eddie Avenue for a length of 15m. It is considered that a minimum of 3m setback is necessary for the third storey and 5m on the fourth storey to provide for a transition between the existing development on the opposite (western) side of Eddie Avenue.</p> <p>The site on the opposite (western) side of Eddie Avenue is currently zoned SP2 Infrastructure; Educational Establishments and is occupied by St Christophers Catholic Church which is approximately 6-7m in height and is located on the boundary.</p>
<p>Setbacks to the side and rear boundaries of allotments</p> <p>3.7 Where development is adjacent to residential zoned land, Council may increase the minimum setbacks to the side and rear boundaries.</p> <p>3.8 For blank building walls with no window or balcony, the minimum setback to the side and rear boundaries of an allotment is:</p> <ul style="list-style-type: none"> (a) zero setback for all storeys provided the setback is to a boundary that adjoins non-residential zoned land and is not a secondary frontage; or 	<p>Yes. The properties to the south are currently zoned R2 – Low Density Residential. The development complies with the building separation requirements of the ADG and provides an additional 3m setback to the current lower density residential development.</p> <p>Yes. The development proposes a zero setback along the eastern boundary which adjoins land zoned B2 – Local Centre (non-residential).</p>

<p>(b) where the setback is to a boundary that adjoins residential zoned land:</p> <ul style="list-style-type: none"> i. zero setback for the basement level, the first storey (i.e. the ground floor), and the second storey; and ii. 5 metres for the third and fourth storeys; and iii. 9 metres for the fifth storey. <p>3.9 The maximum depth for cross-through dwellings (i.e. single or dual aspect dwellings where the side building walls do not contain a window or balcony) is 14 metres.</p> <p>3.10 For building walls with a window or balcony in commercial development, shop top housing and mixed use development, the minimum setbacks to the side and rear boundaries of an allotment are:</p> <ul style="list-style-type: none"> (a) 3 metres for the first storey (i.e. the ground floor). Council may allow a setback less than 3 metres provided it complies with the Building Code of Australia; and (b) 3 metres for the second storey; and <p>(c) 5 metres for the third and fourth storeys; and</p>	<p>The rear/south setbacks (which adjoins low density residential properties) are a minimum of 9m for all levels and 6m to the basement.</p> <p>No. Several apartments exceed 14m, however the depths of each apartment are less than the maximum 18m set by the ADG.</p> <p>Yes. Ground floor retail on the northern and western boundary proposes a zero setback, complies with the BCA.</p> <p>No. Unit 1 is located on the boundary adjoining Eddie Avenue (zero setback). This reduced setback is considered acceptable for the second storey as it mimics the setback on the opposite (western) side of Eddie Avenue. In this regard, St Christophers Church is located on the boundary with a height similar to two storeys (approximately 6-7m).</p> <p>No. Unit 13 and 25 are located on the boundary adjoining Eddie Avenue (zero setback).</p> <p>It is considered that a minimum of 3m setback is necessary for the third and 5m for the fourth storey to provide for a transition between the existing development on the opposite (western) side of Eddie Avenue.</p>
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<p>(d) 5 metres for the fifth storey provided the setback is to a boundary that adjoins non-residential zoned land; or</p> <p>(e) 9 metres for the fifth storey where the setback is to a boundary that adjoins residential zoned land.</p>	<p>The site on the opposite (western) side of Eddie Avenue is currently zoned SP2 Infrastructure; Educational Establishments and is occupied by St Christophers Catholic Church which is approximately 6-7m in height and is located on the boundary.</p> <p>N/A (no fifth floor).</p> <p>N/A (no fifth floor).</p>
<p>Building form and design</p> <p>3.13 Council applies the design quality principles of State Environment Planning Policy No. 65—Design Quality of Residential Apartment Development and the Apartment Design Guide to residential flat buildings, shop top housing, serviced apartments, boarding houses and mixed use development (containing dwellings). This includes buildings that are two storeys or less, or contain less than four dwellings.</p>	<p>No. An assessment of the proposal against the ADG has been provided in an earlier section of this report.</p>
<p>Building design (substations)</p> <p>3.14 The location and design of substations must be shown on the plans.</p> <p>3.15 Substations should locate underground. Where not possible, substations are to be integrated into the building design and concealed from public view.</p> <p>3.16 Substations must not locate forward of the front building line.</p>	<p>No (no details provided).</p>
<p>Building design (utilities and building services)</p> <p>3.17 The location and design of utilities and building services (such as plant rooms, hydrants, equipment and the like) must be shown on the plans.</p> <p>3.18 Utilities and building services are to be integrated into the building design and concealed from public view.</p>	<p>Yes. Sufficient space/rooms provided for utilities and services that are concealed from public view.</p>
<p>Section 5 – Building Design</p>	
<p>The objectives are:</p> <ul style="list-style-type: none"> a) To have high architectural quality in development. b) To encourage building facades and corner allotments to add visual interest to the streetscape. c) To provide pedestrian comfort and protection from the weather. d) To have facade designs and building footprints that integrate into the overall building form and enhance the desired contemporary street character. e) To have a modern and interesting roof skyline. 	<p>The development does not meet objectives (b) and (e), of Section 5 of BDCP 2015 – Part B2.</p> <p>In this regard, the building lacks definition of base, middle and top of the building and fails to use a range or vertical and</p>

<ul style="list-style-type: none"> f) To give the Hume Highway the appearance of a business enterprise corridor by creating active business frontages and limiting the domestic appearance of attics. g) To have front fences that achieve an attractive streetscape and incorporate open style construction such as spaced timber pickets or wrought iron. h) To ensure the design of dwellings are adaptable to a number of family types, and cater for senior residents and residents with disabilities. i) To provide adequate amenity to the occupants of buildings and to neighbouring residential development in terms of solar access. j) To provide adequate amenity to the occupants of buildings in terms of open space k) To provide appropriate landscaping in commercial centres. l) To have a landscape buffer zone that encourages deep soil planting to enhance commercial centres or arterial roads. m) To ensure the siting and design of buildings contribute to the personal and property security of people. n) To ensure development is integrated with the public domain and contribute to an active pedestrian orientated environment. o) To maximise natural surveillance so that people feel safe at all times. p) To encourage building designs, materials and maintenance programs that reduce the opportunities for vandalism and graffiti. 	<p>horizontal elements to break up the repetitive façade.</p> <p>With regard to the curved corner feature element (located on the corner of Tower Street and Eddie Avenue) the opportunity has been lost to emphasise this architectural feature. It is considered that the architectural design element should be emphasised and strengthened by extending it to protrude above the roofline (as displayed on the existing St Christophers Church building on the opposite side of Eddie Avenue).</p>
<p>Façade design</p> <p>5.1 Council applies the design quality principles of State Environmental Planning Policy No 65–Design Quality of Residential Apartment Development and the Apartment Design Guide to residential flat buildings, shop top housing, serviced apartments, boarding houses and mixed use development (containing dwellings). This includes buildings that are two storeys or less, or contain less than four dwellings.</p> <p>5.2 Development must articulate the facades to achieve a unique and contemporary architectural appearance that:</p> <ul style="list-style-type: none"> (a) unites the facades with the whole building form; (b) composes the facades with an appropriate scale and proportion that responds to the use of the building and the desired contextual character; (c) combines high quality materials and finishes; (d) considers the architectural elements shown in the illustration to this clause; and (e) considers any other architectural elements to Council's satisfaction. 	<p>No. Please refer to the previous section of this report which provides a detailed ADG assessment.</p> <p>No. The building lacks definition of base, middle and top of the building and fails to use a range of vertical and horizontal elements to break up the repetitive façade.</p> <p>The building entries are not well defined. The design of the building entries result in an unacceptable design</p>

<p>5.3 Development must architecturally treat blank walls that can be viewed from the street and adjoining residential zoned land by incorporating public art, variation in building materials and/or other architectural design methods which reflect contemporary and interesting design.</p>	<p>outcome.</p>
<p>5.4 The street facade of development on corner allotments should incorporate architectural corner features to add visual interest to the streetscape.</p>	<p>The eastern façade is bland and no details have been provided that shows the use of different materials, finishes or colours to achieve compliance with this clause.</p>
<p>5.5 Development should restrict the use of the first storey (i.e. the ground floor) to business, retail or other non-residential uses:</p> <ul style="list-style-type: none"> (a) to maintain business and retail floor space in the business zones; and (b) to maintain active street frontages in the business zones. 	<p>With regard to the curved corner feature element (located on the corner of Tower Street and Eddie Avenue) the opportunity has been lost to emphasise this architectural feature. It is considered that the architectural design element should be emphasised and strengthened by extending it to protrude above the roofline (as displayed on the existing St Christophers Church building on the opposite side of Eddie Avenue).</p> <p>Yes.</p>
<p>5.6 Development in enterprise corridors may have predominantly glazed facades provided it does not cause significant glare nuisance.</p>	<p>N/A</p>
<p>Attic and roof design</p>	
<p>5.10 Development must incorporate a high quality roof design that:</p> <ul style="list-style-type: none"> (a) achieves a unique and contemporary architectural appearance; and (b) combines high quality materials and finishes. 	<p>N/A. No attics proposed.</p>
<p>5.11 Council does not allow the following development to have attics:</p> <ul style="list-style-type: none"> (a) development with 4 or more storeys in the village, small village and neighbourhood centres that adjoin the Hume Highway; or 	

<p>(b) development in the enterprise corridors (this does not include residential development up to 2 storeys at the rear of an allotment).</p>	
<p>Adaptable housing</p> <p>5.12 Residential flat buildings, mixed use development and shop top housing that contain 10 or more dwellings must provide:</p> <p>(a) at least one adaptable dwelling plus an adaptable dwelling for every 50 dwellings; and</p> <p>(b) must comply with AS 4299–Adaptable Housing.</p>	<p>Yes. Unit 6 is designed as an adaptable dwelling.</p>
<p>Awnings</p> <p>5.13 A traditional box awning must be provided continuously along retail streets to provide pedestrian shelter to footpaths. Council may allow an awning other than a traditional box awning where it considers:</p> <p>(a) the awning design to be an integral feature of the building design; and</p> <p>(b) the awning design does not contain finishes susceptible to degradation (such as glazing material) that result in an unacceptable visual impact on the streetscape.</p> <p>Council does not support cut outs in awnings for trees and light poles.</p> <p>5.14 The height of an awning should:</p> <p>(a) match the height of an adjoining or nearby awning; and</p> <p>(b) have a consistent fascia height to accommodate a sign.</p> <p>5.15 Development may incorporate an awning design in the enterprise corridors that:</p> <p>(a) achieves a unique and contemporary architectural appearance; and</p> <p>(b) combines high quality materials and finishes.</p>	<p>Yes. The proposed development is consistent with these clauses.</p>
<p>Access to sunlight</p> <p>5.23 The living areas for at least 70% of dwellings in a development must receive a minimum sum of 3 hours of sunlight between 8.00am and 4.00pm at the mid– winter solstice. Council may allow light wells and skylights to supplement access to sunlight. However, these building elements must not be the primary source of sunlight to living areas.</p> <p>This clause applies to development that contain two or less storeys, or three or less dwellings such as shop top housing, mixed use development and residential flat buildings.</p> <p>5.24 The living areas of a dwelling on an adjoining allotment must receive a minimum sum of 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.</p>	<p>Yes.</p> <p>No. The adjoining dwelling to the south at No. 2 Lambeth Street currently receives 4 hours solar access to a living area (on the rear western elevation) between 12.00pm and 4.00pm at the mid–</p>

	<p>winter solstice, which will be reduced to approximately 2.5 hours.</p> <p>It is noted that the existing dwelling at No. 2 Lambeth Street is a small brick cottage that is likely to be redeveloped at some point in the near future. In this regard, the land size is approximately 1011m² with a frontage of 20m.</p> <p>If this adjoining residential site was to be redeveloped, any new development (likely to be a dual occupancy development), would allow for compliant solar access to be achieved to a living area with regard to the sites orientation and the shadows cast from the proposed development.</p>
Entrances 5.28 The main entrance or entrances to development must face the street. 5.29 Access to the dwelling of shop top housing, mixed use development and residential flat buildings must be from the street. This may be provided: as a passage or stairway that is separate to the non-residential area in the building;	<p>Yes.</p> <p>Yes.</p>
Building Design and natural surveillance 5.31 Windows to the living areas of front dwellings, or the windows on the upper floors of development must overlook the street. 5.32 Where the ground floor of development faces the street, the ground floor must incorporate shopfront style windows with clear glazing so that pedestrians can see into the premises and vice versa. The use of obscure or opaque glass, or other types of screening is discouraged.	<p>Yes.</p>
Security devices for commercial development 5.36 The security door or grille to a shopfront facing the street must be transparent or an open grille type shutter. A solid roller door or shutter is not permitted.	<p>Yes.</p>
Security devices for commercial development 5.36 The security door or grille to a shopfront facing the street must be transparent or an open grille type shutter. A solid roller door or shutter is not permitted.	<p>Yes.</p>

<p>Development adjacent to residential zones</p> <p>5.38 In determining a development application that relates to land adjoining land in Zone R2, R3 or R4, Council must take into consideration the following matters:</p> <ul style="list-style-type: none"> (a) whether any proposed building is compatible with the height, scale, siting and character of existing residential development within the adjoining residential zone; (b) whether any goods, plant, equipment and other material used in carrying out the proposed development will be stored or suitably screened from residential development; (c) whether the proposed development will maintain reasonable solar access to residential development between the hours of 8.00am and 4.00pm at the mid-winter solstice; (d) whether noise generation from fixed sources or motor vehicles associated with the proposed development will be effectively insulated or otherwise minimised; (e) whether the proposed development will otherwise cause nuisance to residents, by way of hours of operation, traffic movement, parking, headlight glare, security lighting, fumes, gases, smoke, dust or odours, or the like; and (f) whether any windows or balconies facing residential areas will be treated to avoid overlooking of private yard space or windows in residences. 	<p>No. The development does not comply with clauses (a), and (f) as it will have an adverse impact on the adjoining southern residential properties in terms of privacy.</p>
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PART B5 – PARKING	
CONTROL	COMPLIES?/COMMENT
<p>BDCP 2015 – Part B5 Carparking requires shop to housing to provide the following car parking spaces:</p> <ul style="list-style-type: none"> - 1 car space per dwelling - 1 car space per 40m² of gross commercial floor area. 	<p><u>Residential</u> Required: 34 spaces Provided: 41 spaces</p> <p><u>Commercial</u> Required: 18 spaces Provided: 23</p> <p><u>Visitors</u> Required: 0 Provided: 7</p>

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 inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000, particularly clause 50(1AB) relating to the design verification statement.

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

The proposed development is considered likely to result in detrimental impacts on the locality, in particular the existing low-density residential properties at the south/rear of the site as previously mentioned in this report. As such, it is considered that the impact of the proposed development on the locality is unacceptable.

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

As a result of the number of variations sought and lack of information submitted, the site is not considered suitable for the proposed development. The proposed development results in a built form for the site which is inconsistent with the ADG and the longer term desired future character illustrated in Bankstown Development Control Plan 2015, Bankstown Local Environmental Plan 2015 and the Draft Canterbury Bankstown Consolidated Local Environmental Plan 2020.

Submissions [section 4.15(1)(d)]

The application was notified on two separate occasions. During the notification periods four separate submissions, outlining the following concerns:

Proposed apartments only receive 2 hours solar access during mid-winter – they will be dark and cold.

The Apartment Design Guide requires a minimum of 70% of apartments to receive 2hrs solar access between 9am – 3pm mid-winter. The development complies with this requirement.

Under the Apartment Design Guide a maximum of 15% of apartments in a building are to receive no direct solar access between 9am and 3pm at mid-winter. The development fails to meet this minimum requirement as 21% of apartments receive no direct solar access between 9am and 3pm at mid-winter.

The proposal is for four storeys however only three storeys are permitted

Bankstown Development Control Plan 2015 – Part B2 Commercial Centres states that the storey limit for development is 3 storeys (plus attic). The development proposes 4 storeys with no attic, hence the development fails this control.

Development exceeds the 14m height limit

The subject site has a prescribed height of 14m in accordance with the BLEP 2015 Height of Buildings Map. The proposed development does not exceed 14m in height. It is noted that there are architectural roof features proposed that slightly exceed the 14m height limit, it is considered that the development is consistent with Clause 5.6 – Architectural roof feature of Bankstown Local Environmental Plan 2015.

Insufficient car parking

The development meets the minimum car parking requirements as detailed earlier in this report.

Location of air-conditioning units not shown on the plan – may increase overall height

Although not specified on the plans, various plant rooms are proposed within the development concealed from public view.

Disruption during construction

Potential construction impacts of the development (including noise, traffic and waste) would typically be addressed via conditions of consent including restriction on the hours of construction.

Privacy and overshadowing residential properties at the rear

It is considered that the development results in unreasonable impacts on the adjoining southern properties in terms of solar access to a living area and reduced visual privacy.

Increased pressure on facilities in the area - what provisions or resources are Council and the developers putting in place to sustain a high number of population being introduced?

Following a favourable determination of any application, a developer would have to apply to the relevant authority to establish the additional service needs for the development. In a case where the services are inadequate, the developer will be required to liaise with the relevant authority with regards to the potential upgrading of facilities to cater for the increase in demand generated by the development. Any upgrade works would be required to be carried out prior to occupation of the development.

This type of development would be subject to payment of a developer contribution. Money paid to Council under a condition of consent in accordance with Section 94A Development Contributions Plan – Bankstown is put towards meeting the cost of one or more of the public facilities that will be or have been provided within the area as listed in the Works Schedules (Appendix B) of the policy.

Traffic congestion

The proposed development has been reviewed by Council's Traffic Department. In this regard, it is considered that Tower Street, Eddie Avenue and the surrounding street network have sufficient capacity to accommodate any potential additional traffic that is generated by the proposed development.

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

With regard to the relevant planning considerations, it is concluded that the proposed development would contravene the public interest. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and development controls, by the consent authority, in order to ensure that any adverse impacts associated with the development are suitably addressed. Approval of this development would undermine the integrity of the controls contained in this report in addition to providing for a poor development outcome.

CONCLUSION

The development application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls. The proposed development is not considered to be satisfactory in accordance with the applicable environmental planning instruments and development controls. It is recommended that the proposed development be refused in light of the justifications presented in this report.

RECOMMENDATION

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

REASONS FOR REFUSAL

- 1) The proposed development fails to comply with the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*, specifically, the Apartment Design Guide (ADG) – Objective 3B-2 (overshadowing of adjoining properties), 3C-1 (transitions), 3C-2 (amenity of public domain), 3D (communal space), 3F (visual privacy), 3G (pedestrian access and entries), 3H (vehicle access), 4A-1 (solar access), 4B-3 (natural cross-ventilation), 4C-1 (ceiling heights), 4D-1 (visible window from each room), 4G (storage), 4M (façade & building entries), 4N (roof design), 4S-2 (concealment opportunities) [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
- 2) The proposed development is inconsistent with the aims of the *Bankstown Local Environmental Plan 2015* [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
- 3) The proposed development is inconsistent with the objectives of the B2 Local Centre zone listed in the *Bankstown Local Environmental Plan 2015* [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
- 4) The proposed development is inconsistent with the *Draft Canterbury Bankstown Local Environmental Plan 2020* [Pursuant to Section 4.15(1)(a)(ii) *Environmental Planning and Assessment Act, 1979*];
- 5) The proposed development fails to comply with the objectives of Section 3 and 5 of Bankstown Development Control Plan 2015 – Part B2 Commercial Centres [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*];
- 6) The proposed development fails to comply with Clause 3.4 of Bankstown Development Control Plan 2015 – Part B2 Commercial Centres which relates to storey limit [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*];
- 7) The proposed development fails to comply with Clause 3.6(b) & (c) and 3.10(b) & (c) of Bankstown Development Control Plan 2015 – Part B2 Commercial Centres which relates to setbacks [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*];
- 8) The proposed development fails to comply with Clauses 3.13, 5.1, 5.3 & 5.4 of Bankstown Development Control Plan 2015 – Part B2 Commercial Centres which relates the Apartment Design Guide [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*];

- 9) The proposed development fails to comply with Clause 5.23 and 5.38 of Bankstown Development Control Plan 2015 – Part B2 Commercial Centres which relates to solar access, privacy and amenity impacts on adjoining residential properties [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*];
- 10) Insufficient information has been submitted demonstrating compliance with Clauses 3.14, 3.15 and 3.16 of Bankstown Development Control Plan 2015 – Part B2 Commercial Centres which relates to substations [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*];
- 11) The development application does not comply with Clause 50(1AB)(b)(i) and (ii) of the Environmental Planning and Assessment Regulation 2000 as the Design Verification Statement submitted does not provide an explanation that verifies how the development addresses how the design quality principles are achieved, and demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved [Pursuant to the provisions of *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*].
- 12) The development application fails to adequately address the provisions of *State Environmental Planning Policy No 55 - Remediation of Land* [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
- 13) The proposed development represents an unacceptable level of impact of the locality [Pursuant to Section 4.15(1)(b) *Environmental Planning and Assessment Act, 1979*];
- 14) The site is considered unsuitable for the proposed development [Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979];
- 15) The development is not considered to be in the public interest [Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*].

NOTES:

- 1) Council's decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
- 2) If you are dissatisfied with this decision, you may apply for a review of determination pursuant to Section 8.2 of the Environmental Planning and Assessment Act, 1979 or appeal to the Land and Environment Court pursuant to Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act, 1979. Any application for a review pursuant to Section 8.2 must be received, assessed and determined by Council within 6 months after the date of receipt of this Determination Notice. It is therefore advisable to lodge the application for review as soon as possible to ensure that assessment is

complete within the statutory timeframes. Section 8.10 in the Environmental Planning and Item: 1 Attachment B: Reasons for Refusal Canterbury Bankstown Local Planning Panel Meeting held on 1 March 2021 Page 32 Assessment Act 1979 extends this six month period to twelve months for determinations made during, or six months before, the Prescribed Period of 25 March 2020 and 25 March 2022. You should seek advice from your legal advisor on the time limits for the lodgement of any appeal.

-END-

Canterbury Bankstown Local Planning Panel - 12 April 2021

ITEM 2	684-700 Canterbury Road, Belmore
	Proposed construction of a six storey shop top housing development comprising 39 residential units, commercial tenancy, two basement levels and associated landscape and site works.
FILE	DA-422/2018 - Roselands
ZONING	B5 Business Development
DATE OF LODGEMENT	20 September 2018 (Amended Plans received on 12 June 2019, 1 October 2019, 19 November 2019, 15 May 2020, 23 December 2020 and 26 February 2021)
APPLICANT	CD Architects
OWNERS	Chidiac Holdings Pty Ltd
ESTIMATED VALUE	\$13,000,000.00
AUTHOR	Planning

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-422/2018 proposes the construction of a six storey shop top housing development comprising 39 residential units, a commercial tenancy and two levels of basement carparking associated landscape and site works.

DA-422/2018 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 initially notified for a period of 22 days (including newspaper advertising). No submissions were received during the notification period.

The application was then re-notified to include the Voluntary Planning Agreement (VPA) for a period of 28 days (including newspaper advertising). No objections were received during this period.

Amended Plans were received on 15 May 2020 and the application was re-notified for 21 days (including newspaper advertising). One submission was received.

Further amended plans and information was received on the 23 December 2020 which reinstated the offer for the VPA, before another set of amendments made as listed in the 'Background' section of this report. However, the revisions have not been sufficient to address some critical issues associated with this proposal and the application is recommended for refusal.

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 stated in Attachment B.

ATTACHMENTS

- A. Assessment Report
- B. Reasons for Refusal

DA-422/2018 ASSESSMENT REPORT

BACKGROUND

- DA-422/2018 was lodged on the 20 September 2018. The application originally sought approval for the construction of a six storey shop top housing development comprising 42 residential units, ground floor commercial tenancy, two basement levels and associated landscape and site works.
- The application was notified from 17 October 2018 to 7 November 2018. No submissions were received.
- On 1 March 2019, Council issued a letter to the Applicant which outlined a number of key issues and non-compliances with the design including, but not limited to: State Environmental Planning Policy 65 – Design Quality of Residential Development (SEPP 65), CLEP 2012, CDCP 2012 as well as matters raised by Council's internal referrals.
- On the 6 May 2019, a meeting was held with Council staff and the applicant to discuss the issues raised in Council's letter, including the manoeuvrability of the garbage trucks.
- The applicant provided amended plans on the 12 June 2019.
- The amended plans and VPA were notified from 30 July 2019 until 28 August 2019. No submissions were received.
- On the 17 September 2019, Council issued a further letter to the Applicant which outlined that there are a number of outstanding issues and that the application could not be supported.
- The applicant provided amended plans on 1 October 2019.
- On 11 November 2019, Council issued a further letter to the Applicant which outlined that there are a number of outstanding issues and that the application could not be supported.
- Council staff and the applicant met on the 15 November 2019 to discuss the issues in Council's letter.
- The applicant provided amended plans on the 19 November 2019.
- On 25 February 2020, Council issued a further letter which outlined that there are a number of outstanding issues and that the application could not be supported.
- The applicant provided amended plans on the 15 May 2020, the number of units was reduced from 41 to 39 and the applicant had also formally withdrawn their offer of the VPA for the dedication of the land to the rear of the site.
- The amended plans were notified from 15 July 2020 until 4 August 2020. One submission was received.
- On 28 August 2020, Council issued a further letter to the applicant which outlined that there are a number of outstanding issues and that the application could not be supported.
- On the 14 September 2020 Council met with the applicant to discuss the matters raised in Council's letter dated 28 August 2020.
- On 5 November 2020 Council, via mail advised the applicant that, plans sent on the 27 October 2020 in regard to the rear laneway were not satisfactory.
- Further plans relating to the rear laneway were submitted on the 12 November 2020.

- A meeting was organised with Council staff including Council's Infrastructure Specialist on 1 December 2020 to discuss the laneway and road levels and determine what the option were in lowering the road levels to enable a 3.8 metre head clearance to the building entry to allow for garbage trucks to enter the site and manoeuvre to allow them to leave Joan Lane in a forward direction.
- The applicant provided amended plans on the 23 December 2020, including a Voluntary Planning Agreement (VPA) to dedicate a portion of the rear of the site for a future laneway connecting Joan and Timothy Lanes as per the development control plan
- On 4 February 2021, the applicant provided the BASIX Certificate and associated stamped plans
- On 19 February 2021 the applicant was sent a further letter with the outstanding issues. The letter also advising the applicant that the application is being reported to the Local Planning Panel for determination based on the latest set of plans provided on the 23 December 2020.
- On the 24 February 2021 an email was sent to the applicant clarifying three points raised in Council's letter dated 19 February 2021.
- The applicant provided amended plans and documentation on the 26 February 2021, including the proposed sub-division of land into two lots. For completeness, this assessment report has been assessed against the plans provided to Council on the 26 February 2021.

SITE & LOCALITY DESCRIPTION

The subject site is known as 684-700 Canterbury Road, Belmore. The site has a 39.93 metres frontage to Canterbury Road and a 40.94 metre rear boundary, with a total site area of 1,875m². The site is zoned B5 Business Development under the Canterbury Local Environmental Plan 2012.

The property is currently a vacant block. A site inspection revealed that the site it is being used to store building materials. The surrounding development comprises varying development types with mixed use development along Canterbury Road and to the rear of the subject site are single and two-storey dwellings, dual occupancy and multi-dwelling housing.



Figure 1: Aerial of subject site (boundaries in blue are approximate). **Source:** NearMaps



Figure 2 - Oblique view of subject site **Source:** Nearmaps

PROPOSED DEVELOPMENT

The Development Application proposes the construction of a six storey mixed use development comprising 39 residential units, a business/office tenancy on the ground floor and two level of basement car parking. The proposal also involves the dedication of the rear portion of the site for the purposes of a laneway to enable the future connection of Joan and Timothy Lane.

No specific use has been designated for the proposed ground floor tenancy as part of this application.

The specifics of the development are as follows:

Floor	Description
Basement Level 2	<ul style="list-style-type: none"> • 40 x residential car parking spaces (three of which are nominated as accessible car spaces) • Pedestrian lift • Residential storage areas.
Basement Level 1	<ul style="list-style-type: none"> • 15 x residential car spaces (two of which are nominated as accessible car spaces) • 7 x residential visitor car spaces • Car wash bay • 12 x business/office car spaces (one of which is an accessible car space) • 4 x visitor bicycle spaces • Pedestrian lift • Residential storage areas.
Ground Floor	<ul style="list-style-type: none"> • 490m² of business/office space • Residential entry via Canterbury Road (western side of site) • Business/office and residential waste rooms; • 6 x Business/office car spaces (including two visitor spaces) • 1 x accessible residential visitor car space; • 1 x courier bay; • 8 x residential bicycle spaces • 3 x Business/office bicycle racks • Residential and commercial waste storage rooms.
Level 01	<ul style="list-style-type: none"> • 1 x 1 bedroom apartment • 8 x 2 bedroom apartment (including 1 adaptable and 1 livable apartment) • 1 x 3 bedroom apartment (adaptable)
Level 02	<ul style="list-style-type: none"> • 1 x 1 bedroom apartment • 8 x 2 bedroom apartment (including 1 adaptable and 1 livable) • 1 x 3 bedroom apartment (livable)
Level 03	<ul style="list-style-type: none"> • 1 x 1 bedroom apartment; • 10 x 2 bedroom apartments (including 1 adaptable and 1 livable and 7 x maisonettes between levels 3

	and 4); <ul style="list-style-type: none"> • 2 x 3 bedroom apartment.
Level 04	<ul style="list-style-type: none"> • 4 x 2 bedroom apartments (maisonettes between levels 4 and 5) • 2 x 3 bedroom apartment (maisonettes between levels 4 and 5)
Level 05	<ul style="list-style-type: none"> • Communal Open Space • (plus the bedrooms to the maisonettes)

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 (Vegetation in Non-Rural Areas) 2017
- 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, we must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, we must be satisfied that the land will be remediated before the land is used for that purpose.

The applicant has submitted a Geotechnical Investigation and a Combined Phase 1 Preliminary Site Investigation and Phase 2 Detailed Site Investigation report. The reports contain recommendations in 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, if the application was to be approved. Accordingly, the submitted reports demonstrate that the site would be suitable for the proposed development in accordance with SEPP 55 – Remediation of Land.

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

Transport for New South Wales (TfNSW)

Vehicle access

The application was referred to the Roads and Maritime Services (RMS) now known as Transport for New South Wales (TfNSW) who provided concurrence, subject to conditions. The objectives of this clause have been satisfied.

Noise and vibration

Canterbury Road is identified as a road with an annual average daily traffic volume of more than 40,000 vehicles, Clause 102 of the SEPP is relevant and requires Council to consider whether the development is likely to be adversely affected by road noise/vibration and requires Council to be satisfied that appropriate measures will be taken to ensure that certain noise criteria in decibels, is not exceeded.

An acoustic report prepared by Acoustic, Vibration and Noise Pty Ltd, accompanied the application. The report includes recommendations to achieve the acoustic levels outlined in Clause 102 of SEPP (Infrastructure).

The report relies on the following elements to achieve acceptable acoustic privacy, including:

The measures proposed are consistent with the Department of Planning and Environment's 'Development near Rail Corridors and Busy Roads – Interim Guideline' relating to development near busy roads as well as satisfying the requirements of SEPP (Infrastructure).

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.

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.

The applicant was requested to provide an updated design verification statement, this has been provided, however the statement does not address the requirements as per Clause 50 (1AB) of the Environmental Planning & Assessment Regulation 2000, which requires the statement to address how the design quality principles are achieved and demonstrate in terms of the Apartment Design Guide how the objectives of parts 3 and 4 have been achieved.

Council's assessment of how the proposal compares to the design principles are discussed below:

Principle 1: Context and Neighbourhood Character

The site is located along Canterbury Road, adjoining the site to the east at 680-682 Canterbury Road, Belmore is a recently constructed six-storey shop-top housing and to the west of the subject site at 704 Canterbury Road is a six -storey mixed use development. To the rear of the site is a R3 Medium Density Residential zone which is predominately occupied by low to medium residential development.

Relevant to this design principle, the proposal seeks variations the height of building requirements of the Canterbury Local Environmental Plan 2012 and building height plane requirements of the Canterbury Development Control Plan 2012 which are discussed in detail further in this report.

Principle 2: Built Form and Scale

The proposal seeks a variation to the maximum building height control permitted for the site pursuant to Canterbury Local Environmental Plan 2012. For the reasons outlined later within this report, the Clause 4.6 variation statement submitted is not supported.

In addition to the height variation, the proposed design in its current form seeks variations to the ADG and the CDCP 2012. As the proposal currently stands, the design 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

A BASIX Certificate has been submitted to Council with this development application, which details the resource, energy and water efficiency measures that can be incorporated into this proposal.

The proposal also achieves the solar access and natural ventilation of the ADG.

Principle 5: Landscape

The design quality principle states that good landscape should enhance a positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Further to the above, the design quality principle states that good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long-term management. The communal open space satisfactorily achieves these requirements and in the context of a mixed- use development will contribute to the landscaping character of the streetscape.

Principle 6: Amenity

The proposed development has been designed to maximise solar access, and incorporating seven large skylights to the upper level units facing south. These skylights range from approximately 2.5m x 2.3m to 4.3m x 2.2m.

The proposed units will have suitable internal amenity. Their size and room dimensions meet the minimum standards within the Apartment Design Guide. As such they will provide adequate space to meet the needs of future occupants.

Storage is provided within all units with additional storage within the allocated basement car parking spaces, whilst the outdoor private terraces are of sufficient size to meet the recreational needs of future occupants. Lift access has been provided from the basement throughout the majority of the building, thereby providing accessibility for all residents and visitors.

However, the proposed development fails to provide good amenity and outlook for Bed 3 of Units 104, 204 and 304, the windows are too close to the side wall.

Poor outlook for the living area and balcony of Units 107 and 207 the primary living space faces a void and poor outlook and amenity of kitchen and dining areas of Units 101 and 201.

Overall, the design in its current form, does not provide for adequate amenity for all future residents of the development.

Principle 7: Safety

The development achieves the Crime Prevention through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The proposal provides increased activation and passive surveillance of the surrounding streets and private open space areas on the site. The applicant was advised to provide a wider residential entry via Canterbury Road, this has been achieved.

Principle 8: Housing Diversity and Social Interaction

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

The proposed development provides 3 x 1 bedroom apartments, 30 x 2 bedroom apartments, 6 x 3 bedroom apartments. In addition, a total of 4 apartments have been nominated as adaptable units which meets the minimum 10% requirement under the Canterbury Development Control Plan 2012 and the development is also capable of meeting the Livable Housing Guideline's silver level universal design.

Principle 9: Aesthetics

The proposed use of pattern, texture, form and colour seeks to produce a design aesthetic that reflects a satisfactory quality finish. These elements contribute to the desired future character of the locality and enhance the existing surrounding streetscapes.

Apartment Design Guide

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

Section	Design Criteria	Proposed	Complies
Part 3 Siting the Development			
3C Public Domain Interface	<ul style="list-style-type: none"> - Avoid long, high blank walls and fences - Direct access from the street to ground floor apartments and windows overlooking the street improve safety and social interaction; - Key components to consider when designing the interface include entries, private terraces or balconies, fence and walls, changes in level, services location and planting. - Safety considerations (real or perceived) and consideration of social interaction opportunities when viewed from the public domain. - Terraces, balconies and courtyard apartments to have direct street level entry where possible; - Changes in levels between ground floor and terraces to balance passive surveillance and privacy; - Provide seating at building entries, letter boxes and private courtyards adjacent the street. - Multiple building entrances to be clearly defined through architectural detailing, changes in materials, plant species and colours; - Concealment opportunities minimized. 	<p>The proposal seeks its main entry into the business/office space via Canterbury Road with clear glazing which provides surveillance.</p> <p>The residential apartments above the ground level commercial space provide a living area and a balcony facing Canterbury Road.</p> <p>The residential entry via Canterbury Road is accessed along the western end of the site</p>	Yes
3D Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site. Total site area is 1875m ² , requiring a minimum of 468.75m ²)	Ground level - 32.9m ² Roof top - 308.3m ² (18.2%)	No ^{see note[1]}

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 paving area (170.9sqm) Required area to achieve 2hours solar access is: 85.45sqm.</p>	<p>Achieved</p> <p>10am – 88.29sqm 11am – 89.63sqm 12pm – 85.86sqm</p>	Yes															
3E Deep Soil Zones	<table><tr><td colspan="3">Deep soil zones are to meet the following minimum dimensions:</td></tr><tr><th>Site Area</th><th>Minimum Dimensions</th><th>Deep Soil Zone (% of site area)</th></tr><tr><td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² - 1,500m²</td><td>3m</td></tr><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Deep soil zones are to meet the following minimum dimensions:			Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)	Less than 650m ²	-	7%	650m ² - 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Nil	No ^{see note[2]}
Deep soil zones are to meet the following minimum dimensions:																		
Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)																
Less than 650m ²	-	7%																
650m ² - 1,500m ²	3m																	
Greater than 1,500m ²	6m																	
Greater than 1,500m ² with significant existing tree cover	6m																	

Section	Design Criteria	Proposed	Complies									
3F Visual Privacy	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:	Given the site adjoins a lower residential zone to the rear an increased 3m building separation is required.	Yes									
	<table><tr><th>Building Height</th><th>Habitable Rooms & Balconies</th><th>Non-habitable Rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr></table>	Building Height		Habitable Rooms & Balconies	Non-habitable Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p>Level 1 – 9m to balcony/habitable room</p> <p>Level 2 – 9m to balcony</p> <p>Level 3 – 9m to balcony</p> <p>Level 4 – 12m to balcony</p> <p>Communal Open Space – 12m (Min)</p> <p>Side (east and west boundary): 4.5m</p>
	Building Height	Habitable Rooms & Balconies		Non-habitable Rooms								
	Up to 12m (4 storeys)	6m		3m								
	Up to 25m (5-8 storeys)	9m		4.5m								
	Note: An increased 3m building separation is required given the land to the south is a different zone (R3 Medium Density Residential) that permits lower density residential.											
			No ^{see note[3]}									

<p>3J Bicycle and Car Parking</p>	<p>For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements.</p> <p>The subject site is not located within 800m of a railway station and therefore the parking rates under Part B1 Transport & Parking of the CDCP 2012 apply.</p> <p><u>Shops, Business and Retail Premises</u></p> <p>Other Locations: 1 space per 30m2 GFA (120m2 - 1,000m2).</p> <p>80% of parking rate to be allocated for visitors and short stay parking.</p> <p>20% of the parking rate is to be allocated for staff and long-stay parking.</p> <p>490sqm/30=16.33 (17) required</p> <p><u>Residential Component:</u> Studio or 1 bedroom: 1 space per dwelling 2 bedroom: 1.2 space per dwelling (the 0.2 space to remain as common property) 3 bedroom or more: 2 spaces per dwelling 3 x 1 bedroom = 3 30 x 2 bedrooms = 36 6 x 3 bedrooms = 12 Total required = 51 car spaces</p> <p>Visitor Parking: 1 space per 5 dwellings except where the site is located on a road less than 11m in width or a cul-de-sac, then 1 space per 5 dwellings. Required 39/5 = 7.8 (8)</p>	<p>The subject site is not located within 800m of a railway station, therefore Council's car parking controls apply.</p> <p>17 (2 of which are marked as visitor spaces) commercial car spaces, if the application was being recommended for approval a condition would be imposed requiring the allocation for visitor and short stay parking and the allocation for staff and long stay parking</p> <p>1 courier space provided</p> <p>55 car spaces, 8 visitor spaces, 1 car wash bay provided (for the residential component)</p>	<p>Yes</p> <p>Yes</p>
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Section	Design Criteria	Proposed	Complies
	The car parking needs for a development must be provided off street.	The proposal has provided all required car parking on site	Yes
3G Pedestrian Access and Entries	<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>Separate entry points are provided from Canterbury Road for the residential lobby and the ground floor tenancy. The residential lobby is approximately 3.3m wide and provides mail boxes accessible from Canterbury road and lift access to the upper residential floors via the main lobby.</p> <p>The entry doors into the residential lobby is recessed from Canterbury Road which differentiates from the business tenancy.</p>	Yes
Part 4 Designing the Building			
4A Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	29 out of 39 apartments (74.4%) receive 3 hours of solar access between 9am and 3pm	Yes

Section	Design Criteria	Proposed	Complies
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	The ADG requires that no more than 15% of the total apartments (maximum of 6 apartments) 6 units will not receive direct sunlight between 9am-3pm in mid-winter (i.e. units 108,109, 110, 208, 209 & 210)	Yes
4B Natural Ventilation	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.	76.9%, 30 out of 39 units are naturally cross ventilated	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	All units comply	Yes

Section	Design Criteria		Proposed	Complies											
4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:		2.7m - Habitable rooms	Yes											
			2.4m - non-habitable rooms												
			Two storey apartments meet the 2.7m for main living area and 2.4m for second floor (area not exceeded 50% of apartment area)												
			3.27m - Ground floor	No ^[see note 4]											
			2.7m - First floor												
	<table><tr><th colspan="2">Minimum Ceiling Height for Apartment and Mixed Use Buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic Space</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed use areas</td><td>3.3m for ground & first floor to promote future flexibility of use</td></tr></table>	Minimum Ceiling Height for Apartment and Mixed Use Buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic Space	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed use areas	3.3m for ground & first floor to promote future flexibility of use		
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Habitable rooms	2.7m														
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Attic Space	1.8m at edge of room with a 30 degree minimum ceiling slope														
If located in mixed use areas	3.3m for ground & first floor to promote future flexibility of use														
	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: <table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment Type	Minimum Internal Area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Achieved. The required minimum internal areas for the relevant apartment type have been met	Yes
	Apartment Type	Minimum Internal Area											
	Studio	35m ²											
	1 bedroom	50m ²											
	2 bedroom	70m ²											
	3 bedroom	90m ²											
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Achieved	Yes										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	All open floor plans comply and not exceed the maximum 8m depth.	Yes											
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Achieved all master bedrooms and secondary rooms meet the minimum area of their respective use	Yes											
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have minimum dimension of 3m (excluding wardrobe space)	Yes											
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments	All apartments comply	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 comply	Yes															
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	All apartments comply.	Yes															
	<table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling type		Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Apartments 105, 108, 109, 110, 205, 208, 209, 210, 305, 307,311, 401, 402, 404, 406,407,
	Dwelling type	Minimum Area		Minimum Depth														
	Studio apartments	4m ²		-														
	1 bedroom apartments	8m ²		2m														
	2 bedroom apartments	10m ²		2m														
	3+ bedroom apartments	12m ²		2.4m														
	Apartment 403 provides for a larger balcony and in addition a second balcony on the upper level.																	
	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.	No apartments are located at the ground level or on a podium	N/A															

Section	Design Criteria	Proposed	Complies										
4F Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level</p>	<p>The following apartments will be serviced of more than 8 units of circulation core: Level 1 – 10 units Level 2 – 10 units Level 3 – 10 units Level 4 – 9 units</p> <p>Although the apartments exceed 8 units off a circulation core, the ADG allows for up to 12 apartments. The proposal will not exceed 12 units off a single circulation core and the proposal provides two lift cores and would adequately service the development</p>	Yes										
4G Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	<p>Storage is shown on the proposed plans within each apartment and within the basement level. A condition of consent will be included to ensure that 50% of the storage is located within the apartments.</p>	Yes – could be confirmed via a condition of consent, if the application was recommended for approval.
Dwelling type	Storage size volume												
Studio apartments	4m ³												
1 bedroom apartments	6m ³												
2 bedroom apartments	8m ³												
3+ bedroom apartments	10m ³												

Section	Design Criteria	Proposed	Complies
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>An Acoustic Report 2018-386 Rev.1 dated 31 August 2018 and amended 24 February 2021 prepared by Acoustic, Vibration & Noise Pty Ltd. This were reviewed by Council's Environmental Health Officers who were satisfied with the recommendations of the report subject to conditions of consent.</p>	Yes
	<p>Design Guidance 4H-2 Internal apartment layout separates noisy spaces from quiet spaces, using a number of the following design solutions:</p> <ul style="list-style-type: none"> rooms with similar noise requirements are grouped together doors separate different use zones wardrobes in bedrooms are colocated to act as sound buffers 	<p>Apartments 101, 107, 201 and 207 have bedrooms opening directly in a living/dining area.</p>	No ^[see note 5]

Section	Design Criteria	Proposed	Complies
4Q Universal Design	<p>Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</p> <p>Total number of residential units in the development = 20% of 39 = 7.8 = 8 Livable units required.</p>	<p>The Statement of Compliance Access for People with a Disability submitted with the application states that:</p> <p>Units 104, 105, 205 & 305 are nominated as adaptable units there are also capable of satisfying the intent of Silver level Livable Housing Guidelines.</p> <p>In addition to the adaptable units, the following units 102, 202, 204 & 302 are capable of providing compliance with the Silver level of Livable Housing Guidelines.</p>	Yes

Section	Design Criteria	Proposed	Complies
4S Mixed Use	<p>Mixed use developments positively contribute to the public domain. Design solutions may include:</p> <ul style="list-style-type: none"> • development addresses the street • active frontages are provided • avoiding blank walls at the ground level <p>Residential circulation areas should be clearly defined. Design solutions may include:</p> <ul style="list-style-type: none"> • residential entries are separated from commercial entries and directly accessible from the street • commercial service areas are separated from residential components • residential car parking and communal facilities are separated or secured • security at entries and safe pedestrian routes are provided • concealment opportunities are avoided <p>Landscaped communal open space should be provided at and commercial podium or roof levels</p>	<p>The proposal provides for a large office/business area on the ground floor which would active the frontage to Canterbury Road.</p> <p>The proposal provides a separate residential entry from Canterbury Road.</p> <p>A landscaped residential communal area has been located on the roof level.</p>	Yes

As identified in the above table, the proposed development seeks to depart from the following ADG design criteria:

^[1] Communal open space

The ADG requires that communal open space within a development have an area of at least 25% of the site area. In this case the minimum area of communal open space required is 468.75m², where 341.2m² is provided. This is a shortfall of 127.55m² which equates to a 27.2% departure.

Objective 3D-1, which deals with communal open space, reads as follows:

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping. The ADG states that the size, location and design of communal open spaces will vary depending on the site context and the scale of development. The function of the communal open space is to provide amenity in the form of, landscape character, facilities within common open spaces and incorporate some of the following elements such as seating for individuals, barbecue areas, play equipment, swimming pools and gyms.

The site is constrained by its location being an infill development and the requirement under the Canterbury Development Control Plan 2012 requiring the dedication of part of the rear of the site for future laneway linking Joan and Timothy Lanes.

The location of the communal open space in the manner proposed is satisfactory for the following reason:

The ADG acknowledges the relationship between balconies and communal open space and seeks more communal open space where the number or size of balconies is compromised. However, an increase in balcony size assists in supporting a communal open space slightly reduced in size. In this case, 46% of the proposed residential units include balconies that exceed the minimum ADG requirements therefore qualifying for consideration for a reduced communal open space area. The larger balconies range from 11sqm to 33sqm.

On this basis, if the required communal open space was reduced relative to the number of units that have larger than required balconies under the ADG, the site would require approximately 252.40sqm of communal open space for the remaining units that provide just the minimum size balconies.

The communal open space, in combination with the proposed larger balconies, and adequate area to service the apartments with the required balcony area it considered to provide good opportunities for passive recreation, relaxation and sufficient area to service the development.

The proposed communal open space is appropriately located and contributes adequately to landscape character. Its departure from the minimum numerical requirements does not contravene the objectives in this case as a suitable and useable area is achieved that enhances the residential amenity of the occupants.

^[2] Deep soil area

The ADG requires deep soil zones on sites that are a minimum 7% of site, which in this case equates to 131.25m² (6m minimum dimension applies). The purpose of deep soil is to, among other things, allow infiltration of rain water to the water table, and reduce stormwater runoff, promoting healthy growth of large trees with large canopies.

The proposal provides a temporary area for deep soil to the rear of the site, however a permanent deep soil area cannot be provided in this case and it is considered impractical given the site circumstances. The proposal also includes a 9metre wide road dedication along the rear of the site and the ground floor provides a large business/office space with associated parking and services.

The applicant has proposed for the surplus land from the laneway dedication to form small communal open space area on the ground floor with deep soil. The proposal also seeks to plant 3 x 45litre Blueberry Ash in the south western corner (ground level) of the site which align with the objectives of this design principle.

Notwithstanding the numerical non-compliance the proposal meets the objectives for deep soil planting. 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, and alternative forms of planting provided such as on-structure planting. On-slab planting is proposed on the communal open space that provides an effective planted space and meets the objectives of the Apartment Design Guide.

^[3] Visual Privacy

The proposal provides a 4.5m side setback along the east and west boundaries. Objective 3F-1, Design Criteria 1 of the ADG requires separation distances to habitable rooms and balconies of 6m (up to 4 storeys) and 9m for (5-8 storeys).

During discussions with the applicant it was raised that the voids along the east and west boundaries be a minimum of 4.5m. In order to preserve the visual privacy of the subject development and adjoining properties translucent glazing is proposed to the lower 150mm of glazed area.

^[4] Ceiling heights

The objective of the ceiling height controls is to achieve sufficient natural ventilation and daylight access. However, in a mixed-use development the ground and first floor levels should have increased ceiling heights to ensure long term adaptability and flexibility for other business uses.

The proposed development proposes an office/business premises on the ground floor and residential above. The first floor contains 10 residential apartments. The ceiling height to level 1 is 2.7m and meets Objective 4C-1, design criteria 1 outlined in the ADG. In this instance the subject site is not located within a town centre and two of the objectives of the B5 Business Development zone is to provide a:

- *“mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres and*
- *to provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design”*

As stated above, the proposal provides a 490sqm floor area for business use on the ground floor and residential accommodation above, therefore it is not likely that the first floor would see a change in its future use from residential to a business use and in this circumstance the 2.7m ceiling height to the first floor is considered acceptable.

The ADG states “ceiling height is measured internally from the finished floor level to finished ceiling level”, the proposal does not achieve this. Although the ground floor ceiling height is shown as 3.3m (drawing number DA9020), this is on the basis of an exposed off form concrete soffit ceiling. The proposal has not taken into account any ceiling lining for the future shop/office area, which will further reduce the internal commercial floor to ceiling height.

This will compromise the range of potential future uses that can be accommodated in this substantially sized (490sqm) area on the ground floor, which is not consistent with the ADG and the objectives of the Canterbury Local Environmental Plan 2012.

In this regard, the applicant has provided the following justification:

“By ensuring a 200mm slab is structurally adequate, it confirms that a floor to ceiling (underside of slab) of 3.3m can be achieved”.

“Ceiling linings have not been taken into account as it is anticipated that the commercial ground floor will provide a bare shell to the commercial tenancy allowing flexibility in design of the interior space for its individual occupant.”

It is noted that the use of ground floor does not form part of this application, however the design needs to take into consideration the retrofitting of this space 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.

In response to the floor to floor heights being less than 3.1m and the ground floor ceiling height the applicant has provided statements from a structural engineer certifying the proposed minimal slab thicknesses can be achieved through structural design solutions.

^[5] Acoustic Privacy

The design guidance contained with 4H-2, which aims to avoid conflicts in the internal layout between noisier and quieter rooms. For example, bedrooms are located adjacent to living rooms throughout the design, e.g. apartments 101, 107, 201 and 207 and will impact the amenity of these apartments and is not supported.

Canterbury Local Environmental Plan 2012

This site is zoned B5 Business Development 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 B5 Business Development are as follows:

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design.*
- *To support urban renewal that encourages an increased use of public transport, walking and cycling.*
- *To encourage employment opportunities on Canterbury Road and in accessible locations.*

The proposed development meets the objectives of the B5 zone as it provides for mixed use development comprising a large floor area at the ground level for the use of a business area and residential development above. The proposal encourages employment opportunities along Canterbury Road.

Provision/ Standard	Requirement	Proposal	Complies
Part 2 Permitted or Prohibited Development			
2.1-2.3 Zoning	B5 Business Development	Mixed use development Office/Business on the ground level with residential development above.	Permissible
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 a vacant block and therefore there is no demolition required.	N/A
Part 4 Principal Development Standards			
4.3 Height of Buildings	18m	18.025m-18.175m	No ^[6]
4.4 Floor Space Ratio	Not applicable	Not applicable	N/A
4.6 Exception to development standard	Clause 4.6 lodged for height breach refer to discussion below.		
Part 6 Local Provisions			

Provision/ Standard	Requirement	Proposal	Complies
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.	The site is not affected by Acid Sulfate Soils and therefore an acid sulfate soils management plan was not required as part of this development.	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"> (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. 	The proposal is not considered to be inconsistent with this clause.	Yes

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"> (a) is compatible with the flood hazard of the land, and (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and (c) incorporates appropriate measures to manage risk to life from flood, and (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 (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. 	The subject site is not flood affected	N/A

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.	The application was referred to Council's Development Engineer who did not raise any objections with the proposal in terms of stormwater subject to conditions	Yes
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 (substation); - the disposal and - management of sewage; - stormwater drainage or on-site conservation; - suitable vehicular access.	The applicant provided a letter from a Level 3 Accredited Service Provider, accredited to complete work with Ausgrid stating that once formal approval is granted the applicant can formally apply to connect to Ausgrid nominated substation S.274 (Wilson Ave). Further to this, should the application be approved a condition shall be imposed stating that a sub-station does not form part of the consent.	Yes

Schedule 1 Additional permitted uses

1 Use of certain land along Canterbury Road in Zone B5 Business Development

- (1) *This clause applies to the land identified as "A" on the Key Sites Map.*
- (2) *Development for the purpose of residential accommodation is permitted with development consent, but only as part of a mixed use development.*

The subject site has been identified within the land marked as "A" on the key sites map. The application has nominated the ground floor use as "commercial" which encompasses business premises, office premises and retail premises. The proposal does not include the use of the ground floor area and would be subject to a separate development application. However, it should be noted that retail premises is prohibited within the zone, however a food and drink premises, business and office premises would be permissible. If the application was being recommended for approval a condition would be imposed requiring the word 'commercial' to be removed from the plans.

The car parking rates for the ground floor space were based on a rate of 1 space per 30m² of gross floor area to allow for a flexibility of permissible land uses.

The proposal is generally consistent with the relevant provisions contained in CLEP 2012. Further discussion is provided below with respect to the contravention to the height of buildings development standard contained in Clause 4.3. The application is accompanied by a Clause 4.6 Request to Vary a Development Standard relating to the height of buildings.

^[6] *Clause 4.3 – Height of Buildings*

The proposal complies with the development standards contained in CLEP 2012, with the exception of Clause 4.3 (2), which reads as follows:

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

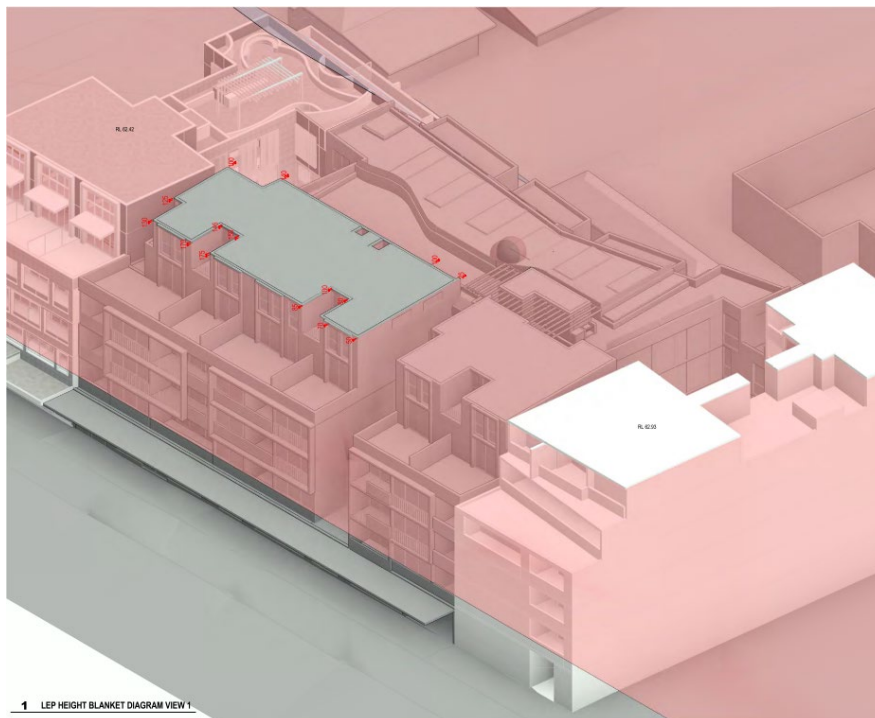
The subject site has a maximum building height of 18m.

The proposed variation

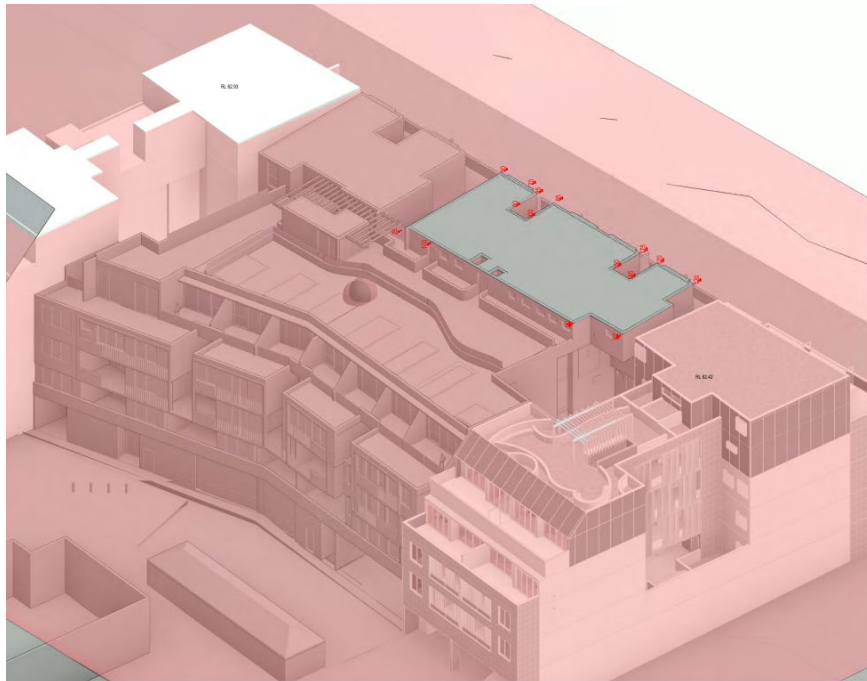
The application proposes to contravene the building height standard of clause 4.3(2) of the CLEP 2012.

The variation ranges from 18.050m-18.175m along the Canterbury Road frontage.

The area of encroachment onto the height control is shown in the LEP Height Blanket below.



Source: CD Architects



1 LEP HEIGHT BLANKET DIAGRAM VIEW 2

Source: CD Architects

The variation ranges from: 18.025mm-18.140mm along the rear (southern side) of the apartments facing Canterbury Road.

The application is accompanied by a Clause 4.6 Request to Vary a Development Standard relating to the 'height of buildings' pursuant to the Canterbury Local Environmental Plan 2012. Council is of the view that the actual height breach would be greater than that indicated by the Applicant given that the ground floor ceiling height has not taken into consideration ceiling finishes and therefore the Clause 4.6 to vary the height of buildings is not a true and accurate reflection of the actual height breach. Furthermore, the Clause 4.6 has not been updated to reflect the most recent plans, the introduction refers to 41 apartments in lieu of the 39 proposed and the communal open space is referred to as 434sqm, whereas the communal open space on the roof top is 308.3m² and 32.9m² at the ground level, therefore the total communal open space proposed is 341.2m².

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

- 1) *The objectives of this clause are as follows:*
 - a) *to establish and maintain the desirable attributes and character of an area,*
 - b) *to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
 - c) *to support building design that contributes positively to the streetscape and visual amenity of an area,*
 - d) *to reinforce important road frontages in specific localities*
- *In fact, as demonstrated on Drawing No. DA7035, to Canterbury Road the proposal achieves a maximum height of RL 62.55, therefore sitting between the approved heights of the neighbouring developments with No. 680 – 682 Canterbury Road providing for a maximum RL 62.42 while No. 704 Canterbury Road provides for an RL of 62.93.*
- *Based on the above, the proposal actually sits 380mm below that of No. 704 Canterbury Road.*
- *Ensure an active shop front at ground level through the use of glazing.*
- *Ensure equitable access is attainable from Canterbury Road.*

The proposal satisfies objective (a)

- *The plans demonstrate that 29/39 or 74.4% of the proposed units receive a minimum of 2 hours solar access.*
- *The above diagrams nominate that six (6) units will receive no solar access. This is equal to 15% and is therefore within the 15% control prescribed by ADG.*
- *The proposal has sought to maximise solar access to the development with 23 of the proposed units provided with a northern orientation. This is equivalent to between 6 – 7 units per level and has been achieved through longer, narrow design units that still comply with the minimum width and depth requirements of ADG.*
- *the architectural plans prepared by CD Architects, 434m² of communal open space is provided for the development and of this, 85.45m² (or 50% of the principal usable part of the communal open space at roof level) receives solar access for at least 2 hours.*
- *In terms of overshadowing to neighbouring development, as demonstrated on DA 6001, solar access to the neighbouring development at No. 704 is limited on June 21 given the orientation of the site and the units themselves.*
- *It is acknowledged that the adjoining building comprises of two main components being north and south that are connected by a circulation core. Units located within the northern part of the building provide for living areas and private open space that are orientated south into the void. In view of this orientation, these units currently receive limited to no solar access. The proposed development will not alter this arrangement.*
- *While units located within the southern component of No. 704 are likely to receive limited solar access at present, regard must be made to the desired future character of the area and the nature of the proposed development as an “infill development”, bounded by established developments to the east and west. The site is further constrained in its depth with 9m of the rear property to be dedicated for future lane connectivity.*

- *Strict compliance with solar access is further limited by the north-south orientation of the north which inevitably means that development to the south will be impacted to some extent.*
- *The current plans indicate that solar access to the upper level, south eastern units of No. 704 will still be possible in part. In view of the “I” shaped design of No. 704, it is likely that this development overshadows itself in part, particularly to the lower levels.*
- *By 3pm, the proposal will cast additional shadows to the private open space of Nos. 1, 3 and 5 Liberty Street. These properties do however receive adequate solar access in the early afternoon period.*

The proposal therefore meets objective (b).

- *Careful consideration has been given to articulation of Canterbury Road. The proposed development is to be constructed of high quality materials with varied façades to ensure a positive contribution to the redeveloped Canterbury Road streetscape.*
- *The proposal is considered to be an ‘infill development’ that responds to the desired future character of the area and the constraints of the site. Where possible, the proposal has made considerable effort to achieve the objectives and controls of the Apartment Design Guide.*

The proposal satisfies objective (c).

- *With respect to objective d), the development contains separate entrances for the residential lobby and commercial tenancy along the Canterbury Road frontage.*
- *The additional height will not be read within the context of the overall development, given the variation is limited to the thickness of the roof.*

Response:

As stated above, given the floor to ceiling height of the ground floor is required to be increased to achieve compliance and a satisfactory development outcome, the breach to the building height will be greater than that proposed. The applicant’s reply letter states that *“Ceiling linings have not been taken into account as it is anticipated that the commercial ground floor will provide a bare shell to the commercial tenancy allowing flexibility in design of the interior space for its individual occupant”*.

This will compromise the flexibility of uses to the large floor area of 490sqm on the ground floor and would be inconsistent with the Apartment Design Guide and the objectives of the Canterbury Local Environmental Plan 2012.

Compromising on the floor to ceiling height on the ground floor to reduce further breach to the building height is not supported. The proposal has not adequately considered or taken into account relevant controls, particularly the impacts on the floor to ceiling.

The justification provided by the applicant states how the development meets the solar and ventilation requirements of the ADG. Compliance with the maximum building height development standard and the controls and design guidance contained within the Apartment Design Guide would be expected of any development.

The applicant's Clause 4.6 has not adequately addressed the objectives of Clause 4.3 of the CLEP 2012. Therefore, given the above, it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

"The maximum proposed variation is 175mm and is limited to the thickness of the roof. It is worth noting that generally no gross floor area exceeds the maximum height control for the site and the variation is limited to the roof only.

The extent of the variation is limited to the northern component of the building only, where a six storey design is achieved. To the rear, the building has been designed as a maximum of five storeys with rooftop level communal open space proposed.

Although the variation occurs to the northern component of the building, in view of the scale of the development the variation the 175mm non-compliance will not be discernible at street level.

Having regard to the northern façade, the proposed development incorporates cross over units which span over the fifth and sixth storeys.

With respect to the R3 zone to the rear, the proposed variation is located in excess of 20m from this boundary therefore preserving the intended relationship sought by Council's desired future character for this area.

The ability to achieve the future desired character of the locality and a high quality communal open space provides a better planning outcome.

In this case, strict compliance with the development standard for height of buildings in the Canterbury Local Environmental Plan 2012 is unnecessary and unreasonable".

Response:

The applicant's submission states that the maximum proposed variation is 175mm and limited to the thickness of the roof. The proposal would result in a greater variation to the building height than that outlined in the applications variation to achieve the desired outcomes and flexible use objectives within the ground floor tenancy

It is acknowledged that the proposal has taken into account the northern orientation of the site which incorporates cross over units which span over the fifth and sixth storeys. However, compromising the floor to ceiling heights to the ground floor tenancy to alleviate a greater height breach is not supported.

Therefore, given that there is insufficient information to determine the actual height breach and its impacts it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

(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

With regard to the above, it is considered that the applicant's written submission under Clause 4.6 of CLEP 2012 to vary the building height is not well founded, and the variation sought may be greater than that proposed. It has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The submission has not provided sufficient environmental planning grounds to justify the contravention to the building height.

The written submission has not adequately addressed the matters required by sub-clause (3).

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

The applicant's submission (in part) states:

Furthermore, it is important to also consider the objectives of the B5 Business Development zone in relation to the development, which are as follows:

The following comments are made in relation to the zone objectives:

- *A single, large commercial tenancy is proposed at ground level being 516m² in area.*
- *The entirety of the ground floor, excluding services and entry lobbies will be used for non-residential purposes. To the upper levels, 39 residential units are proposed in varied forms including 1, 2 and 3 bedroom designs. Four of these units have been designed as adaptable units, while a number of units have also been designed as crossover units enabling a strong mix catering to various household types.*
- *A bus stop is located immediately in front of the subject site encouraging the use of public transport.*
- *As stated, a large commercial tenancy is proposed at ground level promoting new employment opportunities. It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.*

Response:

Council agrees that the development is consistent with the objectives of the B5 Development zone. However, the Clause 4.6 has not been updated to reflect the ground floor tenancy being 490m². Furthermore, the first objective of the B5 zone is *“To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres”*.

Therefore, the importance of ensuring compliant ceiling heights in this instance is key to ensure flexibility for a range of future uses and ensure sufficient area for services and ceiling finishes. The applicant states *“the entirety of the ground floor, excluding services and entry lobbies will be used for non-residential purposes”*, it should also be noted that the ground floor also provides an accessible residential visitor car space and bicycle parking.

The proposal is not in the public interest, as the objectives of the of the Height of Building have not been met and a building with a compliant height would still meet the objectives of the B5 Business Development zone as outlined below

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design.*
- *To support urban renewal that encourages an increased use of public transport, walking and cycling.*
- *To encourage employment opportunities on Canterbury Road and in accessible locations.*

(b) the concurrence of the Planning Secretary has been obtained.

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 20-002, dated 5 May 2020.

Conclusion

Based on the foregoing, the requested contravention of the development standards relating to the height of buildings is not well founded and is not supported for the following reasons:

- I. an appropriate degree of flexibility has not been applied and better outcomes are not achieved by the contravention of the building height.
- II. the circumstances of the proposal do not warrant contravention of the standard,
- III. there are not sufficient environmental planning grounds to warrant contravention,
- IV. the proposal is not in the public interest, as the development is not consistent with relevant objectives of the standard and the zone, and
- V. there is a public benefit in maintaining the standard, in the circumstances of the subject application.

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)]

Canterbury Development Control Plan 2012 (CDCP 2012)

The application was lodged on the 20 September 2018; therefore, the application was assessed against CDCP 2012 - Amendment 3 which were the applicable controls when the application was lodged.

This is despite a number of amendments to the CDCP 2012 having been made since lodgement of the subject application, however in accordance with Part A1.9 of CDCP 2012 (Amendment 5), “*If an application has been made before the commencement of the DCP in relation to land to which the DCP applies, and the application has not been finally determined before that commencement, the application must be determined as if the DCP had not commenced*”.

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
Car Parking	<ul style="list-style-type: none"> • Business: 1 Space per 30m² GFA (120m²-1000m²) and one courier space = $490\text{m}^2/30 = 16.33$ 	17 car spaces and 1 courier space provided.	Yes

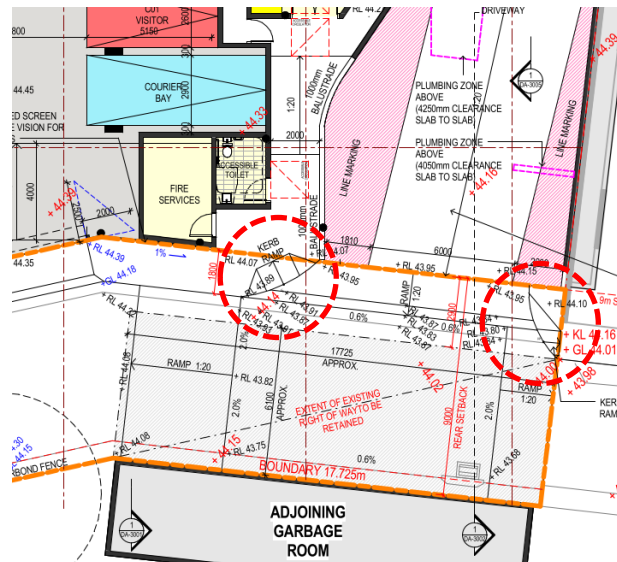
	<p>(17) car spaces required and one courier space</p> <ul style="list-style-type: none"> • Studio/1 bedroom: 1 space per dwelling (3 x 1 = 3 spaces required). • 2 bedroom: 1.2 spaces (the 0.2 space to remain as common property) per dwelling (30 x 1.2 = 36 spaces required). • 3 bedroom: 2 spaces per dwelling (6 x 2 = 12 spaces required). • Visitor: 1 space per 5 dwellings $39/5 = 7.8$ (8) spaces required). • Car wash bay: 1 car wash bay. <p>Required 51 residential spaces, 8 visitor spaces plus 1 x car wash bay required.</p>	55 residential spaces, 8 visitor spaces plus 1 x car wash bay provided	
Bicycle Parking	<ul style="list-style-type: none"> • Business: Staff 1 space per 300m² (1.6 rounded up to 2) • Or • Office: Staff: Minimum 1 space per 200m² GFA (2.45 rounded up to 3) • Residents: 1 space per 5 dwellings (7.8 rounded up to 8) spaces required). • Visitors: 1 space per 10 dwellings (3.9 rounded up to 4) spaces required) 	<p>3 bicycle spaces provided</p> <p>8 residential bicycle spaces provided on the ground floor</p> <p>4 visitor bicycle spaces provided in basement 1</p>	Yes

Servicing the building:

The proposal has failed to demonstrate that a garbage truck is able to service the site and then exit in a forward direction without having to reverse down Joan Lane.

The Applicant has been provided a number of opportunities to address these matters which have not been satisfactorily resolved and the following matters remain outstanding:

The plan shows only a pedestrian ramp on the western side, and nothing on the eastern side of the basement entry. This has been designed to avoid the conflict with the truck movements and the kerb

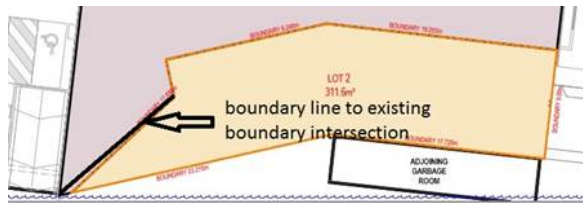


Given the recent fatalities of interaction between garbage trucks and pedestrians, and other vehicles in surrounding localities. A safe and equitable pedestrian pathway is required to ensure pedestrians have a safe and compliant route of travel along the footpath adjacent to the building to connect to the footpath alongside the adjacent development. This may be achieved by moving the basement accessway further to the west. However, this may impact on the required truck manoeuvring area, internal layout of the ground floor and the proposed open space area and needs to be carefully considered as part of an overall design solution.

The question about trucks entering on a slope and whether the truck will enter such that the vehicle actually breaches the 3.8m.

The appropriate longitudinal clearance profile to ascertain this have not been provided for assessment.

Boundary



The boundary of the road dedication shall extend to the existing south west boundary corner of the site, see black line above

Council's traffic engineer raised the following issues:

- A revised swept path for a 12.5m HRV will not mount kerbs and will allow a standard B99 vehicle to pass if necessary. The garbage truck will not need to back out to allow the B99 to pass.
- The grade on the space inside the building to accommodate the turning garbage truck is about a 6% downgrade. This grade needs to be confirmed as satisfactory for the operation of the garbage truck,
- A vehicle clearance diagram is required to confirm that when the garbage truck is tilting from the laneway to the 6% downhill grade it still has a vertical clearance of 3.8m. The highest point of the garbage truck could rise by up to 0.2m as it tilts down to the 6% grade.

Council's Resource Recovery have stated that there are two issues:

- The traffic CAD drawings are from a different set of plans, the ones without the ramp next to the driveway. It looks like these will still work, however this has not been provided.
- The carting distance for the bulky waste is 12-15m, if the truck stops in the spot to allow the commercial cars to pass. In reality the garbage truck would block the driveway to make its collection.

The applicant has not submitted the final set of CAD traffic drawings to match the final plans.

Given the above, the application is not consistent with the objectives of Part B1 of the Canterbury Development Control Plan 2012 which reads:

B1.1 General Objectives

- *O1 To provide adequate car, bicycle and service vehicle facilities for the building users and visitors, depending on building type and proximity to public transport.*
- *O2 To ensure casual parking on streets is available in centres to support local business.*
- *O3 To minimise overflow parking and other traffic impacts in residential streets and neighbourhoods.*
- *O4 To ensure servicing by larger vehicles occurs off-street in such a way that reduces impacts on the pedestrian environment.*
- *O5 To ensure vehicle facilities are compliant, functional and safe.*

- *O6 To encourage reduced car dependency through encouraging alternative means of transport such as cycling, walking and public transport.*
- *O7 To ensure vehicle traffic is managed and roads do not inhibit the performance of business centres, presenting barriers to pedestrian movement, or segregating areas.*
- *O8 To minimise the visual impact of parking structures on the appearance of streetscapes.*

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.

The Landscape Plan could form part of the conditions of consent, should the application be supported, to ensure that the proposed development adequately satisfies the requirements. The application was also referred to Council's Tree Management team who raised no objection with the proposed development.

Part B4 – Accessible and Adaptable Design

The access report prepared by Accessible Building Solutions was submitted as part of the DA. The report concludes that the design generally complies with the relevant standards.

Where the design includes some non-compliances, these matters can be resolved through minor design changes or BCA Performance Solutions at the relevant Construction Certificate stage. On this basis, the design is considered acceptable from an accessible and adaptable design perspective.

Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no objection with the current design in terms of stormwater.

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 proposal does not have any blind corners	Yes
	Provide natural surveillance for communal and public areas.	Active uses and habitable rooms have been orientated towards main communal and/or public areas	Yes
	Provide clearly visible entries.	The residential and commercial entries are separated	Yes

	Design the fence to maximise natural surveillance from the street to the building	The proposal; does not incorporate any boundary fencing	N/A
	Avoid landscaping that obstructs natural surveillance.	Achieved	Yes
	Entrances, exits, service areas, pathways, car parks are to be well-lit after dark	To ensure appropriate lighting is incorporated within the development and ensure there is no light spillage onto adjoining properties appropriate conditions have been imposed	Yes
	Where permitted, provide appropriate mixed uses within buildings to increase opportunities for natural surveillance	The development is part of a mixed-use development and	Yes
	Ensure buildings are clearly identified by street numbers.	Achieved and can be conditioned	Yes
	Use materials that reduce the opportunity for vandalism.	The proposal incorporates a large amount of glazing facing Canterbury Road.	Yes
	Provide an appropriate level of security for individual dwellings and communal areas through use of intercoms, self-closing doors and signage.	Achieved	Yes

Part B9 – Waste

The application was referred to Council's Project Officer – Resource Recovery who have raised the following:

There are two issues:

- The traffic CAD drawings are from a different set of plans, the ones without the ramp next to the driveway. It looks like these will still work, however this has not been provided.
- The carting distance for the bulky waste is 12-15m, if the truck stops in the spot to allow the commercial cars to pass. In reality, the garbage truck would block the driveway during its collection.

The applicant needs to submit the final set of CAD traffic drawings to match the final plans.

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"> • Orientate development to maximise solar access and natural lighting, without unduly increasing the building's heat load. • Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells. • Coordinate design for natural ventilation with passive solar design techniques • Site new development and private open space to avoid existing shadows cast from nearby buildings. • Site a building to take maximum benefit from cross-breezes and prevailing winds. • Do not compromise the creation of active street frontage or casual surveillance of the street, communal space and parking areas, through the required orientation. 	The subject site has a north-south orientation. The proposed development has been designed to maximise solar access and natural ventilation.	Yes
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.	The building is more than 4 storeys. Refer to ADG assessment above.	N/A
C5.2.2.4 Building Depth	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.		

Control	Requirement	Proposed	Complies
	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).		
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"> Provide accessible entries for all potential use such as the transporting of furniture. Face habitable rooms towards the street, private open space, communal space, internal driveway or pedestrian ways in order to promote positive social interaction and community safety. 	<p>The subject site provides entries for the transportation of furniture.</p> <p>Habitable rooms have been designed to face the street, private open spaces and communal areas.</p>	Yes
C5.2.3.2 Roof Design and Features	<ul style="list-style-type: none"> Roof terraces are permitted with consent in all business zones except the B1 Zone. A management strategy is required and must be approved by Council as part of the development application, for any proposed roof terrace. 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. 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. 	<p>The proposal provides a communal roof top terrace.</p> <p>The roof top terrace provides for a BBQ area and seating.</p>	Yes

Control	Requirement	Proposed	Complies
	<ul style="list-style-type: none"> Allow for views and passive surveillance of streets and public open space from roof terraces. 		
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"> 10% of dwellings in any development must be accessible or adaptable to suit current or future residents with special needs. 	<p>The total number of residential apartments for this development is 39, therefore 3.9 (4) units should be adaptable.</p> <p>The proposal provides 4 adaptable units being 104, 105, 205 and 305.</p>	Yes
C5.2.3.4 Building Services	<ul style="list-style-type: none"> All letterboxes be installed to meet Australia Post standards. Design and provide discretely located mailboxes at the front of the property. 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. Facilities should not be visually obtrusive and should not detract from soft-landscaped areas that are located within the required setbacks or building separations. 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. Unscreened appliances and meters should not be attached to any facade that would be visible from a street or driveway within the site: 	<p>A condition could be imposed requiring the letter boxes being installed in accordance with Australia Post requirements.</p> <p>The proposal has incorporated the fire booster within the built form within a cupboard facing Canterbury Road.</p> <p>The Applicant has provided a letter from a Level 3 Accredited Service Provider, accredited to complete work with Ausgrid that may connect to a substation within the vicinity of the site. If the application was being recommended for approval a condition would be imposed stating that consent does not grant approval for a substation.</p>	Yes

Control	Requirement	Proposed	Complies
	<p>(a) Screen air conditioning units behind balcony balustrades;</p> <p>(b) Provide screened recesses for water heaters rather than surface- mounting them on exterior walls; and</p> <p>(c) Locate meters in service cabinets.</p> <ul style="list-style-type: none"> • 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. • Coordinate and integrate building services, such as drainage pipes, with overall façade and balcony design. • Location and design of service areas should include: <p>(a) Screening of clothes drying areas from public and semi-public places; and</p> <p>(b) Space for storage that is screened or integrated with the building design.</p> <p>Minimise visual impact of solar hot water systems by:</p> <p>(a) Placing the system as unobtrusively as possible, both to the street and neighbouring properties;</p> <p>(b) Using a colour that is consistent with the colour of roof materials;</p> <p>(c) Designing solar panels, where possible, as part of the roof;</p> <p>(d) Setting the solar panels back from the street frontage and position below the ridgeline;</p> <p>(e) 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).</p>		

Control	Requirement	Proposed	Complies
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. The proposal also includes windows within the common circulation areas.	Yes
	<p>Proposed development must retain a minimum of 2 hours of sunlight between 9.00am and 3.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.</p> <p>If a neighbouring dwelling currently receives less than 2 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property.</p> <p>Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following:</p> <p>(c) Systems must receive at least 2 hours of direct sunlight between 9.00am and 3.00pm on 21 June.</p> <p>If a system currently receives less than 2 hours sunlight, then proposed development must not reduce the existing level of sunlight.</p> <p>Clothes drying areas on adjoining residential properties must receive a minimum of 2 hours of sunlight on 21 June</p>	<p>The application has been considered against the solar access and overshadowing controls. Whilst some overshadowing of neighbouring properties would occur, if the proposal were to be supported, the proposed development is consistent with the controls in those plans. Given the design of the adjoining development (702-704 Canterbury Road), the rear apartments facing north, particularly those on the lower levels will be overshadowed by its own building.</p> <p>The location of the adjoining communal open space (702-704 Canterbury Road) is located on Level 1 within the light well. Its design location is such that any built form proposed at the subject site will obstruct solar access to this COS. Given the design of the adjoining development, the communal open space will be overshadowed by its own building.</p>	Yes

Control	Requirement	Proposed	Complies
		<p>The rear lower density residential developments will receive solar access for more than 2 hours in mid winter.</p> <p>Adjoining properties do not have any solar panels.</p>	
C5.2.4.2 Acoustic Privacy	<ul style="list-style-type: none"> • Locate sensitive rooms, such as bedrooms, from likely sources of noise such as major roads and neighbouring' living areas. • Above ground access to new dwellings must not include communal balconies that would be located immediately next to a bedroom window. • 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. • -Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp. • 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. • Design the layout of lower levels facing the road or rail to: <ol style="list-style-type: none"> (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; (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 	<p>Acoustic privacy has been assessed against the requirements of SEPP 2007 earlier within this report. In addition, the Applicant has provided an acoustic report and the recommendations made in this report form part of the conditions of consent</p>	Yes

Control	Requirement	Proposed	Complies
	<p>manufacturers standards); and (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"> 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. 		
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) and assessment under Part B1</p>		

Part D Business Centres

Control	Requirement	Proposed	Complies
Minimum frontage	30m	39.93m	Yes
Site isolation	Neighbouring properties are not to be isolated so that the property will be unable to reasonably accommodate redevelopment.	The proposal is an infill development and there is no isolation of adjoining properties	Yes
Floor to Ceiling Height	<p>Floor to ceiling heights Ground Floor: 3.3m Residential Floors: 2.7m</p> <p>Basement car parking must meet AS2890.1 requirement.</p>	<p>Ground Floor: 3.3m</p> <p>Residential floors: 2.4-2.7m (ADG Compliant)</p> <p>Achieved</p>	<p>No ^{see note[7]}</p> <p>Yes</p> <p>Yes</p>
Front setback	<p>1-4 storeys nil setback on street</p> <p>Above four – an additional 5m</p>	<p>1-4 (ground – Level 2) storeys nil setback on street</p> <p>Storey 4 (Level 3) = Balconies encroaches in required 8m setback.</p>	<p>Yes</p> <p>No ^{see note[8]}</p>

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Control	Requirement	Proposed	Complies
Façade treatment	To encourage articulated building design to reduce the appearance of scale, enhance visual interest and ensure a diversity of built form.	Achieved	Yes
	To encourage vertical and horizontal building elements that contribute to streetscape modulation and enhance the pedestrian experience.		
	Define a base, middle and top		
	Adopt requirements of 'Development near rail corridors and busy roads – Interim Guideline' (NSW Dept. of Planning and Environment)	Acoustic report received and reviewed by Council's Environmental Health Officer who raised no objections, subject to conditions.	Yes
Roof design	Must not exceed a pitch of 10°	< 10°	Yes
Laneways	New laneways are identified for some town centres. Refer to relevant Chapter in Part D for controls relating to specific centres. Where sites are to be redeveloped and a new lane is identified over private land, creation of the laneway is required even if the laneway cannot be immediately utilised.	Refer to discussion under Part D6 Canterbury Road Structure Plans	Partly complies. Refer to discussion further in this report regarding boundary line.
Building Services	<p>Unscreened appliances and meters should not be attached to any façade that would be visible from a street, driveway or a principal communal area within the site:</p> <ul style="list-style-type: none"> • Screen air conditioning units behind balcony balustrades, • Provide screened recesses for water heaters rather than surface mounting them on exterior walls, • Locate meters in service cabinets. 	<p>The proposal has incorporated the fire booster within the built form within a cupboard facing Canterbury Road.</p> <p>The Applicant has provided a letter from a Level 3 Accredited Service Provider, accredited to complete work with Ausgrid that may connect to a substation within the vicinity of the site. If the application was being recommended for approval a condition would be imposed stating that consent does not grant approval for a substation</p>	Yes

The proposed development is consistent with the above objectives and numerical controls, exception for the following numerical controls:

^[7]D1.3.3 Floor to Ceiling Height

The objective of the floor to ceiling height control is:

O1 To ensure floor to ceiling height is adequate for the operation of the intended and potential use.

The relevant controls read:

Control C1 Floor to ceiling heights must:

- (a) Provide a minimum 3.3m floor to ceiling height for the ground floor.*
- (d) The floor to ceiling height may need to be increased to meet the requirements of the intended use, however, the maximum building height will still need to be complied with.*

The ceiling height has been discussed earlier in this report under note 7 above, the ground floor ceiling height only achieves the 3.3m ceiling height on the basis that an exposed off form concrete soffit ceiling. The proposal has not taken into account any ceiling lining to the business area, which will further reduce the internal commercial floor to ceiling height.

Although, the application does not seek approval for the use and fit-out of the ground floor tenancy it should be designed to promote a range and future flexibility of uses. The proposed ceiling height of the ground floor in its current form is inconsistent with the ADG and the objectives of the Canterbury Local Environmental Plan 2012 and is not supported.

^[8] D1.3.4 – Setbacks

The objectives of the setback controls are as follows:

- O1 To establish the desired spatial proportions of the street and define the street edge.*
- O2 To minimise building size and bulk by setting back upper storeys.*
- O3 To minimise amenity impacts on adjoining properties.*
- O4 To encourage increased setbacks along Canterbury Road to provide for possible future implementation of street parking and assist in reducing traffic noise impacts.*
- O5 To allow for flexible design and building articulation by permitting minor encroachments.*

The proposed design results in a variation to the following setback controls contained within Part D1.3.4:

- **Front Setback:**

Control C2 requires that for developments above 4 storeys that an additional 5m setback is provided from the street boundary (i.e 8m setback from the street boundary).

The 5th Storey (Level 4) are setback 3.5m from the street boundary, therefore encroaching in the required 8m setback from the Canterbury Road frontage. Given, that the balconies on level 4 facing Canterbury Road do not contain any other physical structures above (such as awnings) or gross floor it is not considered that this is detrimental to the overall objectives of the control.

It is also noted that the balconies on level 4 have a setback that is generally consistent to the adjoining properties, particularly 680-682 Canterbury Road. It is therefore considered that the variation sought to the street boundary setback will be consistent with the objectives of the setback control.

- **Rear Setback:**

Controls C7-C10 requires the following:

On boundary with residential zone – rear setback

- C7 Establish a 45° height plane projected at 6 m from the residential zone boundary.
- C8 Provide minimum 6m setback to the residential zone boundary.
- C9 A two-storey limit on the boundary with residential zone applies.
- C10 A setback to a rear lane is not required.

The proposed development seeks an encroachment within the 45degree height plane and a two-storey limit on the boundary with residential zone.

The proposed design provides a nil setback to 'new' rear boundary, a 9m setback has been provided to the rear boundary that adjoins the residential property. The building will still comply with the requirements of CDCP 2012 given that a nil setback is permitted along the subject sites' rear boundary.

The applicant has provided a height plane blanket demonstrating the areas of encroachment within the 45degree which occurs to parts of level 3 and 4.

The applicant's justification states:

Section 4.15 (3A) of the Environmental Planning and Assessment Act 1979 states as follows:

Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority-

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards – is not to require more onerous standards with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards – is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) may consider those provisions only in connection with the assessment of that development application.*

In this subsection, standards include performance criteria.

As identified in (3A)(b) above, the consent authority is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards”.

The objectives of the DCP control are:

- O1 to establish the desired spatial proportions of the street and define the street edge.*
- O2 To minimise building size and bulk by setting back upper storeys*
- O3 To minimise amenity impacts on adjoining properties*
- O4 To encourage increased setbacks along Canterbury Road to provide for possible future implementation of street parking and assist in reducing traffic noise impacts.*
- O5 To allow for flexible design and building articulation by permitting minor encroachments.*

It is important to note, as like clause (3A)(b), Objective 5 is to allow for a flexible design and building articulation by permitting minor encroachments.

The proposal is compliant with the separation requirements contained within ADG and therefore Objective 1 of the DCP requirements has been met in terms of spatial proportions.

In terms of Objective 2, compliance with the separation controls under ADG reinforces that the proposed building size and bulk has been achieved and therefore Objective 2 has been met.

Under the ADG provisions, Section 3F, an additional setback of 3 metres is required to ensure an appropriate transition between an adjoining zone of a lower density. The control within the ADG provisions are also to protect privacy and amenity issues. Again, this proposal meets this requirement and therefore Objective 3 has been met.

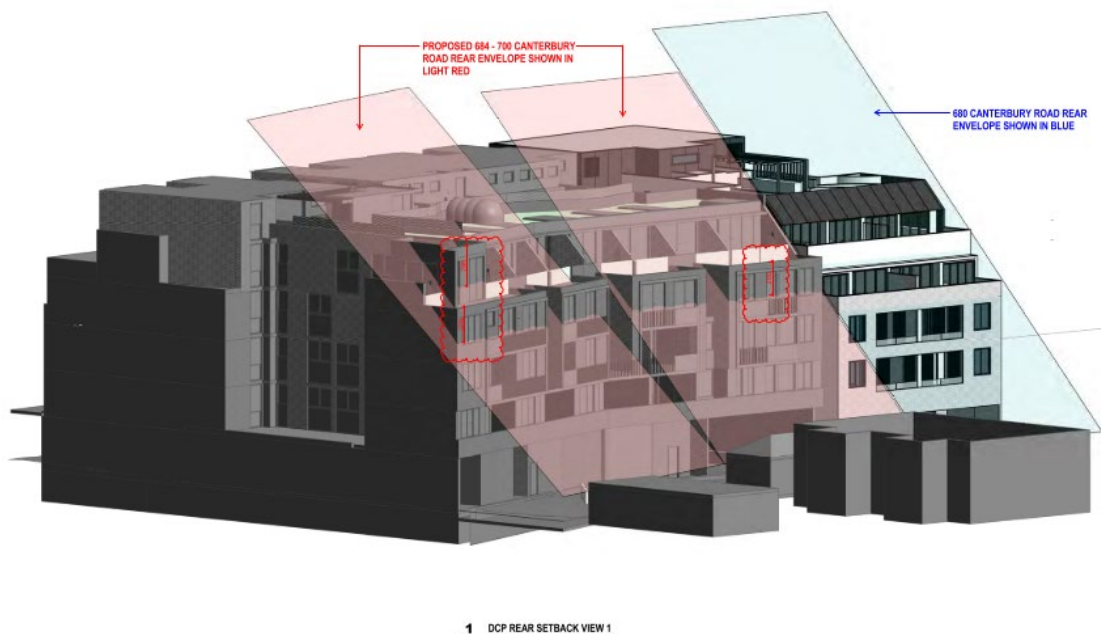
Objective 4 is not relevant in this instance.

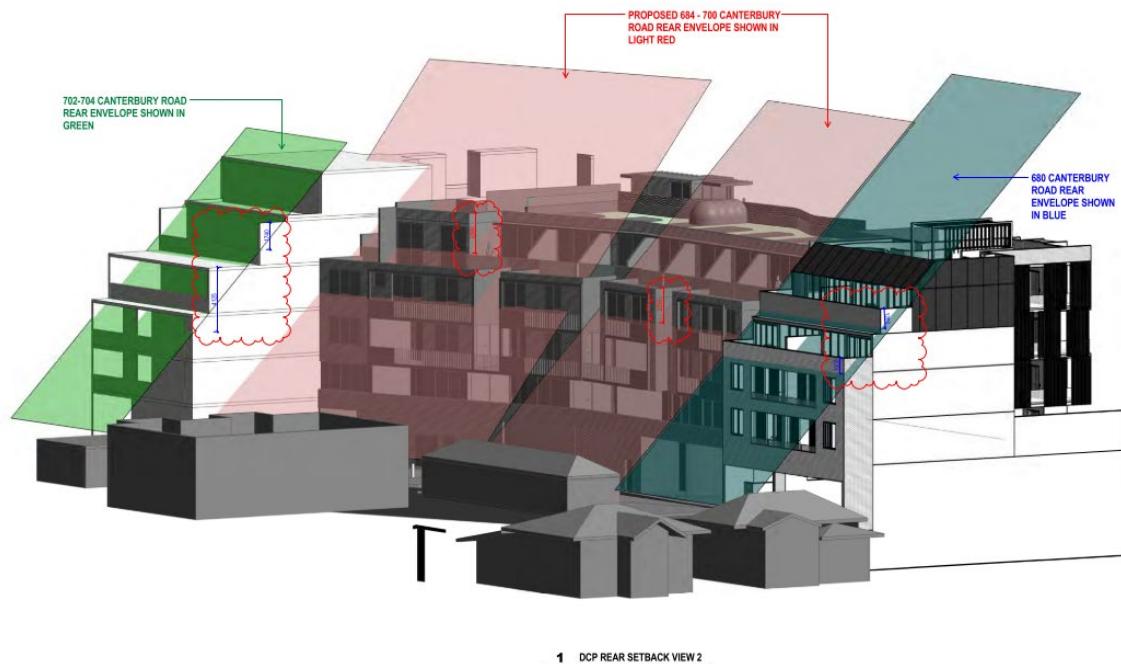
The upper level, being Level 5 is generally compliant other than one room to the south eastern corner and has little to no amenity consequence.

Comment:

Although the design seeks to vary the setback controls, the design is still generally in keeping with the objectives of the setback controls given the following:

- The encroachment occurs mainly on level 4 and a portion of level 5.
- The design achieves compliance with the building separation requirements specified within the ADG, including the additional setbacks requirements to the southern boundary given the land to the south comprises a lower density residential zone.
- Although the design incorporates more than 2 storeys on the residential boundary (along the rear boundary), the building is contained within the building height plane and as stated above is compliant with the ADG separation requirements
- In light of the above, the proposed variations to the rear height plane are considered acceptable in this instance.





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.

D6 Canterbury Road Structure Plan

Controls

- C1 Development of the Canterbury Road Corridor is to be in accordance with the characteristics of the following five-character areas:

(c) Urban General (B5 – Business Development):

Comprise medium scale buildings, ranging in height from three to five (5) storeys, with varying street alignment. Street level activities include retail, commercial and residential. Showrooms are permitted, but they must be designed to reinforce pedestrian quality. This character area predominantly applies to the commercial transitions between the Urban Centre and Urban Residential character areas.



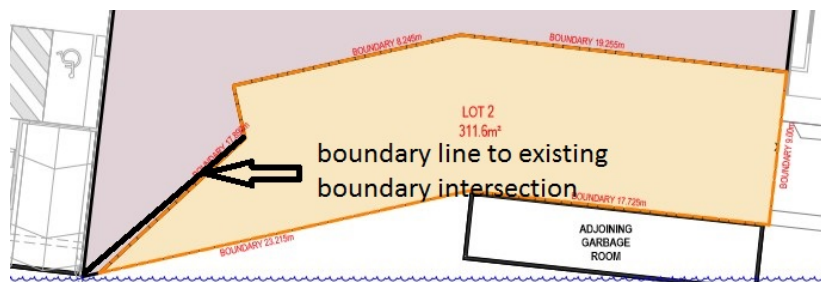
Figures D6.4: Typical Road Structure (Refer to Figure D6.5 below)



Figures D6.5: How a Typical Road Structure Might Be Improved Over Time With Left Turn Circulation (Refer to Figure D6.4 above)

The proposal includes the dedication of the rear parcel of land to allow the future connection of Timothy and Joan Lanes to allow for a future through connection between Nelson Avenue and Liberty Street as require by the CDCP 2012.

However, the proposed subdivision plan indicating the two lot sub-division has not correctly shown the required boundary line as it does not adequately line up with the existing boundary intersection. See extract below with changes made to boundary line by Council's Infrastructure Specialist for clarity.



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

A Voluntary Planning Agreement (VPA) was submitted to Council on 12 June 2019 to dedicate the parcel of land along the rear of the site. The land to be dedicated is to facilitate the connection between Joan and Timothy Lane to provide for a future vehicular thoroughfare. Council's General Counsel has advised that a VPA can be avoided if:

1. The Applicant voluntarily agrees to subdivide the land in question into 2 lots – being one lot for the laneway dedication and one for the balance of the land to be redeveloped.
2. A plan of subdivision is provided which identifies an intention for the laneway lot to be dedicated as public road under s.9 of the *Roads Act 1993*

The applicant has chosen to amend their application to subdivide the land and dedicate the rear part for lane purposes. However, as discussed above the subdivision line is not consistent with the advice given about the land required to be dedicated.

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

The proposed development is inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000, particularly clause 50(1AB) relating to the design verification statement.

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

There are no other likely environmental impacts to arise from the proposed development.

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

The application has been assessed under Section 4.15 of the Act. It should be noted that the applicant has been given seven opportunities to amend their plans over a 3 year period. It is acknowledged that they have addressed some of Council's concerns. However, as demonstrated throughout the body of this report, the design seeks a number of variations to key development controls which we cannot support.

Furthermore, the additional information required to facilitate a detailed assessment including the real height breach, will result in further design changes, particularly in regard to the matters raised by Council's Infrastructure Specialist, Waste, Traffic and Urban Design departments.

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 notified with newspaper advertising on three different occasions.

The first notification was for a period of twenty-two (22) days between 16 October 2018 and 07 November 2018. No submissions were received during the notification period.

The application was re-notified to include the Voluntary Planning Agreement (VPA). This notification took place between 31 July 2019 until 28 August 2019 (a total of 28 days). No objections were received during this period.

Amended Plans received on 15 May 2020 were re-notified for 21 days. One (1) submission was received. Amended plans received on 23 December 2020 and 26 February 2021 were not re-notified.

Objection: Loss of solar access to apartments at the rear of 702-704 Canterbury Road, Belmore. This will also devalue property.

"The proposed development will block all sun into the apartments at the back of the adjoining property 702-704 Canterbury Rd Belmore.

The units at the back of the property on the western border of the proposed development currently enjoy sun until early afternoon (1-1:30pm). The views currently enjoyed will also be blocked entirely.

The primary source of light for the apartments in the back of the block (overlooking the common area courtyard on level 1) of 702-704 Canterbury Rd Belmore on the western border of the proposed development comes from the windows and balconies facing Canterbury Rd.

This will not only reduce the liveability but also the value".

Comment: The application has been considered against the solar access and overshadowing controls of the Apartment Design Guide and the Development Control Plan. Whilst some overshadowing of neighbouring properties would occur, if the proposal were to be supported, the proposed development is consistent with the controls in those plans. Given the design of the adjoining development, the rear apartments facing north, particularly those on the lower levels will be overshadowed by its own building.

Objection Loss off solar access to level 1 communal open space. This will also devalue property.

"The common area courtyard on level 1 of 702-704 Canterbury Rd Belmore will also be impacted reducing the ambience and benefit to the residents"

Comment: The location of the adjoining communal open space (702-704 Canterbury Road) is located on Level 1 within the light well. Its design location is such that any built form proposed at the subject site will obstruct solar access to this communal open space. Given the design of the adjoining development, the communal open space will be overshadowed by its own building.

Referral	Comments Received
Infrastructure Specialist	This is discussed earlier in the report under the heading: Canterbury Development Control Plan 2012 (CDCP 2012)
Traffic	This is discussed earlier in the report under the heading: Canterbury Development Control Plan 2012 (CDCP 2012)
Urban Designer	<ul style="list-style-type: none"> Poor amenity and outlook of Bed 3 of Units 104, 204 and 304. Windows are too close to the side wall Poor outlook of living area and balcony of Units 107 and 207. Primary living space faces a void Poor outlook and amenity of kitchen and dining areas of Units 101 and 201. The distance between the balcony of Unit 1 at 704 Canterbury Road and windows of kitchen and dining areas of Units 101 and 201 should be 6.0m Internal layout at Levels 1, 2 and 3 is not well considered. <p>The following points have not been addressed, however could also form conditions of consent.</p> <ul style="list-style-type: none"> In some instances, finishes are replaced with low quality materials and inadequate construction methods. To avoid this, it is recommended if the application is approved that a condition of consent be added that materials and finishes at construction certificate stage be the same as the DA approval. It is recommended the word "similar" in the material palette to be removed from the drawings. Provide well-designed vegetated green roofs in lieu of pebble roofs. This will assist in reducing urban heat impact of the building. Amended landscape concept plans to be submitted for approval prior to the construction certificate Provide well-designed vegetated communal open space on the rooftop, including trees planted on structures and high-quality landscaping. Landscape concept plans to be submitted for approval prior to the construction certificate Provide detailed design of the various façade types at 1:50 or 1:20, illustrating construction method, façade articulation and materiality. Plans to be submitted for approval prior to the construction certificate The trees on the open space on the Ground Level at the rear should be a minimum of 100 litres.
Resource Recovery (Waste)	This is discussed earlier in the report under the heading: Canterbury Development Control Plan 2012 (CDCP 2012)
Building Surveyor	No objections – subject to conditions
Development Engineer	No objections – subject to conditions
Tree	No objections – subject to conditions

Environmental Health Officer	No objections – subject to conditions
Transport for NSW	No objections – subject to conditions

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.

The proposal seeks to depart from Clause 4.3 relevant to the ‘height of buildings’ standard under the CLEP 2012, with the highest breach nominated as 175mm. The applicant’s written submission under Clause 4.6 of CLEP 2012 has been assessed and it is considered that the breach to the development standard relating to the building height is not acceptable in this circumstance.

As outlined within the body of the report, the current design also seeks a departure from a number of planning controls including controls relating to apartment design which are considered to impact on the amenity afforded to future residents of the site.

Furthermore, the outstanding matters raised by Infrastructure, Traffic, Development Engineer, Waste and Urban Design departments would likely result in further redesign of the proposal to achieve compliance. The Applicant has been provided a number of opportunities to address the matters raised throughout the duration of the assessment process and these have not been satisfactorily resolved.

RECOMMENDATION

It is recommended that the development application DA-422/2018 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 does not comply with Clause 50(1AB)(b)(i) and (ii) of the Environmental Planning and Assessment Regulation 2000 as the Design Verification Statement submitted does not provide an explanation that verifies how the development –
 - (i) addresses how the design quality principles are achieved, and
 - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012 relating to 'Height of buildings' and exceeds the allowable height of building of 18m.
3. The Clause 4.6 Request to vary Clause 4.3(2) 'Height of buildings' of the Canterbury Local Environmental Plan 2012 is not well founded and it has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
4. 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 and Principle 6: Amenity.
5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the ceiling heights contained within Part 4C of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.
6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the Acoustic Privacy requirements contained within Part 4H of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.
7. 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'.

8. The proposed development is unsatisfactory, pursuant to the provisions Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls of the Canterbury Development Control Plan 2012 (CDCP 2012) including:
 - b. Part B9 - Waste Insufficient information has been submitted to allow a proper and thorough assessment of the application against the relevant waste controls outlined within Part B9 of CDCP 2012.
 - c. Part D – D1.3.3, C1(a) and(b) relating to the floor to ceiling heights. D1.4.6, relating to laneways and boundary line.
9. 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 Part B1 Transport and Parking, including:
 - *O4 To ensure servicing by larger vehicles occurs off-street in such a way that reduces impacts on the pedestrian environment.*
 - *O5 To ensure vehicle facilities are compliant, functional and safe.*
 - *O7 To ensure vehicle traffic is managed and roads do not inhibit the performance of business centres, presenting barriers to pedestrian movement, or segregating areas.*
10. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, is unsatisfactory given the inadequate information provided to determine access to and from the development site and the area available for manoeuvring of vehicles and garbage trucks and safe pedestrian access.
11. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) 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 and the suitability of the site for the development.
12. 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.
13. 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-

Canterbury Bankstown Local Planning Panel - 12 April 2021

ITEM 3

Procedures - Canterbury Bankstown Local Planning Panel

AUTHOR

Chairperson

PURPOSE AND BACKGROUND

Panel members would recall my previous email in Aug 2020 seeking your input on changes required to the Canterbury Bankstown Local Planning Panel (CBLPP) Operational Procedures as a result of Directions made by the Minister for Planning and Public Spaces to local planning panels under section 9.1 of the Environmental Planning and Assessment Act 1979.

Two matters from this circulation require comment.

First there was a reference to site inspections being more flexible following individual inspections during this covid period. I am of the view that the direction from the Minister suggests that site inspections be carried out as a panel (ie together). This is how inspections were carried out pre covid and the Panel should resort back to this after the end of the special covid arrangements.

The second matter for comment relates to a number of responses about the unequal amount of times community members are requested to attend panel meetings.

When the State Government set up the Local Planning Panels it was left to the councils to determine if the community representatives would be selected to participate on the Panel on a council wide basis or on a ward by ward basis. Canterbury-Bankstown council decided on the latter.

Community representatives are therefore selected for consideration of matters from their own wards only. The selection within wards has for some time now been on a rotation system between the representative and the alternative representative.

As the number of matters going to the Panel differ between each ward this results in a skew between wards in the number of times community representatives participate on the Panel

I am of the view that the council wide system verses the ward system could be reviewed by the Council with a view to considering a change to a council wide system.

The amended Operational Procedures are attached for the Panel's consideration. Items 1-4 reproduce the Minister's Local Planning Panel directions. Part 5 represent additional procedures for CBLPP meetings.

Separately, the current delegation dated 6 May 2019 to the General Manager from the Panel under the provisions of section 2.20 (8) of the Environmental Planning and Assessment Act 1979 (see attachments) to determine certain types of development applications requires a minor amendment to include the following administrative changes:

- In item A (3) reference to the new Minister's Directions referred to above; and
- The references in A1 (a) – (h) to include ancillary development associated with those developments including alterations and additions to those developments

POLICY IMPACT

There are no policy impacts from the recommendation.

FINANCIAL IMPACT

There are no financial impacts from the recommendation.

COMMUNITY IMPACT

There are no community impacts from the recommendation.

RECOMMENDATION

1. The Panel adopt the amended Operational Procedures
2. The Panel adopt the amended Instrument of Delegation to the General Manager
3. The Panel requests that a draft report to the council be prepared which outlines the strengths and weaknesses of the two options for the selection of community representatives on the Panel (council wide or by wards) and this draft report be circulated to all current Panel members for comment following which the draft report be referred back to the Panel to finalise a recommendation to the Council.

ATTACHMENTS

- A. Amended Operational Procedures
- B. Amended Instrument of Delegation to the General Manager

Canterbury Bankstown Council Local Planning Panel Operational Procedures

SCHEDULE 1 - OPERATIONAL PROCEDURES

PART 1 - Panel composition

1.1 Chair selection and rotation

1. The chair and any alternate chairs are to rotate presiding over panel meetings, or other business, as practicable, unless the chair or alternative chair is unavailable for any reason.
2. Where possible, deferred matters should be considered by the chair that presided over the original deferment.

1.2 Independent expert members and alternates

1. The independent expert members and alternate members can be interchanged as needed by the chair for reasons including:
 - a. a member has a conflict of interest,
 - b. a member is unavailable, or
 - c. to periodically rotate the members.

1.3 Community representatives for wards and use of alternates

1. A community representative member can be interchanged as needed by the chair or alternate chairs for reasons including:
 - a. a member has a conflict of interest,
 - b. a member is unavailable, or
 - c. to periodically rotate the members.

PART 2 - Reviews of panel decisions

2.1 Reviews

1. The determination of a review application from a panel decision shall be determined by different members of the panel to those who made the original determination.

PART 3 - Meeting and other business procedures

3.1 Role of chair

1. The chair is responsible for the management of the panel's functions and operations, including managing conflicts of interest.
2. The chair is to preside over panel meetings and other business.
3. The chair is to ensure the panel fully discharges its responsibilities under the Act, these operational procedures, any other directions from council, and the code of conduct for local panel members in a timely manner.
4. The chair is responsible for the good and orderly conduct of the panel meetings and may do all things and take all steps necessary to control the good and orderly conduct of any meeting of the panel or site inspection carried out by the panel in the performance of its functions.
5. The chair is to determine which alternative chair, independent expert members or alternates, and which community representative or alternates are to hear a matter prior to consideration of the matter commencing. The chair may make arrangements with the general manager (or delegate) to determine independent expert members or alternates, and which community representatives or alternates are to hear a matter.

3.2 Role of alternate chairs

1. Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

3.3 Meeting and other business procedures

1. The panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection.
2. A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.
3. The panel may determine detailed procedures for the execution of efficient and effective meetings and any other business.
4. The panel is not bound by the rules of evidence and may inquire into and inform itself on any matter, in such manner as it thinks fit, subject to the rules of natural justice and procedural fairness.
5. The panel is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
6. The panel must give reasonable notice to the public of the times and places of its meetings. This must be through the website used by the panel and may include other mechanisms as appropriate.

7. The panel may:
 - a. adjourn the public meeting where a panel briefing is required to hear confidential or sensitive information or to deliberate before reconvening for voting and determination; or
 - b. close the public meeting for deliberation and/or voting and determination.
8. With a view to discharging its responsibilities in a timely manner, the panel may, in its absolute discretion, but otherwise fairly and consistently, impose time limits on presentations by persons other than members of the panel. Where, there are a large number of objectors with a common interest at any public meeting, the panel may, in its absolute discretion, hear a representative of those persons.
9. The panel shall hold meetings or transact its business as required to meet panel demands and workloads.
10. Where a quorum for a meeting or other business is not present, the meeting or other business is to be deferred.

3.4 Site inspections and panel briefings

1. The chair may elect for the panel to attend site inspections or panel briefings for development applications and planning proposals prior to the panel's consideration
2. Site visits should be conducted on the same day as a public meeting, if practicable.
3. Site visits and panel briefings are solely to be used to identify and clarify issues with a proposal.
4. At a site visit or panel briefing, a panel member must not offer an opinion on the merit of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendation.
5. The panel may be briefed by council staff and any other person engaged in the assessment of the matter about the proposal. On request, and at the chair's discretion, the applicant may attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material.
6. A written record of the site visit or briefing must be made publicly available on the panel's website.

3.5 Transaction of business outside meetings

1. Where a development application is the subject of less than 10 unique submissions by way of objection, the panel is able to determine the application by an electronic circulation of papers.
2. Planning proposals are able to be considered by an electronic circulation of papers.
3. Decisions made by electronic circulation of papers are to be recorded in the panel's minutes and made publicly available on the panel's website.

PART 4- Other matters

4.1 Obligation to consult with council if adverse financial impacts

1. A panel must not exercise a function that will result in the making of a decision that would have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council.
2. The consultation may be in writing, with the council being given a specified time to respond in writing. Where a meeting with the General Manager (or delegate) is to be held to discuss the matter, all relevant panel members should be present, and minutes kept of the meeting and its outcomes

4.2 Interactions with third parties about matters before the panel

1. Panel members are not to discuss any matter that is to be considered by the panel with councillors, the applicant, their consultants, parties who have made a submission, or any other person with an interest in the matter outside of the local planning panel meeting.
2. This does not apply to persons employed by the council to assess the matters to be considered by the panel, nor to panel briefings as specified in Part 3.4.

4.3 Deferring determinations

1. Where the panel determines to defer its determination of an application, it must record the reasons for the deferral in its minutes.
2. Where the determination of an application is deferred pending the provision of additional information, the panel must specify the timeframe in which the information is to be provided to the council for assessment.

4.4 Panel performance

1. Once a planning assessment is completed by the council and referred to the panel, the panel will be expected to:
 - a. determine the matter within 2 weeks (14 calendar days) for development and modification of consent applications; and
 - b. provide its advice within 2 weeks (14 calendar days) on planning proposals.
2. Panel chairs are obliged to work with senior council staff to ensure that key issues are addressed during assessment, in order to minimise the number of deferrals by the panel at determination stage.
3. Should an application experience unreasonable delays in excess of 180 calendar days from lodgement, the panel chair may require the council to report the matter to the panel within 4 weeks for determination.

Note: The requirements relating to the timeframes for assessing development applications under the *Environmental Planning and Assessment Regulation 2000* must be considered.

Additional matters for Canterbury Bankstown Local Planning Panel

PART 5 – Meeting procedures for public meetings

5.1 Role of chair

1. Under 3.1.5 above the chair has made arrangements with the General Manager that the General Manager or his delegate will determine Panel members as follows:
 - a) independent expert panel members – as a general policy there will be an even rotation of expert members, and
 - b) community representatives - generally to sit and vote only on development applications or planning proposals that relate to their ward (subject to availability and conflict of interest).
2. In addition to the matters referred to in 4.3 above In order to minimise the number of deferrals, the Chair is to be briefed by Council staff on key planning issues early in the assessment process (*within four weeks of the close of public exhibition*) for complex or contentious applications

5.2 Notice of meetings

1. Notice of public panel meetings (time and place) shall be provided through Council's website at least five working days prior to the meeting and published in local newspapers the week preceding the meeting.
2. Agendas for public meetings shall be publically available for viewing five working days prior to the meeting (by close of business) on the Council website, at Council customer service centres and library and knowledge centres.

5.3 Time Limits for Addressing the Panel in a public meeting

1. Applicants for development applications (and planning proposals) and people who have made a submission on a development application will be notified in writing of the development application's referral to the Panel and advised that they may make an application to address the Panel regarding the matter.
2. An application to address the Panel must be received at Council by 12 noon on the day of the meeting. Applicants will be advised of any conditions which may apply to their address to the Panel. If a number of applicants have similar views, they may be asked to appoint one spokesperson to address the Panel. Written submissions to the Panel will be accepted.
3. Addresses to the Panel by applicants and objectors shall be restricted to three minutes with a two minute extension at the discretion of the Chair. The Chair also has the discretion to extend the period if considered appropriate.
4. Speakers at the Panel meeting who are objectors shall be heard first. The applicant together with any representative for the applicant to speak after the objectors.

5.4 Deliberation

1. Following the public meeting, the Panel shall adjourn for a closed session for deliberation, voting and determination.
2. Council staff to attend the first part of the closed session for final clarification or discussion from public meeting.
3. In the second part of the closed session Council officers shall leave (except CB Panel Administration Assistant) and only voting members of the Panel deliberate on, vote and determine the matter.
4. Community representatives will only attend that part of the closed session for the matters they will vote on.

5.5 Minutes

1. Minutes for a meeting to be finalised and made available to the public on Council's website within five business days of the meeting.

Adopted at CBLPP 12 April 2021

Instrument of Delegation

Environmental Planning and Assessment Act 1979

Delegation of Functions from Canterbury Bankstown Local Planning Panel to the General Manager

By resolution of the Canterbury Bankstown Local Planning Panel dated 12 April 2021 the Panel pursuant to Section 2.20(8) of the Act delegates to the General Manager of Canterbury Bankstown City Council the Functions specified or described in Schedule 1 of this Instrument of Delegation.

1. Definitions

1.1 In this instrument

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Canterbury Bankstown Council.

Function means a function of the Canterbury Bankstown Local Planning Panel

General Manager means the person appointed by the Council pursuant to s334 of the *Local Government Act 1993* to the position of General Manager, and a person appointed by the Council pursuant to s336 of the *Local Government Act 1993* to act in the vacant position of General Manager.

Panel means Canterbury Bankstown Local Planning Panel.

2. Commencement

2.1 The delegation commenced on 12 April 2021.

Schedule 1

Functions

Approve an application for Development Consent

- (A) In accordance with the provisions of 2.20 (8) of the Environmental Planning and Assessment Act 1979, the Panel delegates to the General Manager of Canterbury Bankstown Council the authority to determine the following development applications:

1. where the proposed development is for any of the following types of development including ancillary development associated with those developments including alterations and additions to those developments :
 - a) detached dwelling house,
 - b) one of a group of two or more attached dwellings, row house, terrace house, townhouse or villa unit,
 - c) a dual occupancy (attached or detached),
 - d) a boarding house, guest house, hostel or the like
 - i. with a total area of all floors not exceeding 300 m² measured over the enclosed walls, and
 - ii. in which no more than 12 persons would ordinarily be resident,
 - e) four or more single dwellings located on one allotment and used for short term holiday accommodation,
 - f) a non-habitable building being a private garage, carport, shed or the like,
 - g) a structure being a fence mast, antenna, retaining or a free – standing wall, swimming pool or the like, or
 - h) a private bushfire shelter, and
 2. where the proposed development contravenes:
 - a) a development standard by more than 10% but only up to 30%, or
 - b) non-numerical standards, and
 3. despite a proposed development application falling with 1 and 2 above if the proposed development application involves development of a kind referred to in items 1, 2 or 4 of the Ministers direction under section 9.1 of the Act dated 30 June 2020 (Operational Procedures and Development Applications and Applications to Modify Development Consents) then the panel must determine that development application.
- (B) The General Manager, at the discretion of the General Manager may refer any development application referred to in 1 and 2 above to the panel for determination.
-

Anthony Hudson

Chairperson of Canterbury Bankstown Local Planning Panel

Date: 12 April 2021

-END-