



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

12 July 2021 - 6.00pm

ORDER OF BUSINESS

ORDER OF BUSINESS

APOLOGIES AND DECLARATIONS

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

REVESBY WARD

- 1 DA-954/2020 - 715 Henry Lawson Drive, East Hills**
Demolition of existing garage, construction of a detached secondary dwelling
and construction of an outbuilding with double garage 3
- 2 DA-311/2021 - Shop 2, 10-14 Padstow Parade, Padstow**
Change of use of Shop 2, to a dress hire shop with associated fitout. 39

ROSELANDS WARD

- 3 DA-279/2021 - 223A Bonds Road, Riverwood**
Installation of two prefabricated portable structures to be used for storage
and general purposes for the Australian Air League 57
- 4 DA-117/2020 - 153-155 Penshurst Road, Narwee**
Demolition of existing on site structures and construction of an eight storey
shop top housing development comprising 34 residential units above two
retail premises with two levels of basement car parking.
The Application is classified as Integrated Development pursuant to the
Water Management Act 2000 73

Canterbury Bankstown Local Planning Panel - 12 July 2021

ITEM 1	DA-954/2020 - 715 Henry Lawson Drive, East Hills Demolition of existing garage, construction of a detached secondary dwelling and construction of an outbuilding with double garage
FILE	DA-954/2020 – Revesby
ZONING	R2 Low Density Residential and SP2 Infrastructure
DATE OF LODGEMENT	28 October 2020
APPLICANT	Fouad Al Hazzouri
OWNERS	Fouad Al Hazzouri
ESTIMATED VALUE	\$194,750.00
AUTHOR	Jeremy Swan, The Planning Hub – Independent Town Planning Consultant

REPORT

This matter is reported to Council's Local Planning Panel in accordance with the Panel's delegation from the NSW Minister for Planning, as the applicant and land owner is a member of council staff who is principally involved in the exercise of Council's functions under the Environmental Planning and Assessment Act 1979.

Development Application No. DA-954/2020 proposed the demolition of existing garage, construction of a detached secondary dwelling, and construction of an outbuilding with double garage.

A request for further information was issued to the applicant on 1 February 2021 requesting further information regarding:

- Site acquisition;
- The proposed Studio (outbuilding);
- Maximum wall height;
- Solar Access;
- Setbacks;

- Demolition of existing garage proposed under the application having already been undertaken; and
- Car parking requirements.

The applicant submitted additional information in response to the request on 17 March 2021. The applicant removed the proposed studio (outbuilding) from the proposal and detailed that the existing garage was damaged in recent rain events, and it was in a dilapidated state so was required to be removed. They have detailed that there was no asbestos as it was only a skeleton, mainly timber, colour-bond and concrete tiles. The proposed studio and demolition have therefore been excluded from the assessment of the proposal.

DA-954/2020 has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 requiring, amongst other things, an assessment against:

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment
- Bankstown Local Environmental Plan 2015
- Bankstown Development Control Plan 2015
- Draft Consolidated Canterbury Bankstown Local Environmental Plan 2020.

The application is generally compliant, however proposes minor variations to the requirements contained in the Bankstown Development Control Plan 2015.

These minor variations include the setback of the proposed garage and car parking requirement for the proposed secondary dwelling. In respect of the setback of the proposed garage a condition has been included which recommends increasing the front setback in compliance with Council's DCP. In respect of the car parking requirement, whilst the DCP requires a car parking space for the secondary dwelling, SEPP (Affordable Rental Housing) 2009 specifically states a consent authority must not refuse consent if no additional parking is provided on the site.

The application was notified for a period of 14 days from 2 November 2020 to 16 November 2020. No submissions were received.

POLICY IMPACT

The matter has no direct policy implications.

FINANCIAL IMPACT

The matter has no direct policy implications.

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-954/2020 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is commonly known as 15 Henry Lawson Drive, East Hills, NSW, 2213 and legally described as Lot 19 DP17857. The existing lot has a frontage of 32.5m to Henry Lawson Drive to the south west and a frontage of 32.37m to Lucas Road to the east and a fall of approximately 0.72m to the north.

Currently, the site contains an existing single-storey dwelling and single garage and carport. The surrounding area consists of an established low density residential neighborhood with single dwellings and dual occupancies.

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



Figure 1: Aerial of subject site, outlined in red. **Source:** Nearmap



Figure 2: Map showing the site and surrounding lot context. **Source:** Sixmaps

The site has an overall area of 834.7sqm by title, is irregular in shape and is zoned R2 Low Density Residential and SP2 Infrastructure.

A portion of the site is zoned SP2 Infrastructure and is identified for acquisition by Transport for NSW (previously known as RMS) for the adjoining classified road. The site has an area of 560.9sqm (excluding area identified for acquisition). Refer to zoning map below.

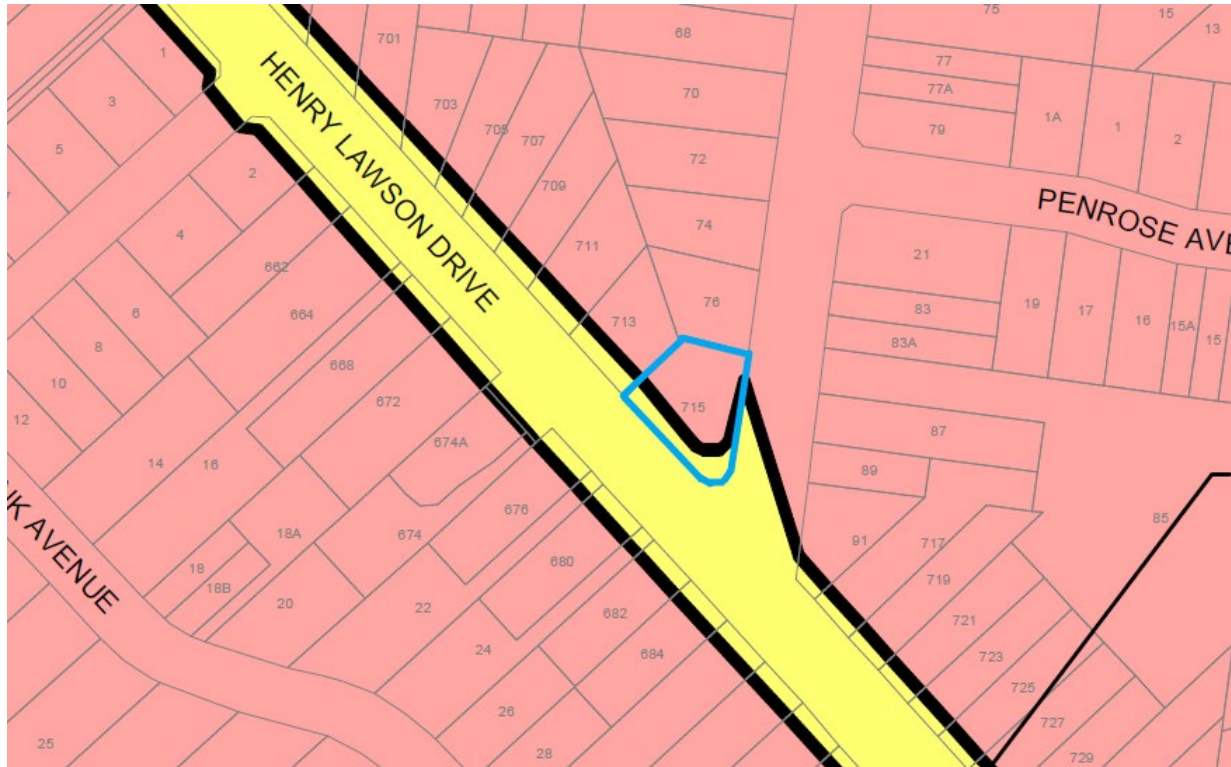


Figure 3: Zoning Map detailing the site outlined in blue. **Source:** NSW Legislation

PROPOSED DEVELOPMENT

The Development Application (DA) (as amended on 17 March 2021) proposes the construction of a double garage fronting Lucas Road and the construction of a secondary dwelling to comprise two bedrooms, living area, kitchen, bathroom and laundry with a gross floor area of 59.99m².

Statutory Considerations

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

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment
- Bankstown Local Environmental Plan 2015
- Bankstown Development Control Plan 2015

SECTION 4.15 ASSESSMENT

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

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

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

The subject site has been used for residential purposes. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination.

Therefore, the site is considered suitable for the proposed development and therefore the development application satisfies the provisions of SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007

The subject site has frontage to Henry Lawson Drive which is identified as a classified road. A portion of the site is zoned SP2 Infrastructure and is identified for acquisition by Transport for NSW (previously known as RMS) for the adjoining classified road.

The following table provides an assessment of the proposed development against the relevant provisions of the SEPP.

Clause	Requirement	Proposal	Compliance
100 Development on proposed classified road	Consent for development for any of the following purposes on land reserved for the purposes of a classified road (but before the land is declared to be a classified road) may be granted only	A portion of the site is zoned SP2 Infrastructure and is identified for acquisition by Transport for NSW (previously known as RMS) for the adjoining classified road. No works are	Yes.

	<p>with the concurrence of TfNSW—</p> <p>(a) subdivision that results in the creation of an additional lot with dwelling entitlements,</p> <p>(b) development with a capital investment value greater than \$185,000,</p> <p>(c) development for the purpose of dwellings that are, or any other building that is, to be held under strata title.</p>	<p>proposed on the land identified for acquisition and it has been excluded from the site area for the proposed development.</p>	
101 Development with frontage to classified road	<p>The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:</p> <p>(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and</p> <p>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</p> <p>(i) the design of the vehicular access to the land, or</p> <p>(ii) the emission of smoke or dust from the development, or</p> <p>(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and</p> <p>(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or</p>	<p>The site is access from Lucas Road.</p> <p>The proposed development will utilise existing access from Lucas Road and will not adversely impact on the safety, efficiency and ongoing operation of Henry Lawson Drive.</p> <p>The proposed development involves the construction of a secondary dwelling. The secondary dwelling has been appropriately located and designed to ensure it will not be adversely impacted by vehicle</p>	<p>Yes.</p> <p>Yes.</p> <p>Yes.</p>

	vehicle emissions within the site of the development arising from the adjacent classified road.	emissions or traffic noise associated with Henry Lawson Drive.	
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State Environmental Planning Policy (Building Sustainability Index. BASIX) 2004

A valid BASIX Certificate accompanies the development application. The Certificate details the water, thermal comfort and energy commitments which are also detailed on the submitted plans.

The proposal satisfies the requirements of State Environmental Planning Policy Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Affordable Rental Housing) 2009

Division 2 of SEPP (ARH) 2009 provides controls for secondary dwellings. The table below provides a summary of the controls set out in this Policy in regard to this development:

Clause	Requirement	Proposal	Compliance
20 Land to which Division applies	This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of a dwelling house is permissible on the land— (a) Zone R1 General Residential, (b) Zone R2 Low Density Residential, (c) Zone R3 Medium Density Residential, (d) Zone R4 High Density Residential, (e) Zone R5 Large Lot Residential.	The subject site is zoned R2 Low Density Residential in which development for the purposes of a dwelling house is permissible.	Yes.
22 Development may be carried out with consent	(1) Development to which this Division applies may be carried out with consent. (2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the	The proposed development can be carried out with development consent. The proposed development will not result in there being any other dwelling other	Yes.

	<p>development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.</p> <p>(3) A consent authority must not consent to development to which this Division applies unless:</p> <p>(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and</p> <p>(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.</p> <p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres,</p>	<p>than the principal dwelling and the secondary dwelling.</p> <p>The total floor area of the principal dwelling and the secondary dwelling complies with the 0.5:1 Floor Space Ratio control for the site.</p> <p>The proposed secondary dwelling has a floor area of 59.99m².</p> <p>The subject site has a total area of 560.9m².</p>	<p>Yes.</p> <p>Yes</p> <p>Yes.</p>
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	(b) parking if no additional parking is to be provided on the site.	No additional parking is to be provided for the secondary dwelling onsite.	Yes.
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Greater Metropolitan Regional Environmental Plan 2 – Georges River Catchment

The subject site is located within an area that is identified as being affected by the *Greater Metropolitan Regional Environmental Plan (GMREP) 2 – Georges River Catchment*, being a deemed SEPP from 1 July 2009 under the then Clause 120 of Schedule 6 of the EP & A Act 1979. 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.

As assessment of the proposal indicates that it is 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 GMREP No. 2.

Bankstown Local Environmental Plan 2015

This site is zoned R2 Low Density Residential under Bankstown Local Environmental Plan 2015 (BLEP 2015). 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 BLEP 2015.

The particular aims of this Plan are as follows:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to manage growth in a way that contributes to the sustainability of Bankstown, and recognises 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 minimise 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.*

The proposal generally complies with the relevant aims of this Plan.

Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of BLEP 2015 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

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

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To allow for certain non-residential development that is compatible with residential uses and does not adversely affect the living environment or amenity of the area.*
- To allow for the development of low density housing that has regard to local amenity.*
- To require landscape as a key characteristic in the low density residential environment.*

The proposed development meets the objectives of the zone as it provides for the housing needs of the community in an appropriate low density residential environment that has regard to the local amenity.

Relevant Clauses

The following clauses of the BLEP 2015 were taken into consideration:

Clause 4.3 – Height of Buildings;
Clause 4.4 – Floor Space Ratio;
Clause 4.5 – Calculation of floor space ratio and site area;
Clause 5.1 – Relevant acquisition authority;
Clause 5.1A – Development on land intended to be acquired for public purposes;
Clause 5.4 – Controls relating to miscellaneous permissible uses;
Clause 6.1 – Acid Sulfate Soils; and
Clause 6.2 – Earthworks.

An assessment of the development application has found that the proposal complies with the matters raised in each of the above clauses of the Bankstown Local Environmental Plan 2015.

The table below demonstrates the relevant compliance with the controls as set out in the BLEP 2015.

Provision / Standard	Requirement	Proposal	Compliance
Clause 4.3 - Height of Buildings	Max 9m – building Max 7m – wall	4.79m 2.87m	Yes.
Clause 4.4 - Floor Space Ratio	Max 0.5:1	0.35:1	Yes.
Clause 5.1 - Relevant Acquisition Authority	The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map - Classified Road – Transport for NSW	A portion of the site is zoned SP2 Infrastructure and is identified for acquisition by Transport for NSW (previously known as RMS) for the adjoining classified road. No works are proposed on the land identified for acquisition and it has been excluded from the site area for the proposed development.	Yes.
Clause 5.1A – Development on land intended to be acquired for public purposes	Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table. Zone SP2 Infrastructure and marked “Classified road” - Roads	A portion of the site is zoned SP2 Infrastructure and is identified for acquisition by Transport for NSW (previously known as RMS) for the adjoining classified road. No works are proposed on the land identified for acquisition and it has been excluded from the site area for the proposed development.	Yes.
Clause 5.4 – Controls relating to miscellaneous permissible uses	Secondary dwellings on land other than land in a rural zone If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed	The proposed secondary dwelling has a floor area of 59.99m ² .	Yes.

	whichever of the following is the greater: (a) 60 square metres, (b) 10% of the total floor area of the principal dwelling.		
Clause 6.1 – Acid Sulfate Soils	<p>Development consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p>Class 5 - Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p>	The subject site is identified as containing class 5 acid sulfate soils. The site is not below 5 metres Australian Height Datum and the proposed development will not lower the water table.	Yes.
Clause 6.2 – Earthworks	The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The proposed development involves minor earthworks to accommodate the proposed secondary dwelling and garage. The earthworks are minor in nature and have been designed to ensure they do not adversely impact environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	Yes.

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

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.

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

The following table provides a summary of the development application against the controls contained within Part B1, B5 and B13, of the *Bankstown Development Control Plan 2015*.

STANDARD	BDCP 2015	
	REQUIRED	COMPLIANCE
BDCP 2015 Part B1		
Section 2 – Dwelling Houses		
Building design (car parking)	<p>Development must locate the car parking spaces behind the front building line with at least one covered car parking space for weather protection. Despite this clause, Council may allow one car parking space to locate forward of the front building line provided:</p> <p>(a) the car parking space forward of the front building line is uncovered and located in a stacked arrangement on the driveway in front of the covered car parking space; and</p> <p>(b) the covered car parking space is setback a minimum 6 metres from the primary and secondary frontages.</p> <p>Where development proposes a garage with up to two car parking spaces facing the street, Council must ensure the garage architecturally integrates with the development and does not dominate the street facade.</p>	<p>No. A portion of the proposed garage is located forward of the building line of the dwelling to Lucas Road. A Condition requiring amended plans to be provided that provide a setback of 2.5m for the garage to Lucas Road to ensure it is behind the building line of the dwelling to has been included in the Draft Conditions in Attachment B.</p> <p>Yes. The proposed garage has been designed so it architecturally integrates with the development and does not dominate the street façade and is consistent with existing development in the area.</p>
Section 3 – Secondary Dwellings		
Subdivision	The subdivision of secondary dwellings is prohibited.	Yes. No subdivision is proposed as part of the application.

STANDARD	BDGP 2015	
	REQUIRED	COMPLIANCE
Lot Size	A secondary dwelling is permissible on an allotment with a minimum lot size of 450m ² .	Yes. The subject site has a total area of 560.9sqm (excluding area identified for acquisition).
Site Cover	<p>Council must not consent to development for the purpose of secondary dwellings unless:</p> <p>(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning instrument; and</p> <p>(b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under an environmental planning instrument, that greater floor area.</p>	Yes. The proposed development complies with the applicable FSR control of 0.5:1 for the site and the secondary dwelling has a floor area of 59.99m ² .
Storey limit	<p>The storey limit for detached secondary dwellings is single storey and the maximum wall height is 3 metres.</p> <p>The siting of secondary dwellings and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property.</p> <p>Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing)</p>	<p>Yes. The proposed secondary dwelling is single storey and has a wall height of 2.8m.</p> <p>Yes. The proposed secondary dwelling has been sited to ensure it is compatible with the existing slope and contours of the allotment and any adjoining property.</p> <p>Yes. Any reconstituted ground level on the allotment does not exceed a height of 600mm above the ground level (existing).</p>
Setback restrictions	The erection of secondary dwellings is prohibited within 9 metres of an existing animal boarding or training establishment.	Yes. No existing animal boarding or training establishment is located within 9m of the site.

STANDARD	BDP 2015	
	REQUIRED	COMPLIANCE
Setbacks to the primary and secondary road frontages	<p>The minimum setback for a building wall to the primary road frontage is:</p> <p>(a) 5.5 metres for the first storey (i.e. the ground floor); and</p> <p>(b) 6.5 metres for the second storey.</p> <p>The minimum setback to the secondary road frontage is:</p> <p>(a) 3 metres for a building wall; and</p> <p>(b) 5.5 metres for a garage or carport that is attached to the building wall.</p>	<p>Yes. The proposed secondary dwelling is setback 5.94m from Henry Lawson Drive.</p> <p>Yes. The proposed secondary dwelling is setback over 3m from Lucas Road.</p>
Setbacks to the side and rear boundaries	For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metres.	Yes. The proposed secondary dwelling is setback 0.9m from the side boundary.
Private open space	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.	Yes. The proposed secondary dwelling will not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.
Access to sunlight	<p>At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.</p> <p>At least one living area of a dwelling on an adjoining allotment must receive a minimum 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. The living area of the secondary dwelling receives at least 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice.</p> <p>Yes. At least one living area of a dwelling on an adjoining allotment receives at least 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice.</p>

STANDARD	BDCP 2015	
	REQUIRED	COMPLIANCE
	A minimum 50% of the private open space required for the principal dwelling on the allotment and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space.	Yes. At least 50% of the private open space required for the principal dwelling on the allotment and a minimum 50% of the private open space of a dwelling on an adjoining allotment receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox.
Visual privacy	<p>Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</p> <ul style="list-style-type: none"> (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council. <p>Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where:</p> <ul style="list-style-type: none"> (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or 	<p>Yes. The windows of the secondary dwellings have been offset to minimise overlooking.</p> <p>Yes. The proposed secondary dwelling only proposes a bathroom and bedroom windows that look into the existing dwellings private open space.</p>

STANDARD	BDCP 2015	
	REQUIRED	COMPLIANCE
	(d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	
Building design	The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling.	Yes. The proposed secondary dwelling has a roof pitch of 24 degrees.
Building design (car parking)	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces.	Yes. The proposed secondary dwelling does not result in the principal dwelling on the allotment having less than the required car parking spaces.
Landscaping	Development must retain and protect any significant trees on the allotment and adjoining allotments. To achieve this clause, the development may require a design alteration or a reduction in the size of the secondary dwelling.	Yes. The siting and design of the secondary dwelling does not impact on any significant trees on the allotment and adjoining allotments.
Section 13 – Ancillary Development (Outbuildings)		
Site Cover	<p>The sum of the gross floor area of all the outbuildings on the allotment must not exceed 60m².</p> <p>Outbuildings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.</p>	<p>Yes. The garage has a total area of 16.1m².</p> <p>Yes. The proposed garage will not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.</p>
Height	<p>The storey limit for outbuildings is single storey. An attic or basement is not permitted in outbuildings.</p> <p>The maximum building height for outbuildings is 4.8 metres and the maximum wall height for outbuildings is 3 metres.</p> <p>The siting of outbuildings and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property.</p>	<p>Yes. The garage is single storey.</p> <p>Yes. The garage has a maximum height of 4.55m with a wall height of 2.87m.</p> <p>Yes. The siting of the garage is compatible with the existing slope and contours of the allotment and any adjoining property.</p>

STANDARD	BDCP 2015	
	REQUIRED	COMPLIANCE
	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the outbuilding is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the outbuilding to a height no greater than 1 metre above the ground level (existing) of the allotment.	Yes. Any reconstituted ground level on the allotment does not exceed a height of 600mm above the ground level (existing).
Setbacks to the primary and secondary road frontages	Outbuildings must locate behind the front building line.	No. A portion of the proposed garage is located forward of the building line of the dwelling to Lucas Road. A Condition requiring amended plans to be provided that provide a setback of 2.5m for the garage to Lucas Road to ensure it is behind the building line of the dwelling to has been included in the Draft Conditions in Attachment B .
Setbacks to the side and rear boundaries	The minimum setback to the side and rear boundaries of the allotment is: (a) zero setback for carports or masonry walls that do not contain windows, eaves and gutters provided the structures comply with the Building Code of Australia; or (b) 0.45 metre for non-masonry walls that do not contain a windows, eaves and gutters; or (c) 0.9 metre for walls with windows, or outbuildings that are or are intended to be used for recreation purposes.	Yes. The proposed garage is setback 0.9m from the side boundary.

STANDARD	BDCP 2015	
	REQUIRED	COMPLIANCE
Building design	<p>Outbuildings must not function as self-contained dwellings, and must not function or be adapted to function for industrial purposes.</p> <p>The design of outbuildings is limited to the following facilities: (a) a half bowl sink; and (b) a maximum cupboard length of 1.8 metres; and (c) a toilet and shower with external access only; and (d) no cooking facilities or excessive number of large windows.</p> <p>The maximum roof pitch for outbuildings is 25 degrees.</p>	<p>Yes. The proposed garage will not function as self-contained dwellings, and must not function or be adapted to function for industrial purposes.</p> <p>Yes. The proposed garage only has a bathroom with external access only.</p> <p>The roof pitch of the garage is 24 degrees.</p>
Landscaping	Development must retain and protect any significant trees on the allotment and adjoining allotments.	
BDCP 2015 Part B5 - Parking		
Section 2 – Off Street Parking		
Car parking for a dwelling house	2 car spaces per dwelling behind the front building line.	Yes. The existing dwelling is provided with two car spaces in the proposed garage. A portion of the proposed garage is located forward of the building line of the dwelling to Lucas Road. No. A Condition requiring amended plans to be provided that provide a setback of 2.5m for the garage to Lucas Road to ensure it is behind the building line of the dwelling to has been included in the Draft Conditions in Attachment B .
Secondary dwellings	1 car space if the gross floor area of the secondary dwelling is over 50m ² .	No. The proposed secondary dwelling has a gross floor area of 59.99m ² and has not been provided with a car space. See discussion the proposed variation below.

STANDARD	BDCP 2015	
	REQUIRED	COMPLIANCE
Section 2 – Off-Street Parking Access and Circulation		
Access driveway width and design	<p>The location of driveways to properties should allow the shortest, most direct access over the nature strip from the road.</p> <p>For new residential development, necessary clear driveway widths – one way – 3m</p>	<p>Yes. The proposed driveway is sited and designed to allow the shortest, most direct access over the nature strip from the road.</p> <p>Yes. The driveway is over 3m in width.</p>
BDCP 2015 Part B13 – Waste Management and Minimisation		
Section 2 – Demolition and Construction		
Development controls	All development applications are to be accompanied by a Waste Management Plan prepared in accordance with the Waste Management Guide for New Developments and the Bankstown Demolition and Construction Guidelines.	Yes. A Waste Management Plan was submitted with the application.
Section 2 – Residential Development		
All residential development types	<p>Development must provide a bin storage area. The bin storage area must be of adequate size to accommodate all allocated bins.</p> <p>The location of the bin storage area should not adversely impact on the streetscape, building presentation or amenity of occupants and adjoining dwellings.</p>	<p>Yes. Adequate space is provided on the property to accommodate all allocated bins.</p> <p>Yes. Adequate space is provided on the property to accommodate all allocated bins in a location that would not adversely impact on the streetscape, building presentation or amenity of occupants and adjoining dwellings.</p>

Secondary Dwelling Car Parking Variation

The proposal does not comply with Section 2 of Part B5 of the BDCP 2015 in relation to the minimum car parking requirement for a secondary dwelling. The control is provided below:

Secondary dwellings - 1 car space if the gross floor area of the secondary dwelling is over 50m².

The proposed secondary dwelling has a gross floor area of 59.99m² and has not been provided with a car space.

An assessment of the proposed variation to the minimum car parking requirement for a secondary dwelling under Section 2 of Part B5 of the BDCP 2015 has been undertaken and is deemed to be reasonable based on the following:

- In accordance with Clause 22 of the ARH SEPP 2009 a consent authority must not refuse consent to a secondary dwelling if no additional car parking is to be provided onsite.
- The provision of a secondary dwelling will positively contribute to the provision of affordable housing and housing diversity in the established low density residential neighbourhood of East Hills.
- The provision of secondary is consistent with the objectives of the R2 Low Density Residential Zone as it provides for the housing needs for the community and does not result in any adverse impacts on the amenity of the principle dwelling or surrounding area.

Bankstown Section 94A Development Contributions Plan 2009

The Bankstown Section 94A Development Contributions Plan 2009 applies to the site and requires a contribution of \$4,181.

Open space and recreation	\$2,630
Roads and traffic facilities	\$505
Community facilities	\$311
Public domain facilities	\$698
Plan administration and management	\$37

This is included as a condition of consent.

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

There are no planning agreements applicable to the proposed development.

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

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

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

The proposed development is not considered likely to result in any significant detrimental environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the BDCP 2015 occur, they have been addressed and are considered worthy of support. As such, it is considered that the impact of the proposed development on the locality will be acceptable.

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

The proposed development is permissible on the subject site and presents a built form that is compatible with the existing and desired future character of the locality. As a result, the site is considered to be suitable for the proposed development.

Submissions [section 4.15(1)(d)]

No submissions were received during the notification period.

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

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

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Affordable Rental Housing) 2009, Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment, Bankstown Local Environmental Plan 2015, Bankstown Development Control Plan 2015 and Draft Consolidated Canterbury Bankstown Local Environmental Plan 2020.

The application proposes a minor variation to the requirements contained in the Bankstown Development Control Plan 2015. These minor variations include the setback of the proposed garage and car parking requirement for the proposed secondary dwelling. In respect of the setback of the proposed garage a condition has been included which recommends increasing the front setback in compliance with Council's DCP. In respect of the car parking requirement, whilst the DCP requires a car parking space for the secondary dwelling, SEPP (Affordable Rental Housing) 2009 specifically states a consent authority must not refuse consent if no additional parking is provided on the site.

As a result, approval for the development application is recommended.

RECOMMENDATION

It is recommended that:

1. Development Application No. 954/2020 be approved subject to the attached conditions included at **Attachment B**.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No.954/2020, submitted by Found Al Hazzouri, accompanied by the drawings as listed in the table below, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

Drawing No.	Drawing Title	Revision	Dated	Prepared by
A02	Site/Ground Floor Plan	B	17/03/2021	Atelier Hazzouri Architects
A03	Roof Plan	B	17/03/2021	Atelier Hazzouri Architects
A04	Secondary Dwelling Plan	B	17/03/2021	Atelier Hazzouri Architects
A05	Double Garage Plan	B	17/03/2021	Atelier Hazzouri Architects
A06	Section A-A	B	17/03/2021	Atelier Hazzouri Architects
A07	Section B-B	B	17/03/2021	Atelier Hazzouri Architects
-	Schedule of Finishes	-	17/03/2021	Atelier Hazzouri Architects
SW01	Concept Stormwater Plan	B	17/03/2021	Atelier Hazzouri Architects
SW02	Concept Stormwater Plan	B	17/03/2021	Atelier Hazzouri Architects
SD01	Sediment Control Plan	B	17/03/2021	Atelier Hazzouri Architects
L01	Concept Landscape Plan	B	17/03/2021	Atelier Hazzouri Architects

- 3) Design Modifications – Proposed Garage

The design of the proposed development must be modified to provide a setback of 2.5m for the proposed garage to Lucas Road to ensure it is behind the building line of the existing dwelling.

Amended Plans detailing the design modification are to be provided to the principle certifying authority prior to the issue of a Construction Certificate.

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

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

- 4) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 5) Landscaping shall be installed in accordance with the approved landscape plan.
- 6) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

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

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

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

- 7) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 8) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 9) Pursuant to section 4.17 of the Environmental Planning and Assessment Act 1979, and the Bankstown Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$4,181.00 shall be paid to Council.

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

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

- 10) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 11) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

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

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

- 12) The person having benefit of this Determination Notice shall apply for a Work Permit and obtain approval from Council, for any of the following applicable engineering works in front of the site, at their own expense:
 - a) Light Duty VFC of maximum width of 3.0 metres at the property boundary,
 - b) Drainage connection to trunk stormwater pipe
 - c) Removal of all redundant driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs,
 - d) Repair of any damage to the public road including the footway occurring during building works, and
 - e) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

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

- 13) Stormwater runoff from all areas proposed for development shall be collected and connected to the existing stormwater system within the site, subject to the existing system being evaluated by a qualified professional Civil Engineer and found to be structurally adequate and to have the required hydraulic capacity, as required in Council's Development Engineering Standards. The existing system shall be upgraded or replaced as necessary to comply with the requirements above.

The plan for the proposed drainage system together with the hydraulic evaluations shall be submitted to the PCA for approval with the application for the Construction Certificate.

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

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

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

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

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

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

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

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

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

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 16) The building work in accordance with the development consent must not be commenced until:
 - a. a construction certificate for the building / subdivision work has been issued by the council or an accredited certifier, and
 - b. the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building / subdivision work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- c. the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d. the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 17) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
 - 18) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
 - 19) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
 - 20) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
 - 21) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

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

- 22) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.

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

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

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

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

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

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

- 27) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 28) Prior to the ground floor slab being poured, an identification report by a Registered Surveyor must be submitted to the principal certifying authority verifying that the proposed buildings finished ground floor level and siting to the property boundaries conforms to the approved plans.
- 29) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 30) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 31) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.
- 32) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 33) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 34) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 35) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 36) An Occupation Certificate for the completed development must not be issued until all conditions relating to demolition, building have been satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).
- 37) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted. An official "house numbering" letter will be sent to the applicant indicating the proposed house numbers of the new development. Note: The house numbers of the development are subject to change depending of the type on subdivision that may occur at a later stage.
- 38) A copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.

-END-

Canterbury Bankstown Local Planning Panel - 12 July 2021

ITEM 2	DA-311/2021 - Shop 2, 10-14 Padstow Parade, Padstow
	Change of use of Shop 2, to a dress hire shop with associated fitout.
FILE	DA-311/2021 - Revesby Ward
ZONING	R4 High Density Residential and SP2 Infrastructure: Road Infrastructure Facility
DATE OF LODGEMENT	29 April 2021
APPLICANT	Vision Group Architects
OWNERS	Canterbury-Bankstown Council
ESTIMATED VALUE	\$50,000.00
AUTHOR	Planning

REPORT

This matter is reported to the Canterbury Bankstown Local Planning Panel as the site which the development application relates is owned by Canterbury Bankstown Council.

Development Application No. DA-311/2021 proposes a change of use of Shop 2 to a dress hire shop with associated fitout.

The proposal has been assessed against the matters for consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act 1979*, which included, amongst other things, an assessment against State Environmental Planning Policy No 55 – Remediation of Land, Bankstown Local Environmental Plan 2015, the Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment and Bankstown Development Control Plan 2015. The proposal was assessed to be compliant with all relevant controls contained within the abovementioned planning legislation.

The proposal also considered the relevant matters contained within 'Division 4.11 Existing Uses' of the *Environmental Planning and Assessment Act 1979*. An assessment against the relevant matters of this division resulted in the proposal establishing existing use rights for use of the premise as a retail tenancy.

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

Development Application DA-1078/2016 was approved in Shop 1 for the 'internal fitout of the ground floor tenancy for use as a recruitment office'. The proposed use related to a portion of the previously approved retail tenancy (approximately half of the floor area). As the subject site had been rezoned to 'R4 High Density Residential' and 'SP2 Infrastructure: Road Infrastructure Facility' under the BLEP 2015, an 'office premises' was prohibited. As such, consideration was given to the existing use rights provisions contained in the Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000. This application was supported by Council's Planning Officer noting:

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

Development Application DA-1016/2017 was approved for the 'fitout of tenancy for future retail/commercial use'. During the assessment of this application, Council sought legal advice to confirm that existing use rights continued to benefit the site and was advised that the abandonment of the now prohibited use for the purpose of retail did not arise, given the active and genuine endeavour by the proponent to lease the premises.

The current development application DA-311/2021 now seeks approval for the change of use of Shop 2 to a dress hire shop with associated fitout. Further to the legal advice provided in the consideration of DA-1016/2017, in relation to the continuation of existing use rights that benefit the site, and in reaffirming this advice with Council's general counsel, it was confirmed that the site continues to benefit from existing use rights and that the proposed use is available to be pursued under this legislation.

The application was notified for a period of fourteen (14) days. No submissions were received during this period.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications

RECOMMENDATION

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

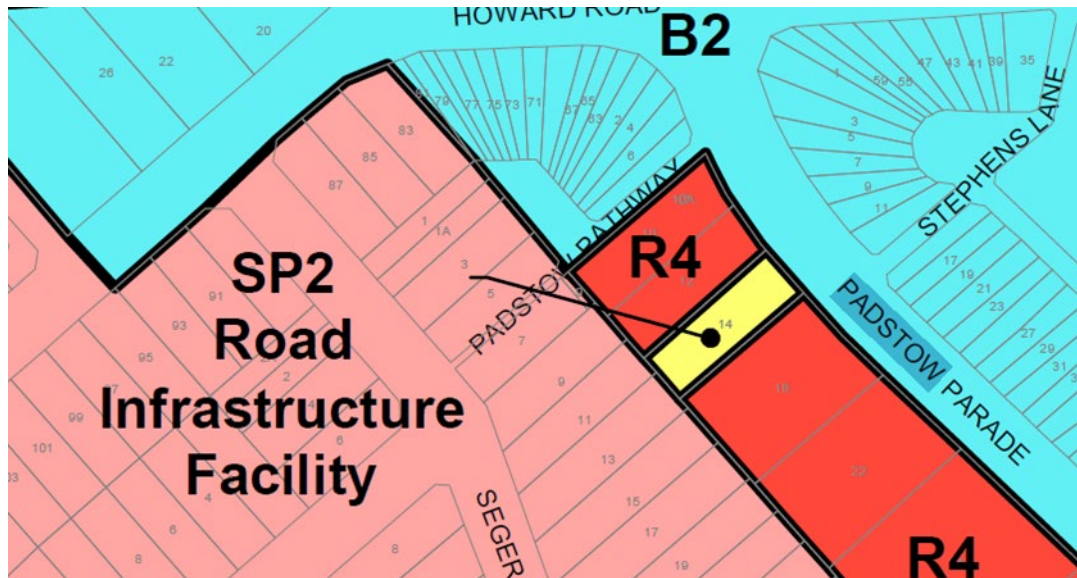
ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-311/2021 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

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



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



PROPOSED DEVELOPMENT

The development application proposes a change of use of Shop 2 to a dress hire shop with associated fitout. The physical works are limited internally to the installation of minor partition walls for changing rooms and the installation of a toilet and kitchen facilities. There are no external works proposed.

Statutory Considerations

When determining this application, the relevant matters listed in Section 4.15(1) 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:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (GMREP No. 2)
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- Bankstown Local Environmental Plan 2015 (BLEP2015)
- Bankstown Development Control Plan 2015 (BDCP 2015)

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)]

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The site is located within land identified as being affected by Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. The GMREP 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP 2.

State Environmental Planning Policy 55 – Remediation of Land

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

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

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

Bankstown Local Environmental Plan 2015

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

- 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

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

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

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

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

Development Application DA-1016/2017 was approved on 3 April 2018 by the Canterbury Bankstown Local Planning Panel for the fitout of Unit 2 (the 'other' half of the approved retail tenancy). Prior to the DA being reported to the Panel, legal advice was sought to confirm that existing use rights continued to benefit the site with the following advice received;

- *In 2014, Development Consent was issued for the construction works that are now on site which included a retail space at Ground Level*
- *That consent was activated consistent with law and constructed within a time causing activation*
- *The zone has now changed prohibiting retail on the land*

- *The abandonment of the now prohibited use for the purpose of retail does not arise, given the active and genuine endeavour by the proponent for leasing purposes in engaging a real estate agent and providing the advertising boards on site and other advertising material in that respect.*
- *the DA that the Council would be submitting to itself should be concerned for the retail fitout of the consent granted for the purpose of retail.*

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

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

The subject development application now seeks approval for a change of use of Shop 2 to a dress hire shop with associated fitout. Further to the legal advice provided in the consideration of DA-1016/2017, additional legal advice was recently sought to confirm its validity. Of importance was the following statement, which was provided in the assessment of DA-1016/2017:

“The abandonment of the now prohibited use for the purpose of retail does not arise, given the active and genuine endeavour by the proponent for leasing purposes in engaging a real estate agent and providing the advertising boards on site and other advertising material in that respect.”

The legal advice sought under the current proposal was provided, with the following statement confirming the above:

“...to establish EURs (existing use rights) ... a statement from Council’s property team confirming that the subject property has been actively marketed for use as a retail/commercial space since the Bankstown LEP came into effect (i.e.. from the date that prohibition arose). Such evidence should rebut the presumption of abandonment after 12 months without use.”

As Council is the owner of the site, Council’s Property department provided documentation confirming that the site has been actively marketed for a use as a retail/commercial space since the Bankstown LEP 2015 came into effect. These documents provide for a comprehensive timeline of events in respect to the attempts at leasing the site.

Based on the legal advice provided under DA-1016/2017 and under the current proposal, with the evidence submitted by Council's Property department, it is considered that Council, being the owner of the site, has demonstrated an active and genuine endeavour to lease the premises for commercial/retail purposes. As such, it is considered that the consent may be granted for the tenancy to be used as a retail tenancy, with associated fitout, as was approved under DA-1124/2013.

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

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.

The draft plan proposed the subject site being rezoned from R4 High Density Residential and SP2 Infrastructure: Road Infrastructure Facility to B2 Local Centre. Notwithstanding that the proposed use will be permissible within this zone, a review of the application against the aims and objectives of B2 Local Centre under the draft CBLEP 2020 has revealed the proposal remains consistent the draft environmental planning instrument.

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

Bankstown Development Control Plan 2015 – Part B1 Residential Development

Due to the proposal not being a use that is permissible within the R4 High Residential Zone, there are no applicable controls related to the development. However, it is considered that the proposed use of the site and associated fitout works, being entirely internal to the subject tenancy, is consistent with the desired character of the R4 High Density Residential Zone, having no impact on the existing prevailing suburban character and amenity of the residential environments, particularly given the nature of the base building that was originally approved and has now been constructed.

Bankstown Development Control Plan 2015 – Part B5 Parking

Clause 2.1 of the BDCP 2015 – Part B5 provides as follows:

2.1 Development must calculate the amount of parking required using the schedule of off-street parking requirements.

The defined use of the premise is “**Retail Premises**”, as such it is appropriate to use the “**Shop**” definition contained within the *Schedule: Off-street parking requirements*.

Schedule: Off-street parking requirements

Land use	Off-street parking requirements
Shops	<p>Development of less than 4,000m² gross floor area 1 car space per 40m² of gross floor area.</p> <p>Developments of greater than or equal to 4,000m² gross floor area A parking survey should be carried out by the applicant, to assess the appropriate level of parking for developments greater than 4,000m² in gross floor area.</p> <p>Note 1: Council may vary the car parking requirement for minor alterations and additions to shops solely where the total gross floor area of the building does not exceed 500m².</p> <p>Note 2: In the Bankstown CBD, Council may consider a planning agreement for 50% of the parking requirement for the purpose of public parking provided the development is less than 4,000m² gross floor area.</p>

Gross Floor Area of Shop 2 – 161m²

Parking Calculation – $161/40 = 4.025 = 4$ off street car parking are required

Gross Floor Area of Shop 1 – 137.8m²

Parking Calculation - $137.8/40 = 3.445 = 3$ off street car parking are required

Total Parking Requirements for Shops = 7 car parking spaces.

With respect to the assessment of this application against Part B5 – Parking, the following was noted from DA-1124/2013 (*Partial Construction and Use of the Ground and First Floor of a Multi-Storey Carpark, Including Amenity Facilities and a Retail Tenancy*):

“The proposed development satisfies the relevant controls contained in Part D8 – Parking of the BDCP 2005 with regard to the retail tenancy. The GFA of the proposed retail tenancy generates the demand for eight (8) car parking spaces, which have been accommodated as part of the 98 spaces provided on the ground and first floors levels of the proposed development.”

The above assessment was based on a rate of 1 space per 40sqm of gross floor area.

In accordance with Part B5 – Parking of the BDCP 2015, a rate of 1 space per 40sqm of gross floor area also applies to business premises/office premises in ‘other centres’ (which includes Padstow). Accordingly, the proposed change of use, as well as the existing “office” use currently in Shop 1, do not generate an increase in parking demand. The existing car parking spaces within the on-site multi-storey car park are capable of satisfying the parking demand for the proposed use and the existing use within Shop 1.

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

There are no planning agreements applicable to the proposed development.

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

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

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

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

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

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

The proposed development will not alter the existing built form. It is therefore considered that the proposed works are compatible with the existing and desired future character of the locality.

Submissions [section 4.15(1)(d)]

The application was neighbour notified for a period of 14 days between 21 May 2021 and 3 June 2021. No submissions were received.

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

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

CONCLUSION

The development application has been assessed in accordance with the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979, and the relevant planning controls. It has been demonstrated that the site benefits from existing use rights. It is considered that the proposal will result in an orderly and economic use of the site.

RECOMMENDATION

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

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-311/2021, submitted by Vision Group Architects, accompanied by the drawings as listed in the table below, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

Drawing No.	Drawing Title	Revision	Dated	Prepared by
00	Site Analysis & Site Plan	A	April 21	Invision Design
01	Tenancy Floor Plan			
03	Elevation			
04	Section			

- 3) The building must comply with the Category 1 fire safety provisions as are applicable to the building's proposed use.

Note: The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

- 4) A separate application shall be submitted to Council prior to the erection of any additional signage unless the proposed signage is "exempt development" in accordance with the relevant legislation.

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

- 5) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 6) A long service levy payment which is 0.35% of the total cost of the building work is to be paid to the Building and Construction Industry Long Service Payments Corporation.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 7) The building work in accordance with the development consent must not be commenced until:
 - a) a construction certificate for the building work has been issued by the council or an accredited certifier, and

- b) the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c) the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building work.
- 8) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 9) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 10) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.

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

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 11) Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.

- 12) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 13) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 14) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 15) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).

USE OF THE SITE

- 16) Compliance with the conditions of Development Consent No. DA-1124/2013.
- 17) Three (3) off street car parking spaces shall be provided on the ground floor level of the existing car park on the subject site. The car parking spaces, driveways and manoeuvring areas are to be used for employees and visitors' vehicles only and not for the storage of new or used materials, finished goods, or commercial vehicles.
- 18) The hours of operation of the use shall be limited to between Monday – Wednesday, 10am – 4pm, Thursday 10am – 9pm, Friday 10am – 3pm, and Saturday 10am – 3pm.
- 19) All loading and unloading of goods shall take place within the site or from the adjoining service lane in a manner that does not interfere with parking areas, driveways or landscaping.
- 20) There shall be no emissions of noise, smoke, smell, vibration, gases, vapours, odours, dust, particulate matter, or other impurities which are injurious or dangerous to health, or the exposure to view of any unsightly matter or otherwise.
- 21) All waste materials associated with the use shall be stored in containers located either within the building or behind screen walls in accordance with the approved plans.
- 22) The use of the premises shall not contravene the *Protection of the Environment Operations Act 1997*. The operation of the premise shall be carried out in accordance with the requirement of the NSW EPA, where relevant.

- 23) No signs or goods are to be displayed or trading of any description is to be carried out on the public road, public footway, utility service land, customer and/or employee parking area or the driveways or pedestrian walkways outside or in the immediate vicinity of the premises.
- 24) Identification number/s are to be conspicuously displayed at the front of the premises.
- 25) Instructions concerning procedures to be adopted in the event of an emergency are to be clearly displayed on the premises for both public and staff information at all times.
- 26) No external signage is approved under this development consent. External signage details must be submitted to Council for approval prior to installation.

-END-

Canterbury Bankstown Local Planning Panel - 12 July 2021

ITEM 3	DA-279/2021 - 223A Bonds Road, Riverwood
	Installation of two prefabricated portable structures to be used for storage and general purposes for the Australian Air League
FILE	DA-279/2021 – Roselands
ZONING	RE1 Public Recreation
DATE OF LODGEMENT	23 April 2021
APPLICANT	Bailey Christopher
OWNERS	City of Canterbury Bankstown
ESTIMATED VALUE	\$80,000
AUTHOR	Planning

REPORT

This matter is reported to Canterbury-Bankstown Local Planning Panel as the development site is owned by City of Canterbury Bankstown Council.

Development Application No. DA-279/2021 proposes the installation of two portable structures to be used for storage and general purposes at the Australian Air League Riverwood Squadron, at 223A Bonds Road, Riverwood.

The proposal has been assessed against the matters for consideration contained in Section 4.15 of the Environmental Planning and Assessment Act 1979, which included, amongst other things, an assessment against State Environmental Planning Policy No 55 – Remediation of Land, Canterbury Local Environmental Plan 2012, the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment and Canterbury Development Control Plan 2012. The assessment identified no non-compliances with the controls contained within the above-mentioned planning legislation.

The application was notified for a period of 14 days, and no submissions were received during this period.

POLICY IMPACT

The matter has no direct policy implications

FINANCIAL IMPACT

The matter has not direct financial implications

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-279/2021 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 223A Bonds Road, RIVERWOOD, NSW 2210. The site has a frontage to Hornet Lane of 51.24m (from the boundary fences) and a depth of 35.05m, with an overall site size of approximately 1897.5m².

The site contains the existing air leagues building and its associated ancillary structures. The main air leagues building is a single storey U-shaped building fronting onto Hornet Lane, which is a cul-de-sac access lane for the Bland and Lance Hutchinson Ovals.

The surrounding development consists of:

- To the north and west of site is Hornet Lane and the associated car park, beyond which is the Bland and Lance Hutchinson Ovals
- To the east of the site are the Oasis Villas, a multi dwelling development, at 223 Bonds Road.
- To the south (rear) of the site, are residential properties 45 and 47 Methuen Parade.

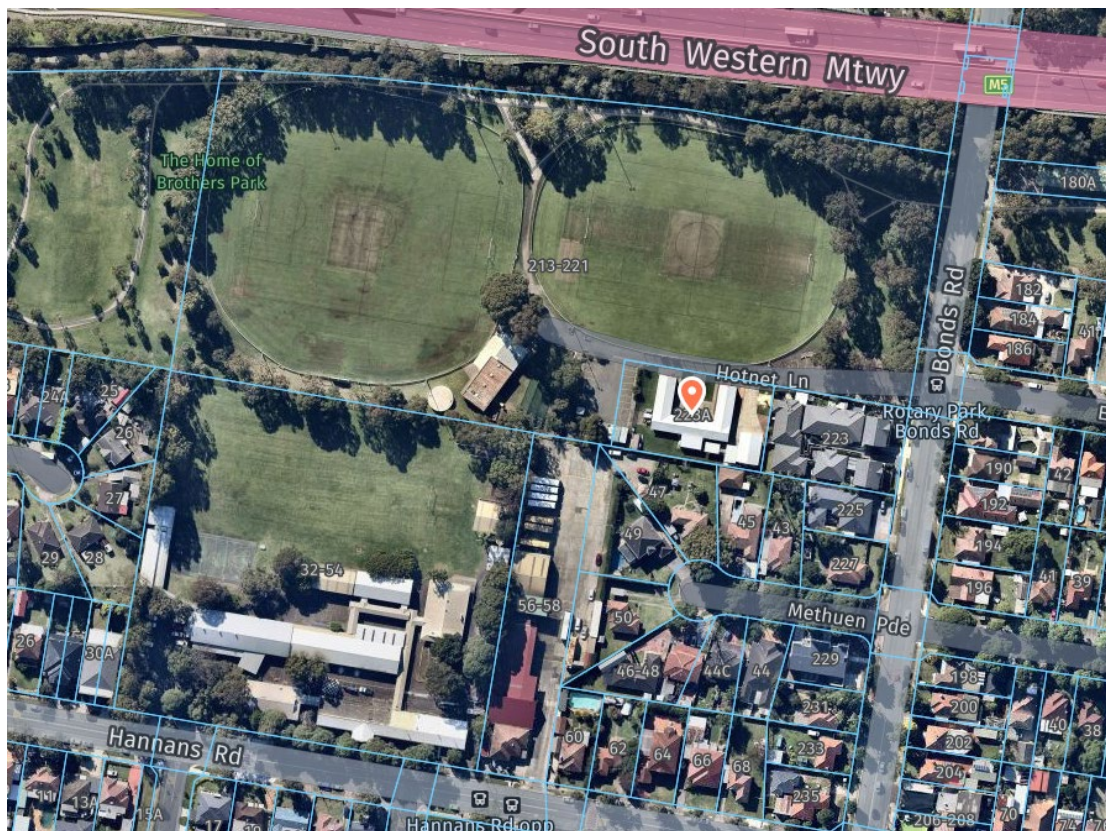


Figure 1: Aerial of subject site pinned orange. **Source:** NearMaps 2021

***Note: The NearMaps plan incorrectly names Hornet Lane as Hotnet Lane'

DEVELOPMENT HISTORY

A review of the planning history of this site finds two previous consents.

On 28 May 2010, Council under Delegated Authority approved DA- 207/2010 for the construction of a new garage used in conjunction with the use of land by the Australian Air League. The constructed garage has a width of 9 metres and a depth of 12 metres.

On 25 October 2012, Council under Delegated Authority approved DA-372-2012 for the construction of a carport, gazebo and boundary fence, which has since been constructed.

PROPOSED DEVELOPMENT

The Development Application (DA) proposes the installation of 2 prefabricated portable structures for storage purposes.

Each prefabricated portable structure has an external dimension of 9m x 3m and an internal floor space dimension of 24.64m². The structures have a maximum height of 3m.

The cabins will be finished in Air Force Blue (also known as Dulux Ballet Blue) and, due to the existing slope of the land, will have a maximum height of 3.48m above existing ground level.

The prefabricated portable structures will be installed in a connected L shape, set in at 1.3m from the southern boundary and approximately 1.3m from the site western edge of the site as delineated by the fence between the car park and the air leagues site.

Statutory Considerations

When determining this application, the relevant matters listed in Section 4.15(1) 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 – Remediation of Land (SEPP 55)
- Metropolitan Regional Environmental Plan (GMREP) No. 2 – Georges River Catchment
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)

PERMISSIBILITY

The site is a regular allotment that is currently zoned RE 1- Public Recreation.

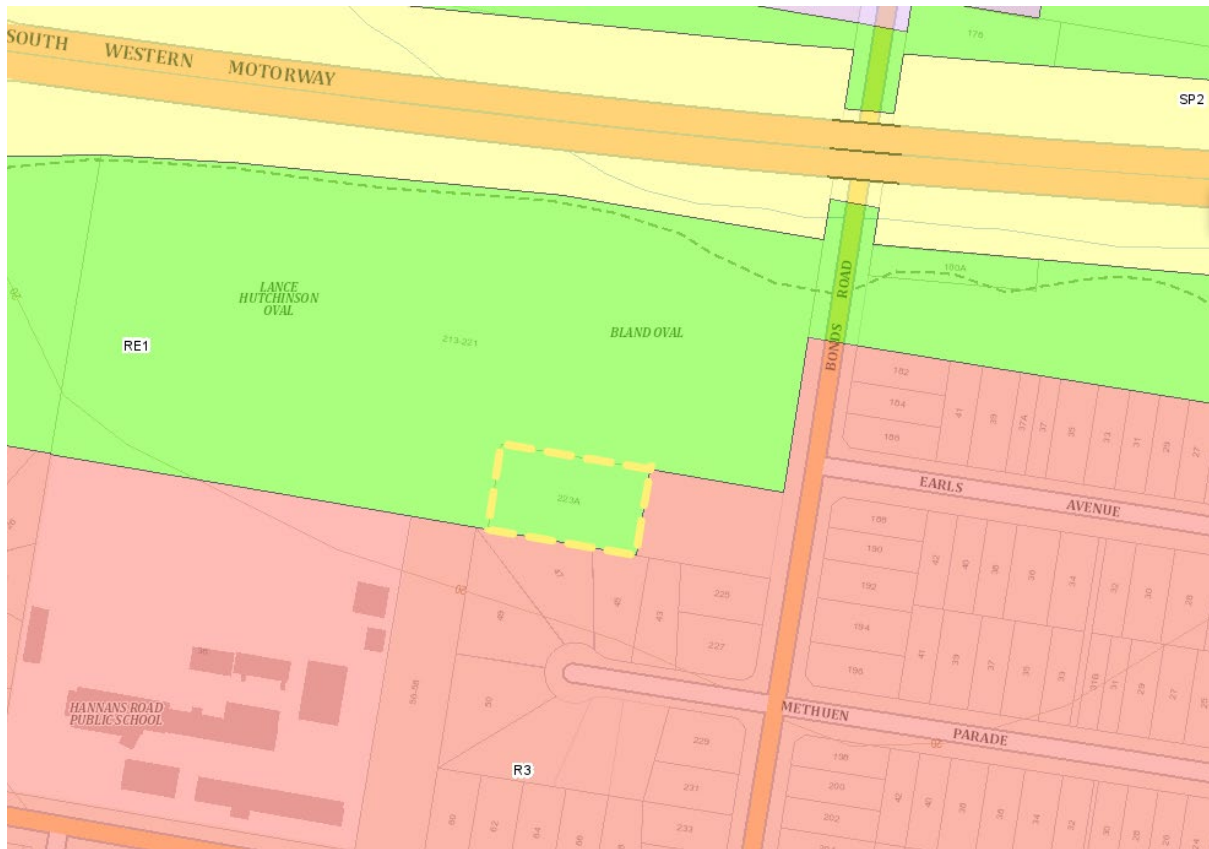


Figure 3 - Land Zoning Map Extract (site outlined in dashed yellow)

The Air League is considered a community facility as defined in the Canterbury Local Environmental Plan 2012, which defines 'Community Facility' as a building or place:

- (a) *owned or controlled by a public authority or non-profit community organisation, and*
- (b) *used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

The Air League is considered a community facility as it is a non-profit community organisation which is for the social and cultural development of the community. The Australian Air League is a youth organisation for boys and girls aged from 8 years which encourages an interest in aviation as a career or as a hobby for the youth of Australia. The organisation is self-funding and is staffed by volunteers.

The proposed installation of the two prefabricated portable structures would be classed as development ancillary and subservient to the main use, as its sole purpose will be for the storage of facilities for the Air Leagues.

Given this, the proposed development would retain and maintain the community facility use of the main building and as such is permissible in the zone with consent.

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 No 55 – Remediation of Land

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

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose. No historical evidence exists to suggest that the site was previously occupied by an activity or a land use that would cause it to be contaminated. As such it is not considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the proposed development pursuant to the provisions of SEPP 55.*

A check of the use historic use of the site does not indicate any industrial or intensive uses it is unlikely to be contaminated and is suitable for the proposed use.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The site is located within land identified as being affected by the Greater Metropolitan Regional Environmental Plan (GMREP) No. 2 – Georges River Catchment, being a deemed State Environmental Planning Policy from 1 July 2009 under the then Clause 120 of Schedule 6 of the Environmental Planning and Assessment Act 1979. 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 it is 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 GMREP No. 2.

Canterbury Local Environmental Plan 2012

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

- *Clause 1.2 Aims of the Plan*
- *Clause 1.3 Land to which Plan Applies*
- *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*

Aims of the Plan

The particular aims of this Plan are as follows:

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

Objectives of zone

The objectives of the RE1 – Public Recreation zone are

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

The prefabricated portable structures are deemed an ‘ancillary building’ as referred to above. The site is not subject to any building height or floor space ratio controls.

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

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

Draft Canterbury Bankstown Consolidated Local Environmental Plan

On 6 March 2020 the Canterbury Bankstown Local Planning Panel endorsed the Planning Proposal to undergo exhibition. The Draft CBLEP was placed on public exhibition from 9 March 2020 until 24 April 2020

The Planning Proposal (PP_2019_CBANK_005) seeks to produce a single set of planning rules and combine and align the Bankstown LEP 2015 and Canterbury LEP 2012 into a consolidated Local Environmental Plan, as follows:

- Produce a single land use table consistent with the Local Strategic Planning Statement, Standard Instrument (Local Environmental Plans) Order 2006 and other State requirements.
- Resolve differences between Bankstown LEP 2015 and Canterbury LEP 2012.
- Comply with the Gateway Determination issued by the Department of Planning, Industry & Environment (dated 20 February 2020), namely the conditions to preclude any changes to residential land uses and development standards, and to preclude the rezoning of any land other than those included in current land use strategies.

The proposed development raises no concerns in relation to the Draft Canterbury Bankstown Consolidated Local Environmental Plan.

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

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

Part A1.4 Aims of this DCP

The DCP aims to:

- (a) Achieve well-designed development that is compatible with its context and acceptable to the community;
- (b) Enhance amenity for people in Canterbury;
- (c) Conserve non-renewable resources;
- (d) Protect natural features and the environment;
- (e) Ensure development in Canterbury functions in a way that meets the needs of the community;
- (f) Facilitate full consideration of human, environmental and servicing requirements in relation to proposed development;
- (g) Allow designers to respond to the individual circumstances of a site;
- (h) Support the LEP and strategic focus for Canterbury; and
- (i) Support a comprehensive development assessment process.

The proposed prefabricated portable structures have a total floor area of 49.28m². Control C6 of Part B1.2.2 – General Parking Provisions in Canterbury Development Control Plan 2012 states that minor alterations and additions which result in an increase of up to 25m² do not attract any additional parking requirement. Typically an ancillary storage area would require a Traffic and Parking Assessment Report (TPAR), however given the proposal is for 2 portable structures of a minimal scale, it is not considered that the submission of a TPAR is required, as any parking and traffic generation would be unlikely due to the nature of the use which would not generate any intensification of staffing or patrons. The recommended conditions of consent also limit the use to storage and if this is to change in the future (for example to office or training space), a car parking assessment would be required and any additional parking requirement would be taken into account at that time.

An assessment of the development application revealed that the proposal generally complies with the matters raised in the above clause of Canterbury Development Control Plan 2012.

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

A planning agreement has not been entered into under section 7.4 of the Environmental Planning and Assessment Act 1979 nor has the applicant offered to enter into a draft planning agreement.

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

The development remains consistent with the provisions contained in the Environmental Planning and Assessment Regulation 2000.

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

The development will not have an impact on the locality for the following reasons;

- The prefabricated portable structures are to be located behind the main Air Leagues Building.
- The structures are proposed adjacent to a hardstand area used for carparking in association with the Punchbowl Bus Company depot at 56-58 Hannans Road, Riverwood and although located near the boundary with the residential properties at 47 Methuen Parade, will not be overly visible and will not result in amenity issues by way of noise, or smells.
- The 2 prefabricated portable structures have a combined floor area 49.28m², and having regard to the size of the adjoining playing fields will not dominate the environment.

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

The site is considered to be suitable to accommodate a storage shed that is used in association with the Air Leagues.

Submissions [section 4.15(1)(d)]

The application was notified for a period of 14 days. No submissions were received.

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

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and the environment are avoided. This has been achieved in this instance hence approval of the development is considered to be in the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, which required, amongst other things, an assessment against the provisions contained within the Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012. As the report has demonstrated the development application is worthy of being supported.

RECOMMENDATION

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

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-279/2021, submitted by Bailey Christopher, accompanied by the drawings as listed in the table below, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

Drawing No.	Drawing Title	Issue	Dated	Prepared by
A103	Proposed Plan	00	22 March 2021	Oger Australia Pty Ltd
A104	Proposed Plan, Elevations and Section	00	22 March 2021	Oger Australia Pty Ltd
A105	Roof Plan	00	22 March 2021	Oger Australia Pty Ltd
STORM-001	Stormwater Details -1	A	20 April 2021	MLE Designs Pty Ltd

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

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

- 3) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 4) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Canterbury Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 5) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 6) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.

- 7) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, evidence of lodgement of an application for a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

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

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

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

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

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

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

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

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

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

- 8) Stormwater runoff from all areas proposed for development shall be collected and connected to the existing stormwater system within the site, subject to the existing system being evaluated by a qualified professional Civil Engineer and found to be structurally adequate and to have the required hydraulic capacity, as required in Council's Canterbury Development Control Plan 2012 Part B5. The existing system shall be upgraded or replaced as necessary to comply with the requirements above.

The plan for the proposed drainage system together with the hydraulic evaluations shall be submitted to the PCA for approval with the application for the Construction Certificate.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 9) The building work in accordance with the development consent must not be commenced until:
- a) a construction certificate for the building has been issued by the council or an accredited certifier, and
 - b) the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

- c) the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 10) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 11) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 12) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 13) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 14) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

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

- 15) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.

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

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

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 17) Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.
- 18) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 19) The stormwater drainage system shall be constructed in accordance with Council's Canterbury Development Control Plan 2012 Part B5 and the engineering plans and details approved by the Principal Certifier. Should the person having benefit of this Determination Notice encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, then he / she must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at his / her own expense.
- 20) The existing internal stormwater drainage system, and the stormwater drainage system draining the site shall be cleaned out, tested for leaks and repaired as necessary. A licensed plumber is to certify that the work has been carried out.
- 21) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 22) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 23) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).

CONDITIONS OF USE

- 24) The portable structures may be used for the purposes of storage only.
- 25) All activity being conducted so that it causes no interference to the existing and future amenity of the adjoining occupations and the neighbourhood in general by the emission of noise, smoke, dust, fumes, grit, vibration, smell, vapour, steam, soot, ash, waste water, waste products, oil, electrical interference or otherwise.

-END-

Canterbury Bankstown Local Planning Panel - 12 July 2021

ITEM 4	DA-117/2020 - 153-155 Penshurst Road, Narwee Demolition of existing on site structures and construction of an eight storey shop top housing development comprising 34 residential units above two retail premises with two levels of basement car parking. The Application is classified as Integrated Development pursuant to the Water Management Act 2000
FILE	DA-117/2020 – Roselands
ZONING	B2 – Local Centre
DATE OF LODGEMENT	14 February 2020
APPLICANT	Cracknell & Lonergan Architects Pty Ltd
OWNERS	Lin's Aust Holdings Pty Ltd
ESTIMATED VALUE	\$14,300,000
AUTHOR	Planning

REPORT

This matter is reported to Council 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-117/2020 proposes the demolition of existing site structures and the construction of an eight (8) storey hop top housing development comprising thirty-four (34) residential apartments above two (2) retail premises with two levels of basement car parking. The Application is classified as Integrated Development pursuant to the Water Management Act 2000.

DA-117/2020 has been assessed against 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 21 days. A total of two (2) submissions were received during this period. The amended application was re-notified for a period of 28 days. No additional submissions were received during this time. In summary, the following concerns were raised in the two (2) submissions received:

- *Privacy impacts.*
- *Outlook impacts.*
- *Solar access impacts.*
- *Structural integrity impacts.*
- *Pollution impacts resulting from demolition and construction phases.*
- *Impacts on Station Lane.*
- *Traffic Impacts.*
- *Maintenance of existing retail premises on the site.*
- *Electrical impacts.*

The Applicant was provided two opportunities to amend the design to address Council's concerns during the assessment phase. The last letter to the Applicant advised they had a final opportunity to amend the design to address the concerns raised.

As outlined within the attached assessment report, the design has somewhat addressed concerns raised by Council in correspondence issued during the assessment of the application. Although consideration to some variations has been deemed acceptable on merit, the proposal still seeks to vary controls that are considered to result in adverse amenity impacts (i.e apartment design, crime prevention measures, acoustic, private open space and setbacks). In addition, the application is still deficient in key information to facilitate a detailed assessment by Council Officers including but not limited to matters relating to Geotech, BASIX, solar access, waste and engineering. Information required to address these matters would likely result in further redesign of the proposal to achieve compliance.

The Applicant has been provided adequate opportunity to address the matters raised throughout the duration of the assessment process.

It is therefore recommended that the Application be refused.

POLICY IMPACT

This matter has no direct policy implications

FINANCIAL IMPACT

This matter has not direct financial implications

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Reasons for Refusal

DA-117/2020 ASSESSMENT REPORT

BACKGROUND

On 14 February 2020, DA-117/2020 was submitted to Council by Cracknell & Lonergan Architects Pty Ltd for the demolition of existing on-site structures and the construction of a nine storey shop top housing development comprising 39 residential units above four retail premises with two levels of basement parking. The Application was initially publicly advertised for 21 days. Two submissions were received during this period.

On 6 July 2020, Council issued an additional information request letter raising the following concerns based on a preliminary assessment:

- Updated survey required.
- Additional information required to address the requirements of State Environmental Planning Policy 55 – Remediation of Land.
- Non-compliances with requirements of the Apartment Design Guide (ADG) including presentation to the street, communal open space, building separation, solar access, floor to ceiling heights, private open space and storage.
- Non-compliance with maximum building height development standard outlined within Canterbury Local Environmental Plan 2012 (CLEP 2012).
- Additional information required to determine compliance with the requirements outlined within Clause 6.2 – Earthworks and Clause 6.6 – Essential Services within CLEP 2012.
- Non-compliances with controls outlined within Canterbury Development Control Plan 2012 (CDCP 2012) relating to building design, building services, overshadowing, setbacks, façade treatment and roof design.
- Concerns raised by Council’s Traffic, Engineering, Waste, Urban Design and Environmental Health Officers.

The above information was requested to be provided by 27 July 2020. Two extensions were provided and some of the requested information was received on 10 September 2020 and 24 November 2020. The amended design comprised an eight storey development consisting of three retail tenancies on the ground floor with 33 apartments located above.

On 18 March 2021, a further additional information request letter was issued raising the following concerns:

- An updated BASIX to be provided.
- Non-compliances with the requirements of the ADG regarding communal open space, building separation, pedestrian entries, solar access, apartment design and private open space.
- Additional information required to determine compliance with the requirements outlined within Clause 6.2 – Earthworks and Clause 6.6 – Essential Services within CLEP 2012.
- Non-compliances with controls outlined within Canterbury Development Control Plan 2012 (CDCP 2012) relating to parking, landscaping, crime prevention, dwelling mix, building services, overshadowing, setbacks, façade treatment and roof design.
- Concerns raised by Council’s Engineering, Waste and Urban Design Officers.

It is noted that a number of matters raised in this letter were reiterated from Council's initial letter. The Applicant was provided a final opportunity to amend the application to address the matters raised. The information was due to be submitted on 8 April 2021. A request for an extension to provide the information was granted and the information was received on 30 April 2021.

The assessment below is based on the information currently before Council.

For the reasons outlined within this report, the proposal is recommended for refusal.

SITE & LOCALITY DESCRIPTION

The subject site is known as 153-155 Penshurst Road, Narwee and is legally described as Lot V in DP 36397. The site is an irregular allotment that is zoned B2 Local Centre. It has a primary frontage to Penshurst Road of 26.31m and a secondary frontage to Station Lane of 23.69m and a total site area of 864.6m² (by calculation). It falls approximately 1m from the western boundary to the eastern boundary.

The subject site currently comprises a two storey shoptop housing development containing ground floor retail premises with a single level of residential development located above. It is accessed via both Penshurst Road and Station Lane. There are approximately 8 car parking spaces partially located on the subject site and Penshurst Road for public use.



Figure 1: Aerial of subject site in blue. **Source:** NearMaps 2020

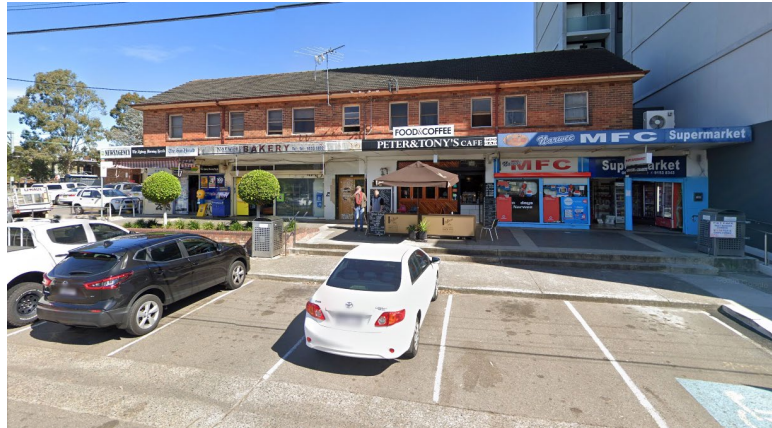


Figure 2: Subject site, view from Penshurst Road

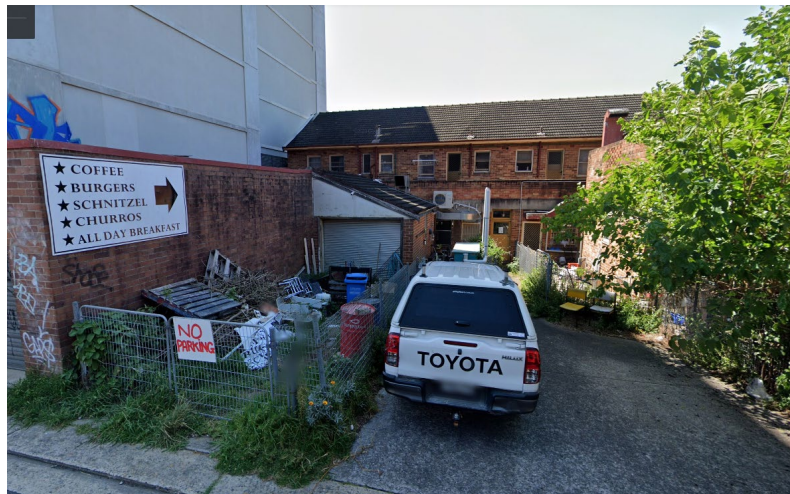


Figure 3: Subject Site, view from Station Lane

Adjoining the site to the south is an existing Service Station with Hannans Road located beyond. Narwee Railway Station is located on the opposite side of Hannans Road. Directly adjoining the site to the north is a recently completed nine (9) storey shop top housing development which extends to Wyatt Parade. To the east is Penshurst Road with B2 and R4 zoned land located beyond. Narwee Hotel and three storey residential flat buildings are located on the opposite side of Penshurst Road. To the west of the site is Station Lane with R4 residential zoned land located beyond comprising three (3) storey residential flat building developments owned by NSW Land and Housing Corporation.



Figure 4: Existing Service Station to the south of the subject site



Figure 5: Existing Shop Top Housing Development to the north of the subject site

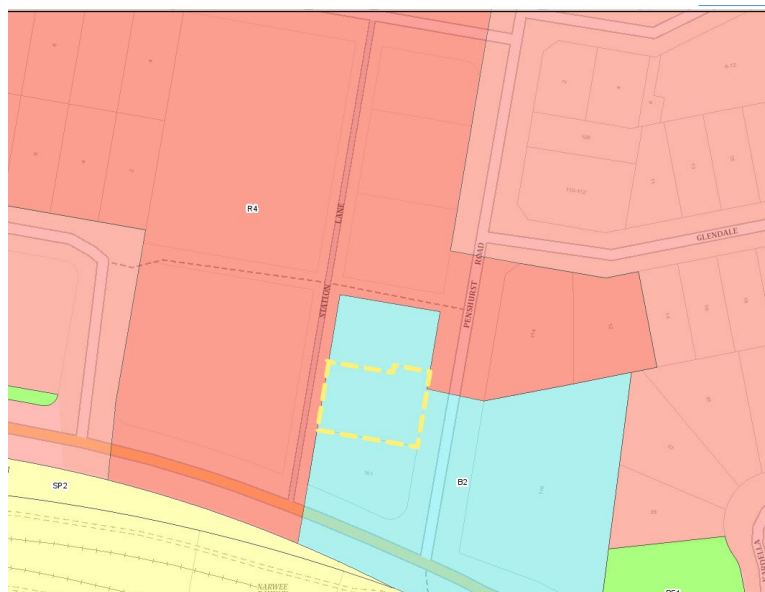


Figure 6: Zoning Map (subject site outlined in yellow)

PROPOSED DEVELOPMENT

The Development Application (DA) seeks development consent for the demolition of existing structures and the construction of an eight (8) storey shop top housing development incorporating two (2) x retail tenancies, thirty-four (34) residential apartments with two (2) levels of basement car parking and rooftop communal open space.

The specifics of the development are as follows:

Floor	Description
Lower Basement Level	<ul style="list-style-type: none"> • 23 x car parking spaces including 3 x accessible parking spaces. • 1 x car wash bay • Single lift core • Stair access • Storage
Upper Basement Level	<ul style="list-style-type: none"> • 11 x car parking spaces. • 6 x residential visitor car parking spaces including 1 x accessible space. • 1 x retail visitor car parking space. • 17 x bicycle spaces. • Electrical room. • Storage. • Single lift core. • Stair access
Ground Floor	<ul style="list-style-type: none"> • 2 x retail tenancies with a combined gross floor area of 274sqm. Each tenancy comprises its own direct pedestrian access from Penshurst Road. • Access to the residential component of the development from Penshurst Road. • Cleaners Rooms. • Mechanical Plant room. • Detention tank. • Separate commercial and residential bin storage areas including bulky garbage room. • Separate vehicular access for the residential and commercial component of the development from Station Lane. • 4 x retail car parking spaces (including 3 x visitor retail). • Single lift core • Stair access. • Hydrant. • Kiosk.
Level 01	<ul style="list-style-type: none"> • 2 x studio apartments. • 1 x one bedroom apartment. • 3 x two bedroom apartments. • 1 x three bedroom apartment. • 2 x communal courtyards

	<ul style="list-style-type: none"> • Single lift core • Stair access
Level 02	<ul style="list-style-type: none"> • 2 x studio apartments. • 1 x one bedroom apartment. • 3 x two bedroom apartments. • 1 x three bedroom apartment. • Single lift core • Stair access
Level 03	<ul style="list-style-type: none"> • 2 x studio apartments. • 3 x two bedroom apartments. • 1 x three bedroom apartment. • Single lift core • Stair access
Level 04	<ul style="list-style-type: none"> • 1 x two bedroom apartment • 3 x three bedroom apartments • Single lift core • Stair access
Level 05	<ul style="list-style-type: none"> • 1 x two bedroom apartment • 3 x three bedroom apartments • Single lift core • Stair access
Level 06	<ul style="list-style-type: none"> • 3 x two bedroom apartments • 1 x three bedroom apartment. • Single lift core • Stair access
Level 07	<ul style="list-style-type: none"> • 1 x two bedroom apartment. • 1 x three bedroom apartments. • 169.6sqm communal open space. • Single lift core • Stair access

Statutory Considerations

When determining this application, the relevant matters listed in Section 4.15(1) 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:

- Water Management Act 2000
- State Environmental Planning Policy 55 – Remediation of 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 (Building Sustainability Index: BASIX) 2004
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

SECTION 4.15 ASSESSMENT

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

Water Management Act 2000

A Geotechnical Report prepared by EI Australia dated 2 December 2016 accompanied the application. The report does not reflect the amended plans submitted and therefore insufficient information has been provided to determine whether the recommendations of the report reflect the proposed design.

Page 10 of the report states that groundwater seepage was observed in the monitoring wells. The application was notified as Integrated Development (pursuant to Clause 91 of the Water Management Act 2000) as a result, however was not referred to National Resources Access Regulator (NRAR) as required given that Council was not supportive of the amended design.

Environmental planning instruments [section 4.15(1)(a)(i)]**State Environmental Planning Policy 55 – Remediation Land (SEPP 55)**

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

The Applicant submitted a Phase 1 Desktop Site Contamination Investigation report. The report concludes that the site has primarily been used as retail premises and no topsoil or significant landscaping is provided on site. On this basis, and given the site does not appear to have had any industrial or intensive uses, it is unlikely to be contaminated and is suitable for the proposed use.

The report does not consider the existing service station that adjoins the site to the south and its potential implications on the contamination of the subject site. The application has been referred to Council's Environmental Health Officer who required a Detailed Site Investigation Report and Hazardous Materials (HAZMAT) Report to be prepared for Council's consideration.

A Remediation Action Plan (RAP) and HAZMAT Report was prepared by EI Australia and submitted by the Applicant, at the request of Council. The RAP concludes that the site will be suitable for the proposed development upon remediation and the HAZMAT report outlines a number of recommendations to ensure any hazardous materials are removed and disposed of appropriately. The recommendations of the report could form part of the conditions of consent, should the application be supported. Furthermore, Council's Environmental Health Officer reviewed the application and raises no objection subject to conditions of consent.

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

Ausgrid

The proposed development involves works within five metres of overhead powerlines and requires the installation of a new substation. In accordance with clause 45 of SEPP 2007, a referral to the electricity supply authority for the area was made.

In response, have assessed the plans and advised the application is supported subject to conditions which could be incorporated into any consent, should the application be supported.

Sydney Trains

The subject site is located greater than 25m from the Railway Corridor to the south and therefore the application was not required to be referred to Sydney Trains for concurrence pursuant to Clause 86 of SEPP 2007. However, the application was referred to Sydney Trains during the notification period (as a neighbouring site) for comment. No comments were received.

Notwithstanding the above, given the site's close proximity to the railway corridor and the proposed use of the site, the noise levels recommended within Clause 87 of SEPP 2007 were considered. Council's Environmental Health Officer requested that an acoustic report be submitted to consider the potential noise impacts generated by the railway corridor on the subject site.

An Acoustic Assessment prepared by Pulse Acoustic Consultancy Pty Ltd was submitted. The report outlines a number of recommendations, including but not limited to, glazing, sealing, mechanical ventilation and use of communal space to ensure any potential acoustic impacts to future residents of the site as well as adjoining receivers is minimised. Such recommendations could be incorporated as conditions of consent. Council's Environmental Health Officer reviewed the application and raises no objection subject to conditions of consent.

Roads and Maritime Services (RMS)

The subject site is not located on or adjoining a classified road and therefore the application was not required to be referred to Roads and Maritime Services (RMS) pursuant to Clauses 101 and 102 of SEPP 2007.

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

In accordance with BASIX SEPP, a BASIX Certificate accompanied this application (Certificate No. 1063996M dated 19 December 2019). 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 the objectives of the SEPP. However, the BASIX Certificate has not been updated to reflect the amended proposal, as per Council's request. The Certificate submitted notes that the proposal incorporates 39 apartments, however the amended design consists of 34 apartments. Therefore, the Certificate submitted cannot be relied upon.

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.

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. A Design Verification Statement prepared by Peter Lonergan from the office of Cracknell & Lonergan Architects Pty Ltd dated 5 February 2020 accompanied the application.

The principles outlined within Schedule 1 of SEPP 65 are discussed as follows:

Principle 1: Context and Neighbourhood Character

The development is generally consistent with Council's height controls and will generally align with the desired future character of the locality. As outlined within the assessment, the design does not comply with the minimum front setback controls. At this stage, design alterations required to achieve compliance would result in non-compliances with the applicable private open space provisions. Therefore, it is considered that further design changes are required to ensure the proposed design aligns with the existing and future desired character of the area.

Principle 2: Built Form and Scale

The development is generally consistent with Council's height controls. In terms of bulk and scale, as outlined within the body of the report below, variations to the minimum building separation requirements are considered acceptable on merit. However, additional design changes are required to ensure the design is in keeping with the existing and future desired character of Penshurst Road (i.e. compliant front setbacks).

In addition, given the variations sought to the internal design of apartments and the lack of information provided to determine compliance with solar and acoustic matters, Council is not satisfied that a suitable level of amenity will be afforded to future occupants of the building. Acceptance of the variety of non-compliances would not be in keeping with the desired built form and scale of development envisaged for the area.

Therefore, the proposed design is not considered appropriate in terms of scale and bulk.

Principle 3: Density

For the reasons outlined in Principle 2, the density of the proposed development is an unreasonable response to the desired future context and built form.

Principle 4: Sustainability

Insufficient information has been submitted to determine whether the development incorporates suitable sustainable features as an updated BASIX Certificate was not submitted.

Principle 5: Landscape

The proposal incorporates landscaping on Levels 1, 4, 6 and the rooftop. Although the design doesn't incorporate any deep soil area, the proposed landscape area and design satisfies the ADG guidance for sites where the ground floor comprises 100% site coverage, such as the subject design.

Further, all the proposed apartments have access to private open space, in the form of balconies. The proposal satisfies the relevant landscaping requirements of the ADG and CDCP 2012.

Council's Landscape Architect has reviewed the design and is supportive, subject to conditions of consent should the application be supported.

Principle 6: Amenity

The proposed design does not satisfy the design requirements relating to apartment design, apartment size and private open space outlined within the Apartment Design Guide (ADG). Furthermore, insufficient information has been submitted to determine whether the design complies with the minimum solar access and acoustic requirements outlined within the ADG.

Based on the information submitted, the proposal in its current form, is not considered to provide adequate amenity for future residents of the development.

Principle 7: Safety

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

However, there is concern with the design of the ground floor. The design relies on the shared use of the residential lobby by commercial patrons as well as the shared parking arrangement within the basement. It is considered that this design could be improved to reduce any potential safety impacts associated with the shared use arrangement.

Principle 8: Housing Diversity and Social Interaction

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

Principle 9: Aesthetics

It is Council's view that an improved variety of materials and finishes could be incorporated into the design to improve the streetscape appearance whilst also reducing the potential for vandalism. Furthermore, the non-compliance with the relevant built form standards increases the perception of bulk, as well as adversely impacts the internal and external amenity. Therefore, it is considered that the aesthetics of the building and its presentation to the locality could be improved further.

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 minimised. 	<p>Blank walls are avoided, where possible.</p> <p>The building has been designed to incorporate private open space/habitable rooms facing the adjoining streetscapes to facilitate passive surveillance.</p> <p>The ground floor has been designed to enable direct access from the street.</p> <p>Letterboxes are provided at the residential entrance.</p> <p>The entrance to the residential component is demarcated using double doors and increased setback from the street.</p>	Yes

Section	Design Criteria	Proposed	Complies
3D Communal and Public Open Space	Communal open space has to have a minimum area equal to 25% of the site. Total site area is 860m ² , requiring a minimum 215m ² Min 6m dimension.	269.8sqm (31%). The amended design has incorporated communal open space on the first floor to ensure the design meets the minimum area requirement. Although this is achieved, it is considered that the location is not well considered given the potential impact on the amenity of the adjoining apartments. No updated acoustic report has been submitted to ensure appropriate noise mitigation measures are incorporated in the design to support the location of the communal area or whether such noise mitigation measures will impact on the natural ventilation of these properties. Furthermore, no appropriate shading devices are incorporated into the communal landscape areas to provide for weather protection.	Yes – however concern with design
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The rooftop communal open space area receives solar access to more than 50% of the area between 11am-3pm.	Yes

Section	Design Criteria			Proposed	Complies
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions:			Nil	N/A
	Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)	The design guidance within Part 3E notes that achieving the deep soil design criteria may not be possible in some instances including where there is 100% site coverage or non-residential uses at the ground floor. This applies to the subject development as the ground floor of the development is covered by retail premises, an entrance to the residential component and parking and service areas. In this instance, the deep soil design criteria is not applicable.	
	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			

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:			For the purposes of the assessment below, reference to the floors is as shown on architectural plans.	Refer to Comment [1] below for further consideration of non-compliances noted.
	Building Height	Habitable Rooms & Balconies	Non-habitable Rooms	North	
	Up to 12m (4 storeys)	6m	3m	1st Floor: 4.35m (high sill)	No
	Up to 25m (5-8 storeys)	9m	4.5m	2nd Floor: 4.35m (high sill)	No
				3rd Floor: 4.35m (high sill)	No
				4th Floor: 4.35m (high sill)	No
				5th Floor: 4.35m (high sill)	No
				6th Floor: 4.35m (high sill)	No
				7th Floor: 4.35m (high sill)	No
		Note: An increased 3m building separation is required given the land to the west is a different zone (R4 High Density Residential) that permits lower density residential.			South
			1st Floor: 4m (high sill)	No	
			2nd Floor: 4m (high sill)	No	
			3rd Floor: 4m (high sill)	Yes	
			4th Floor: 4m (high sill)	No	
			5th Floor: 4m (high sill)	No	
			6th Floor: 4m (high sill)	No	
			7th Floor: 4m (high sill)	No	
			West (measured from other side of laneway)		
			1st Floor: Min 9.3m	Yes	
			2nd Floor: Min 9.3m	Yes	
			3rd Floor: Min 9.3m	Yes	
			4th Floor: Min 12.2m	Yes	
			5th Floor: 13.9m	Yes	
			6th Floor: 16.2m	Yes	
			7th Floor: 18.3m	Yes	

Section	Design Criteria	Proposed	Complies
		Within Site 1st Floor: Min 9m (high sill) 2nd Floor: Min 9m (high sill) 3rd Floor: 9m (high sill) 4th Floor: Min 9m (high sill) 5th Floor: 9m (high sill) 6th Floor: Min 8m (habitable to blank) 7th Floor: Min 8m (high sill)	No No No No No No No
3J Bicycle and Car Parking	For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements as set out in the table below. Otherwise, the CDCP 2012 controls apply.	The site is within 800m walking distance of Narwee Railway Station. Based on Council's calculations, the parking generation rate outlined within CDCP 2012 is lesser than the RMS guidelines and therefore the rates in CDCP 2012 apply. Refer to CDCP 2012 section of this report for assessment.	N/A
	The car parking needs for a development must be provided off street.	Parking is provided within the basement.	Yes

Section	Design Criteria	Proposed	Complies
3G Pedestrian Access and Entries	Multiple entries should be provided to activate the street edge.	Multiple entries provided along Penshurst Road frontage.	Yes
	Entry locations relate to the street and subdivision pattern / existing pedestrian network.	Entry locations relate to existing pedestrian network.	Yes
	Building entries should be clearly distinguishable from private entries.	Residential entry is distinguishable by virtue of the double doors, increased setback within the building and location of signage.	Yes
	Building access areas (lift lobbies, stairwells and hallways) should be clearly visible from public domain and communal spaces.	Residential lobby and lift is visible from street front.	Yes
	Minimise ground floor and underground level changes along pathways and entries. Steps and ramps integrated into design.	Building has been designed to reflect adjoining pathway levels where possible. A passenger lift has been included in the design on the ground floor to provide for disabled access to the parking area at the rear of the site in addition to the stairs.	Yes
	Provide way finding maps for large developments. Electronic access and audio/video intercoms required.	Can be conditioned	Yes – via condition of consent should the application be supported
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.	It is acknowledged that the existing development to the north of the subject site coupled with the orientation of the	No – additional information required

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	<p>site may impact the level of solar access afforded to the site. However, insufficient information has been provided to determine whether the amended design complies, or the level of solar access received is acceptable.</p> <p>Firstly, the view from the sun diagrams don't match floor plans (particularly levels 3 and 4 facing east).</p> <p>Furthermore, not all levels on the view from the sun diagrams incorporate balustrades. As outlined within this report, the sole use of glass balustrading is not supported. Therefore, through the inclusion of a more solid balustrades and the inclusions of balustrades in general, there is concern that the design may result in a further non-compliance than that shown in the plans submitted.</p>	

Section	Design Criteria	Proposed	Complies
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.	Conservatively a total of 22 of the 34 apartments are naturally cross ventilated (total of 64.7%). This is excluding apartments 1.01, 1.03, 1.04 and 1.07 on the ground floor. As raised earlier within this report, an updated acoustic report has not been submitted to determine whether the windows adjoining the communal areas on Level 1 can be open whilst complying with relevant noise criteria. Therefore, these have been excluded to present a worst case scenario. The acoustic report submitted also recommends mechanical ventilation be incorporated into the design to ensure relevant noise criteria is met for the external facades. Air conditioning is provided to each apartment.	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	All cross through apartments are less than 18m when measured glass line to glass line.	Yes

Section	Design Criteria	Proposed	Complies
4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Ground Floor: 4.5m floor to floor	Yes
	Minimum Ceiling Height for Apartment and Mixed Use Buildings	Upper residential floors: minimum 3.1m floor to floor.	Yes
	Habitable rooms		
	Non-habitable		
	For 2 storey apartments		
	2.7m		
	2.4m		
	2.7m main living area floor 2.4 for second floor, where its area does not exceed 50% of the apartment area		
	These minimums do not preclude higher ceilings if desired.		
4D Apartment Size and Layout	Apartment are required to have the following minimum internal areas:	All apartments comply with the minimum internal area requirements with the exception of apartments 5.03 and 5.04 which don't comply with the minimum 95sqm area requirement for a 3 bedroom apartment that consists of more than 1 bathroom as they measure 93sqm.	No
	Apartment Type		
	Studio		
	1 bedroom		
	2 bedroom		
	3 bedroom		
	35m ² 50m ² 70m ² 90m ²		
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.		

Section	Design Criteria	Proposed	Complies
	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.	Can be conditioned.	Yes – via condition of consent should the application be supported
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Apartments 1.05, 1.06, 2.05, 2.06, 3.04 and 3.05 comprise a room depth greater than 8m. it is noted that this could potentially be conditioned, however it is unknown how bringing the kitchen area forward will impact on the width and circulation of the living/dining area. Therefore, it is considered revised plans demonstrating compliance would be the preferred outcome.	No
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	All master bedrooms have a minimum area of 10m ² and all other bedrooms have a minimum area of 9m ² (excluding wardrobe).	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m (excluding wardrobe).	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 	The combined living/dining rooms within each apartment comply with the minimum width requirements.	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 cross through apartments are at least 4m wide internally.	Yes															
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	The following apartments do not comply with the minimum area requirements:	No															
	<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	Studio:2.05, 2.06, 3.04, 3.05
	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														
		1 bed: 1.02																
		2 bed: 1.04(<1m included in area), 1.03, 2.03, 6.02. 7.02																
		NB: The areas above exclude area utilised by air conditioning units and areas that comprise <1m balcony depth.																
		As outlined within the CDCP 2012 section of this report, the building does not comply with the 5m front back controls in certain instances. Compliance with the setback control would render some affected balconies non-compliant with the minimum depth requirements and therefore the amended design may result in further non-compliance to minimum private open space requirements.																
	The minimum balcony depth to be counted as contributing to the balcony area is 1m.																	

Section	Design Criteria	Proposed	Complies										
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Maximum 7 apartments off the single circulation core.	Yes										
4G Storage	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <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> <div>At least 50% of the required storage is to be located within the apartment.</div>	Dwelling type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	All apartments comprise sufficient storage space.	Yes – via condition of consent should the application be supported.
Dwelling type	Storage size volume												
Studio apartments	4m ³												
1 bedroom apartments	6m ³												
2 bedroom apartments	8m ³												
3+ bedroom apartments	10m ³												

4H Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses	Building separation is considered acceptable.	Yes
	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	Corridors are located directly above each other on each floor. No sensitive rooms directly adjoin the corridors.	Yes
	Rooms with similar noise requirements are grouped together	Rooms with similar noise requirements are grouped together, where possible.	Yes
	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	Windows serving bedrooms on the first floor directly adjoin the communal open spaces on this level. As outlined within this report, it is noted that a high sill window is applied to these affected areas. However, without an updated acoustic report that considers this design, the potential acoustic impacts and associated mitigation measures to maintain appropriate acoustic privacy cannot be determined. Without such, this design is undesirable. No bedrooms are proposed to be directly adjoining the driveway or building services.	No

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>The development has been designed to appropriately address the street, particularly at ground level, to activate the street frontage along Penshurst Road. The design doesn't incorporate any blank walls along Penshurst Road</p>	Yes
	<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>Generally, the residential and commercial uses are adequately separated. However, the revised design incorporates integrating the residential and retail parking spaces on the upper basement level. Furthermore, pedestrian access from the retail parking area at the ground floor relies on the residential lobby which raises safety and operational concerns.</p>	No
	<p>Landscaped communal open space should be provided at commercial podium or roof levels</p>	<p>Landscaping is incorporated into the communal areas on first floor and the rooftop.</p>	Yes

Further discussion is provided below with respect to visual privacy (building separation).

[1] Part 3F – Visual Privacy

Part 3F-1 of the ADG specifies minimum separation distances between windows and balconies of a development. The proposed design does not comply with the minimum building separation requirements to the northern boundary, southern boundary and within the site as outlined within the table above.

The objective of Part 3F is:

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

In terms of non-compliances to the northern and southern boundary, high sill windows have been applied to the impacted windows (both habitable and non-habitable).

Within the site, high sill windows have been incorporated to the impacted windows. Where possible, windows are offset and where offset is not possible, additional screening has been incorporated in addition to the high sill window.

On this basis, it is considered that despite the proposed variation, the design is consistent with the objective of the control and could be enforced via condition of consent should the application be recommended for approval.

Canterbury Local Environmental Plan 2012 (CLEP 2012)

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

Clause 1.2 Aims of Plan

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

- (a) to provide for a range of development that promotes housing, employment and recreation opportunities for the existing and future residents of Canterbury,*
- (b) to promote a variety of housing types to meet population demand,*
- (c) to ensure that development is of a design and type that supports the amenity and character of an area and enhances the quality of life of the community,*
- (d) to create vibrant town centres by focusing employment and residential uses around existing centres and public transport nodes,*
- (h) to protect the natural environment for future generations and implement ecological sustainability in the planning and development process,*
- (i) to protect and promote the environmental and cultural heritage values of Canterbury.*

The development is consistent with the aims of the plan.

Clause 2.3 Zone objectives and Land Use Table

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

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

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.*

The proposed development meets the objectives of the B2 zone as it provides for a mixed use development, containing ground floor retail premises, within an accessible location. The site is located within close proximity to Narwee Railway Station which will maximise public transport patronage as well as encourage walking and cycling.

Provision/ Standard	Requirement	Proposal	Complies
Part 2 Permitted or Prohibited Development			
2.1-2.3 Zoning	B2 Local Centre	The proposed shop top housing development is permitted with consent.	Yes
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Demolition is proposed.	Yes
Part 4 Principal Development Standards			
4.3 Height of Buildings	27m	Maximum 26.47m (RL 63.3 – RL 36.83). As outlined earlier within this report, the rooftop communal open space does not incorporate any shading device. Should the application have been recommended for approval, appropriate conditions could have been incorporated into the consent to provide for an appropriate shading device to be incorporated into the rooftop communal open space whilst still complying with the maximum building height standard, based on the current design.	Yes
4.4 Floor Space Ratio	N/A	N/A	N/A

Provision/ Standard	Requirement	Proposal	Complies
Part 6 Local Provisions			
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. 	<p>As outlined earlier within this report, a Geotech Report prepared by EI Australia dated 2 December 2016 was submitted with the application. The plans outlined within the report do not match those submitted and therefore it is unknown as to whether the recommendations can be relied upon.</p> <p>In regard to contamination of the site, a Remedial Action Plan (RAP) was prepared by EI Australia, dated 8 September 2020 and submitted as part of the application. Council's Environmental Health Officer has reviewed the report and raised no objection, subject to conditions of consent should the application be supported.</p>	Unknown
6.4 Stormwater Management	<p>Consent must not be granted unless:</p> <ul style="list-style-type: none"> (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. 	<p>Council's Development Engineer has reviewed the application and raises no objection to the stormwater design.</p>	Yes

Provision/ Standard	Requirement	Proposal	Complies
6.6 Essential Services	<p>Essential services must be available or adequate arrangements have been made to make them available, including:</p> <ul style="list-style-type: none"> - 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 subject site has adequate water supply, stormwater and sewage connection and vehicular access. An electrical substation is provided at the rear of the site and its integrated within the design to meet Ausgrid requirements. The substation is encased by a perforated screen which correlates with the waste and vehicle entry points.	Yes

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

Draft Canterbury Bankstown Consolidated Local Environmental Plan

On 30 June 2020, the Canterbury Bankstown Local Planning Panel endorsed the Planning Proposal (PP_2019_CBANK_005) to proceed to the Department of Planning, Industry and Environment for finalisation and making. The Planning Proposal seeks to produce a single set of planning rules and align the Bankstown LEP 2015 and Canterbury LEP 2012 into a consolidated Local Environmental Plan. The Planning Proposal however does not propose any change to the planning or development provisions relating to this site.

As the Planning Proposal has been exhibited it must be considered under Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The Draft CBLEP also seeks to insert a saving provision "If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies, and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced".

The proposed development will not impact the Draft CBLEP and is considered consistent with the CBLEP.

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

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

Canterbury Development Control Plan 2012 (CDCP 2012)

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

Part B1 – Transport and Parking

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

Standard	Requirement	Proposal	Complies
Residential Car Parking	<ul style="list-style-type: none"> • Studio: 0.5 space per dwelling ($6 \times 0.5 = 3$ spaces required). • 1 bedroom: 1 space per dwelling ($2 \times 1 = 2$ spaces required). • 2 bedrooms: 1 space per dwelling ($15 \times 1 = 15$ spaces required). • 3 bedrooms: 1 space per dwelling ($11 \times 1 = 11$ spaces required). • Visitor: 0.15 space per dwelling = 5.1(5) spaces required. • Car wash bay: 1 car wash bay. <p>Total: 31 residential spaces, 5 visitor spaces plus 1 x car wash bay required.</p>	<p>The design incorporates 40 residential car parking spaces (including 6 visitor spaces) and 1 car wash bay.</p> <p>However, only 3 adaptable spaces are provided for the 4 adaptable residential apartments proposed. Therefore, the surplus of parking may not be as per calculated once the design is amended to accommodate the additional required adaptable parking space as well as the other parking matters highlighted within this report.</p>	Yes.
Residential Bicycle Parking	<ul style="list-style-type: none"> • Residents: 1 space per 5 dwellings (6.8) spaces required). • Visitors: 1 space per 10 dwellings (3.4) spaces required) <p>Total: 10.2 (10) spaces required.</p>	11 bicycle spaces proposed.	Yes
Retail Car Parking	1 space per 40smq = 6.85 (7) spaces required.	<p>5 retail parking spaces proposed therefore the design is deficient two spaces.</p> <p>It is noted that there is a surplus of residential car parking spaces. The proposed layout requires the non-residential and residential uses to mix in the basement which is contrary to contrary to Control C26 in part B1.4.6 of CDCP 2012 and also poses as a safety risk. The</p>	No

		reallocation of residential parking to retail to ensure compliance will result in further non-compliance. Furthermore, the reliance on two entry points for the retail component would be confusing for users in itself and is not considered appropriate from an operational perspective.	
Retail Bicycle Parking	Staff: Minimum 1 space per 300m ² = 1 space Patrons: Minimum 1 space per 500m ² GFA over 1,000m ² = Nil	No retail bicycle spaces proposed. It is noted that the one space requirement could be conditioned should the application be supported.	Yes – via condition of consent

Council's Development Engineer raised concern with the basement design. Their comments are detailed below in the referral section of this report.

The application was also referred to Council's Traffic and Transport Division who raised no objection, subject to conditions of consent.

Part B2 – Landscaping and Part B3 – Tree Preservation

The application was referred to Council's Landscape Architect who raised concern regarding the street trees proposed along the Penhurst Road frontage. Due of the height of the awning, alternative smaller species for the street planting needs to be considered. The mature height of the proposed trees should be lower than 4.5m to create better screening in the pedestrian's eye level. It is encouraged to have more than three trees for better pedestrian experience. The awning could then be a width of 3m along the entire length of the façade. This matter, as well as other comments raised by Council's Landscape Architect could be dealt with by conditions of consent should the application be recommended for approval.

Part B4 – Accessible and Adaptable Design

The disability access report prepared by Lindsay Perry Access was submitted as part of the development application. 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. The recommendations of the report could be incorporated into conditions of consent, should the application be approved.

Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no objection with the current design from a stormwater and flood management perspective.

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 design does not create blind corners.	Yes
	Provide natural surveillance for communal and public areas.	The ground floor retail design allows for natural surveillance of Penshurst Road. At least one habitable room of each of the residential apartments located on the upper floors are orientated towards the adjoining streetfronts to facilitate natural surveillance.	Yes
	Provide clearly visible entries.	The entry points to the retail components are clearly defined along the ground floor. The residential entry point is also clearly visible and is setback within the building with double doors which assists with its demarcation and distinction from the other retail entry points.	Yes Yes
	Design the fence to maximise natural surveillance from the street to the building.	No fence proposed.	N/A
	Avoid landscaping that obstructs natural surveillance.	The proposed landscaping on the ground floor and upper levels will not obstruct natural surveillance.	Yes
	Ensure buildings are clearly identified by street numbers.	Can be conditioned.	Yes – via condition of consent should the application be supported
	Use materials that reduce the opportunity for vandalism.	There is concern that the proposed rendering on the ground floor along the southern and western elevations provide opportunity for vandalism.	No

	Provide an appropriate level of security for individual dwellings, car parks and communal areas through use of intercoms, self closing doors and signage.	As raised within this report, there is concern regarding the combined use of the residential lobby by the commercial patrons/staff as well as the shared basement parking arrangement.	No
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Part B9 - Waste

The application was referred to Council's Project Officer – Resource Recovery who raised concerns with the current design. The concerns raised are detailed later within this report.

- C5 - Shop Top Housing

The table below provides an assessment of the proposed design against the relevant controls outlined in Part C5 of CDCP 2012.

Standard	Requirement	Proposal	Complies
C5.2.1.3 – Balconies and Communal Open Space	The apartment layout and communal open space requirements specified within the ADG override the balcony and communal open space controls outlined within Part C5.2.1.3 of CDCP 2012. An assessment of the proposal against these ADG controls has been undertaken earlier within this report.		
C5.2.1.4 – Layout and Orientation	Orientate development to maximise solar access and natural lighting.	The site comprises an east-west orientation. The apartments have been designed to comprise a westerly or easterly orientation to maximise solar access, where possible.	Yes
	Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	Further information required (refer to solar access below)	Unknown
	Site new development and private open space to avoid existing shadows cast from nearby dwellings.	No habitable windows have been incorporated along the northerly elevation to avoid shadows cast by the existing building to the north of the site.	Yes
	Site a building to take maximum benefit from cross-breezes and prevailing winds.	The design of the building benefits from the prevailing winds. At least 60% of the apartments are cross ventilated.	Yes
	Do not compromise the creation of active street frontage or casual surveillance of the street,	Given the east-west orientation of the site, the development has not	Yes

	communal space and parking areas, through the required orientation.	compromised the creation of an active street front. The primary street front is orientated to Penshurst Road, which is in keeping with the character of the area.	
C5.2.2.1 – Floor Space Ratio	The development is to comply with the maximum FSR development control stipulated within CLEP 2012.	A maximum FSR development standard does not apply to the site pursuant to CLEP 2012.	N/A
C5.2.2.2 – Floor to Ceiling Height	The floor to ceiling heights specified within the ADG override the floor to ceiling height controls outlined within Part C5.2.2.2 of CDCP 2012. An assessment of the proposal against these ADG controls has been undertaken earlier within this report.		
C5.2.2.3 - Setbacks	The development is assessed against the relevant setback controls outlined within Part D1 of CDCP 2012 pursuant to Part C5.2.2.3(C1) of CDCP 2012.		
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.		
C5.2.2.5 – Building Separation	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.		
Part C5.2.3 – Building Design			
Building Entries	Provide accessible entries for all potential use such as the transporting of furniture.	Double entry doors are provided to the residential component of the development to facilitate the transporting of furniture.	Yes
	Face habitable rooms towards the street, private open space, communal space, internal driveways etc in order to promote passive social interaction and community safety.	The design includes facing habitable room windows towards the street and private open space.	Yes
Façade Treatment	The development is assessed against the relevant façade treatment controls outlined within Part D1 of CDCP 2012 pursuant to Part C5.2.3.1(C3) of CDCP 2012.		
C5.2.3.2 – Roof Design and Features	Roof terraces are permitted with consent in all business zones except the B1 zone.	A roof terrace is proposed and is permitted in the B2 zone.	Yes
	A management strategy is required and must be approved by Council as part of the development application, for any proposed roof terrace.	Plan of Management provided which incorporates management of use of rooftop terrace.	Yes
	Supplement open space on roof terraces by providing space and appropriate building systems to support the desired landscape	The landscape plan submitted identifies appropriate facilities incorporated into the	No – however could be conditioned should

	design, incorporating shade structures and windscreens to encourage use of roof top open space.	communal areas. However, no shade structure is incorporated into the rooftop terrace design.	application be supported.
	Demonstrate that roof terrace has been designed to protect the privacy, solar access and amenity of adjoining buildings. Measures to minimise overlooking of adjoining properties include screening or planting between properties and preventing rooftop users from standing at the edge of roof terraces that look into adjoining properties through planting and screens.	The rooftop terrace is centrally located within the building design and is therefore setback from the boundaries to minimise visual and overshadowing impacts. Landscaped areas are also proposed along the edge of the terrace to minimise overlooking into adjoining properties.	Yes
	Allow for views and passive surveillance of streets and public open space from roof terraces.	The design allows for views and passive surveillance of adjoining streets.	Yes
C5.2.3.3 - Dwelling Layout and Dwelling Mix	Min 10% of apartments to be adaptable or accessible	4 of the 34 apartments proposed (11.7%) are proposed to be accessible/adaptable.	Yes
C5.2.3.4 - Building services	All letterboxes be installed to meet Australia Post Standards	This can be conditioned.	Yes – via condition of consent should application be supported
	Design and provide discretely located mailboxes at the front of the property.	Mailboxes are integrated within the pedestrian entry point.	Yes
	Integrate systems, services and utility areas within the design of the whole development.	All services and facilities including, but not limited to, air conditioning units, hot water systems, electrical substation, water hydrant etc are integrated within the design of the whole development.	Yes
C5.2.4.1 - Solar Access and Overshadowing	The ADG sets the objectives and controls for solar access and overshadowing in the LGA for Shop Top Housing to which SEPP 65 relates. Refer to 4A Solar and Daylight Access of the ADG for objectives, design criteria and design guidance.		
Solar Access and Overshadowing – Adjoining Development	Development to retain a minimum of 3 hours of sunlight between 8am-4pm on 21 June for existing living areas and 50% of the principal private open space.	West: Hourly overshadowing diagrams between 8am-4pm were requested from the Applicant, but not provided. These are	Unknown

		<p>needed to be read in conjunction with the view from sun diagrams and elevation plans for the development to the west (particularly for the am) to determine whether there is any additional impact to the development and associated POS of the property to the west as a result of the building and rear setback variation. Therefore, insufficient information has been submitted to determine whether adequate solar access is maintained to the existing development to the west.</p> <p>South: A service station directly adjoins the property to the south. No residential development is located on this site.</p> <p>East: The Narwee Hotel is partially overshadowed by the proposed development at 4pm. No residential development is located on this site.</p> <p>North: The proposed development does not overshadow the development to the north.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Acoustic Privacy	Communal balconies are not to be located directly adjoining bedroom window.	The communal areas on the ground floor directly adjoin bedroom windows.	No
	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.	No residential dwellings are proposed on the ground level. All residential apartments are raised above the shared pedestrian pathway on the ground floor.	Yes

	Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp	The design does not include any balconies or windows that directly face the driveway at ground level.	Yes
	Design to address all requirements in 'Development Near Rail Corridors and Busy Roads- Interim Guideline'	The acoustic report submitted addresses the relevant requirements in 'Development Near Rail Corridors and Busy Roads-Interim Guideline'.	Yes

- **D1 – Business Centres - General**

The table below provides an assessment of the proposed design against the relevant controls outlined in Part D1 of CDCP 2012.

Standard	Requirement	Proposal	Complies
D1.2.1 – Minimum Frontage	A minimum frontage of at least 18m shall be provided.	The site has a primary frontage to Penshurst Road of 26.31m and a secondary frontage to Station Lane of 23.69m. The site does not isolate the property to the south as it comprises a minimum frontage of 18m.	Yes
D1.3.3 – Floor to Ceiling Height	The floor to ceiling heights specified within the ADG override the floor to ceiling height controls outlined within Part D1.3.3 of CDCP 2012. An assessment of the proposal against these ADG controls has been undertaken earlier within this report.		
D1.3.4 – Setbacks	Front Setback: 1-3 storeys built to front boundary	1-3 storeys built to front boundary.	Yes
	Front Setback: Greater than four storeys – 5m (all storeys to be set back this distance including the fourth storey)	Level 3: 5m Level 4: 4.8m Level 5: 4.8m Level 6: 4.8m Level 7: 4.8m	Yes No No No No NB: Compliance would result in some balconies not complying with the minimum depth requirement outlined in the ADG.

	Side setbacks: Except where a proposed development adjoins a residential zone boundary, setbacks are not required in the B2 zones when the desired character is for a continuous street frontage.	A nil setback has been provided to the side boundaries.	Yes
	Proposed developments that adjoin residential zone boundaries to the rear are to comply with the rear setback that is defined by D1.3.4(C7-C9).	<p>The ground to Level 3 (4 storeys) are built to the rear boundary.</p> <p>The 5th, 6th and 7th storey (rooftop) encroach the 45 degree angle.</p> <p>It is noted that the design is generally in keeping with the rear setback of the approved development to the north (in some instances an increased setback is provided). However, consideration of the proposed variation cannot be undertaken as insufficient solar access information has been submitted to determine whether the design, despite the variation to the rear setback control, complies with the objectives.</p>	Unknown
D1.3.5 – Building Depth	Building depth for commercial premises must be Min 10m in depth	Ranges from 13-16.8m in depth	Yes
	Max Street frontage wall length of 50m.	<50m	Yes
D1.4 – Building Design	Design and orient development to maximise solar access and natural light, without unduly increasing the building's heat load.	The commercial tenancies are orientated to the east and therefore are designed to maximize solar access and natural light.	Yes
	Locate entries so they relate to existing street and are clearly visible	The design of the commercial tenancies does provide for an activated street front. Entry doors are provided along the Penshurst Road street front.	Yes

	Provide entries to upper levels from the street front façade to encourage activities on the ground floor.	Separate entry to the residential component on the upper floors is provided along the Penshurst Road street front.	Yes
	Provide an awning over entry to contribute to legibility and the public domain	Awning provided.	Yes
	The façade of the building shall be built to the front street boundary	The first three storeys of the development are built to the Penshurst Road street frontage.	Yes
	Cantilevered awning to overhang the footpath a minimum width of 3m	Cantilevered awning overhangs footpath by 3m except for the cut outs to accommodate the street trees. As per Council's Landscape Architects comments, the proposed street trees are to be altered to comprise a species which will grow under the awning to allow of a 3m width awning to be applied to the whole frontage.	Yes – via condition of consent should the application be supported
	Cantilevered awning height to be in the range of 3.2m-4.2m	Awning is 3.9m above ground level.	Yes
	Posted awnings or colonnades will not be supported.	The design does not include a posted awning or colonnade.	Yes
	Windows on the street frontage must not be mirrored.	To be conditioned.	Yes – via condition of consent should the application be supported
	Do not place external solid roller shutters or brick walls on shopfronts	None proposed.	Yes
	Security grilles must be discreet.	None proposed.	Yes
D1.4.3 – Façade Treatment	New building forms and design features shall not mimic traditional features.	The proposed building does not mimic traditional features.	Yes
	Incorporate contrasting elements in facades	The design does incorporate contrasting elements however the range of materials used could be improved to incorporate a more harmonious range.	No
	Use a harmonious range of high quality materials, finishes and detailing.		

		<p>Furthermore, additional vertical elements should be incorporated (similar to the adjoining development to the north) along the eastern and western facades to provide for additional contrasting elements.</p> <p>The design also incorporates all glass balustrading. A mix of semi-solid and solid balustrades is recommended as per the recommendations in the ADG. This will also assist in providing a greater range and contrast of materials within the facades.</p>	
	Consideration in the design of commercial premises is to be made for mechanical ventilation required by potential future food shops and restaurants	The proposed 4.5m floor to floor height does provide for the opportunity to incorporate mechanical ventilation within the retail tenancies. A room for mechanical ventilation is also incorporated into the design of the ground floor.	Yes
	Refer to existing height datum for new development to existing buildings such as eave and parapet lines, as a guide to aligning the height to levels of adjacent development	<p>The proposal does generally align with the approved development next door. A slight variation in finished floor level is provided given the fall of the land and the approved floor to floor heights of the development next door (which do not comply with current standards) however the proposed developments still correlate with each other.</p> <p>Importantly, the first three levels of each development align with each other and therefore present in unison when viewed from the street.</p>	Yes

D1.4.4 – Roof Design	Roofs must not exceed pitch of 10 degrees	Roof does not pitch more than 10 degrees.	Yes
	Relate roof design to the desired built form and context.	Flat roof is in keeping with roof design of buildings located in the B2 zone.	Yes
D7.6 - Narwee	Development in the Narwee Local Centre is to be in accordance with the structure plan shown in Figure D7.5	The proposal incorporates retail tenancies on the ground floor along the Penshurst Road frontage. This is consistent with the structure plan.	Yes

As outlined above, the design seeks to vary a number of design controls. Given the cumulative number of variations sought and the amenity impacts associated with such variations, it is considered that the design is an overdevelopment of the site.

Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

The Canterbury Development Contributions Plan 2013 applies to the site. However, given the application is recommended for refusal, such contributions have not been calculated.

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

There are no planning agreements associated with this application.

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

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

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

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

- **National Construction Code**

Council's Building Surveyor has reviewed the application and raises no objection, subject to conditions of consent.

- **Proposed excavation works**

The proposed development involves excavation and construction works in close proximity to property boundaries and neighbouring properties. Should the application be approved, relevant conditions requiring the applicant to provide a dilapidation report for the adjoining properties, prior to the issue of the Construction Certificate could be included on any consent issued. Should any damage to adjoining properties result from the proposed excavation works at the subject site, the applicant would be required to rectify all damages.

- ***Sediment and Erosion Control***

Standard conditions could be included regarding the installation and maintenance of the sediment and erosion control measures as part of the pre and during construction phase of the development, should the application be supported.

The development will involve excavation of part of the site to accommodate the development. Any excavated material not utilised elsewhere on the property, will require proper disposal and transport in accordance with the Waste Avoidance and Recovery Act, and the Protection of the Environment Operations Act. A condition will be imposed in this regard should the application be supported.

- ***Referrals***

Referral	Comments Received
Building Surveyor	<p>Council's Building Surveyor requires the following information to complete their assessment:</p> <ul style="list-style-type: none"> • The development application is deficient of information to determine if the development can achieve compliance with the relevant sections of the BCA. Details demonstrate compliance with the Performance Requirements of the BCA must be provided from a qualified consultant. • A report covering compliance of the development with the relevant provisions contained in Section J of the BCA must be provided from a qualified consultant. • The proposed Fire safety measures must be provided from an accredited Fire Safety Engineer (C10 accreditation). Details of any Fire Engineered Solutions and deemed-to-satisfy provisions must be provided.
Development Engineer	<p>Council's Development Engineer raised the following concern:</p> <p>Within the upper basement level, drivers (visitors) will require to make a nine (9) point turn manoeuvre, to exit from the basement when all 7 visitor's spaces are occupied. This is not an acceptable design outcome and will need to be revised.</p>
Waste Services	<p>Council's Waste Officer raised the following concerns:</p> <p><u>Waste Management Plan</u> An amended Waste Management Plan (WMP) has been submitted, however should be updated to reflect the following requirements, including:</p> <ul style="list-style-type: none"> • Residential generation rate for garbage 140L / dwelling/ week. • Commercial Waste and Recycling to be updated to reflect 2 x commercial dwellings and applicable floor spaces. <p><u>Residential Bin Storage Room</u> The residential bin storage room design needs to be amended to address the following:</p> <ul style="list-style-type: none"> • The area must be of sufficient size to fit and manoeuvre 15 x 1,100L and 2 x 240L bins side-by-side (not stacked) with equal and convenient access to all bins. Approximately 15cm between bins should be provided. Future plans should demonstrate the bins positioned in the room to show compliance with the requirements.

- Space has not been provided for bin lifting equipment to decant 240L recycling bins into 1,100 L bulk bins. This machine needs dedicated space in the room and is to be demonstrated on future plans in order to meet compliance.
- An automatic carousel or liner system should be installed for easy rotation of garbage waste bins. This machine needs dedicated space in the room and is to be demonstrated on future plans in order to meet compliance.
- The bin storage area must be of adequate size to accommodate all required equipment (ie. bin lifting and an automatic carousel/liner system) and its operation.
- 1.5m aisle between bin rows, 2m doorways and pathways for the bin carting route with no steps/excessive slopes/obstacles

Waste Chute System

The Waste Chute System design needs to be amended to address the following:

- A Cross Section of the chute system within the building is to be provided, to show that it enables waste to easily pass through each level of the development.
- The Waste Management Plan refers to the bins being checked daily, and this is not sufficient. The garbage bins at the base of the chute must have capacity for at least three days of waste, this is 3 x 1,100L bins. The 1,100L garbage bins are to be mounted on an automatic carousel or liner system for easy rotation;
- Bin stores have been provided on Levels 1 to 6, however Level 7 has not been provided with a bin store. All residential floors are required to be provided with access to the chute system and recycling bins. Recycling cupboards are recommended instead of storerooms, as cupboards will limit dumping of excess rubbish.
- Bin lifting equipment is required in the residential bin storage room on the ground floor, to emptying the recycling bins into 1,110L bulk bins, which would be emptied by Council.

Commercial Bin Storage Room

The WMP states that 4 x 240L bins are to be stored in the commercial bin storage room, with bins collected twice a week. This is expected to be inadequate for the 2 commercial dwellings. The applicant is proposing that bins would be collected more frequently if the size of the commercial bin storage room is not adequate. Increasing the collection frequency is unacceptable, as it does not allow for flexibility when the commercial dwellings are operational, with missed services impacting storage capacity. In addition, the high number of collections per week would impact on the amenity of the surrounding neighbourhood and an increase in carbon emissions. The best practice collection frequency is once or twice per week.

	<p>The following generation rates are based on the EPA Guide:</p> <table><tr><td></td><td>Floor Area</td><td>Type</td><td>Garbage – 7 days</td><td>Recycling – 7 days</td></tr><tr><td>Retail 1</td><td>154m2</td><td>Retail – other non food</td><td>539L</td><td>1,078L</td></tr><tr><td>Retail 2</td><td>120m2</td><td>Café</td><td>840L</td><td>1,008L</td></tr><tr><td colspan="2"></td><td>Total</td><td>1,379L</td><td>2,086L</td></tr><tr><td colspan="2"></td><td>Number of 240L bins (collected twice weekly)</td><td>3</td><td>5</td></tr></table> <p>The commercial bin storage area design is to be revised to address the following:</p> <ul style="list-style-type: none">• The area must be of sufficient size to fit and manoeuvre 8 x 240L bins side-by-side (not stacked) with equal and convenient access to all bins by users. Approximately 15cm between bins should be provided. Future plans should demonstrate the bins positioned in the room to show compliance with the requirements.• 1.5m aisle between bin rows, 2m doorways and pathways for the bin carting route with no steps/excessive slopes/obstacles		Floor Area	Type	Garbage – 7 days	Recycling – 7 days	Retail 1	154m2	Retail – other non food	539L	1,078L	Retail 2	120m2	Café	840L	1,008L			Total	1,379L	2,086L			Number of 240L bins (collected twice weekly)	3	5
	Floor Area	Type	Garbage – 7 days	Recycling – 7 days																						
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		Total	1,379L	2,086L																						
		Number of 240L bins (collected twice weekly)	3	5																						
Urban Design	<p>In summary, Council’s Urban Designer raised the following concerns:</p> <ul style="list-style-type: none">- The proposed street trees and their impact on the design of the awning along Penshurst Road.- The elevation plans lack details on materiality and therefore a detailed consideration of the proposed materials could not be undertaken.- Concern regarding the design (particularly in relation to the depth) of the studio apartments.- Height of fence around the rooftop communal open space area. The finished floor levels are to reflect the architectural plans.- Concern regarding aisle widths within basement parking area.- The location of air-conditioning units on the balconies impedes the minimum balcony depth/area in some instances.																									
Traffic	No objection – subject to conditions																									
Environmental Health	No objection – subject to conditions																									
Corporate Projects	No objection																									
Tree Management	No objection – subject to conditions																									
Infrastructure	No objection – subject to conditions																									
Public Domain	No objection – subject to conditions																									
Landscape	No objection – subject to conditions																									
Ausgrid	No objection – subject to conditions																									
Sydney Trains	No objection.																									

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

The application has been assessed under Section 4.15 of the Act. It is acknowledged that the Applicant has addressed some concerns previously raised by Council. However, as demonstrated throughout the body of this report, the design seeks a number of variations to key development controls. The application is also deficient of information to determine whether the design will result in adverse environmental impacts including information relating to overshadowing of adjoining properties, solar access to the subject site, acoustic implications and information to address concerns raised by Council's Waste, Development Engineer and Urban Design Departments. Furthermore, the additional information required to facilitate a detailed assessment may result in further design changes, particularly in regard to the basement and ground floor design as well as apartment configuration.

As a result of the number of variations sought coupled with the lack of information submitted, the site is not considered suitable for the proposed development in its current form.

Submissions [section 4.15(1)(d)]

The application was initially notified for a period of 21 days. Two submissions were received during this period. The amended application was re-notified for a period of 28 days. No additional submissions were received during this time.

The matters raised in the two submissions received are discussed below:

Objection: Should an electrical shutdown occur in order to construct the proposed development, the cost associated for adjoining businesses to obtain their own electrical source should be borne by the Applicant of this application.

Comment: This is a civil matter to be negotiated between the builder and adjoining owners should an electrical shutdown be required.

Objection: The proposal will impact on the outlook from the courtyard of adjoining dwellings.

Comment: The original design was considered to impact on the outlook from the courtyard of the dwelling to the north given a wall was proposed to be built to the northern and eastern boundaries of the subject site. As a result, Council requested the Applicant amend the design. The amended design is considered to improve the outlook. Although the design involves building along the eastern boundary, a breakout is proposed along the northern boundary (southern boundary of the adjoining property) for the length of the courtyard. This is considered to be an improved outcome whilst also ensuring the design has a adequate streetscape appearance. Furthermore, it is noted that the courtyard is located off a bedroom and therefore the proposal will not impact the principal living and private open space areas of the affected residence that is orientated to the west.

Objection: The proposal will result in further solar access impacts to the dwellings located to the north of the site.

Comment: Although Council has noted that insufficient information has been submitted to undertake a detailed solar access assessment, which forms part of the reasons for refusal, the proposal is not considered to impact the solar access of properties to the north of the site.

Objection: *The proposed development will result in adverse privacy impacts to adjoining properties.*

Comment: The design complies with the visual privacy controls to the western boundary. In terms of the building separation to the northern and southern boundaries, the amended design incorporates appropriate design elements (such as high sill windows) where compliance is not achieved. Through incorporation of these design elements, a suitable level of privacy to adjoining properties, as well as future residents of the subject site, is achieved.

Objection: *The proposed development will likely impact the structural integrity of adjoining properties during demolition and construction phases. It is recommended that there is a gap between the adjoining site to alleviate such issues.*

Comment: Should the application have been recommended for approval, appropriate conditions of consent could have been incorporated into the consent to ensure the structural integrity of adjoining developments was maintained or the cost of any damage was to be borne by the Applicant.

Objection: *The development will result in significant pollution impacts on adjoining properties during demolition and construction phases.*

Comment: Should the application have been recommended for approval, appropriate conditions of consent could have been incorporated into the consent to ensure pollution was minimised and managed appropriately.

Objection: *What provisions would be in place to ensure that Station Lane will be maintained and repairs throughout and after construction?*

Comment: Should the application have been recommended for approval, appropriate conditions of consent could have been incorporated into the consent to ensure any damage to Station Lane resulting from the construction of the proposal was rectified.

Objection: *The proposed development will result in additional traffic impacts.*

Comment: Council's Traffic Engineer has reviewed the design and is satisfied that it would not result in any additional significant traffic impacts on the surrounding road network.

Objection: *The existing businesses on site are suffering due to Covid-19 and are required as they provide services to nearby residents. Should the application be approved, would they be compensated or guaranteed a space in the proposed development upon completion?*

Comment: Under NSW planning legislation, this is not a planning matter to be considered as part of the detailed assessment of this application.

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

Approval of the proposed development would not be in the public interest. 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.

As outlined within the report above, the application seeks a number of variations and is also deficient in information to facilitate a detailed assessment against relevant controls. Therefore, Council is not satisfied at this stage that the development would not result in any significant adverse impacts.

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, development control plan, codes and policies.

As outlined within the body of the report, the design has somewhat addressed concerns raised by Council in correspondence issued during the assessment of the application. Although consideration to some variations has been deemed acceptable on merit, the proposal still seeks to vary controls that are considered to result in adverse amenity impacts (i.e apartment design, crime prevention measures, acoustic, private open space and setbacks). In addition, the application is still deficient in key information to facilitate a detailed assessment by Council Officers including but not limited to matters relating to groundwater impacts, BASIX, solar access, waste and engineering. Information required to address these matters would likely result in further redesign of the proposal to achieve compliance.

The Applicant has been provided adequate opportunity to address the matters raised throughout the duration of the assessment process.

It is therefore recommended that the Application be refused.

RECOMMENDATION

It is recommended that the application be refused, for the reasons set out in Attachment B.

REASONS FOR REFUSAL

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to determine whether the Application is to be classified as Integrated Development pursuant to the Water Management Act 2000.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to determine whether the design satisfies the requirements of State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX).
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application is not consistent with State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development with respect to Schedule 1 Design Quality Principles. The proposed development does not meet Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 4: Sustainability, Principle 6: Amenity, Principle 7: Safety and Principle 9: Aesthetics.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided to determine whether the application complies with the minimum solar access requirements outlined within Part 4A of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.
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 minimum apartment size requirements and habitable room depth requirements outlined within Part 4D 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 minimum private open space requirements outlined within Part 4E 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)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the acoustic privacy controls 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.

8. 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 mixed use design solutions (particularly in regards to the residential circulation areas) contained within Part 4S of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.
9. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and thorough assessment of the design against the provisions outlined within Clause 6.2 – Earthworks of Canterbury Local Environmental Plan 2012.
10. 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:
 - a. Part B1 – Traffic and Parking
The design does not comply with the required allocation of parking to the retail component and insufficient accessible parking for the residential component is proposed. The design of the basement does not comply with C26 in Part B1.4.6 of CDCP 2012. Lastly, concern is raised in regards to the functionality to the design of the upper level basement.
 - b. Part B7 – Crime Prevention and Safety
The design does not comply with the relevant controls outlined within Part B7 of CDCP 2012 particularly in regards to use of materials to reduce opportunity of vandalism and security of the basement and communal areas.
 - c. 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.
 - d. Part C5 – Shop Top Housing
The design fails to comply with the following controls contained within Part C5 of CDCP 2012:
 - i. C5.2.1.4 – Layout and Orientation
 - ii. C5.2.4.1 – Solar Access and Overshadowing of adjoining development
 - iii. C5.2.4.2 – Acoustic Privacy
 - e. Part D1 – Business Centres – General
The design fails to comply with the following controls contained within Part D1 of CDCP 2012:
 - i. D1.3.4 – Setbacks
 - ii. D1.4.3 – Façade Treatment

11. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposal will result in adverse environmental impacts and the site is not suitable for the proposed development.
12. 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.

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 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.

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