

Proposed Six (6) Storey Mixed Use Development
comprising Six (6) Commercial/Retail Tenancies
and Forty Nine (49) Residential Apartments and
Basement Parking for One Hundred & Fifteen
(115) Cars
Nos. 892-894, 896-900 & 906 Canterbury Road,
Roselands

Amended Statement of Environmental Effects



This Amended Statement of Environmental Effects
has been prepared to accompany an application for
a Review of Determination under Division 8.2 of the
Environmental Planning & Assessment Act, 1979.

February 2022



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Construction of a Six (6) Storey Mixed Use Development comprising six (6) Commercial/Retail Tenancies, Forty Nine (49) Residential Apartments and Basement and Ground floor Level Parking for One Hundred & Fifteen (115) cars.

Nos. 892-894, 896-900 & 906 Canterbury Road, Roselands
Division 8.2 (Section 8.3) Review of Determination

February 2022

Document History & Status

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1 Introduction

This report has been prepared by Andrew Robinson Planning Services Pty Ltd on behalf of Ahmed Corporation to accompany a request for a Division 8.2 (Section 8.3) Review of Determination to DA-500/2020 for *demolition of the existing structures and construction of a new six storey shop top housing development over two levels of basement parking and the associated landscaping* at Nos. 892-894, 896-900 & 906 Canterbury Road, Roselands. The development application was refused following consideration by the Canterbury Bankstown Local Planning Panel, as set out in the Notice of Determination dated 10 December 2021.

Accordingly, this report constitutes an Amended Statement of Environmental Effects and examines the proposed development (as amended) in terms of its compliance with the heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The site is located on the south-western corner of the intersection of Canterbury Road and Flora Street in Roselands and is currently occupied by a number of two storey and single storey buildings occupied by commercial uses including a school uniform warehouse, a signs and wraps advertising business, a café and a vacant shop.

The proposed six (6) storey shop top housing development comprises:

- 6 commercial/retail tenancies
- 49 residential apartments
- 115 parking spaces

The original (refused) scheme proposed fifty (50) residential apartments. While the amended scheme submitted under the Section 8.3 Review of Determination remains substantially the same development, one (1) residential apartment has been removed from Level 4, reducing the total number of apartments to forty nine (49). The apartment mix has also been slightly amended with two (2) apartments reducing from 2 bedroom to 1 bedroom apartments. Further, the design has been amended in order to address non-compliances with certain ADG requirements that were identified in the assessment report prepared for the Local Planning Panel meeting. This includes amendments in order to comply with the ADG requirements with respect to cross ventilation, solar access, private open space, communal open space, apartment size and layout.

A maximum building height of 18m is prescribed under Clause 4.3 of *Canterbury Local Environmental Plan 2012*. However, the proposal seeks to vary the height of buildings principal development standards prescribed under Clause 4.3 by 1.077m. Although the overall building height has not been reduced, an Amended Clause 4.6 – Exceptions to Development Standards request is provided at **Appendix A** of this Amended Statement and provides further discussion on environmental planning grounds to support the proposed height variation.

The planning merits of the proposal (as amended) are discussed in the body of the Statement and it is considered that despite the non-compliances, the proposed development meets the intent of both the LEP and the DCP and is worthy of Council's support.

This Amended Statement of Environmental Effects should be read in conjunction with the amended architectural drawings and other associated documentation that accompanies the Section 8.3 Review of Determination application, as detailed at 1.2 below.

1.1 Consent Authority

The proposed development has a capital investment value (CIV) less than \$20 million (refer to the Registered Quantity Surveyors Report submitted with the application). Accordingly, the consent authority is Canterbury Bankstown Council.

1.2 Specialist Studies

This report has been prepared with the assistance of a number of specialist consultants, as follows:

Precise Surveying Pty Ltd	Survey Plan	Separate Attachment
Architecture Design Studio (NSW) Pty Ltd	Architectural Drawings	Separate Attachment
Architecture Design Studio (NSW) Pty Ltd	SEPP 65 Design Verification Statement & Design Quality Principles Report	Separate Attachment
Motion Traffic Engineers Pty Ltd	Traffic and Parking Impact Assessment of Proposed Mixed Use Development	Separate Attachment
Acoustic Noise & Vibration Solutions Pty Ltd	Traffic & Environmental Noise Assessment	Separate Attachment
Eco Certificates Pty Ltd	BASIX Certificate	Separate Attachment
Eco Certificates Pty Ltd	BCA Section J Deemed to Satisfy Compliance Report	
Architecture Design Studio (NSW) Pty Ltd	Waste Management Plan	Separate Attachment
Zenith Landscape Designs	Landscape Plan	Separate Attachment
Design Right Consulting	Access Report	Separate Attachment
Design Right Consulting	BCA Report	Separate Attachment
ACE Civil Stormwater Services Pty Ltd	Stormwater Concept Plans	Separate Attachment
Australian GeoEnviro Pty Ltd	Remedial Action Plan	Separate Attachment
QPC&C Pty Limited	Registered QS Cost Report	Separate Attachment

2 The Subject Site

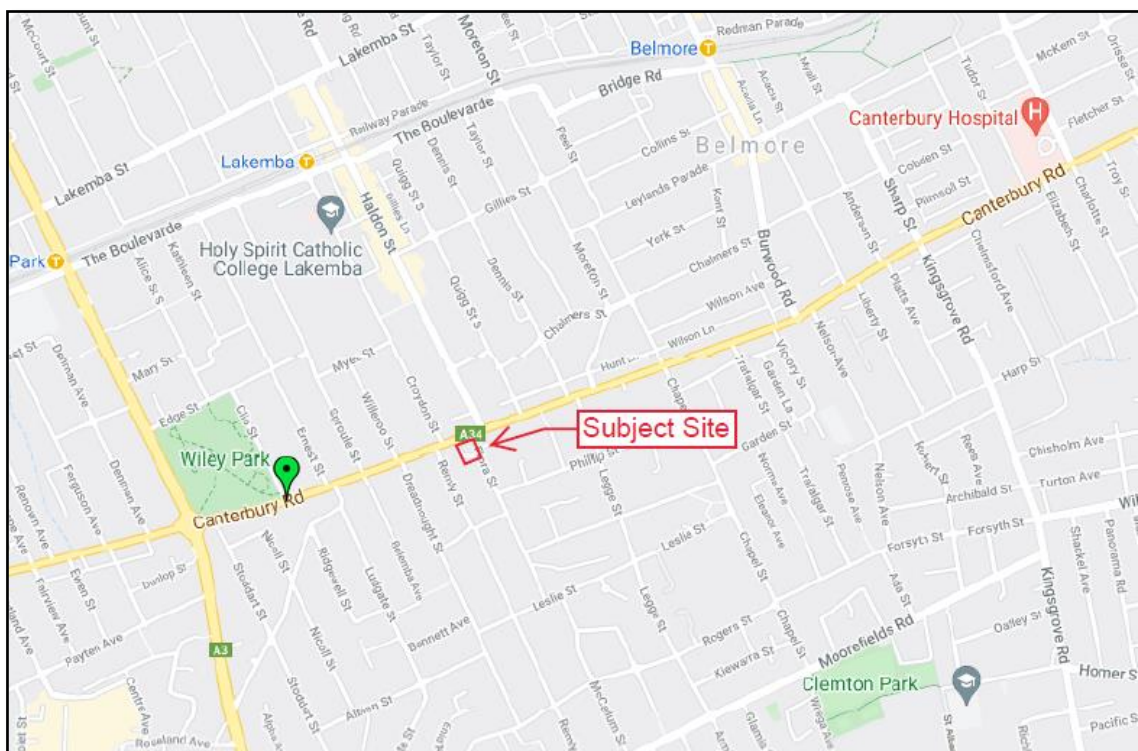
2.1 Location and Site Context

The site is located on the south-western corner of the intersection of Canterbury Road and Station Street at Roselands. The Canterbury Road corridor is a precinct that is undergoing significant change in the coming years as demand for density in the precinct rises. The proposed mixed use building is a reflection of the desired character of the area and is a response to the renewal being undertaken along Canterbury Road.

The site is essentially rectangular, having a frontage of 44.348m to Canterbury Road, a secondary frontage of 50.292m to Flora Street and a total area of 2,219.06m².

The location of the site is shown in **Figure 1** below.

Figure 1: Location Plan



Source: nearmap.com.au

The site is located approximately 600km south of the Lakemba Town Centre and 13km south-west of the Sydney CBD and enjoys excellent access to a range of facilities and services, including:

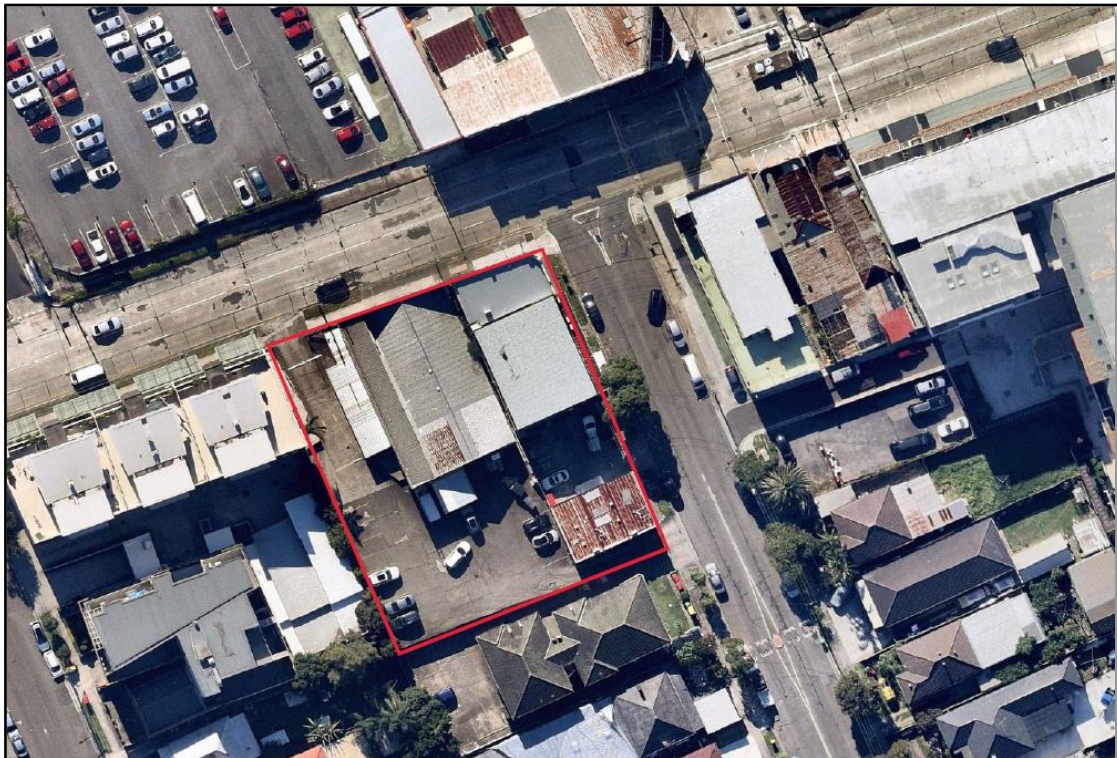
- Roselands shopping centre, Lakemba, Belmore and Campsie town centres;
- local and regional recreational facilities – including numerous parks and reserves;
- numerous schools and higher education facilities;
- health care facilities including Canterbury Hospital and Bankstown-Lidcombe Hospital; and

- employment centres – Bankstown and Hurstville and to the north-east, the Sydney CBD etc.

Public transport (train & bus) services are readily accessible, with the site being approximately 600m from the Lakemba Railway Station. The closest bus stops are located opposite the site on Canterbury Road (east bound), as well as approx. 60m to the east on Canterbury Road (west bound). There are other bus stops located within walking distance from the site on Haldon Street to the north and Remly Street to the south-west.

An aerial view of the site and surrounding area is provided in **Figure 2** below:

Figure 2: Aerial Photo of the Site and Surrounds



Source: nearmap.com.au

2.2 Existing Condition

As noted earlier, the site is currently occupied by a number of two storey and single storey buildings occupied by commercial uses including a school uniform warehouse, a signs and wraps advertising business, a café and a vacant shop. The rear and eastern sides of the site are concrete and bitumen hard stand that provides on-site parking, with vehicular access available from both Canterbury Road and Flora Street.

The existing condition of the site is illustrated in the following images:

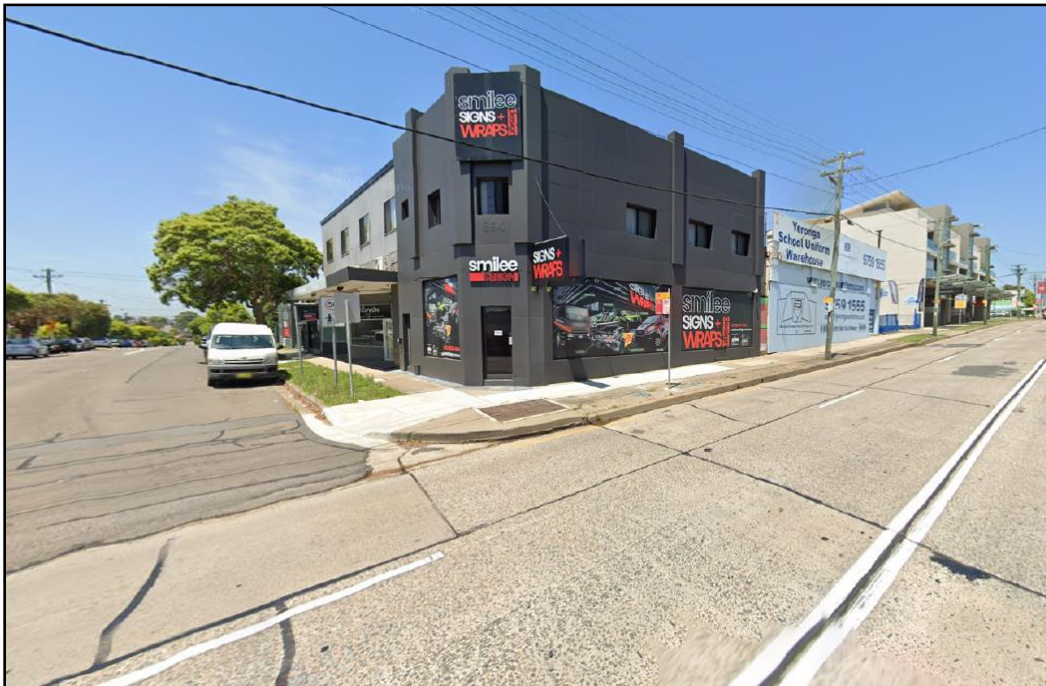


Image 1: View of the site looking south-west from Canterbury Road.



Image 2: View towards the site looking south-west from Canterbury Road.



Image 3: View of the eastern side of the site looking from Flora Street towards Canterbury Road and showing the scale of the existing development on the opposite side of Canterbury Road.

2.3 Legal Description and Zoning

The site comprises three (3) allotments. The legal description of the site is Lots 1 & 2, DP 511598 and Lot X, DP 418488.

A copy of the Survey Plan prepared by Precise Surveying Pty Ltd is provided as part of the development application package.

The site is zoned *B2 Local Centre* under the provisions of *Canterbury Local Environmental Plan 2012*. The *B2 Local Centre* zone permits the proposed mixed use development with the consent of Council.

2.4 Land Uses in the Surrounding Area

The site is surrounded by a range of building typologies that consist of 2-4 storey mixed use buildings along Canterbury Road and low density residential to the south. Immediately adjoining the site western side of the site is a four storey mixed use development and approximately 150m to the east there is a five storey mixed use development of similar typology to the proposed building. Al Hikma College is located northeast of development site.

The following images illustrate the existing streetscape, built form and character surrounding the site:



Image 4: View of the rear of the site and the adjoining low density residential property looking west from Flora Street.

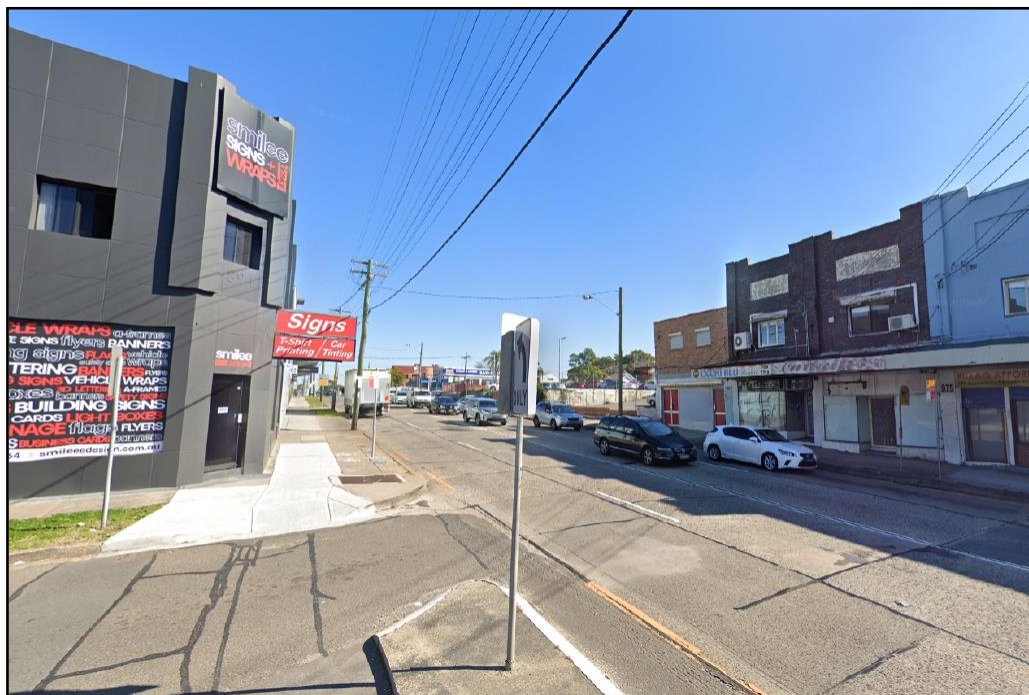


Image 5: View of the site and the development on Canterbury Road opposite the site, looking north-west along Canterbury Road from Flora Street.



Image 6: View looking north-west across Canterbury Road to the existing development west of the site along Canterbury Road.

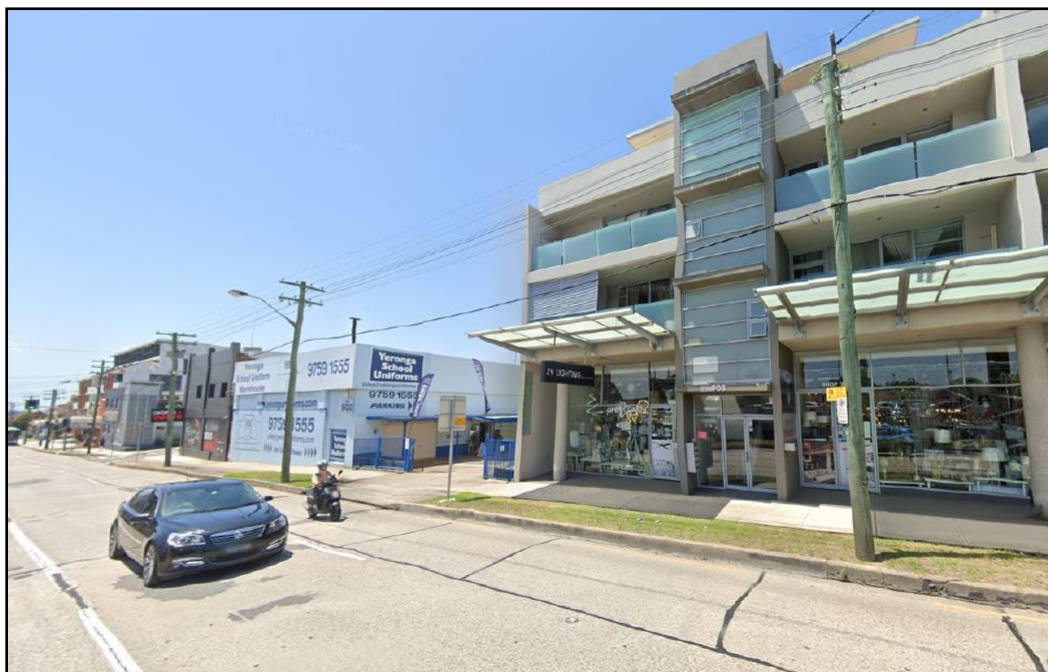


Image 7: View looking north-west across Canterbury Road towards the site and showing the adjacent four storey mixed use development and five storey mixed use development further to the north-west.

2.5 Utility Services

Utility services, including water, electricity, sewer and telecommunications are currently available to the site. The applicant's services consultant will be consulting with the various utility service providers in order to establish the location of existing services and determine the likely requirements that each utility provider might have as a consequence of the proposed development.

2.6 Site Topography

The site is relatively level, with a very minor fall in an easterly direction towards Flora Street. Refer to the Survey Plan provided with the application for details on the site levels.

2.7 Views & Vistas

The proposed development is not likely to interrupt any significant existing views and vistas. However, there may be potential for district views afforded from the upper levels of the development.

2.8 Contamination

The site is currently used for a range of commercial land uses and there is no visible evidence that the site may be contaminated or is unhealthy building land.

2.9 Site Access

Vehicular access to the site is currently available from both Canterbury Road and Flora Street. Pedestrian access is also available via the existing footpaths along Canterbury Road and Flora Street. A new two-way driveway is proposed on the south-eastern corner of the site off Flora Street. This will provide vehicular access to the basement levels, as well as an at-grade parking and on-site garbage collection area / loading and unloading area.

2.10 Existing Public Transport

The site is well located with respect to access to public transport, with bus stops serviced by several bus routes operating in close proximity to the site. The nearest bus stops are located on Canterbury Road opposite the site (east bound) and approx. 60m to the east on Canterbury Road (west bound). There are other bus stops located within walking distance from the site on Haldon Street to the north and Remly Street to the south-west. Lakemba Railway Station is located to the north within reasonable (approx. 600m) walking distance from the site.

Sydney Buses operates the following route accessed from bus stops on Canterbury Road:

- Route 487 (Bankstown Central to Canterbury)

Other routes available from Haldon Street and Remly Street and operated by Punchbowl Bus Company include:

- Route S14 (Lakemba to Mount Lewis)
- Route 450 (Strathfield to Hurstville)
- Route 946 (Roselands to Bankstown)

The Sydney Trains network is accessed from Lakemba Railway Station where the T3 – Bankstown Rail Line provide regular services between Central, Leppington and Bankstown, including Sydenham, Marrickville, Dulwich Hill, Hurlstone Park, Canterbury, Campsie, Belmore, Lakemba, Wiley Park, Punchbowl etc. Connections to all other destinations covered by the Sydney Trains Network can be

made at various stations on the T3 - Bankstown Line. Rail services generally operate on a 15-20 minute headway in each direction. However, during weekday peak periods the services are often more frequent.

2.11 Heritage

The site is not listed as a Heritage Item and there are no heritage conservation areas or heritage items in the vicinity of the site that would potentially be impacted by the proposed development.

3 The Proposed Development

3.1 General Description

Shop Top Housing Development

The proposed development (as amended) comprises a six (6) storey shop top housing development with a gross floor area (GFA) of 4,919m² comprising six (6) commercial/retail tenancies at ground level and forty nine (49) residential apartments. Car parking (115 spaces) is located over 2 basement levels and at ground level. Vehicular access to the site is provided from Flora Street at the south-eastern corner of the site, via a two-way driveway to the ground floor and basement parking levels. In addition, an on-site waste collection area / loading & unloading area is provided at ground level, accessed via the same driveway.

As noted above, the development includes forty nine (49) residential apartments across five (5) levels, with twelve (12) apartments on each of the first, second and third floor levels, seven (7) apartments on the fourth floor level and six (6) apartments on the fifth floor level.

Of the 49 residential apartments, two (2) of the 1 bedroom and two (2) of the 2 bedroom apartments on the fourth and fifth floor levels have been nominated as adaptable apartments. Each of these adaptable apartments have been allocated a compliant accessible car space in the basement levels. In addition, seven (7) of the 2 bedroom apartments are nominated as livable apartments.

The table below illustrates the amended residential mix compared to the original (refused) design:

Amended Design		Original (Refused) Design	
Apartment Type	No. of Apartments	Apartment Type	No. of Apartments
1 bedroom	11 (22%)	1 bedroom	12 (24%)
1 bedroom + study	3 (6%)		
2 bedroom	16 (33%)	2 bedroom	25 (50%)
2 bedroom + study	15 (31%)	2 bedroom + study	9 (18%)
3 bedroom	3 (6%)	3 bedroom	4 (8%)
3 bedroom + study	1 (2%)		
Total	49 (100%)	Total	50 (100%)

The proposed apartment mix (as amended) provides housing choice in the form of 1 bedroom, 1 bedroom + study, 2 bedroom, 2 bedroom + study, 3 bedroom and 3 bedroom + study apartments in various configurations within an established urban environment, close to shops, services and public transport nodes, commensurate with current local market conditions.

Car parking is provided over two (2) basement levels and at ground level and comprises the following:

- 90 residential spaces (including 5 accessible spaces),
- 10 visitor spaces (including 1 accessible space),
- 15 commercial spaces (including 1 accessible space).

In addition, there are racks for 28 bicycles located at ground floor level and in the upper basement level.

Three (3) lift cars in two cores provide access between the basement levels, ground floor level and the residential floor levels above.

The Amended Architectural Drawing package prepared by Architecture Design Studio (NSW) Pty Ltd provides the design detail of the proposed development, as amended for the purpose of the Section 8.3 Review of Determination.

Provided below is a description of each floor level of the proposed development:

Drawing 1101 (Rev Q)

Lower Basement Plan:

1. 52 resident parking spaces (incl. 2 accessible spaces);
2. 1 x car wash bay;
3. Individual resident storage areas;
4. Storage/services room; and
5. Lift cores & fire stairs.

Drawing 1102 (Rev Q)

Upper Basement Plan:

1. 37 resident parking spaces (incl. 3 accessible spaces);
2. 10 visitor parking spaces (incl. 1 accessible space);
3. 6 commercial/retail parking spaces
4. 11 bicycle racks;
5. Individual resident storage areas; and
6. Lift cores & fire stairs.

Drawing 1201 (Rev Q)

Ground Floor Plan:

1. 6 x commercial tenancies totalling 514m²;
2. 10 commercial/retail parking spaces (incl. 1 accessible);
3. 7 bicycle racks;
4. Residential lobbies;
5. Residential, commercial/retail and bulky goods waste and recycling storage rooms;
6. On-site waste and recycling collection area / SRV loading & unloading area;
7. Booster pump cupboard;
8. Sprinkler Tank room;
9. Fire Pump room;
10. Substation;
11. Main Switch room;
12. Ramp to basement levels;
13. Landscaping; and
14. Lobbies, lifts & fire stairs.

Drawing 1301 (Rev Q)

First Floor Plan:

1. 3 x 1 bedroom apartments;
2. 1 x 1 bedroom + study apartment;
3. 2 x 2 bedroom apartments;
4. 5 x 2 bedroom + study apartments;
5. 1 x 3 bedroom apartment;
6. 327.18m² common open space; and

7. Lobbies, lifts & fire stairs.

Drawing 1302 (Rev Q)*Second Floor Plan:*

1. 3 x 1 bedroom apartments;
2. 1 x 1 bedroom + study apartment;
3. 2 x 2 bedroom apartments;
4. 5 x 2 bedroom + study apartments;
5. 1 x 3 bedroom apartment; and
6. Lobbies, lifts & fire stairs.

Drawing 1303 (Rev Q)*Third Floor Plan:*

1. 3 x 1 bedroom apartments;
2. 1 x 1 bedroom + study apartment;
3. 2 x 2 bedroom apartments;
4. 5 x 2 bedroom + study apartments;
5. 1 x 3 bedroom apartment; and
6. Lobbies, lifts & fire stairs.

Drawing 1304 (Rev Q)*Fourth Floor Plan:*

1. 1 x 1 bedroom apartment;
2. 5 x 2 bedroom apartments;
3. 1 x 3 bedroom + study apartment;
4. 85.01m² common open space; and
5. Lobbies, lifts & fire stairs.

Drawing 1305 (Rev Q)*Fifth Floor Plan:*

1. 1 x 1 bedroom apartment;
2. 5 x 2 bedroom apartments;
3. 141.64m² common open space; and
4. Lobbies, lifts & fire stairs.

3.2 Design Philosophy

The key design features of the development may be summarised as follows:

- The Canterbury Road corridor is a precinct that will undergo significant change in the coming years as demand for renewal and increased urban density in the precinct rises. The proposed mixed use building is a reflection of the desired character of the area and is a response to the renewal being undertaken along Canterbury Road & the Lakemba Town centre.
- The existing surrounding building typologies consist of 2-4 storey mixed use commercial buildings with a mixed use residential flat building of 4 storeys directly to the west of the subject site and a new residential development approx. 150mm east of similar typology to the proposed development.
- The proposal has been designed to provide a quality mixed-use development that responds to and utilises the advantages of its context within Roselands and the greater area.
- the design considers aspect, solar access and cross ventilation to ensure the need for mechanical heating and cooling is kept to a minimum;

- the development carefully interfaces and considers its relationship with development on the adjacent lots, the anticipated surrounding built form and natural landscape;
- a range of ESD initiatives are to be incorporated in order to minimise the demand on resources and energy.

3.3 Scale

The building has been designed so as to fit comfortably into the overall scale of the existing and anticipated future built form in this location. The surrounding streetscape character and built form consists of a mixture of built forms and building heights and there is no dominant scale or character. Notwithstanding, the area is undergoing a transition to a higher built form such that the height, bulk and scale of the proposed development will be well suited to this future context and will make a positive contribution to the streetscape character and urban form and scale.

The highly articulated and fragmented building form further reduces the perceived bulk and height of the proposed development and the amenity impacts associated with the proposed built form. The proposed height is not considered to be responsible for any adverse external amenity impacts to neighbouring properties.

3.4 Landscape Treatment

The landscape concept for the proposed development is to provide a relatively low maintenance, yet engaging and attractive landscape setting for both the public and private domain of the development.

The above description should be read in conjunction with the landscape plan prepared by Zenith Landscape Designs that accompanies the application.

3.5 Materials and Finishes

The building will be constructed using a combination of textures including rendered and painted concrete walls, metal composite cladding, , anodized aluminium louvers and dark anodized aluminium window and sliding door frames. The multi layered facade consists of a variety of materials colours and design elements that provides articulation and provides a top/middle/bottom visual appearance to break up visual bulk & integrate with the desired character for the precinct. These materials and finishes have been selected for their combination of environmental sustainability, low maintenance and weathering qualities.

The materials and finishes key prepared by Architecture Design Studio Pty Ltd and contained in the architectural drawing package illustrates the proposed external material, finishes and colour palette.

3.6 ESD Design Initiatives

A range of design initiatives and elements have been employed to ensure the proposed development optimises its sustainability. These features are summarised as follows:

- installation of water efficient fixtures and fittings;
- water efficient design;
- gas instantaneous central hot water system to serve all residential apartments;
- cross ventilation;
- gas cook-tops and electric ovens for all residential apartments;
- energy efficient lighting and appliances;
- 3- phase air conditioning systems for all residential apartments;
- hot water diversion system (min. 100 litre) for all residential apartments to provide a supplementary supply for toilet flushing;
- low maintenance, drought tolerant planting.

A BASIX Certificate (No. 1200132M_04) outlining the BASIX Commitments / ESD initiatives is provided with the application documentation.

3.7 Access

The proposed development, as amended, nominates four (4) apartments as adaptable apartments. While the original application proposed 4 x 1 bedroom apartments as adaptable, the scheme has been amended and now proposes 2 x 1 bedroom and 2 x 2 bedroom apartments on the fourth and fifth floor levels. Each apartment has been allocated an accessible parking space in the basement levels. In addition, seven (7) x 2 bedroom apartments have been nominated as 'livable' apartments.

The application is accompanied by an Access Report prepared by Design Right Consulting that makes an assessment of the proposed development having regard to the relevant deemed-to-satisfy requirements of the BCA/NCC 2019 (Amendment 1), Disability (Access to Premises - Building) Standards 2010, AS 1428.1-2009 Design for Access and Mobility Part 1 – General requirements for access – New building work, AS 4299-1995 - Adaptable Housing and General Best Practice access requirements and AS 2890.6-2009 – Parking Facilities Part 6 – Off street parking for people with disabilities.

The Access Assessment Report identifies some minor non-compliances with the deemed-to-satisfy provisions of the NCC 2019 / BCA, however, acknowledges that these can be readily addressed through minor design changes or through the performance based solutions recommended in the Access Report.

As such it is considered that subject to minor design changes or the satisfactory implementation of performance based solutions, the proposed development will provide the required layout and facilities to enable the building to be used by all people, in a self-sufficient, equitable, dignified and amenable way.

3.8 Stormwater Management

ACE Civil Stormwater Services Pty Ltd has provided updated Stormwater Concept Plans for the proposed development.

The concept plans demonstrate that the OSD system and stormwater drainage system can be designed to conform to the requirements of Council's stormwater management requirements.

3.9 Social Dimensions

As described earlier at 3.1, the mixed use development provides a range of apartment layouts and types to accommodate occupants from singles to couples, families, the elderly and people with a disability.

3.10 Aesthetics

A high quality architectural design and character is proposed. Durable materials and enduring details with variation in scale and proportion appropriate to the context of the site will give the development a distinct character commensurate with the existing and anticipated built form and urban character.

3.11 Safety & Security

Each of the commercial tenancies will be secured by lock and key. Access to the residential apartments will be controlled via an intercom system, with each residential unit being provided with an intercom to the residential lobbies. The lifts will be operated using a swipe card / security 'key' or similar that will only allow residents and their visitors to access to the residential floors.

3.12 Construction Phase

Construction of the proposed development will be undertaken in accordance with EPA and WorkCover Authority guidelines to ensure that minimal impacts occur to nearby premises and their occupants and that the safety of workers is afforded the highest continued priority.

The successful building contractor will be required to prepare a Construction Management Plan that outlines the procedures that will need to be implemented in order to manage the possible impact of construction activities on the surrounding area. Typical details for inclusion in a Construction Management Plan are:

- materials storage and handling;
- site facilities – offices, amenities etc;
- the methodology for managing pedestrian and vehicular traffic;
- excavation;
- soil and water management;
- waste management (construction);
- air quality management;
- noise management; and
- occupational health and safety.

The Construction Management Plan will be consistent with current industry best practice and any Council requirements.

3.13 Erosion & Sediment Control Management

The successful building contractor will be required to prepare an Erosion & Sediment Control Management Plan that outlines the procedures that will need to be implemented in order to manage the possible impact of erosion hazard and stormwater pollution from sediment during the excavation and construction phase. The erosion and sediment controls will be put in place prior to works commencing on the site and will be maintained (as necessary) throughout the course of construction. The Erosion & Sediment Control Management Plan should include, but not be limited to, the following information:

- the property boundaries;
- existing and final contours;
- existing and final overland flow drainage paths;
- the location of a stabilised entry/exit point (rumble pad);
- the location of soil and sand stockpiles;
- the location of all proposed temporary drainage control measures;
- the location of all proposed erosion control measures (alternatively, use notes to describe locations) including installation sequence and maintenance requirements;
- details of any permanent site stabilisation measures; and
- a statement of who is responsible for establishing and maintaining all erosion and sediment measures.

4 Statutory Planning Framework and Compliance

The following Environmental Planning Instruments and Development Control Plan apply to the site:

- *Environmental Planning & Assessment Act, 1979*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development*
- *State Environmental Planning Policy (Building Sustainability Index) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *Canterbury Local Environmental Plan 2012*
- *Draft Consolidating Local Environmental Plan*
- *Canterbury Development Control Plan 2012*

A discussion on the relevant provisions of the Environmental Planning Instruments and Development Control Plan listed above is provided below:

4.1 Environmental Planning and Assessment Act 1979

The matters that are required to be considered when determining development applications are set out in Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). An assessment of the proposal against these matters is provided below and in Section 5 of this Statement.

4.2 State Environmental Planning Instruments

4.2.1 State Environmental Planning Policy No. 55 – Remediation of Land

The intent of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) is to provide a consistent approach to the remediation of land across the State by specifying certain matters that consent authorities must consider when determining development applications on land which is potentially contaminated.

Under the provisions of Clause 7 of SEPP 55 the consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is found to be contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or can and will be remediated in order for it to be suitable for the purpose for which the development is proposed.

On the basis of the existing and known historical land uses, there is no evidence to indicate that the site may be contaminated. Further, the site is free of any Statutory Notices issued by the NSW EPA and the site is not listed on the List of Contaminated Sites notified to the EPA. Based on these findings, it is considered unlikely that the site is contaminated and the risk to human health and the environment associated with groundwater and soil contamination is low.

Notwithstanding, it is noted that Council's Environmental Health Officer has requested a Detailed Environmental Site Assessment be prepared for the site.

Australian GeoEnviro Pty Ltd prepared a Stage 1 Detailed Site Investigation which involved on-site inspections and chemical testing to determine whether contamination has occurred from historic site usage. Contamination was detected during these investigations, and it was recommended that a

Remedial Action Plan (RAP) detailing the proposed remedial methodology and subsequent validation assessment criteria be prepared.

Australian GeoEnviro Pty Ltd has concluded that the subject site can be made suitable for its proposed use, following remediation of areas of environmental concern (AECs) in accordance with the RAP, and subsequent validation of and preparation of a Stage 4 Validation report.

Based on an evaluation of feasible remediation options, off-site disposal of the contaminated impacted material is considered the preferred option for the site. The RAP sets out remediation, validation, site management and health and safety requirements for remediation and validation. All excavated material transported off site should be classified in accordance with NSW EPA 2014 - Waste Classification Guideline Part 1; Classifying Waste.

Subject to the successful implementation of the measures detailed in this RAP, it is considered the site can be made suitable for the intended residential land use with no requirement for ongoing management.

A copy of the RAP is provided as part of the supporting documentation for this Section 8.3 Review of Determination application.

Having regard to the above, it is considered that following the removal, off-site disposal of the identified contaminated material and Validation, the site will be suitable for the proposed shop top housing development and the consent authority can be satisfied that its obligations under SEPP 55 will be met.

4.2.2 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings (SEPP 65) is part of a suite of documents developed by the State Government in an effort to improve the quality of design in residential flat buildings. The Policy recognises that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.

The Policy identifies 9 quality design principles which are applied by consent authorities in determining development applications for residential flat buildings. The design principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merits of the proposed solutions.

The proposed development, as amended, has been designed having regard to the nine (9) design quality principles contained in Part 2 of SEPP 65. Architecture Design Studio (NSW) Pty Ltd has prepared a Design Quality Report that addresses each of the 9 design quality criteria. This report is included in the supporting documents submitted with the application and demonstrates that the proposed development is of a high design quality.

As required, a SEPP 65 Design Verification Statement has also been prepared by Architecture Design Studio (NSW) Pty Ltd and is provided with the SEPP 65 Design Quality Statement.

The design of the residential component of the development has embraced the SEPP 65 design quality principles and will provide a high quality amenity for future residents.

An assessment of the proposed development against the relevant sections of the Apartment Design Guide (ADG) has also been prepared by Architecture Design Studio (NSW) Pty Ltd and demonstrates that the proposal will perform adequately in relation to the design requirements under the ADG.

In this regard, amendments have been made to the design with respect to cross ventilation, solar access, private open space, communal open space, apartment size and layout in order to address non-compliances identified in the assessment of the previous (refused) scheme.

It is noted that Clause 6A of the SEPP states that provisions of a Development Control Plan have no effect where they relate to the objectives, design criteria and design guidance contained within Parts 3 and 4 of the ADG for the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage

In addition, subclause 30(1) of the SEPP states that a Development Consent cannot be refused if the proposed development complies with the design criteria contained within Parts 3 and 4 of the ADG relating to car parking, internal apartment area and ceiling heights.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) came into force on 1 July 2004 and has been progressively implemented to the various types of residential development. The intent of the BASIX SEPP is to encourage sustainable residential development by requiring applicants to make commitments to incorporating sustainable design / building techniques in order to achieve more water and energy efficient residential buildings.

BASIX is an on-line program that assesses a residential dwelling against water, thermal comfort and energy reduction targets. Designs must meet these targets before a BASIX Certificate can be issued. Commitments made during the BASIX assessment process must be shown on plans and adhered to during construction.

An updated BASIX Certificate (No. 1200132M_04) has been submitted with this Section 8.3 Review of Determination application and demonstrates that the proposed development meets the required water, thermal comfort and energy targets. The BASIX Commitments specified in the BASIX Certificate and nominated on the architectural drawings will be incorporated into the construction and fit-out of the development. As such, Council can be satisfied that the sustainability obligations under the SEPP have been met.

4.2.4 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) aims to facilitate the effective delivery of infrastructure across the State. The ISEPP also contains provisions with respect to roads and traffic, including development in or adjacent to road corridors and road reservations.

The site has its principal frontage to Canterbury Road, a classified State Road that carries in excess of 40,000 vehicles per day.

Accordingly, the proposed development is a land use type that is sensitive to traffic noise and vehicle emissions. Clause 102(3) of the ISEPP states that consent must not be granted to a residential development affected by road noise or vibration unless the consent authority is satisfied that appropriate attenuation measures will be incorporated in the design and construction in order to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building - 35 dB(A) at any time between 10.00pm and 7.00am,
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.

The application is accompanied by an (updated) Acoustic Report prepared by Acoustic Noise and Vibration Solutions Pty Ltd. This report provides details of the noise measurements taken to determine the existing road noise levels, as well as recommendations for mitigations measures to ensure that the relevant interior noise criteria will be met. Provided that the recommendations for appropriate construction materials are incorporated into the design and construction of the building, this will satisfy the noise design criteria specified under the ISEPP, the BCA, AS2107 – *Acoustics – Recommended Design Sound Levels and Reverberation Times*.

4.3 Local Environmental Planning Instruments

4.3.1 Canterbury Local Environmental Plan 2012

The principal local environmental planning instrument applying to the site is *Canterbury Local Environmental Plan 2012*, which came into force on 1 January 2013. This LEP has been made in accordance with the standard environmental planning instrument under Section 3.20 of the *Environmental Planning & Assessment Act, 1979*.

As noted earlier, the site is zoned B2 Local Centre under *Canterbury Local Environmental Plan 2012*.

The specific aims of the LEP in relation to the B2 Local Centre zone are:

- *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.*

Comment: The proposed mixed use development is considered to be consistent with the objectives for the B2 Local Centre zone as follows:

- The development will provide additional commercial/retail floor space that will suit a range of commercial land uses, together with new residential accommodation and assist in facilitating the revitalisation of this section of Canterbury Road and the ongoing economic growth of the suburbs of Roselands and Lakemba.
- The development will provide additional housing choice and diversity in the location, in a built form that is consistent and compatible with the likely future character of the area.
- A high level of residential amenity will be achieved, with the design of the residential apartments having regard to the design quality principles set out in SEPP 65, as well as the objectives and design criteria set out in the ADG.
- The site is located within walking distance of Lakemba Railway Station and a number of bus stops, giving the site excellent access to the public transport network, as well as being accessible to the services and facilities provided in the surrounding area.

There are a number of clauses in the LEP that are applicable to the proposed development. These are discussed below:

Clause 2.7 of the LEP relates to the demolition and states that *the demolition of a building or work may be carried out only with development consent*.

Comment: Consent for the demolition of the existing buildings and concrete / bitumen hard stand areas on the site is being sought under this application.

Clause 4.3 of the LEP relates to the height of buildings and prescribes a maximum building height of 18m for the site, as indicated on the Height of Buildings Map that accompanies the LEP.

Comment: The proposed development has a maximum building height of 19.07m and will therefore exceeds the maximum building height development standard by 1.077m.

Clause 4.4 of the LEP relates to floor space ratio. However, a maximum floor space ratio is not prescribed for the site.

Clause 4.6 of the LEP relates to exceptions to development standards and provides a mechanism for a degree of flexibility in the application of certain development standards to certain development, in order to achieve better development outcomes.

Comment: As detailed above, the proposed development exceeds the statutory maximum building height of 18m by up to a maximum of 1.077m. Accordingly, an Amended Clause 4.6 Exceptions to Development Standards request for a variation to the height of buildings principal development standard is provided at **Appendix A** of this Statement.

On the merits of the environmental planning grounds provided in the Clause 4.6 Exceptions to Development Standards request, it is considered that the Clause 4.6 variation request is well founded. Accordingly, it is requested that Council grant an exception to the height of buildings principal development standards in this instance.

Clause 6.1 of the LEP relates to Acid Sulfate Soils (ASS) and requires an Acid Sulfate Soils Management Plan to be submitted in certain instances where there is the potential for acid sulfate soils to be disturbed during works below the natural ground surface.

Comment: The Acid Sulfate Soils map that accompanies Canterbury LEP 2012 indicates that the site is not located on land with an Acid Sulfate Soils classification. Accordingly, a Preliminary Acid Sulfate Soils Management Plan is not required to be submitted with the application.

Therefore, it is considered that the information provided above is sufficient to address the requirements of Clause 6.1 of the LEP.

Clause 6.2 of the LEP relates to earthworks and requires the consent authority to give consideration to a range of matters with respect to the potential for impacts associated with earthworks. As the basement levels will require excavation, these matters need to be taken into consideration and are discussed below:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: The excavation for the 2 basement levels constitutes earthworks that are ancillary to the development. Noting that contaminants have been identified across the site and the Remedial Action Plan recommends excavation and off-site disposal of this material, the soil to be removed from the excavation will be classified and then disposed of at a licensed facility. The excavation and disposal will be undertaken by an appropriately qualified and experienced company, in accordance with the RAP, and erosion and sediment controls will be put in place prior to works commencing on the site.

As such, it is unlikely that the proposed excavation will have any detrimental impacts on adjoining properties, soil stability or drainage patterns.

Clause 6.4 of the LEP relates to stormwater management and states that consent must not be granted to development unless the consent authority is satisfied that the development:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: The application is accompanied by an amended concept stormwater drainage design prepared by ACE Civil & Stormwater Services Pty Ltd that should be referred to with respect to the above.

4.4 Draft Local Environmental Planning Instruments

4.4.1 Draft Consolidated Local Environmental Plan

Canterbury Bankstown Council has prepared a Planning Proposal to consolidate and align *Bankstown Local Environmental Plan 2015* and *Canterbury Local Environment Plan 2012*.

Notwithstanding, no change to the existing statutory controls that apply to the site are proposed. As such, the proposed amendments will not affect the proposed development.

4.5 Development Control Plans

4.5.1 Canterbury Development Control Plan 2012

Canterbury Development Control Plan 2012 contains detailed provisions and controls that supplement the provisions of the LEP. Chapter B provides general controls relating to all development types and Part D provides controls relating to Business Centres, as well as the Canterbury Road Corridor. In particular, Chapter C5 provides controls specific to shop top housing, with general objectives as follows:

- O1 To encourage lively business centres capable of accommodating a mix of retail, commercial and community activities, that caters to the community, relative to their size and intended function.*
- O2 To ensure long-term social and economic viability of business centres is maintained and they remain significant to the community for their individual character, ease of access, and urbane appeal.*
- O3 To maintain commercial activity at ground level to promote pedestrian activity and contribute to lively streets in centres.*

O4 To maintain facades in business centres where they contribute to the character of the streetscape.

O5 To ensure frontages are appropriate for the location and will maximise activity at the public/private interface and provides weather protection for pedestrians.

O6 To minimise impacts of commercial activities on adjacent residential properties.

The proposal has been assessed against the relevant objectives and controls under Chapter C5 and Part D of Canterbury Development Control Plan 2012 and this assessment is summarised in the Compliance Table provided below:

Canterbury Development Control Plan 2012	
Chapter C5 – Shop Top Housing	
Control	Compliance
5.2.1 Site Planning	
Balconies and Communal Open Space <ul style="list-style-type: none"> Balconies to meet the minimum ADG sizes. Communal open space (COS) - minimum 15% of site area Minimum length of COS – 6m Screen walls to COS to be 1.2m or 1.8m if 50% transparency screening is provided. 	Complies: <p>The balconies meet the minimum dimensions required under the ADG.</p> <p>25% (553.83m²) of COS is provided in three locations.</p> <p>The minimum dimension of the COS complies with the 6m minimum.</p> <p>1.2m walls are provided to the outside edge of the COS.</p>
Height	Non-compliance: The height of the building exceeds the 18m LEP height limit by 1.077m. A Clause 4.6 Exceptions to Development Standards request has been provided.
Setbacks	Complies: See Part D below.
Floor to Ceiling Height	Complies: The floor to ceiling heights satisfies the ADG requirements.
Building Depth	Complies: See Part D below.
Building Separation	Complies: The ADG separation distances are achieved.
Dwelling Layout and Mix <ul style="list-style-type: none"> ADG Design Criteria – Apartment Size Min. 10% of dwellings to be accessible or adaptable. 	Complies: <p>The apartment sizes meet the minimum sizes under the ADG.</p> <p>4 (8%) apartments are nominated as adaptable. In addition, seven (7) apartments are nominated as being 'Livable' under the Livable Housing Guidelines.</p>
Solar Access <ul style="list-style-type: none"> ADG Criteria – Solar & Daylight Access 	Complies: <p>42 of the 49 (85%) will receive at least 2 hours solar access between 9am and 3pm in mid-winter.</p>
Parking Rates <p>The site is not within 800m of a Railway Station, therefore the DCP rates apply.</p>	Complies: The proposed parking provision satisfies the minimum requirements under the DCP.

Part D – Business Centres	
Control	Compliance
<p>D1.2 Site Planning</p> <p><i>Minimum frontage</i></p> <ul style="list-style-type: none"> Minimum frontage of 18m in B2 zone. <p><i>Front Setback – B2 Zone along Canterbury Road and any secondary frontage</i></p> <ul style="list-style-type: none"> 1-4 storeys – min 3m Above 4 storeys – additional 5m <p><i>Side Setback – boundary with residential zone</i></p> <ul style="list-style-type: none"> 45° height plane projected at 1.5m from the residential boundary. <p><i>Building Depth</i></p> <ul style="list-style-type: none"> Minimum depth of 10m Maximum street frontage wall length of 50m 	<p>Complies: The site has a frontage of 44.348m to Canterbury Road and a secondary frontage of 50.292 to Flora Street.</p> <p>Levels 1-4 have a 3m setback to Canterbury Road and Flora Street.</p> <p>Levels 5 & 6 are setback a further 5m.</p> <p>The 45° height plane is generally adhered to in relation to the adjoining residential zone to the south.</p> <p>The building has a depth of 18m.</p> <p>The street frontage wall length is 41m to Canterbury Road and 38m to Flora Street.</p>
<p>6.1 Canterbury Road Corridor</p> <p>B2 Local Centre</p> <p><i>Comprise lower scale buildings, ranging in height from three (3) to five (5) storeys, and will likely be infill sites, additions to existing or heritage buildings, or buildings in sensitive locations. Urban development will provide an active mix of retail, employment, community and residential, with major areas of activation on cross streets. Active retail is desirable at ground level with commercial and residential above. Open space takes the form of regularly shaped streets, plazas, piazzas, paths and promenades. Transit nodes may include an open space feature where it provides significant public transport connections between Canterbury Road and the cross street bus network. Small floor space showrooms may be appropriate in secondary retail frontages to the movement economy.</i></p>	<p>Partial Compliance: The proposed building is six (6) storeys in height. However, the upper floors have been set back to read as a four (4) storey street wall to Canterbury Road. The ground floor commercial tenancies front both Canterbury Road and Flora Street and will provide ground floor activation of this corner site, with six (6) tenancies of a range of sizes that will suit various commercial and/or retail uses that will serve the local and wider community. The residential accommodation above will provide a variety of apartment sizes and layouts to suit a diverse demographic and the additional residential population will support the local economy.</p>

As can be seen from the Compliance Table, the proposed development satisfies the majority of the DCP requirements that are relevant to the site. However, the building exceeds the 18m height development standard prescribed under Canterbury LEP 2012. A Clause 4.6 Exceptions to Development Standards request has been prepared and accompanies the application and provides justification for the proposed variation. Refer to **Appendix A** of the Statement.

5 Section 4.15 Assessment

5.1 Section 4.15(1) - Matters for Consideration

In accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
 - (i) *any environmental planning instrument, and*
 - (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

The matters for consideration listed under (a) above have been discussed in Section 4 of this Statement. The remaining matters (b) to (e) are discussed below:

5.2 Likely Impacts of the Development

5.2.1 Context and Setting

The proposed development is considered to represent an appropriate built form and scale having regard to the anticipated future context and setting of the locality. The site is located to the south of Lakemba town centre, on the busy Canterbury Road transport corridor and has excellent access to public transport, educational establishments and the shopping and services available both locally and the wider regional area. Local parks and a range of privately operated and public recreational facilities are also easily accessible.

The Canterbury Road corridor is a precinct that will undergo significant change in the coming years as demand for increased density in the precinct rises. The proposed mixed use building is a reflection of the desired character of the area and is a response to the renewal being undertaken along Canterbury Road & Lakemba Town centre.

It is considered that the proposed development will make a positive contribution to the built form and future character of the locality.

5.2.2 Traffic, Access and Parking

On-site parking is proposed to be accommodated at ground floor level and in 2 basement levels accessed by a driveway off Flora Street on the south-eastern corner of the site.

Parking requirements for the site have been assessed against the applicable rates under Canterbury Development Control Plan (DCP) 2012 (as the site is not within 800m of a Railway Station) and the proposed development requires on-site parking as calculated below:

Car Parking requirement

Residential (50 apartments – DCP rates)

- 1 bedroom apartments – 12 apartments @ 1 space per apartment = 12 spaces
- 2 bedroom apartments - 34 apartments @ 1.2 spaces per apartment = 40.8 spaces;
- 3 bedroom apartments - 4 apartments @ 2 spaces per apartment = 8 spaces;
- Resident Visitors - 50 apartments @ 0.2 space per apartment = 10 spaces.
- **subtotal = 71 car spaces**

Residential Bicycle

- 1 resident space per 5 dwellings = 10
- 1 visitor space per 10 dwellings = 5
- **subtotal = 15 spaces**

Commercial

- 573m² @ 1 space per 30m² GFA = 19.1 spaces
- **subtotal = 20 spaces**

Commercial bicycle

- 1 space per 300m² GFA (staff) @ 573m² = 2 spaces
- **subtotal = 2 spaces**

Therefore, the total required parking under the DCP rates is ninety one (91) car spaces and seventeen (17) bicycle spaces.

A total provision of one hundred and fifteen (115) parking spaces is proposed, allocated as follows:

- 90 residential spaces (incl. 5 accessible spaces)
- 10 visitor spaces (incl. 1 accessible space)
- 15 commercial spaces (incl. 1 accessible space)

A dedicated car wash bay is also provided.

Racks to accommodate 28 bicycles are provided at the ground floor level and upper basement level.

Therefore, the proposed on-site parking satisfies the rates required under the DCP and ADG.

The application is accompanied by a revised Traffic and Parking Impact Assessment prepared by Motion Traffic Engineers that makes an assessment of the on-site parking provision, examines the traffic generation and its impacts and comments on the design geometry of the access ramp and parking facilities.

The report also provides details of the anticipated traffic generation rates and car parking demand based on the RMS *Guide to Traffic Generating Developments*, anticipating that the proposed development will generate 19 vehicle trips an hour to/from the site during the morning peak and 17 trips in the afternoon peak. However, the traffic consultant is of the view that this additional traffic generation is relatively minor and will not result in any noticeable or unacceptable effect on the road network capacity or traffic-related environmental effect.

The Traffic & Parking Impact Assessment report concludes that:

Based on the considerations presented in this report, it is considered that:

Parking

- *The proposed mixed-use development complies with Council's commercial and residential car parking requirements.*

Traffic

- *The proposed mixed use development is a low trip generator for the weekday AM and PM peak hours.*
- *The additional trips from the proposed mixed use development can be accommodated at the nearby intersections and road network without noticeably affecting intersection performance, delays or queues.*
- *There are no traffic engineering reasons why a development consent for the proposed mixed-use development at 892, 898-902 and 906 Canterbury Road in Roselands, should be refused.*

Therefore, having regard to the findings of the Traffic & Parking Impact Assessment, the traffic and parking arrangements of the proposed development are considered to be appropriate and will not result in any adverse environmental impacts or traffic implications in terms of road network capacity.

5.2.3 Noise and Acoustic Performance

In order to ascertain the building materials and construction methods to be adopted so that the building will achieve acceptable internal noise levels in accordance with Council's requirements, the application is accompanied by an Acoustic Report prepared by Acoustic Noise & Vibration Solutions Pty Ltd, that provides an assessment of the noise environment and makes recommendations as to the acoustic treatments that will be necessary in order to satisfy the requirements of AS/NZS 2107:2016 – *Acoustics – Recommended Design Sound Levels and Reverberation Times*, and Clause 102 of *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP).

The report provides details of the unattended environment noise survey undertaken over a seven (7) day period between 3 May and 10 May 2021 in order to determine the daytime and night time background noise levels at the northern boundary adjacent to Canterbury Road and the southern boundary adjacent to the nearest residential receivers. The background noise levels were then

compared to the relevant sound criteria for road noise so as to determine the required attenuation treatments so as to provide for appropriate noise and vibration attenuation.

The recommended materials of construction and acoustic treatments include a concrete roof with gypsum ceiling lining and wool batts between ceiling joists, acoustic glazing treatments with air-tight seals on windows, double skin masonry external wall construction (or other method of construction with an R_w of 44), solid core doors with acoustic seals, as well as lagging (insulation) installed in pipes and services ducts/shafts.

If implemented correctly, the materials of construction and construction techniques recommended in the Acoustic Report will achieve the required noise reduction levels as required in AS 2107: 2016 'Acoustics – Recommended Design Sound Levels and Reverberation Times and Clause 102 of the ISEPP.

Each of the three (3) communal open space areas are located adjacent to residential apartments. There is also the potential for noise generated through use of the communal areas to impact on sensitive receivers beyond the site. Therefore, in order to mitigate the acoustic impacts to these residents and surrounding properties that may arise from people using the communal areas, as well as meet the relevant noise criteria under the POEO Act and Noise Guide for Local Government, the report recommends the installation of a 1.8m high gap free barrier (such as lapped and capped timber, Colorbond or Masonry) around the perimeters of the communal open space areas. Further, it is recommended that the bedroom windows of any residential apartments within the development that face the communal open space areas be fitted with 10.38mm laminated glass with full perimeter acoustic seals.

In order to provide acoustic protection to adjoining properties from vehicles entering and exiting the basement carpark, the report also recommends the installation of a 1.8m high gap free barrier (such as lapped and capped timber, Colorbond or Masonry) along the southern and western boundaries of the site.

Recommendations are also made with respect to attenuation measures to ensure that all proposed mechanical plant & equipment will comply with the NSW Noise Policy for Industry (2017) provided recommendations are adhered to.

5.2.4 Overshadowing and Solar Access

Shadow diagrams which illustrate the extent of shadows cast by the proposed building have been prepared by Architecture Design Studio (NSW) Pty Ltd and are included as part of the amended architectural drawing package. The orientation of the site and the design and siting of the residential units ensures that the private open spaces and adjacent internal living spaces of all of the residential units enjoy excellent levels of solar access. Forty two (42) of the residential apartments (85%) will receive a minimum of 3 hours solar access to their balconies and living areas between 9am and 3pm in mid-winter.

The shadow diagrams illustrate that morning shadows cast by the proposed development during mid-winter will fall over the mixed use building immediately adjoining the western side of the site and the residential dwellings to the south-west. By midday the shadows have contracted so that they are essentially contained within the site, with only minor impact on adjoining properties to the south. By 3pm, the shadows fall over Flora Street and the dwelling on the adjacent site to the south. However, the building will not reduce solar access to this property during the mid-winter morning period.

Having regard to the above, the proposed development performs well with respect to solar access and although will have an overshadowing impact on adjoining properties, this will not have an unreasonable shadow impact on these adjoining properties.

5.2.5 Social & Economic

The proposed development will have both a short and long term positive economic impact on the locality. In the short term it will create construction jobs for a variety of trade and specialist occupations.

The commercial/retail tenancies will provide opportunities for new businesses to establish in the area, as well as providing employment opportunities. The proposed residential apartments will increase the housing choice within Roselands and will create additional housing in an established urban area with good access to local services and facilities, as well as nearby major employment centres, consistent with the Council's intention of increasing residential densities in established urban areas. The additional population generated by the proposed development may reasonably be expected to improve expenditure in Roselands and other nearby centres, thereby making a positive contribution to the local economy.

As a result, it is considered that the proposed development will have a positive social and economic impact.

5.2.6 Crime Prevention

Crime Prevention through Environmental Design (CPTED) is an important inter-agency crime prevention program that reduces crime opportunity through effective planning, urban design and place management. The NSW Police Service program, known as Safer by Design is based on the principles of CPTED.

The Department of Planning & Environment (then PlanningNSW) released guidelines under (the former) Section 79C of the *Environmental Planning and Assessment Act, 1979* which have been prepared to assist councils in identifying crime risk and minimise opportunities for crime through appropriate assessment of development proposals.

The Guidelines uses Crime Prevention through Environmental Design (CPTED) which is a crime prevention strategy and focuses on reducing the opportunities for crime through the planning, design and structure of the built environment. This is achieved through:

- Maximising the risk to offenders through increasing the likelihood of detection and challenge;
- Maximising the effort require to commit an offence;
- Minimising the perceived benefits of crime; and
- Minimising the opportunity to facilitate inappropriate behaviour.

Part B of the Guidelines set out four principles to be used in the assessment of development applications to minimise the opportunity for crime, as follows:

Surveillance

Providing effective surveillance of areas within and surrounding a site can assist in reducing the attractiveness of crime targets. Surveillance of an area can be achieved through both natural and technical means.

Passive surveillance, where people can see what others are doing, creates a sense of safety within an environment and provides opportunities for interaction between individuals. This and high levels of passive surveillance, deters offenders from committing crime.

The landscape treatment for the development has been designed in cognisance of the need to maintain good levels of passive surveillance and allow safe movement of pedestrians around / across the site.

The commercial/retail tenancies have full height glazed 'shopfronts' that allow for good surveillance towards Canterbury Road and Flora Street. The main pedestrian entry/lobbies for the residential apartments are oriented towards Canterbury Road and do not provide concealment spaces. In addition, there are living rooms/balconies of the apartments that are oriented towards both street frontages. This ensures maximum opportunity for casual surveillance of the surrounding footpaths and roadways.

Site lighting will be installed to satisfy the relevant Australian Standards and provide a high degree of lighting throughout the publicly accessible areas of the development.

Access Control

By clearly defining areas accessible to the public and providing physical and symbolic barriers to attract and channel the movement of people, it will be difficult for offenders to reach victims and opportunity to commit crime will be minimised.

Electronic "Access Control" in the form of an audio intercom will be provided at the entry to the residential lobby to provide secure access to the residential apartments.

The pedestrian entry points to the residential foyers/lobbies are clearly identifiable from the Canterbury Road frontage and the entries to the commercial/retail tenancies are also clearly identifiable from both the Canterbury Road and Flora Street frontages.

Territorial Reinforcement

Defining what is public and private territory assists in determining the function of a space and the appropriate behaviour within a space. This definition enhances the informal security presence within and around the site. Territorial reinforcement is achieved through the creation of a "sphere of influence" around a building by utilizing physical designs such as pavement treatments, landscaping and signage that enable users of a building or an area to develop a sense of proprietorship over it.

Whilst the Guidelines specifically refer to public spaces, the principles can be applied to the proposed development. In this regard, the demarcation between the public domain and private property is clearly defined by the footpaths along the Canterbury Road and Flora Street frontages.

Space Management

Neglected and/or poorly maintained buildings and/or areas are often more susceptible to criminal activities such as vandalism.

Again, the Guidelines specifically refer to public spaces. Nevertheless, the building manager / management committee will ultimately be responsible for the management and maintenance of the public domain and communal private spaces of the development.

5.3 Suitability of the Site

The site is considered to be suitable for the proposed use and has the capacity to support the proposed additional density and built form.

Having regard to the characteristics of the site and its location, the proposed mixed use development is considered appropriate in that:

- the site is zoned to accommodate this type and form of development;
- the nature and form of the proposed development is generally consistent with the development controls which apply to the site;
- the scale and nature of the development is compatible with the anticipated future development in the locality;
- the size and dimensions of the land are suitable for the scale of the proposed development;

- the site will have access to all utility services to accommodate the demand generated by the proposed development;
- the proposed development is unlikely to result in any adverse traffic impacts;
- the proposed development will not result in any unacceptable or material environmental impacts in relation to adjoining and surrounding properties, particularly in terms of overshadowing, views, privacy (aural and visual), solar access and natural ventilation.

The proposed development is not expected to result in any significant adverse environmental impacts and it is therefore considered that the site is suitable to accommodate the proposed development.

5.4 The Public Interest

The proposed development is considered to be in the wider public interest for the following reasons:

- it is consistent with the objects of the *Environmental Planning and Assessment Act 1979*, specifically because it represents the *orderly and economic use and development of land, promotes good design and amenity of the built environment* and promotes the *delivery and maintenance of affordable housing*;
- the proposal generally satisfies the objectives and intent of *Canterbury Local Environmental Plan 2012* and relevant objectives and controls of Penrith Development Control Plan 2014;
- the proposal provides a responsive design in terms of its relationship to adjoining development and establishes an appropriate streetscape and human scale through sound urban design principles;
- the design incorporates a number of ESD initiatives that will achieve a high standard of environmental design and sustainability;
- the proposal provides a satisfactory response to the design principles set out in SEPP 65;
- the proposed development provides the community with additional commercial/retail space, together with a form of high quality housing that takes advantage of its proximity to local and regional facilities, public transport and open space areas; and
- the proposal makes a positive contribution towards the State Government's objectives for urban consolidation / renewal and the reduction of urban sprawl.

6 Conclusion

This Amended Statement of Environmental Effects is submitted as part of a Division 8.2 (Section 8.3) Review of Determination application for the redevelopment of Nos. 892-894, 896-900 & 906 Canterbury Road, Roselands for a six (6) storey shop top housing development.

The aim of this Amended Statement has been to:

- describe the proposal, as amended;
- demonstrate compliance and/or planning merit of the proposal against the relevant statutory/development controls; and
- provide an assessment of the likely environmental effects of the proposal.

The development, as amended for the purposes of the review of determination, seeks to provide six (6) commercial/retail tenancies and forty nine (49) residential apartments on the site. Parking for one hundred and fifteen (115) cars is to be provided in two (2) basement levels and at ground floor level. The proposal provides a responsive design in terms of its relationship with adjoining development and establishes an appropriate human scale through sound urban design principles, whilst ensuring that environmentally sustainable principles are incorporated.

The development proposed under this application is considered to be both reasonable and appropriate in the context of the site and will have positive social and economic benefits in terms of creating additional resident population that will in turn support local businesses and services.

The proposed development is considered to be consistent with the aims and objectives of *Canterbury Local Environmental Plan 2012* and is generally consistent with the applicable development controls under Canterbury Development Control Plan 2012.

Having regard to the analysis and assessment contained in this Amended Statement, it is requested that Council support the Clause 4.6 Request with respect to the height variation, together with the requested variations to the DCP controls and give favourable consideration to the application.

Appendix A

Amended Clause 4.6 Exceptions to
Development Standards request

Amended Clause 4.6 Exceptions to Development Standards Clause 4.3 Height of Buildings - *Canterbury Local Environmental Plan 2012*

Proposed Demolition of the Existing Structures and Construction of a 6 Storey Shop Top Housing Development - Nos. 892-894, 896-900 & 906 Canterbury Road, Roselands

1.0 Introduction

This Amended Clause 4.6 Exceptions to Development Standards request has been prepared by Andrew Robinson Planning Services Pty Ltd on behalf of Ahmad Corporation to accompany a Section 8.3 Review of Determination application for a proposed six (6) storey shop top housing development at Nos. 892-894, 896-900 & 906 Canterbury Road, Roselands.

The Amended Clause 4.6 Exceptions to Development Standards request relates to the height of buildings principal development standard prescribed under subclause 4.3(2) of *Canterbury Local Environmental Plan 2012*. Subclause 4.3(2) states:

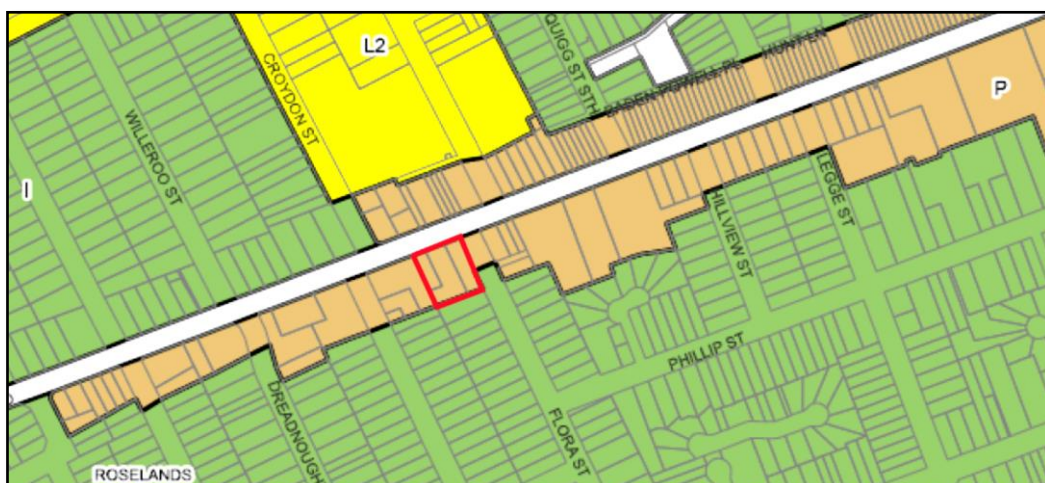
The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Clause 4.3(2) of Canterbury LEP 2012 is a development standard that can be varied by a written request under clause 4.6 of the LEP.

The Height of Buildings Map indicates a maximum building height of 18m applies to the site (refer to **Figure 1**).

When measured in accordance with the definition for building height under the LEP, the proposed development, has a maximum height of 19.077m. This exceeds the 18m statutory maximum building height by 1.077m.

Figure 1: Extract from Canterbury LEP 2012 Height of Buildings Map (HOB_004) showing the 18m height limit for the site (P = 18m).



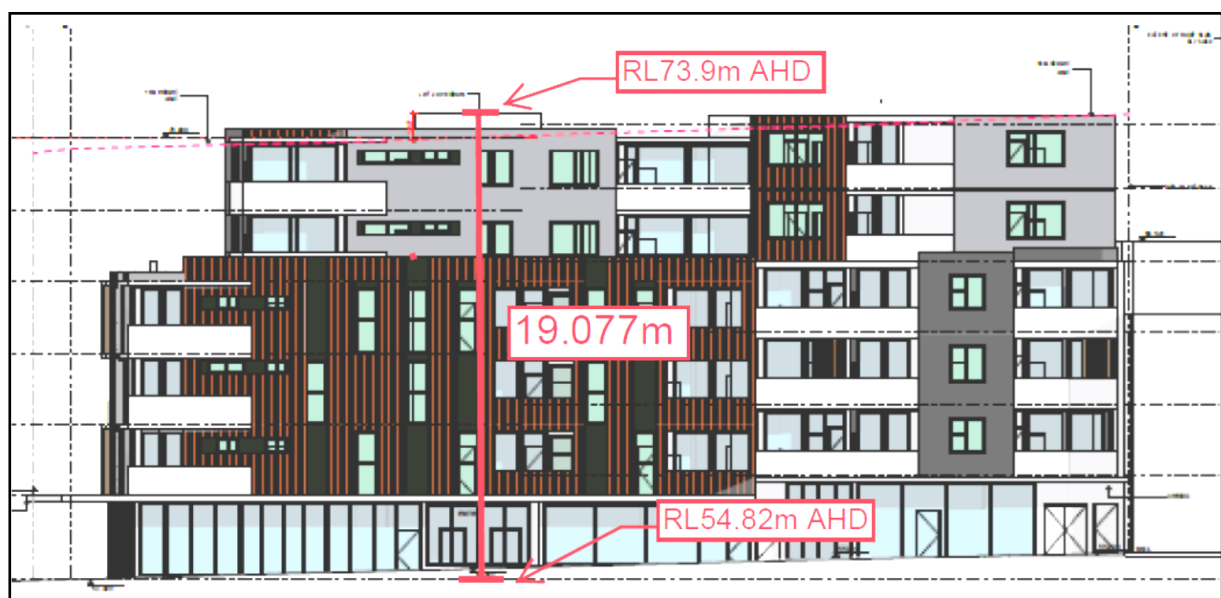
The following definition under *Canterbury Local Environmental Plan 2012* is important in considering the proposed variation:

building height (or height of building) means:

- (a) in relation the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Having regard to the above definition, the non-compliance to the height of buildings principal development standard relates to the roof and lift overrun of the uppermost floor level, where Lift 2 Overrun has an RL of 73.9m AHD (refer to **Figure 2**). The difference between the Lift 2 Overrun (RL73.9m) and the ground level immediately below (RL54.82m) results in a maximum building height of 19.077m.

Figure 2: Extract from architectural drawing No. 1501 (Rev Q) – North Elevation, showing the extent of the non-compliance relative to the 18m statutory height limit.



As noted above, the corresponding ground level RL that accompanies the application indicate a lowest RL of 54.82m at the top of Lift 2 Overrun where the greatest breach occurs. This translates to a maximum building height of 19.077m, exceeding the 18m height standard by 1.077m. This represents a variation of 5.98% above the building height standard.

2.0 The Effect of Clause 4.6 Exceptions to Development Standards

Clause 4.6 of *Canterbury Local Environmental Plan 2012* states (in part):

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2')
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
- *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130
- *Nakhoul v Canterbury Bankstown* [2020] NSWLEC 1320

In summary, the principles arising from the above matters are:

- (i) That the relevant objectives are those stated in the controls not unidentified underlying

objectives at [57] in *Four2Five* No. 1;

- (ii) That the environmental planning grounds must be particular to the circumstances of the proposed development and/or the site at [60] in *Four2Five* No. 1; and
- (iii) The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* remain relevant. However, in order to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a), you need something more than way 1 in *Wehbe*, because that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.
- (iv) Preston CJ in *Initial Action* held that for there to be power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court, in exercising the functions of the consent authority, be satisfied that the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) and adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)). The Court must also be satisfied that the proposed development will be consistent with the objectives of the zone and with the objectives of the standard in question, which is the measure by which the development is said to be in the public interest (cl 4.6(4)(a)(ii)).
- (v) In *RebelMH* the Court, in exercising the functions of the consent authority, must “in fact” be satisfied of the above matters. The state of satisfaction that compliance is “unreasonable or unnecessary” and that there are “sufficient environmental planning grounds” to justify the contravention must be reached only by reference to the cl 4.6 request. The evidence in the proceedings cannot supplement what is in the request, although the evidence may assist in understanding the request and in considering its adequacy. On the other hand, the state of satisfaction that the proposed development is consistent with the relevant objectives, and therefore in the public interest, can be reached by considering the evidence before the Court and is not limited to what is contained in the cl 4.6 request.
- (vi) Lastly, with respect to the public interest and question of precedent, in *Nakhoul*, Walsh C refers to the guidance offered by Justice Lloyd in *Goldin v Minister for Transport Administering the Ports Corporatisation and Waterways Management Act 1995* (2002) 121 LGERA 101; [2002] NSWLEC 75 and held that the initial test under *Goldin* goes to whether or not a proposal is objectionable in itself and, if a proposal is not objectionable in itself, then the second test, concerned with the potential for setting a precedent, should not be a consideration.

In relation to (iii) above, Method 1 in *Wehbe* requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

Subsequently, *Four2Five*, provided a necessity to demonstrate something *more* than simply achieving the objective of the standard. In this regard, a proposed development that contravenes the development standard, but as a result, achieves the objective of the development standard to a greater degree than a development that complied with the standard, would suffice.

With regards to *Initial Action*, it is reaffirmed that the test is that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, **and** that sufficient environmental planning grounds are establishes to justify the contravening of the standard. In doing so, the Court must be satisfied that consistency with the objectives of the zone are achieved.

RebelMH affirms that the Court must be satisfied of the above matters which are ordinarily dealt with in the Clause 4.6 but can be supplemented by other evidence tendered in the proceedings.

Finally, with respect to the public interest and question of precedent, the two tests under *Nakhoul* are firstly whether or not a proposal is objectionable in itself and secondly, what is “the probability that there will be further applications of a like kind”. *Nakhoul* affirms that the potential for setting a precedent,

should not be a consideration where a proposal meets the initial test that a proposal is not objectionable in itself.

3.0 Justification for Variation

What is the context of the variation?

The Canterbury Road Corridor is a precinct that is likely to undergo significant change in the coming years as demand for density in the precinct rises and redevelopment of sites that reflect the current planning regime takes place. The proposed mixed use building is a reflection of the desired character of the area and is a response to the renewal being undertaken along Canterbury Road & Lakemba Town centre.

The existing surrounding building typologies consist of 2-4 storey mixed use buildings with a 4 storey building directly to the west of the subject site and a new mixed use development approximately 150m to the east of similar typology to the proposed development.

The proposed building has been designed to provide a quality mixed-use development that responds to and utilises the advantages of its context within Roselands and the greater area. The proposed building will be of a form and scale that is compatible with both the existing and the desired future character, presenting an attractive facade to both Canterbury Road and Flora Street and making a positive contribution to the streetscape character and urban form and scale that is similar to other mixed use buildings in the locality.

The proposed height and scale of the development is appropriate in its setting and is compatible with the transitional nature of the locality and future developments for the area. The building steps in at upper levels along Canterbury Road & Flora Street to provide a dynamic facade and is in line with the DCP objectives. The proposal is considered to provide an appropriate prototype for similar developments in the surrounding area.

The highly articulated and fragmented building form further reduces the perceived bulk and height of the proposed development and the amenity impacts associated with the proposed built form. The proposed height is not considered to be responsible for any adverse external amenity impacts to neighbouring properties.

An “L” shaped arrangement is adopted for the residential component of the development to minimize bulk and overshadowing to the south.

The building will be constructed using a combination of textures including rendered and painted concrete walls, metal composite cladding, , anodized aluminium louvers and dark anodized aluminium window and sliding door frames. The multi layered facade consists of a variety of materials colours and design elements that provides articulation and provides a top/middle/bottom visual appearance to break up bulk & integrate with the desired character for the precinct.

Strict Compliance is unreasonable or unnecessary in the circumstances of the case.

As described earlier, the roof element and Lift 2 Overrun exceed the 18m maximum building height by a maximum of 1.077m, representing a variation of 5.98% above the development standard.

As demonstrated in the NSW LEC decisions in *Micaul Holdings Pty Limited v Randwick City Council* and *Moskovich v Waverley Council* there should be no artificial conservatism about the use of Clause 4.6 based on the numerical extent of the variation being sought, given that the purpose of Clause 4.6 is to allow flexibility and to achieve better outcomes for a site by allowing developments to exceed development standards where there are justifiable circumstances.

An important finding in *Micaul Holdings Pty Limited* was that while the judgment did not directly overturn the *Four2Five v Ashfield* decision, the Chief Judge indicated that one of the obligations of a consent authority is to be satisfied that the applicant’s written request has adequately addressed the matters in Clause 4.6(3), namely.....*that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.....and that there are sufficient environmental*

planning grounds to justify contravening the development standard.

Therefore, compliance with the development standard is unreasonable and unnecessary where, in the particular circumstances of the case, there are sufficient environmental planning grounds to justify the proposed non-compliance.

The objectives of the height of buildings principal development standard are:

- (a) to establish and maintain the desirable attributes and character of an area,*
- (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
- (c) to support building design that contributes positively to the streetscape and visual amenity of an area,*
- (d) to reinforce important road frontages in specific localities.*

It is considered that the proposed development achieves the objectives of the standard for the following reasons:

- the proposed scale and massing of the building is consistent with both the existing and the anticipated desired future character of the locality;
- the extent of the non-compliance does not seek to increase the number of storeys or density of the development. As such, there is no tangible nexus between the height variation and the overall land use intensity;
- the degree of non-compliance will not result in any unreasonable adverse impacts on the adjoining land uses with respect to overshadowing, loss of privacy, inappropriate scale etc;
- Despite the breach to the building height standard, the building will make a positive contribution to the streetscape character and visual amenity of the area. The non-compliant height does not contribute to an unreasonable visual impact or a loss of privacy to adjoining properties.
- As noted in the planning principle adopted in *Project Venture Developments v Pittwater Council [2005] NSW LEC 191*, *compatibility isdifferent from sameness*. Further, that *it is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve*. Likewise, while compatibility in architectural style and materiality is certainly one aspect of making a subjective assessment as to the compatibility of a building with the character of an area, it is considered that the relationship of a particular built form to surrounding space created by building height, setbacks and landscaping are also significant contributors to urban character. In this regard, it is considered that despite the height breach, the proposed building will make a positive contribution to the streetscape and visual amenity through a built form and appearance that is in harmony with the scale and density of surrounding development.

In consideration of the above, Council's attention is also drawn to the Department of Planning and Environment's publication "*Varying development standards: A Guide*" (August 2011), which outlines the matters that must be considered when varying a development standard.

The Guide has essentially adopted the 5 point test for consideration set out by the Land & Environment Court in *Wehbe v Pittwater Council (2001) NSW LEC 827*, specifically that there are five different ways in which compliance with a development standard can be considered unreasonable or unnecessary, namely:

- *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: As discussed above, the proposal is considered to be consistent with the objectives of the building height standard, notwithstanding the numerical variation.

- *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: The objectives of the building height standard remain relevant and the proposal is consistent with, or at least is not antipathetic to the objectives of the building height standard, notwithstanding the numerical variation.

- *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: The proposal is consistent with the objectives of the building height standard, notwithstanding the numerical variation, and it would not defeat the purpose of the standard.

- *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: There is no evidence to indicate that the building height standard has been abandoned by Council through its actions in granting consent for other buildings in the vicinity that depart from the standard.

- *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The proposed mixed use development is a permissible land use and the zoning of the site is considered to be appropriate in this location and in the context of the surrounding land uses and built form.

In light of the above, it has been demonstrated that the first test under the Wehbe method has been met, such that the requirement to strictly adhere to the numerical development standard for building height is considered to be unreasonable and unnecessary in this instance.

There are sufficient environmental planning grounds to justify contravening the development standard.

Based on the discussion above, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:

- Despite the proposed building exceeding the height of buildings principal development standard, the overall bulk and scale of the building is considered to be acceptable in terms of its scale and built form and the relationship of the building to the adjoining and surrounding residential and non-residential development;
- The additional height of the building does not constitute an additional storey and maintains a building of a scale and form that is appropriate for the location, providing visual interest and a varied building profile.
- The proposed built form and “L” shaped footprint maximises the street frontage to both Canterbury Road and Flora Street, with the six (6) shopfronts at ground level maximising activation of both street frontages, while maintaining clearly identifiable and distinguishable common entries to the residential component. The “L” shaped footprint represents a reallocation of floor space away from the southern corner of the site (i.e. the void above the first floor level communal open space) which will allow for a higher degree of solar access to the southern adjoining properties than would otherwise be achieved by a footprint that sought

to maximise the available building envelope prescribed under Canterbury DCP 2012.

- The extent of the non-compliant height is relatively minor and has primarily been contained to the northern side of the site, such that when viewed from the south, and in the absence of any focal marker of a compliant height, the non-compliant height will not be readily discernible.
- The proposed development provides a built form and scale that will act as a transition in the height and scale of the surrounding existing development, as well as providing a visually interesting focal point and Gateway element (due to its corner location) along Canterbury Road.

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

The Table below demonstrates that the proposed development will be in the public interest because it will be consistent with both the height of buildings principal development standard objectives and the B2 Local Centre zone objectives of the LEP.

LEP Clause	Objective	Proposal
Clause 4.3 Height of Buildings	<i>a) To establish and maintain the desirable attributes and character of an area.</i>	<p>In line with the Canterbury Road Structure Plan, this section of the Canterbury Road Corridor is anticipated to be revitalised to create an attractive, vital and vibrant mixed-use environment via a rich network of publicly accessible spaces, walkable streets and places.</p> <p>Despite the non-compliance, the scale and form of the building is considered to be consistent with the intended redevelopment potential of the land and the existing and anticipated desired future character of the locality.</p>
	<i>b) To minimise overshadowing and ensure there is a desired level of solar access and public open space.</i>	<p>The proposed building will result in a degree of overshadowing to the adjoining property to the south. However, this is considered to be acceptable in the context of a B2 Local Centre zone and an appropriate setback to the adjoining residential zone has been provided to provide for a transition between the two zones. The adjoining property to the south will still receive an acceptable level of solar access during mid-winter.</p>
	<i>c) To support building design that contributes positively to the streetscape and visual amenity of an area.</i>	<p>As noted above, despite the non-compliance, the scale and intensity of the building is consistent with the intended redevelopment potential of the land and the existing and desired future character of the locality.</p> <p>Further, the non-compliant height does not contribute to an unreasonable visual impact or a loss of privacy to adjoining properties.</p> <p>In the contrary, the building will maximise activation of both street frontages and the “L” shaped building footprint allows for a transfer of</p>

		<p>floor space (building mass) away from the southern corner of the site and in doing so, will increase opportunities for solar access to the properties to the south.</p> <p>As noted in the planning principle adopted in <i>Project Venture Developments v Pittwater Council</i> [2005] NSW LEC 191, compatibility isdifferent from sameness. Further, that it is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.</p> <p>Likewise, while compatibility in architectural style and materiality is certainly one aspect of making a subjective assessment as to the compatibility of a building with the character of an area, it is considered that the relationship of a particular built form to surrounding space created by building height, setbacks and landscaping are also significant contributors to urban character.</p> <p>In this regard, it is considered that despite having a more modern architectural style and appearance than much of the existing development in the locality, the proposed building will make a positive contribution to the streetscape and visual amenity through a built form and appearance that is in harmony with the scale and density of surrounding development.</p>
	d) To reinforce important road frontages in specific localities.	Noted – This section of Canterbury Road is part of the Canterbury Road Structure Plan which seeks to create attractive, vital and vibrant mixed-use environments via a rich network of publicly accessible spaces, walkable streets and places.
B2 Local Centre Zoning Objectives	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.	<p>The proposed development will provide six (6) new commercial/retail tenancies that will suit a wide range of businesses, in a location with good access to public transport, other shops, facilities and recreational opportunities.</p> <p>The additional residential accommodation and housing choice will support the increased economic activity and assist in revitalising the locality.</p>
	To encourage employment opportunities in accessible locations.	The proposed six (6) ground floor tenancies will provide opportunities for a range of businesses to establish, therein creating employment opportunities. The location is considered to be accessible, having access to bus services on Canterbury Road and the surrounding road network and being approx. 900m south of

		Lakemba Railway Station.
	<i>To maximise public transport patronage and encourage walking and cycling.</i>	As noted above, the site has excellent access to bus services on Canterbury Road and the surrounding road network and being approx. 900m south of Lakemba Railway Station. This will encourage walking and cycling as people will be likely to walk to the bus stops and walk or cycle to the station to connect with public transport services.
	<i>To facilitate and support investment, economic growth and development for active, diverse and well designed centres.</i>	The six (6) new commercial/retail tenancies will suit a wide range of businesses, that once operational, will contribute to the economic growth and diversity of the locality. Likewise, the additional residential population will contribute to economic growth and viability by utilising the shops and services that will be established in the ground floor tenancies.

4.0 Non-compliance does not hinder the attainment of the Objects of the Environmental Planning and Assessment Act 1979

The Wehbe decision identifies that in assessing a variation to a development standard, consideration must be given to (the former) Objects (a)(i) and (a)(ii) in Section 5 of the *Environmental Planning and Assessment Act 1979* is necessary. These are:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

The proposed variation to the building height standard will not contravene either of these Objects. The proper management of the existing urban environment in order to achieve better social and community outcomes, as well as the orderly and economic use and development of land, will be realised through the provision of high quality commercial/retail tenancies and residential accommodation in the form of a mixed use development, in a location with good access to public transport options and in proximity to shops, services and recreational facilities and educational establishments.

5.0 Secretary's Concurrence

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained prior to granting consent to a development that contravenes a development standard. In accordance with the Planning Circular (PS 18-003) issued on 21 February 2018, as the proposal contravenes a numerical standard by less than 10%, Canterbury Bankstown Council can assume the Secretary's concurrence.

Notwithstanding, provided below is a discussion on the matters under subclause 4.6(5) that the Secretary must consider in deciding whether to grant concurrence:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the height of buildings principal development standard under *Canterbury Local Environmental Plan 2012* will not give rise to any environmental planning matter which could be deemed

to have either State or Regional significance. The variation to the development standard being sought will not have any effects outside the immediate area of the site.

The public benefit of maintaining the development standard.

No substantive public benefit would be realised by maintaining the development standard. Reducing the height of the building to strictly comply with the 18m height limit would not substantially alter the overall design approach or outcome for the site.

Any other matters required to be taken into consideration by the Secretary before granting concurrence.

Despite exceeding the statutory maximum building height, the proposed redevelopment of the site will facilitate the orderly and economic redevelopment of the site for the purposes of a mixed use development that will positively contribute to the achievement of the objectives of *Canterbury Local Environmental Plan 2012*.

5.0 Conclusion

Based on the discussion provided above, it can be concluded that:

- strict compliance with the height of buildings principal development standard under *Canterbury Local Environmental Plan 2012* is unreasonable or unnecessary in the circumstances of the case where:
 - no greater public benefit would be achieved and the location of the non-compliant height towards the northern side of the site mitigates any potential amenity impacts on the adjoining properties to the south.
 - the extent of the non-compliance will not result in any unreasonable adverse impacts on the adjoining land uses with respect to overshadowing, loss of privacy, inappropriate scale etc.
 - the non-compliance does not seek to increase the number of storeys or density of the development. As such, there is no tangible nexus between the height variation and the overall land use intensity, particularly noting that a floor space ratio control has not been prescribed for the site.
 - the proposed design solution is considered to represent an appropriate development outcome for the site, displaying a high quality design, whilst ensuring that a high standard of amenity for future tenants and residents will be achieved.
- there are sufficient environmental planning grounds having regard to the Court matters *Four2Five v Ashfield Council* and *Wehbe v Pittwater Council* to justify the contravention to the development standard as the objectives of the building height standard are still met, despite the non-compliance;
- the building has been designed to a high quality and the amenity for future residents will be to a high standard;
- the non-compliance does not directly result in any adverse environmental impacts in terms of the building being out of context with the anticipated bulk and scale of development in the locality;
- the proposal will provide additional high quality commercial/retail tenancies and additional housing choice in the form of a mixed use development, in keeping with the anticipated desired future character of the area;

- a development that more closely aligned with the building envelope provisions contained in Canterbury DCP 2012 would not necessarily result in a better planning outcome, particularly in terms of solar access and visual privacy to neighbouring properties to the south; and
- the scale and nature of the non-compliance does not give rise to any matter of State or Regional significance, nor does it adversely affect the public interest.

Having regard to the circumstances of this case where:

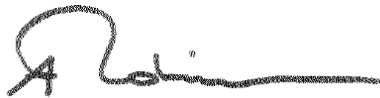
- the overall style, scale and built form of the building is commensurate with the existing and likely future 'built environment' and anticipated desired character of the area;
- The removal of built form from locations adjoining the southern boundary by providing a small exceedance in height in the middle of the site results in a better planning outcome and one which permits improved solar performance to adjoining properties and reduction in bulk when perceived from existing and future developments on the sites to the south of the proposed development.
- the proposal is consistent with the aims and objectives of *Canterbury Local Environmental Plan 2012*; and
- the proposal is generally consistent with the objects of the *Environmental Planning & Assessment Act 1979*, in particular, the orderly and economic use and development of land and ecologically sustainable development,

it is submitted that this Amended Clause 4.6 Exceptions to Development Standards request is well founded. As such, strict compliance with the height of buildings principal development standard prescribed in Clause 4.3(2) of *Canterbury Local Environmental Plan 2012* is unreasonable and unnecessary having regard to the circumstances of the case.

Accordingly, having regard to the assessment and justification contained in this Amended Clause 4.6 Exceptions to Development Standards submission, it is requested that the proposed variation and the development in its proposed form be supported.

Dated: 21 February 2022

Andrew Robinson Planning Services Pty Ltd

A handwritten signature in black ink, appearing to read 'A Robinson', with a long horizontal flourish extending to the right.

Andrew Robinson MPIA
Director