

21 June 2022

The General Manager
Canterbury-Bankstown Council
PO Box 8
BANKSTOWN NSW 2194

Attention: Town Planning

Dear Sir/Madam,

**RE: SECTION 4.55(2) MODIFICATION TO DEVELOPMENT APPLICATION
DA-422/201821
684-700 CANTERBURY ROAD, BELMORE**

The proposal before Canterbury-Bankstown Council seeks to modify an approved Development Application DA-422/2018 under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

The original development application to which modification is sought was for the construction of a six storey shop top housing development comprising 39 residential units, business tenancy, two basement levels and associated landscape and site works and subdivision of the site into two lots. Development consent was issued by Council on 27 August 2021.

Following its approval, a Section 4.55(2) application was submitted in late 2021 (DA-422/2018/A) for minor amendments, including but not limited to changes to the RLs in the basement, minor façade changes relating to glazing and finishes, internal alterations to units, and the inclusion of awnings at Level 5. Development consent was issued by Council on 18 May 2022.

This Section 4.55(2) application seeks to extend the approved lift to access the communal open space at roof level; to provide solar panels and minor changes to the internal planning of two (2) units.

GAT & Associates has been retained by our client, Chidiac Holdings Pty. Ltd., to prepare the Statement of Environmental Effects to accompany the Section 4.55(2) Application for the consideration of Canterbury-Bankstown Council.

This submission is accompanied by architectural plans prepared by CD Architects.

SUBJECT SITE

The subject site is commonly known as 684 – 700 Canterbury Road, Belmore. The subject site is located on the southern side of the street between Nelson Avenue to the west and Liberty Street to the east. Joan Lane adjoins the site to the rear.

As demonstrated in Figure 1 below, the subject site is irregular in shape, providing for a frontage of 39.93m to Canterbury Road. The western side boundary measures

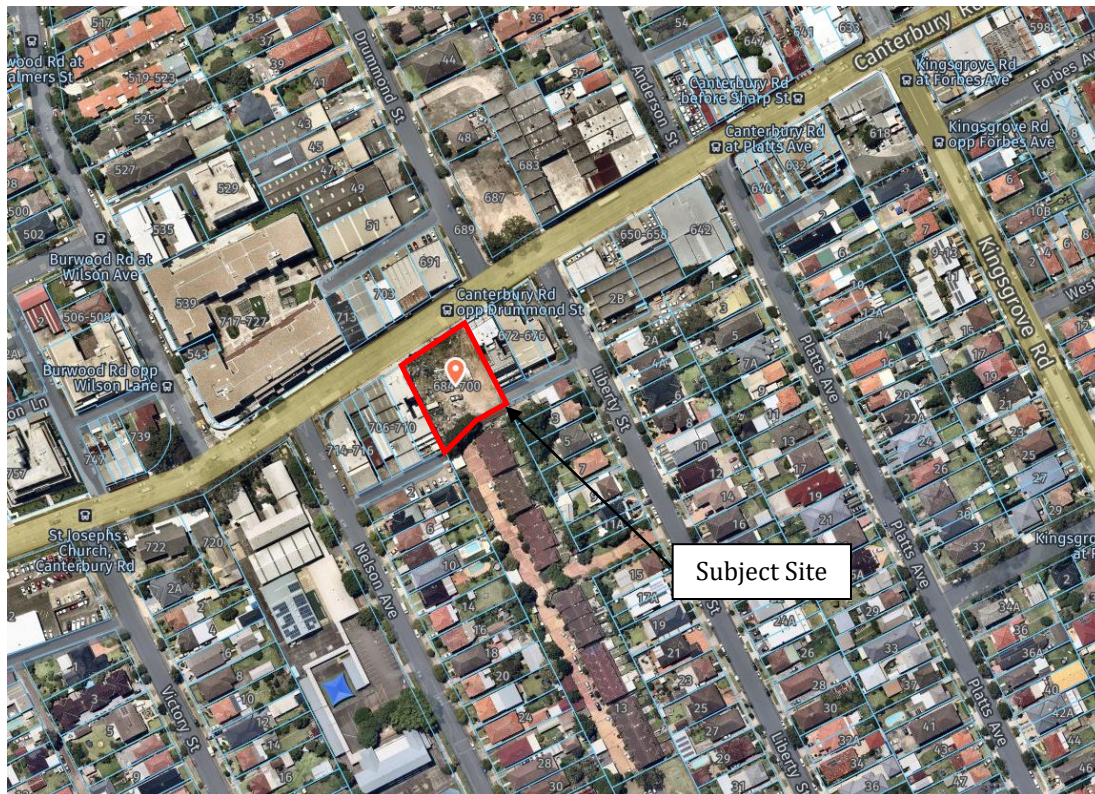
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39.93m in length while the eastern side boundary measures 47.445 metres in length. The rear boundary of the site is irregular in its alignment, angled inwards towards the centre of the site. The total length of the rear boundary however is 40.94 metres (23.215m + 17.725m). The site provides for a total area of 1,875m².

Figure 1 Site Location Map



Source: Nearmap, 26.01.21

The subject site is currently vacant with respect to built form. There are however various construction materials stored over the site as well as several shipping containers.

In terms of its topography, the site is relatively level with an RL of 44.31 at the rear of the site (centre) and RL 44.50 at the front of the site (centre).

In considering the character of the area, development adjoining and within the vicinity of the subject site is rapidly changing in response to the higher density zones prescribed for the area by the Canterbury Local Environmental Plan 2012. Development typically comprises of mixed use or shop top housing style developments, ranging in height from 5 to 6 storeys.

This is demonstrated through the adjoining site to the east, No. 680 – 682 Canterbury Road, which comprises of a recently constructed six storey mixed use development containing 19 residential units.

Further to the east at 670-676 Canterbury Road is a two storey commercial building with at grade parking however the redevelopment of this site as a 6 storey mixed use building is currently being considered by the Land and Environment Court.

Located to the west of the subject site at No. 704 Canterbury Road is a recently constructed six storey mixed use development comprising of 16 residential units, two commercial tenancies and basement level parking.

Similarly, at No. 749 Canterbury Road, an application for a 6 storey residential flat building has been recently constructed comprising of 46 residential dwellings with basement car parking.

To the east of the site, at No. 630 Canterbury Road is another 6 storey mixed use development, containing 1 commercial tenancy and 27 residential units with basement parking.

On the opposite side of Canterbury Road, at No. 721 Canterbury Road is another example of a recently constructed part 5, part 6 storey mixed use development incorporating ground floor commercial/retail floor space, 141 residential units with basement parking and associated landscaping.

The commentary provided above demonstrates the significant transformation of the immediate precinct which was formerly characterised by 1-2 storey scale commercial/industrial buildings or car yards. The scale and character of these new and emerging developments is reflected in the proposed development which seeks a six (6) storey mixed use building.

To the rear of the site, development shifts in terms of its density to an R3 Medium Density Residential zone. The proposed development provides for appropriate setbacks which together with Joan Lane offers adequate separation between the zones.

PROPOSAL

The proposal before Council is for a Section 4.55(2) Modification to DA-422/2018. The development as approved in that development application is a six storey shop top housing development comprising 39 residential units, business tenancy, two basement levels and associated landscape and site works and subdivision of the site into two lots. The approved unit mix is listed below and will not be altered by this application.

- 1 bedroom units = 3
- 2 bedroom units = 30
- 3 bedroom units = 6

A list of the proposed modifications is below. Reference should also be made to the architectural plans prepared by CD Architects.

PROPOSED MODIFICATIONS

Having regard to the recent approval of DA-422/2018/A, there is no change sought to the following levels under this application:

- Basement Level 2
- Basement Level 1
- Ground Floor
- Level 1
- Level 2

Level 3:

No change is sought to the footprint of this level. The modifications sought relate solely to the internal layout of the units:

- Unit 301: internal stairs have been relocated to create sufficient head space for the entry door landing above.
- Unit 407: the internal planning of the storage area and ensuite has been revised. Although storage within the unit has been reduced from 10.49m² to 7.22m².

Level 4:

No change is sought to the footprint of this level. The modifications sought relate solely to the internal layout of the units:

- Unit 301: the internal planning of the unit has been revised, notably the entry and position of the WC. The unit has also marginally increased in size from 94m² to 100m². This has been achieved through a modified layout to the adjoining unit, Unit 407, and by marginally encroaching into the former lobby area.
- Unit 407: the layout of the unit has been revised, repositioning the WC into floor area that was previously used as part of the lobby. The entry to the unit has been relocated accordingly. These design changes have resulted in the unit increasing in size from 129m² to 131m².

Level 5:

No change is sought to the design and layout of residential units approved to the northern side of this level. The changes solely relate to the means of accessing the approved rooftop communal open space on the southern side of this level.

As part of DA-422/2018, access to the rooftop communal open space was approved via a stairwell, including chair lift, between Level 4 and Level 5. As part of this arrangement, the lifts would terminate at Level 4, with only the lift overruns located at Level 5. It is noted that all residential units located on the northern side of Level 5 are designed as cross over units and as such access to these units was approved via Level 4 without any requirement for these units to be directly accessible from Level 5.

Under the current proposal, it is sought to continue the approved lift system to access the communal open space at roof level. A small lobby area is proposed immediately adjacent to the lifts to allow for a sheltered entrance. A new/redesigned stairwell will complete the access arrangements.

Other:

- Solar panels are proposed over the northern component of the roof.
- Condition 2 which references the architectural plans will need to be amended to reflect the current plans.

Given the nature of the proposed modifications and the existing approval for the site, it is considered that these will have no significant impact on the adjoining properties and broader area.

SECTION 4.55 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

It is considered that the development can be determined under Section 4.55(2) of the Environmental Planning & Assessment Act 1979, which states as follows:

- (2) *“Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*
- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
 - (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification”.

In order to have the ability to modify a development consent under Section 4.55 of the Environmental Planning and Assessment Act 1979 (formerly Section 96), Council must be satisfied that the development as modified would be substantially the same as the development for which the development consent was originally granted.

The planning merits of the modification are not relevant to the determination of the threshold question of whether the development to which the consent relates would be substantially the same development as the development for which consent was originally granted.

In this regard, Council must apply the “*substantially the same development test*” to any Section 4.55 Application lodged. Case law in **Vacik Pty Ltd v Penrith City Council** (Stein J, 10242 of 1991, 24 February 1992) stated this test in the following terms:

“... ‘substantially’ when used in the section means essentially or materially or having the same essence”.

In relation to determining whether the proposed modified development is “essentially or materially” the same as the approved development. Justice Bignold in **Moto Projects No. 2 Pty Ltd v North Sydney Council** (1999) 106 LGERA 298 at 309, states:

“The relevant satisfaction required by s 96(2) (a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared....”

In view of the above, a comparison between the approved development and the development as modified is provided below.

As detailed in this letter, the nature of the proposed works will not substantially change the approved development in terms of its use, scale or density. In terms of its use, the proposed modifications will not alter the mixed use nature of the development, nor the number of approved residential units. Rather the changes are limited to continuing the approved lift system to access communal open space at Level 5, the inclusion of solar panels and the minor internal replanning of two residential units.

It is submitted the Section 4.55 proposal is “essentially or materially” the same as the development that was initially approved by Council as the quantitative and qualitative aspects are essentially considered the same. In summary, the reasons for this conclusion are below:

- ❑ The proposal retains the approved building and uses at the subject site and has no notable impact to the bulk, scale or siting of the development as previously approved.

Although the proposal will contravene the maximum building height development standard, the extent of new variation being sought is limited to the solar panels and lift overrun and part of the associated lift lobby rather than habitable floor area.

The effect of these changes to neighbouring properties is considered negligible, with the maximum variation setback 9.24m from the street frontage ensuring a recessive appearance to the public domain. From an amenity perspective, the proposed change will not alter the approved solar access available to neighbouring properties nor will it result in any privacy implications given that the use of Level 5 as communal open space has been previously approved.

There is no change the maximum height of habitable floor area when compared to approved DA-422/2018.

- ❑ The building setbacks as approved will not be altered by this application, ensuring positive relationships between neighbouring properties.

- ❑ The unit of units proposed remain at 39, with no changes sought to unit sizes.
- ❑ The number of residential car spaces is retained at 64 and commercial car spaces at 18.
- ❑ The proposal will continue to provide a sympathetic design response for the site and for the locality, including limiting amenity impacts.
- ❑ No negative visual or acoustic privacy impacts would result through the modifications with positive relationships between the approved works and neighbouring sites continuing to be promoted.

In consideration of the above, it is concluded that the proposal is substantially the same development that was approved by Council initially, and as such satisfies the '*substantially the same development test*' under Section 4.55 of the EP&A Act.

It is therefore considered that the proposal is consistent with Clause 4.55(2) of the Environmental Planning & Assessment Act 1979.

CONSIDERATIONS OF THE PROVISIONS OF SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

(1) Matters for consideration – general

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

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The contamination of the site has been considered as part of the original approval with a Phase 1 and Phase 2 report completed by ADE Consulting Group Pty. Ltd. The proposed modifications do not impact the outcomes of this report. It is noted that Condition 3 of the original development consent acknowledges this report stating that the recommendations included form part of the development consent.

In accordance with State Environmental Planning Policy (Resilience and Hazards) 2021, Council is able to conclude that no further assessment of contamination is necessary.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Clause 2.118 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 applies to the development where it has a frontage to a classified road. The classified road in this instance is Canterbury Road. On this basis, Clause 2.118 of the SEPP aims to ensure that new development does not compromise the effective and ongoing operation and function of classified roads. Furthermore, Clause 2.119 of the SEPP aims to prevent or reduce the potential impact of road noise or vibration on non-road development that is adjacent to classified roads.

The modifications sought in this application do not alter the number of proposed car spaces or traffic generation. Further, there are no changes that would alter the acoustic/noise mitigation recommendations of the acoustic report approved with the original development application.

Therefore, in this regard the proposed modification is considered to satisfy SEPP Infrastructure.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

The site does not provide for any significant trees or vegetation.

STATE ENVIRONMENTAL PLANNING POLICY NO. 65 - DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

The previous development application and modification have provided a detailed assessment of the proposal against the design principles of SEPP 65 and the Apartment Design Guide.

Provided below is a summary of the main controls applying under the Apartment Design Guide that have been impacted by this modification.

| PLANNING GUIDELINE | DEVELOPMENT STANDARD/CONTROL | COMPLY |
|----------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Communal open space | <ul style="list-style-type: none"> 25% of the site. | <ul style="list-style-type: none"> Site area (existing): 1,875m² COS required: 468.75m² Proposed COS: 304.76m² (16.3%) Site area (post dedication): 1560.5m² COS required: 390.13m² Proposed COS: 304.46m² (19.5%) Under DA-422/2018/A, an area of communal open space equal to 312.1m² (16.6%) was approved at roof level. As part of this modification, it is sought to continue the approved lifts to roof level. The area of the proposed lifts, stairs and associated lobby will result in the |

| PLANNING GUIDELINE | DEVELOPMENT STANDARD/CONTROL | COMPLY |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> 50% direct sunlight to the principal useable part of the COS for 2 hours at mid-winter. | <p>reduction of the approved COS by 7.34m².</p> <p>Refer to comments at the end of this report.</p> <ul style="list-style-type: none"> Complies. The relocation of the stairwell will in fact improve solar access to the COS. |
| Deep soil zones | <ul style="list-style-type: none"> 6m dimension, 7% of site. | <ul style="list-style-type: none"> The proposed works will not alter the approved deep soil zones. |
| Visual privacy / Separation | <ul style="list-style-type: none"> Up to 12m (4 storeys): 6m/3m Up to 24m (8 storeys): 9m/4.5m | <ul style="list-style-type: none"> The proposed works will not alter the approved building setbacks. |
| Car parking | <ul style="list-style-type: none"> Council's DCP. | <ul style="list-style-type: none"> The proposed works will not alter number of approved car parking spaces. |
| Solar access | <ul style="list-style-type: none"> 70% to living rooms and private open spaces, min. 2 hours direct sunlight between 9am – 3pm in mid-winter. Max 15% of apartments no sunlight in mid-winter | <ul style="list-style-type: none"> The proposed works will not impact upon solar access to the units when compared to the approved development. |
| Natural ventilation | <ul style="list-style-type: none"> 60% of units to be naturally cross ventilated. | <ul style="list-style-type: none"> The proposed works will not impact upon natural ventilation to the units when compared to the approved development. |
| Ceiling heights | <ul style="list-style-type: none"> 2.7m. | <ul style="list-style-type: none"> The proposed works will not alter the approved ceiling heights. |
| Apartment size | <ul style="list-style-type: none"> Studio = 35m² 1 bedroom = 50m² 2 bedroom = 70m² 3 bedroom = 90m². | <ul style="list-style-type: none"> Complies. <p>Unit 301 (3 bedrooms, 2.5 bathrooms) will be marginally increased as part of the proposed works from 129m² to 131m².</p> <p>Unit 407 (2 bedrooms, 2.5 bathrooms) will increase in size from 94m² to 100m².</p> <p>All other units remain as previously approved.</p> |
| Private open space | <ul style="list-style-type: none"> Studio = 4m² 1 bedroom = 8m², 2m 2 bedroom = 10m², 2m 3 bedroom = 12m², 2.4m Ground floor = 15m², 3m | <ul style="list-style-type: none"> The proposed works will not alter the approved areas of private open space to each unit. |
| Common circulation and spaces | <ul style="list-style-type: none"> Max. number of apartments off a circulation core is 8. | <ul style="list-style-type: none"> The proposed works will not alter the maximum number of units off a circulation core. |

| PLANNING GUIDELINE | DEVELOPMENT STANDARD/CONTROL | COMPLY |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Storage | <ul style="list-style-type: none"> • Studio = 4m³ • 1 bedroom = 6m³ • 2 bedroom = 8m³ • 3+ bedroom = 10m³ | <ul style="list-style-type: none"> • Complies. <p>Unit 301 (3 bedroom) will provide for 5.566m³ of storage within the unit and an additional 4.55m³ of storage in the basement.</p> <p>Unit 407 (2 bedroom) will provide for 9.88m³ of storage within the unit.</p> |

Communal Open Space

As detailed in the table above, the proposal seeks a variation to the provision of communal open space.

Based on a site area of 1,875m², a total of 468.75m² (25%) of communal open space is required. The proposal provides for 304.76m² or 16.3% of the site, representing a shortfall of 163.99m². Following the dedication of the rear portion of the site for road widening purposes, the total site area decreases to 1,560.5m². This therefore reduces the amount of communal open space required on site to 390.13m². The proposed communal open space, 304.76m², therefore represents 19.5% of the site, post dedication.

It is worthy to note that as part of DA-422/2018/A, a total of 312.1m² (16.6%) of communal open space was approved at roof level. As part of this modification, the area of communal open space will be reduced by just 7.34m² to accommodate the proposed lift access.

While this will marginally reduce the extent of communal open space on the site overall, the variation provides for enhanced accessibility to the rooftop communal open space for the future residents.

The Apartment Design Guide (ADG) acknowledges that communal open space can be difficult to achieve, particularly to sites within a business zone or in a dense urban area.

The proposal is an infill development, constrained by the approved built forms to the east and west and the road dedication to the south. In such circumstances, ADG provides for alternative solutions including the provision of larger balconies or increased private open space for apartments.

A number of the apartments provide for balconies that far exceed the minimum requirements of ADG including seven x 2 bedroom apartments on the southern façade with balconies of 13 – 22m². An additional seven x 2 bedroom apartments on the northern façade provide for balconies measuring between 12 – 33m². Two of the proposed 3 bedroom units (U403 and 404) also provide for balconies between 19 – 31m² with Unit 403 providing for a second balcony at Level 5 as well measuring 5m².

As acknowledged by ADG,

“The function of open space is to provide amenity in the form of:

- *landscape character and design*
- *opportunities for group and individual recreation and activities*
- *opportunities for social interaction*
- *environmental and water cycle management*
- *opportunities to modify microclimate*
- *amenity and outlook for residents”.*

The proposal is considered to satisfy the function of open space through the proposed balance of planting which allows for a pleasant landscape character improving amenity and outlook for residents whilst the trafficable areas promote group and individual recreation and opportunities for social interaction.

The submitted Landscape Plan demonstrates appropriate soil depths supporting water cycle management.

The proposal further supports the principles of ADG as it specifically acknowledges that,

“The useable part of the communal open space area may be supplemented by:

- *additional landscape area, circulation space and areas for passive use and outlook”.*

The proposed communal open space is a well designed space that provides outdoor recreation opportunities for future residents whilst also providing a connection to the natural environment, through the generous planted areas which is considered to be of unique amenity given the business setting of the subject site.

The proposal seeks to continue the lifts to the rooftop communal open space ensuring equitable access for all is achieved.

To protect the amenity of neighbouring sites, signs will be posted within the communal open space and the lift wells stating that the rooftop communal area must only be used between the hours of 7:00am – 10:00pm to mitigate any potential noise impacts to the adjoining sites during the acoustically sensitive night time period. This may form a condition of consent or alternatively should a formal Plan of Management be required, this also may form a condition of consent.

The submitted sun eye view diagrams demonstrate that the majority of the communal open space will achieve solar access from 9am – 12pm, exceeding the minimum 2 hour requirement. Reference should also be made to Drawing No. 7012.

It is also worthy to consider that when assessed against the provisions of Chapter C5 of Council’s Development Control Plan, the application exceeds the minimum 15% of communal open space required for shop top housing developments.

The proposed variation should therefore be supported.

CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012

The site is located within Belmore and the provisions of the Canterbury Local Environmental Plan 2012 are applicable.

| PLANNING GUIDELINE | DEVELOPMENT STANDARD/CONTROL | COMPLY |
|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Zoning | <ul style="list-style-type: none"> B5 Business Development | <ul style="list-style-type: none"> As addressed in DA-422/2018, shop top housing is listed as permitted with consent. <p>No change is sought to uses on the site.</p> |
| Cl. 4.3 Height of Buildings | <ul style="list-style-type: none"> 18m | <ul style="list-style-type: none"> The proposal will result in a maximum building height of 19.620m. <p>Refer to comments made at the end of this table.</p> |
| Cl 6.2 Earthworks | <ul style="list-style-type: none"> Development consent is required for earthworks. | <ul style="list-style-type: none"> The proposed modifications will not alter the approved extent of earthworks on site. |
| Cl 6.4 Stormwater Management | <ul style="list-style-type: none"> The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. | <ul style="list-style-type: none"> Stormwater Plans were prepared by John Romanous & Associates as part of DA-422/2018. As the proposed footprint/roof area will not change as a result of the proposed modifications, these plans are considered relevant to the application. |
| Cl 6.6 Essential Services | <ul style="list-style-type: none"> Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required— <ul style="list-style-type: none"> (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access. | <ul style="list-style-type: none"> The site is currently undeveloped however connections are available within the immediate area. <p>A substation was approved as part DA-422/2018/A adjacent to the Joan Lane frontage.</p> |
| Cl 6.7 Mixed Use Development in Business Zones | <ul style="list-style-type: none"> This clause applies to land in the following zones: <ul style="list-style-type: none"> Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B5 Business Development. Despite any other provision of this Plan, development consent may be granted to a mixed use development, on land to which this clause applies, incorporating residential accommodation and a | <ul style="list-style-type: none"> N/A. The proposed modifications relate to an approved shoptop housing development. |

| PLANNING GUIDELINE | DEVELOPMENT STANDARD/CONTROL | COMPLY |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| | <p>medical centre.</p> <ul style="list-style-type: none"> Development consent must not be granted to development under subclause (2) for mixed use development incorporating residential accommodation and a medical centre unless the consent authority is satisfied that the ground level of the building will not be used for the purpose of residential accommodation. Note. This provision does not affect the grant of development consent to development under clause 1 of Schedule 1. | |

Clause 4.3 – Height of Buildings

The maximum building height has been approved at 18.310m, exceeding the development standard by 310mm.

The proposed modification seeks to extend the lift overrun to the rooftop communal open space, in lieu of the approved provision of a stair lift and fire stairs.

The modification has been sought as it is considered that the current arrangement results in a poor design outcome as it provides for a single point of access, being a stairwell, for all 39 residential units in the building to access the sole area of communal open space. The alternative proposed by this modification application seeks to retain a stairwell but introduces a conventional passenger lift in addition, allowing for more convenient and effective movements for residents, particularly those that are elderly, disabled or families with young children so that they may access the communal open space.

The lift overrun to facilitate this access is the new highest element proposed at a height of 19.620m, a variation of 1.620m. A variation is also sought for the enclosed lift lobby (18.065m) and the solar panels (18.255m – 18.470m).

The variations are depicted in the sections and height blanket as indicated in Figures 2 and 3 below.

Figure 2: LEP Height Blanket (Drawing No. DA 7035)

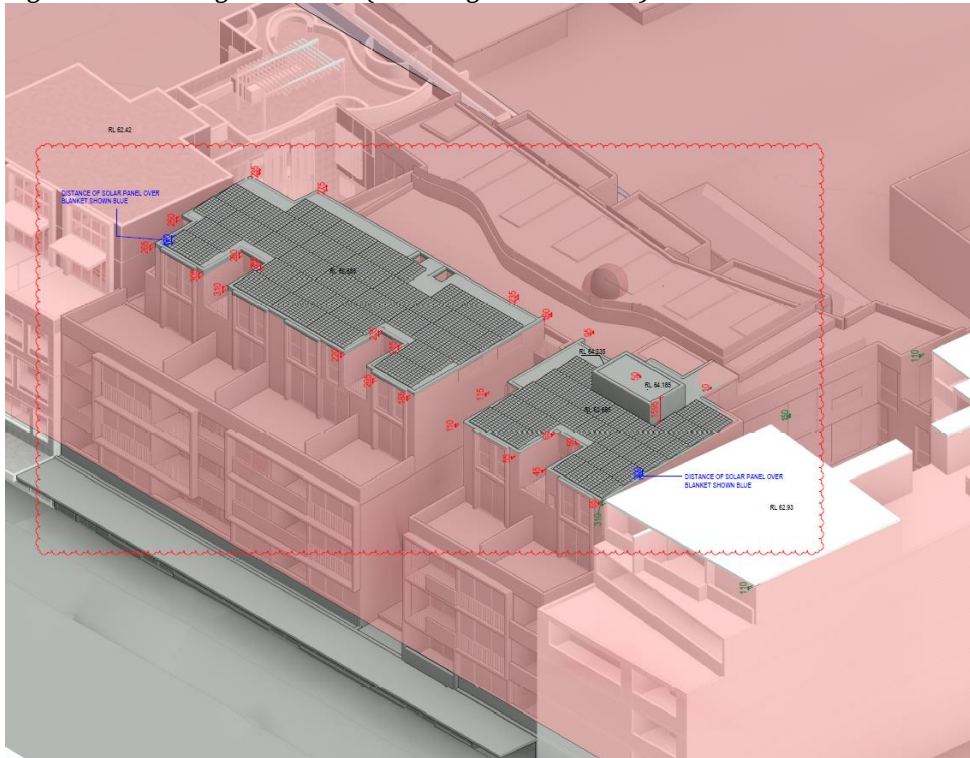
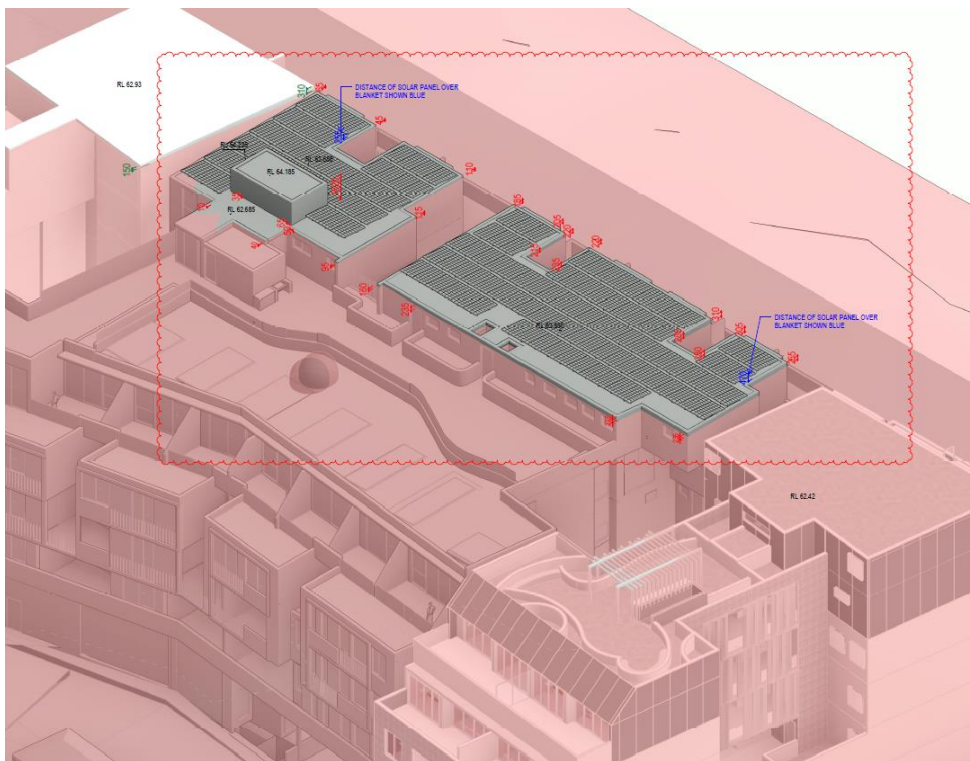


Figure 3: LEP Height Blanket (Drawing No. DA 7036)



A formal Clause 4.6 variation is not strictly applicable Section 4.55 Modifications. The relevant judgements (originating *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) say that Section 4.55 is a “free-standing provision”, meaning that “a

modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". Therefore, a Section 4.55 Modification application can be approved even though it would contravene a development standard.

Section 4.55 (3) still requires the consent authority to take into consideration the matters referred to in Section 4.15, which in turn include the provisions of any environmental planning instrument. Notwithstanding the above, an assessment is carried out below to demonstrate consistency with the provisions of Clause 4.6.

The first approach to assessment of a Clause 4.6 variation is whether the development maintains consistency with the objectives of the development standard being varied. In this case, this is Clause 4.3.

The objectives of Clause 4.3 Height of Buildings are assessed below to ensure ongoing consistency:

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

In response to the above, the following can be said to the modifications:

- The variation to height primarily serves the provision of enhanced accessibility to the rooftop communal open space for the future residents. Importantly, the new elements being proposed are non-habitable and are designed simply to promote increased amenity and sustainability.

The greatest extent of variation relates to the lift overrun, which exceeds the development standard by 1.620m. Though this represents a notable breach, the additional height relates to an element that is limited in its width and that is setback in excess of 9m from the primary street frontage ensuring that it will not be readily visible or obtrusive within the general streetscape.

Aside from the lift overrun and solar panels at the north-eastern end of the roof, the remaining new elements which are proposed at roof level are of a height that is between 0.010m – 0.3m, and as such will sit below the previously approved maximum height of 18.310m.

In terms of the solar panels at the north-eastern end of the building, a maximum variation of 470mm is sought. Although a variation, it is one that allows for ecologically sustainable development targets to be realised and promoted on the site. In view of the increased density on the site, this is considered a positive aspect towards building a sustainable future.

The proposal satisfies objective (a).

- The increase in height will have a negligible effect on solar access, with no change to solar access within the development itself and the status quo retained with respect to neighbouring properties when compared against the approved development.

With respect to communal open space, as demonstrated in the architectural plans prepared by CD Architects, a minimum of 97.6m² (or 57% of the principal usable part of the communal open space) will receive solar access for at least 2 hours, between 10am – 12pm. This represents a better planning outcome in terms of solar access when compared to the approved development which provided for a minimum of 85.56m² (or 50% of the principal usable part of the communal open space).

- The new elements above the height limit (lift overrun, lobby, solar panels) have minimal visual impact as these elements are limited in size, scale, positioned away from the perimeter of the form to be of limited visibility from around the property, or are so marginal variations to not be readily perceived.

The proposal is considered to be an ‘infill development’ that responds to the desired future character of the area and the constraints of the site. Where possible, the proposal has made considerable effort to achieve the objectives and controls of the Apartment Design Guide.

- With respect to objective d), the proposed modification will not alter the separate entrances for the residential lobby and commercial tenancy to the Canterbury Road frontage. The façades will continue to be strongly expressed to engage Canterbury Road, supported by glazing to emphasise this. The internal functions and structure have been clearly expressed through the articulation and massing of the facades.

In view of the above, the objectives are continued to be met despite the variation to height. Further to the satisfaction of the above, the development must satisfy the objectives of Clause 4.6.

The objectives of Clause 4.6 are to:

“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.”

In response, the following is provided:

The encroachments into the height of buildings are modest in their scope and size. The greatest variation for the lift overrun is set in from the street frontage so as to minimise its visibility and, in terms of all elements above the height of buildings, have a negligible to nil additional impact in overshadowing.

A demonstratable better outcome is considered to be achieved by the provision of proper lift access to the rooftop communal open space. The increased accessibility is considered a meritorious modification to the approved development.

In the context of this case, the additional elements above the height can be supported.

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

No amendment affects consistency with any proposed instrument as relevant to the site and application, including the:

- Draft Remediation of Land SEPP

Based on the above, it is sensible to conclude that strict compliance with the height of buildings control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

DRAFT CANTERBURY BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2020

The Draft Canterbury Bankstown Local Environmental Plan 2020 closed exhibition on 22 May 2020. The purpose of the LEP was to consolidate the Canterbury and Bankstown Local Environmental Plans to produce a single set of planning rules.

At the time of writing this letter, the LEP 2020 has not been gazetted, however is understood to be with the Department of Planning, Industry and Environment for finalisation.

The Draft Instrument identifies the subject site as being zoned B5 Business Development which is the same as the current instrument.

In accordance with Schedule 1 – Additional Permitted uses, the site has been identified as ‘APU 18’ on the Additional Permitted Uses Maps. This allows residential accommodation to be permitted with consent where the development is part of a mixed-use development. The proposal will continue to satisfy this requirement.

One (1) new objective however has been added to the B5 zone, being:

- *To allow for the development of land uses that achieve a high standard of urban and landscape design and have regard to local amenity.*

The following comment is made in response:

- The proposed development results in a well-designed mixed use development that will achieve a high architectural standard and site amenity. The proposal will contribute to the streetscape as a positive example of contemporary design. The proposal ensures no visual or acoustic impacts upon the immediately adjacent medium density zone; therefore adequately enhancing the streetscape and urban amenity.

The proposal will continue to align with the zone objectives following gazettal of the draft LEP.

No further clauses or amendments to the mapping as part of the draft impact on the proposed development.

REMEDIATION OF LAND SEPP 2018

The NSW State Government is currently in the process of a broader review program in the aim of ensuring all State Environmental Planning Policies are relevant and up to date. The Draft State Environmental Planning Policy's Explanation of Intended Effects was on public exhibition between 31 January 2018 and 13 April 2018.

As such SEPP (Resilience and Hazards) 2021 will need to be updated to respond to changes in Federal and State legislation and policy, this is to reflect new land remediation practices.

The new SEPP aims to ensure improved management of remediation works through the alignment of the need for development consent with the level of complexity, scale and associated risks with the proposed works.

It is stated that the proposed changes will:

- *reduce the risks associated with remediation projects*
- *encourage proponents to better consider and plan remediation work*
- *better protect the community from unnecessary risks, disturbance and inconvenience*
- *ensure there is consistent regulation of contaminated land and facilitate enforcement of long-term environmental management plans.*
- *Notably, the proposed SEPP will continue to categorise remediation works into two categories being Category 1 and Category 2.*

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

The material of Chapter 4 will be introduced within the new SEPP along with the list of activities which may lead or have led to potential contamination which are currently contained within the 'Managing Land Contamination: Planning Guidelines.'

As part of the new SEPP, a provision will be introduced which allows the consent authority to exercise discretion to not require an investigation report if the authority knows the land is not contaminated or may otherwise be suitable for the use being proposed. The consent authority must have sufficient evidence and/or information in this regard about the land status in order to exercise such discretion.

This has been addressed within this letter and was also considered as part of the original approval. As stated, Condition 3 of the original development consent acknowledges this report stating that the recommendations included form part of the development consent.

Therefore, based on the information of the Explanation of Intended Effect of the SEPP Remediation of Land 2018 it is considered that the proposal is consistent with the draft planning instrument.

(iii) any development control plan, and

CANTERBURY DEVELOPMENT CONTROL PLAN 2012

A detailed assessment against the Canterbury Development Control Plan 2012 was provided as part of the Statement of Environmental Effects which accompanied the original development application and as part of the previous s4.55(2) application.

The proposed modifications, as detailed in this letter, will not impact upon the relevant provisions of the DCP.

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

Not applicable.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

There are no prescribed matters which affect the permissibility of this proposal.

(v) (Repealed).

(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

The modifications will not have an adverse impact on the natural environment, noting that the site does not contain any significant vegetation in its current form and is notably located within an existing urban area.

With respect to the built environment, the proposed modifications will not significantly alter the presentation of the building as previously approved. The variations to the building height primarily relate to the lift overrun which is a modest element that has been setback from all elevations.

In terms of social and economic impacts, the proposal will continue to provide housing stock within an established residential area to assist in meeting the diverse housing needs of the locality.

(c) the suitability of the site for development

The proposed modifications are in keeping with the approved development as issued under DA-422/2018 and DA-422/2018/A. The site remains suited for the development as it is appropriately zoned to permit the development and as it continues to meet the objectives of the zone and that of the Canterbury Local Environmental Plan 2012.

(d) any submissions made in accordance with this Act or the regulations

Not relevant at this time.

(e) the public interest

The public interest would be served by approval of this application, as it will in no way compromise the approved development which provides for the efficient use of land. The development will continue to provide increased commercial and residential floor area in an area suited for it, of an appropriate high level of amenity.

The proposed changes are minor, and the modification will result in substantially the same development.

It is considered that the proposed development will not result in any unreasonable impacts to adjoining properties or to the broader area, as detailed within this letter, previous modifications and the original development applications.

Pursuant to the provisions of Section 4.55(2) of the Environmental Planning Assessment Act, 1979, Council is requested to consider the proposed modifications to Development Application DA-422/2018.

Should you require any additional information please do not hesitate to contact me.

Kind regards

Melissa Rodrigues
GAT & Associates
Plan 2320