



Statement of Environmental Effects

May 2025

77-81 Auburn Road & 19 Neutral Avenue, Birrong

Demolition of Existing Structures and Construction of a Five (5) Storey Shop Top Housing Development with Affordable Housing Comprising Eight (8) Commercial Tenancies, 50 Residential Units, Basement Car Parking, Landscaping and Site Works

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1. INTRODUCTION

This Statement of Environmental Effects (SEE) has been prepared to support an application for the demolition of existing structures and construction of a five (5) storey shop top housing development with affordable housing comprising eight (8) commercial tenancies, 50 residential units, basement car parking, landscaping and site works at 77-81 Auburn Road and 19 Neutral Avenue, Birrong.

The development is submitted under Part 2, Division 1 In-fill affordable housing under State Environmental Planning Policy (Housing) 2021.

A detailed description of the works is included in **Part 3** of this SEE.

The proposal has been the subject of initial pre-lodgement reviews and a Canterbury-Bankstown Design Review Panel meeting. The proposal has evolved since the provision of the Panel meeting advice. Refer to the response and changes to the proposal since the advice in **Part 1.1** of this SEE.

GAT & Associates has been engaged by SDT Constructions Pty Ltd to prepare the SEE to accompany the development application for the consideration of Canterbury-Bankstown Council.

This SEE is based on information and details on the architectural plans prepared by Olsson Associates, Job No. 2015, dated 20/3/25, Rev. A.

- | | |
|---------------------|------------------------|
| • Drawing No. A-001 | Project Summary |
| • Drawing No. A-002 | Contextual Analysis |
| • Drawing No. A-003 | Site Analysis |
| • Drawing No. A-004 | Site Plan |
| • Drawing No. A-005 | Demolition Plan |
| • Drawing No. A-006 | Streetscape Elevations |
| • Drawing No. A-100 | Basement Level 2 Plan |
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- Drawing No. A-400 Schedule of Materials & Finishes
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The following consultant documents have also been prepared and submitted with the application:

- Access Report prepared by Vista Access Architects.
- Acoustic Report prepared by Vipac Engineers and Scientists.
- BASIX Certificate prepared by Greenworld Architectural Drafting.
- Geotechnical Investigation prepared by EI Australia.
- Landscape Plan prepared by Conzept Landscape Architects.
- Preliminary Site Investigation prepared by EI Australia.
- QS Report prepared by Construction Consultants.
- Regulatory Compliance Report prepared by Elite Certification.
- Section J Report prepared by JHA.

- Stormwater Plans prepared by S&G Consultants.
- Traffic and Parking Assessment Report prepared by Varga Traffic Planning.
- Survey Plan (Power Poles & Conductors) prepared by SDG.
- Survey Plan prepared by W. Buton.
- Waste Management Plan prepared by Dickens Solutions.

This SEE has been prepared based on the plans, inspection of the site and general knowledge of the site and locality, with the aim of:

- Assessing the proposal against relevant statutory controls.
- Determining whether the proposal is acceptable within the existing and likely future context of the area.
- Considering whether the proposal is acceptable within the broader planning controls.
- Addressing any likely environmental and external impacts (positive and negative).

The proposed development has been assessed in relation to:

- Section 4.15 Evaluation under the Environmental Planning & Assessment Act 1979.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Sustainable Buildings) 2022.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- State Environmental Planning Policy (Housing) 2021.
- Canterbury-Bankstown Local Environmental Plan 2023.
- Canterbury-Bankstown Development Control Plan 2023.

1.1 Response to Canterbury-Bankstown Design Review Panel

A pre-lodgement Design Review Panel meeting was held on 15 August 2024 (Pre-DA 23-2024). Written advice from the review and meeting was issued on 19 August 2024.

The following is a summary of the application's response to the advice.

Form and External Appearance in Context and Impacts to Public Domain

- Per comments received by the Panel, a deep soil pocket in the centre of the site that correlates to the podium communal open space has been incorporated into the proposal. The landscape plan prepared by Conzept Landscape Architects illustrates a planting outcome that will provide a high level of amenity to the central podium communal open space.
- The Neutral Avenue setback area provides pockets of deep soil landscaping with five (5) trees planted with a mature height of 4m, an appropriate height in response to the constraint of the power lines above.
- The landscape plan illustrates suitable planting in the eastern deep soil pocket to assist in mitigating the visual impact of the development.

Designing with Country and Heritage

- The landscape plan prepared by Conzept Landscape Architects has a primarily native planting schedule.
- The revised material and finishes adopted for the proposal are more responsive to the local centre character. The extensive render previously adopted has been replaced by brick with suitable colour connections to the locality.

Bulk, Massing and Modulation

- As mentioned, the render (in particular to the southern nil setback wall) has been replaced with two tones of brick to improve the streetscape appearance and reduce maintenance.
- Due to setback requirements under Council's DCP and services requirements (e.g. the substation), the two storey plinth extending further east option proved unfeasible for this development.

Relationship with Neighbouring Sites

- Planting at an appropriate scale has been accommodated in the eastern deep soil pocket which will assist in mitigating the visual impact of the development. Notably, the development meets and exceeds the required setbacks on the ground level to Level 4 which enables an improved relationship than forecast in the DCP.
- The right of carriageway prevents the opportunity for landscaping directly on the boundary.

Architectural Design and Materiality

- The architectural plans detail the revised architectural expression.
- The requirements of BASIX have been met with the current design, including the degree of sun shading provided.

- The materials and finishes have been revised to substantially reduce render and predominantly use face brick as the external wall material on all elevations.
- Detailed wall sections have been prepared and are in Drawing No. A-310 and A-311.
- Air-conditioning units have been located on the roof and are screened by the parapet.

Site Layout and Circulation

- The core location remains unchanged as their current locations are the most functional for the basement/car park. Shifting the cores southward would conflict with the current driveway location, which is further considered appropriate to minimise potential on-street queuing and allow the trucks servicing the ground level loading bay sufficient turning radius.
- The central commercial tenancy has been deleted and replaced with a deep soil pocket. A commercial corridor/lobby area remains to service the access to the commercial car parking only. All remaining commercial tenancies are accessed from the street front.
- A skylight has been added over one of the residential lifts. Further skylights would conflict with the communal open space.
- The Level 2 COS has been designed to include trafficable areas separated from the adjoining POS by planters. The courtyards are also designed with a 1m high balustrade and an additional 800mm battened fence above. Visual privacy will be secured without restricting use of either the COS or unit POS, or reducing amenity. Detail is shown on Drawing No. A-303.
- High level kitchen windows serve as the means to achieve cross-ventilation for Units 2.07 and 2.08 and equivalent on Level 3. The high level nature addresses visual privacy. It is submitted that there will be limited acoustic privacy impacts. The noise generated from a common corridor to a kitchen is not deemed to have a significant likelihood of affecting internal amenity. Importantly, the adjoining communal open space is designed more as a quiet reflective space in comparison to the more significant area on Level 5 that would generate noise.
- The western corridor length is largely unchanged due to the core location similarly being unchanged, due to the flow-on effects of the car parking layout. The level change has been removed.
- A 3.2m floor to floor height is now proposed to enable 2.7m ceiling heights to be achieved.
- The affordable housing units are allocated as Units 2.04 to 2.14. While these remain on the same level, a broad range of unit sizes and amenity levels is accommodated within this selection (e.g. solar access and cross-ventilation).

Site Infrastructure

- Due to authority requirements, the substation must be located near the street front and have a direct access pathway free of landscaping. Landscaping is instead proposed behind the substation at a scale that will grow above the height of the substation to assist in mitigating its visual impact.
- The waste room has been revised to be largely situated behind a commercial tenancy. The proposed presentation is simply the door, which must be on the front façade, to meet the

requirements of Council for the collection point to be within 10m of the bin storage area. This has ensured a minimal presentation of blank walls and maximised active street frontage.

Sustainability

- All ADG amenity targets have been met, including solar access, cross-ventilation and general room and private open space sizes. The submitted BASIX Certificate illustrates that compliance has been achieved.
- Notable ESD measures include solar panels on the roof, full electrification of the building and EV ready residential car spaces (per NCC requirements).

Landscape Design

- A landscape plan has been prepared by Conzept Landscape Architects and is submitted under separate cover. The plan details the proposed landscape design for the public domain interface, central courtyard and rooftop communal space.

2. SITE CONTEXT

The subject site consists of five (5) lots of land commonly known as 77-81 Auburn Road and 19 Neutral Avenue, Birrong, and legally defined as Lots X and Y in Deposited Plan 401043, Lots B and C in Deposited Plan 323054 and Lot 2 in Deposited Plan 387131. The site is on the southeastern corner of the intersection of Auburn Road and Neutral Avenue.

The site is irregular in shape. The primary frontage to Auburn Road is 40.23m and the secondary street frontage consists of a total length of 52.25m with a 5.175m long corner splay. The eastern boundary measures 36.74m and the southern boundary measures 54.56m. The overall site area is 2,323m².

The land experiences a modest fall to the southwest with a high point of RL 41.89m AHD and a low point of RL 40.36m AHD. Refer to Figure 1 Site Location Map.



Figure 1: Site Location Map (Source: SIX Maps)

Currently, the improvements on the site include:

- 77 Auburn Road: A single storey brick commercial building and metal roof, currently operating as a café “The Coffee Project”, a takeaway food “Banh Mi Anna” and bakery “Dianne’s Pantry.”
- 79 Auburn Road: Birrong Hardware, a commercial building with a metal roof.

- 81 Auburn Road: A single storey brick and fibro building operating as “The Barber Lab” and “Asian Grocery Shop.”
- 19 Neutral Avenue: an open storage area associated with Birrong Hardware.

A 6.095m wide right of carriageway benefiting 83-85 Auburn Road traverses the rear 79 Auburn Road (part but not all of Lot 2 DP 387131), and thus the entire rear of the site, comprising the loading access to IGA.

Adjacent to the site are high-voltage powerlines along the Neutral Avenue frontage.

Development around the site is commercial along the eastern side of Auburn Road and residential on the western side of Auburn Road and along Neutral Avenue. The scale of the existing development is primarily single storey with some contemporary dwellings two storeys in height.

Notably, the land to the east and southeast is zoned R4 High Density Residential. It is anticipated , in the short to medium term, residential flat building development will replace the older housing stock.

The specific immediate properties include:

- North: A Council car park on the northern side of Neutral Avenue.
- East: A single storey older stock fibro dwelling with a tile roof on 15 Neutral Avenue.
- West: Single storey older stock fibro dwellings with tile roofs at 64 and 66 Auburn Road.
- South: A single storey commercial building operating as “Carlo’s IGA” at 83-85 Auburn Road.

Reference should be made to the photos of the site and surrounds in Part 2.1.

Auburn Road is identified as an unclassified regional road under the purview of Council.

The site is well serviced by public transport being 100m from bus stops on Auburn Road, 420m walking distance from Birrong Train Station and 800m from Regents Park. The land is also proximate to an Australia Post (in Birrong Pharmacy), supermarkets (IGA) and public open space (Jim Ring Reserve, 46m west). Finally, the land is close to child care centres, public and high schools and an aquatic centre, making it well suited for additional density.

2.1 Photos of the Site and Surrounds



Figure 2: View of the site from Council car park opposite



Figure 3: View of the site from Neutral Avenue



Figure 4: Additional view of the site on Neutral Avenue including high voltage power lines



Figure 5: View of the site from opposite on Auburn Road (north)



Figure 6: View of the site from opposite on Auburn Road (central)



Figure 7: View of the site from opposite on Auburn Road (southern section; to IGA)



Figure 8: Neutral Avenue streetscape east



Figure 9: View of northern side of Auburn Road/Neutral Avenue intersection

3. PROPOSAL

The proposal before Council is for the demolition of existing structures and construction of a five (5) storey shop top housing development comprising eight (8) commercial tenancies, 50 residential units, basement car parking, landscaping and site works.

The development has been submitted under Chapter 2, Division In-fill affordable housing under State Environmental Planning Policy (Housing) 2021. The proposal identifies Units 2.04 through 2.14 (a total of 11 units) as affordable units.

The proposed unit mix is:

- 12 x 1 bedroom units
- 33 x 2 bedroom units
- 5 x 3 bedroom units

A description of the works is provided below.

Demolition

All existing structures are to be demolished. Refer to Drawing No. A-005.

Basement Level 2

- A total of 43 residential car spaces are proposed.
- Storage cages.
- Three (3) lifts, with two (2) residential and one (1) for commercial, and three (3) sets of stairs.
- Sprinkler tank, pump room.

Basement Level 1

- A total of 45 car spaces with 18 commercial, 10 residential visitors and 17 residential spaces.
- Storage cages.
- Four (4) commercial and 10 residential bicycle spaces.
- A roller shutter separates the commercial and residential visitors, and the residential car spaces.
- Electrical room and grease arrestor room.

Ground (Level 1) Floor

- Eight (8) commercial tenancies with four (4) sole fronting Auburn Road, one (1) on the corner of Auburn and Neutral, and three (3) solely fronting on Neutral Avenue. The tenancies are between 64.43m² and 102.6m².
- Separate commercial and residential lobbies.

- Residential waste room behind Retail 1 with an entry door to Neutral Avenue.
- Commercial waste room at the rear with a connection to a loading bay.
- A loading bay accessed from the right of carriageway from Neutral Avenue.
- Bulky waste, plant rooms, metres, commercial and caretaker's toilets.
- Two-way basement entry ramp on the southern end of the site.
- Five (5) visitor bicycle spaces.
- Mixed paving and landscaping on the Neutral Avenue frontage.
- Substation on Neutral Avenue frontage.
- Deep soil landscaping set behind the substation and adjacent to the right of carriageway.

Level 2

- A total of 14 residential units with the following unit mix:
 - 3 x 1 bedroom units
 - 11 x 2 bedroom units
 - 3 x 1 bedroom units and 8 x 2 bedroom units are affordable units.
- A 271.73m² centralised communal open space with a deep soil zone maintained through Basement Level 2.

Level 3

- A total of 12 residential units with the following unit mix:
 - 1 x 1 bedroom unit
 - 8 x 2 bedroom units
 - 3 x 3 bedroom units

Level 4

- A total of 14 residential units with the following unit mix:
 - 5 x 1 bedroom units
 - 8 x 2 bedroom units
 - 1 x 3 bedroom unit

Level 5

- A total of 10 residential units with the following unit mix:
 - 3 x 1 bedroom units
 - 6 x 2 bedroom units
 - 1 x 3 bedroom unit

- A 313.4m² communal terrace.

General

- The building has been designed as a U shape with units, and the building is oriented to Auburn Road, Neutral Avenue, and the eastern boundary.
- A central void is proposed to allow light, ventilation and amenity to units.
- A pocket of deep soil is proposed in the central void and carried through to increase the amenity of the podium communal open space.
- Residential waste is sought to be collected by Council from the Neutral Avenue frontage.
- Private contractors will collect the commercial bins from the proposed loading bay.
- The application will involve the amalgamation of lots.
- No strata subdivision is sought at this time.
- The high voltage transmission power lines on Neutral Avenue have necessitated a 3.7m clearance/setback.
- AC units are proposed on the roof.
- Solar panels are proposed on the roof, full electrification is proposed, and all residential car spaces are proposed to be EV ready (per NCC requirements).

4. SECTION 4.15 EVALUATION

The following section provides an assessment of the proposed development in accordance with 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.

The provisions of:

4.1 Any Environmental Planning Instruments

4.1.1 State Environmental Planning Policy (Resilience and Hazards) 2021

4.1.1.(a) Chapter 4 Remediation of Land

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 relates to the remediation of land. Clause 4.6 states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and, if it is contaminated, the consent authority is satisfied that the land is suitable for the purpose. 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.

A Stage 1 Preliminary Site Investigation was prepared by EI Australia and is submitted under separate cover. The report concludes that a Detailed Site Investigation is to be undertaken. This report is in progress and will be submitted for assessment upon completion.

In accordance with State Environmental Planning Policy (Resilience and Hazards) 2021, Council will be able to conclude that the site is suitable to accommodate the development subject to the Detailed Site Investigation and (if required) Remediation Action Plan.

4.1.2 State Environmental Planning Policy (Sustainable Buildings) 2022

4.1.2.(a) Chapter 2 Standards for Residential Development—BASIX

The proposal has been assessed against the provisions of State Environmental Planning Policy (Sustainable Buildings) 2022. A BASIX Certificate has been prepared and is attached under a separate cover. The certificate demonstrates compliance with the required Water, Thermal and Energy provisions under BASIX.

4.1.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

4.1.3.(a) Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to the clearing of vegetation in non-rural areas. There are no trees on the site. Street trees are present on Auburn Road which will be retained as part of the proposal.

As no tree removal is sought, no further assessment is required under Chapter 2.

4.1.3.(b) Chapter 6 Water Catchments

Chapter 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to the protection of certain Water Catchments. The site is located within the Sydney Harbour Catchment and is subject to the controls.

The land is not in proximity to any waterway or the foreshore. The proposed stormwater plans prepared by S&G Consultants identify the drainage methodology proposed which will allow for the treatment of water prior to entering the broader drainage system and minimise potential negative impacts as a consequence of the works.

Given the above, the proposal is deemed to align with the relevant provisions of Chapter 6 and the proposal can be supported.

4.1.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

4.1.4.(a) Chapter 2 Infrastructure

Section 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 applies to development applications within or immediately adjacent to an easement for electricity purposes, within 5m of an exposed overhead electricity power pole or immediately adjacent to an electricity substation. The proposed development is adjacent to high voltage power lines under the ownership of Endeavour Energy.

While preliminary discussions have occurred to confirm the clearance requirements from the powerlines, a referral will be required during the assessment of the development application.

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLY
2.48 Determination of development applications—other development	<ul style="list-style-type: none"> This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following— <ul style="list-style-type: none"> (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower, (b) development carried out— <ul style="list-style-type: none"> (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or (ii) immediately adjacent to an electricity substation, or (iii) within 5m of an exposed overhead electricity power line, (c) installation of a swimming pool any part of which is— <ul style="list-style-type: none"> (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool, (d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines 	<ul style="list-style-type: none"> The site is adjacent to high voltage power lines under the ownership of Endeavour Energy. Preliminary discussions have occurred to confirm the clearance requirements from the powerlines and the design is consistent with those. However, a referral is still required during the assessment.

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLY
	is in force between the electricity supply authority and the council for the land concerned.	
2.119 Development with frontage to classified road	<ul style="list-style-type: none"> The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that— <ul style="list-style-type: none"> (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of— <ul style="list-style-type: none"> (i) the design of the vehicular access to the land, or (ii) the emission of smoke or dust from the development, or (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road. 	<ul style="list-style-type: none"> N/A. Auburn Road is a regional, not a classified, road. However, vehicle access is via the ROW which is accessed from Neutral Avenue, the secondary street. The Traffic and Parking Assessment Report prepared by Varga Traffic Planning determines that there will not be any unacceptable traffic implications.
2.120 Impact of road noise or vibration on non-road development	<ul style="list-style-type: none"> This section applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of TfNSW) and that the consent authority considers is likely to be adversely affected by road noise or vibration— <ul style="list-style-type: none"> (a) residential accommodation, (b) a place of public worship, (c) a hospital, (d) an educational establishment or centre-based child care facility. 	<ul style="list-style-type: none"> Complies. An acoustic report has been prepared by VIPAC Engineers and Scientists that assesses the road noise. The report provides construction recommendations to ensure the noise criteria is met.
2.122 Traffic-generating development	<ul style="list-style-type: none"> This section applies to development specified in Column 1 of the Table to Schedule 3 that involves— <ul style="list-style-type: none"> (a) new premises of the relevant size or capacity, or (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity. 	<ul style="list-style-type: none"> N/A. While the car park exceeds 50 car spaces, Auburn Road is not a classified road. The development is not traffic-generating development.

4.1.5 State Environmental Planning Policy (Housing) 2021

4.1.5.(a) Chapter 2 Affordable Housing

Chapter 2 of State Environmental Planning Policy (Housing) 2021 relates to affordable housing development. The proposal has been prepared using Part 2, Division 1 In-fill affordable housing provisions.

A compliance table of the relevant controls is found in **Appendix C** of this SEE.

Additional comments on specific sections are below.

Section 16 Affordable Housing Requirements for Additional Floor Space Ratio

The Canterbury-Bankstown Local Environmental Plan (LEP) 2023 prescribes a maximum of 2:1 FSR on the site. Based on the 2,323m² site area, a maximum GFA of 4,646m² is permitted.

The proposal utilises the affordable housing bonus provisions under Section 16. The site is within an accessible area as it is within 800m walking distance of a train station – Birrong train station, which is approximately 420m walking distance.

The application identifies 814.7m² of affordable housing GFA across Units 2.02 to 2.12, equating to 15.05% of the total GFA. A bonus of 30% to FSR (and height) therefore applies, resulting in a new maximum 2.6:1 FSR (6,039.8m²) and 18.2m HOB.

The proposed aboveground GFA is 5,410m² (2.33:1). It is noted that five (5) additional residential car spaces are proposed above the required parking specified in Section 19 of SEPP (Housing) 2021, equating to an additional 65m². Inclusive of the car parking, the total GFA is 5,475m² (2.36:1) and is compliant.

The maximum height proposed is 17.85m and is compliant.

Given the above, the development has provided an affordable housing business sufficient to account for the additional floor area and height proposed above the Canterbury-Bankstown LEP 2023 prescribed development standards and can be supported on these grounds.

4.1.5.(b) Chapter 4 Design of Residential Apartment Development

Under Section 144, the Chapter applies to the proposal as it includes development for the purposes of shop top housing.

In accordance with Section 147, the consent authority is to consider the following in the development assessment:

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- (b) the Apartment Design Guide,*
- (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

The principles for residential apartment development are discussed under **Appendix A** of this SEE.

A compliance table of the relevant sections of the Apartment Design Guide (ADG) is in **Appendix B**.

The application has been before the Design Review Panel as part of pre-lodgement discussions, with a response to the advice received summarised in **Part 1.1** of this SEE. A further meeting is anticipated during the assessment of the application.

Additional comments on specific ADG objectives are below.

Deep Soil

Objective 3E-1 states: “deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.”

The design criteria is the development to achieve a minimum deep soil zone of 7% of the site area, with (in this case) a minimum 6m dimension due to the site area exceeding 1,500m². The deep soil requirement is therefore 162.61m² (7%).

It is noted that the design guidance acknowledges that the design criteria may not be possible on some sites, including those in centres and where 100% site coverage or non-residential uses at ground floor are expected. The site is both in a centre and is required by the LEP to have non-residential uses only at ground level.

The site is also constrained by the right-of-carriageway along the rear boundary. A site unconstrained by this easement would have further capacity for deep soil by allowing for a different vehicle access arrangement, reducing paved areas.

Notwithstanding this, the development has accommodated a deep soil pocket of 2.6% of the site area (61.2m²) in the centre of the site. The basement will be constructed around this deep soil pocket, permits deep soil planting within the podium (Level 2) communal open space area.

Supplementary deep soil is proposed along the eastern boundary of the right-of-carriageway, which will allow for the greening of the building from the perspective of the R4 High Density Residential zone to the east. Together, these spaces achieve a deep soil area of 107m² (4.6%) and will allow for and support healthy plant and tree growth in accordance with the objective. Refer to the landscape plan prepared by Conzept Landscape Architects for the specific planting sought.

Given the above, the provision of deep soil is consistent with Objective 3E-1.

Building Separation

The site is zoned E1 Local Centre and is prescribed a height of 14m and FSR of 2:1 under the Canterbury-Bankstown LEP 2023.

The site adjoins land zoned R4 High Density Residential to the east which is prescribed a 13m height and 1:1 FSR. Importantly, the zone also permits dwelling houses and multi-dwelling housing, lower density forms of development. Accordingly, a strict application of the design guidance would necessitate an additional 3m of building separation on this eastern interface.

A 9m separation minimum is proposed on the first four storeys to the east and the neighbouring R4 zone and is compliant.

On Level 5, the top level, the separation would be required to be 12m. The same separation 9.25m is proposed. However, hood windows are proposed which orientate the habitable room windows to the north and away from the interface.

Objective 3F-1 states *"Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy."*

The hood windows ensure no visual privacy concerns are created by the encroachment in the separation distance.

It is noted that the corridor is set at 12.29m and is compliant with the required separation.

The building is designed as a U shape, providing an internal courtyard. Internal separation is proposed at 12m for all residential floors. Similarly, on Levels 2-4, the development is compliant. On the top floor, the separation is to increase to 18m. A variation is therefore sought for these levels.

It is submitted in the first instance that a single level of variation is not deemed to be a significant reduction in visual privacy between properties. Numerous five storey built forms have been

designed with 6m separation to adjoining properties and/or matching the fifth storey separation to the levels below in the Council area, including but not limited to 721 Canterbury Road, Belmore and its relationship to the east, 351 Hume Highway, Bankstown.

Windows and balconies have generally been offset to avoid visual privacy reduction in viewing of the technical encroachment in separation.

It is submitted that the encroachment is of minimal environmental consequence and can be supported.

4.1.6 Canterbury-Bankstown Local Environmental Plan 2023

Refer to Appendix D for an assessment of the proposal against Council's LEP standards.

Additional comments on specific clauses are provided below.

4.1.6.(a) Land Zoning

The subject site is zoned E1 Local Centre under Canterbury-Bankstown Local Environmental Plan (LEP) 2023. Refer to Figure 10 below.

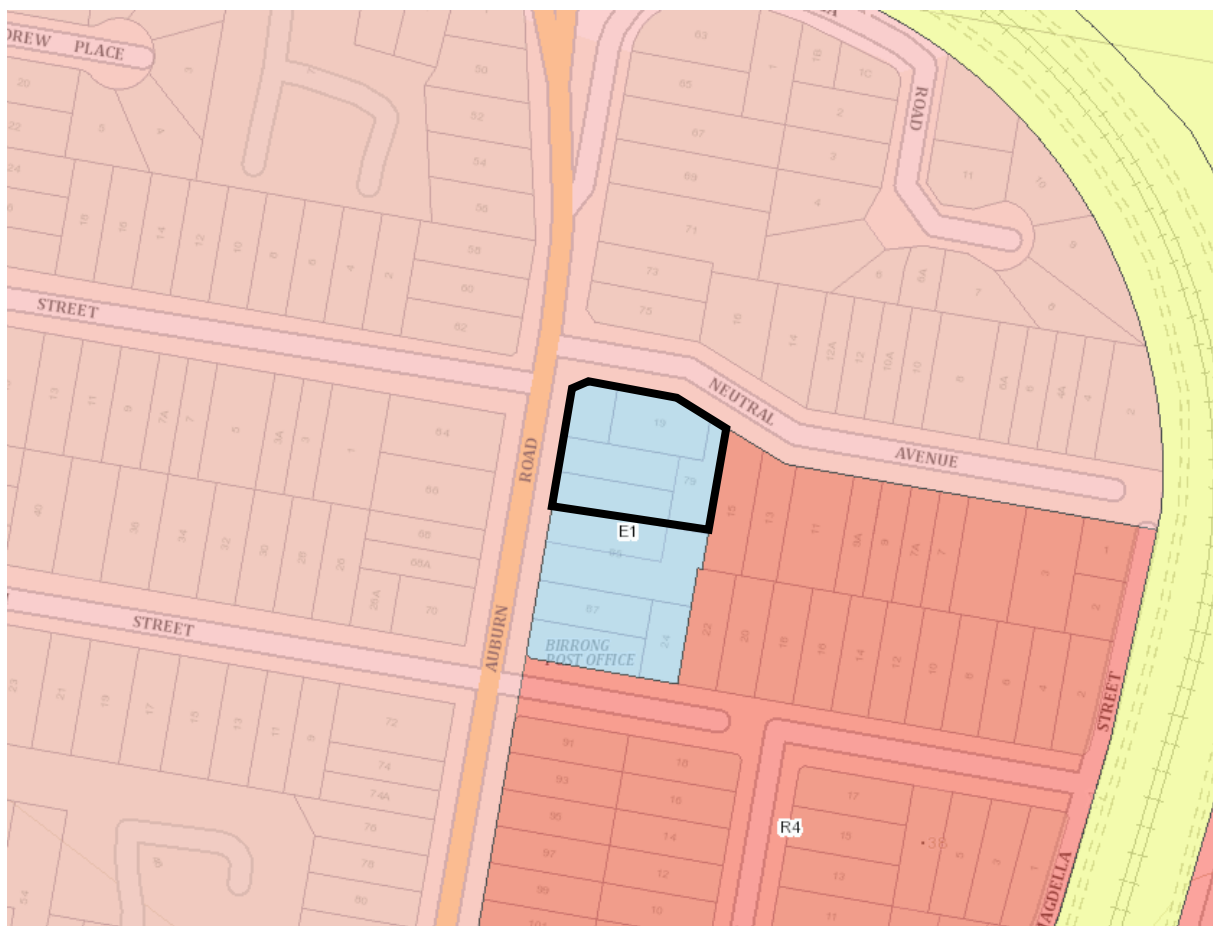


Figure 10: Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

“Shop top housing” is listed as permissible with consent in the zone.

The objectives of the zone are as follows:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To promote a high standard of urban design and local amenity.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

The following comments are made with regard to the objectives of the zone:

- The proposed development incorporates eight (8) commercial tenancies to support retail, business, and community uses that serve the needs of people who live or work in the surrounding neighbourhood. Several tenancies are capable of consolidating into larger sizes to suit market demands.
- The redevelopment of the land with eight (8) commercial tenancies at ground floor reflects the desired future character of the site and Birrong centre. The development will generate employment opportunities and economic growth.
- The proposal incorporates residential development above ground level commercial that will contribute to the vibrancy of the Birrong centre through a higher population and enhanced street activation delivered as part of the proposal. The density of development is consistent with Council's LEP development standards and the affordable housing bonus applicable under SEPP Housing 2021.
- The ground floor primarily comprises commercial floor space, ensuring non-residential land uses have been suitably maximised at the ground level.
- The proposal delivers employment opportunities within an accessible location, 100m walking distance from appropriately serviced bus stops and 420m from Birrong Train Station.
- The development is close to public transport, as detailed above and also provides for appropriate bicycle parking. The Birrong centre is walkable and provides key services for residents. The development is considered to reasonably maximise the potential for public transport patronage and encourage walking and cycling.
- The proposal is deemed to have achieved a high standard of urban design and local amenity, representing a positive redevelopment example of the Birrong neighbourhood centre. The compliance with amenity targets expressed within this SEE and a high quality external appearance collectively achieves a proposal of design excellence. A positive

balance of landscaped and built upon areas is proposed that reflects the land zoning, site constraints (i.e. high voltage power lines, and right-of-carriageway along the eastern boundary) and high density desired future character.

- The proposal provides an active street frontage along Auburn Road and extends it around the majority of the Neutral Avenue frontage, which will attract pedestrian traffic and contribute to the Birrong centre being vibrant, diverse and functional. The landscaping proposed in the street setbacks will also enhance the public spaces.

Given the above, the proposal is consistent with the objectives of the zone.

4.1.6.(b) Clause 6.15 Design Excellence

Under subclause (2), the design excellence clause applies to a shop top housing of at least 4 storeys. The proposed development is 5 storeys. Consequently, an assessment of the design excellence provisions is undertaken below.

Clause	Comment
In deciding whether the development exhibits design excellence, the consent authority must consider the following— (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	The proposed development is deemed to achieve a high standard of architectural design, materials and detailing appropriate to a shop top housing development and location. The use of brick as the predominant material ensures longevity of the materials and continuity with the existing character in the shopping centre and in the older and newer stock dwellings in the surrounding land. The brick is supplemented by concrete fibre cement cladding. Limited render is adopted and, where proposed, used to contrast with the primary materials and finishes. The development reads as a shop top housing development and will sit well within its future context.
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	As above, a high quality external appearance is achieved. The development will enhance the public domain through the nil setback to Auburn Road, limited setback to Neutral Avenue (guided by the site constraint of high voltage powerlines), awning and construction of new footpaths and street trees. The ample provision of commercial glazing to both street frontages will enhance the street activation and the amenity of the public domain.
(c) whether the development detrimentally impacts on view corridors,	There are no view corridors that will be disrupted by the proposed development.
(d) how the development addresses the following matters— (i) heritage issues,	The site is not identified as an item of heritage or proximate to any heritage items. The site is not within a heritage conservation area.
(ii) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	The built form has a suitable relationship to existing and future potential development on adjoining properties. As a corner property, there are two neighbours – to the east and south, in this instance. To the east lies an R4 High Density Residential zone with built form currently reflecting the former zoning of R2 Low Density Residential with single and two storey dwellings. The built form has been

	<p>setback over 9m from the zone boundary to account for the changing land zoning. Visual privacy is secured between the proposed building and the R4 zone by hood windows, where needed. There is limited overshadowing to this property and no variation to a planning control protecting solar access.</p> <p>To the south, the neighbouring property is an IGA. A nil setback blank wall is proposed, which will be constructed of brick, ensuring longevity and minimal maintenance in the intervening period before the IGA site is redeveloped. A nil setback street wall is anticipated by the E1 Local Centre land zoning and the Canterbury-Bankstown Development Control Plan (CBDCP) 2023 controls for the Birrong local centre. The ROW present over the site's eastern boundary is preserved, ensuring long-term access is maintained for the IGA site.</p>
(iii) bulk, massing and modulation of buildings,	<p>The setbacks and separation proposed are defined by the DCP, advice from Council's Design Review Panel and the constraints of the site (e.g. high voltage power lines along Neutral Avenue). Generally speaking, the built form aligns with the intent of the zone for a greater street presence but retains a human scale by limiting the street wall height along Auburn Road to 2 storeys away from the prominent corner (as intended by CBDCP 2023), while the internal separation allows for sunlight, natural light and ventilation for units throughout the site. Privacy is achieved internally and maintained externally. The articulation of the built form reduces the bulk and building mass.</p>
(iv) street frontage heights,	<p>As an in-fill affordable housing development, one additional storey is proposed above the CBLEP and CBDCP controls reference. Notwithstanding this, the development has had due regard to the intended outcome of both instruments.</p> <p>CBDCP 2023 identifies a four storey street frontage height at the corner. Responding to the intent to reinforce the corner and bookend the shopping strip, the fifth storey maintains a nil setback.</p> <p>Along Auburn Road, a two storey street wall is intended by CBDCP 2023 and is proposed. The remaining three storeys are setback, ensuring a pedestrian scale is maintained.</p> <p>Along Neutral Avenue, due to the site constraint of the high voltage power lines, additional setbacks are proposed for the lower levels. To maintain the similar intent for a two storey street wall, all unit floor area is setback on the third to fifth storey and only balconies are aligned with the same setback.</p>

	Acknowledging the atypical circumstances of the site, the built form has responded positively to meet the intent of CBDP 2023 and recognise the importance of the corner presentation and recessing the bulk and scale away from the corner.
(v) environmental impacts, including sustainable design, overshadowing, wind and reflectivity,	<p>The development is compliant with natural cross ventilation and solar access and has maximised natural light. Additionally, there are limited overshadowing impacts as the shadows fall largely on the commercial land to the south.</p> <p>It is not anticipated that the development will raise any wind concerns. Excessive glazing is not sought, and it is expected that no reflectivity issues will arise. Standard conditions for reflectivity will secure a positive outcome.</p>
(vi) the achievement of the principles of ecologically sustainable development,	The development achieves the principles of ESD through the provision of solar panels on the roof, landscaping to assist in the microclimate, incorporating overhangs, compliant cross-ventilation, and maximising natural light. The NCC requires residential car parking be EV ready in a shop top housing context, which will further ESD outcomes.
(vii) pedestrian, cycle, vehicular and service access, circulation and requirements,	The development enhances pedestrian movement in front of the site through a renewed, activated public/private interface, new street trees on the Neutral Avenue frontage and planting in the Neutral Avenue street setback. Further, it accommodates required bicycle parking, car parking and loading areas. The Traffic and Parking Impact Assessment prepared by Varga Traffic Planning demonstrates that the circulation of the parking areas is compliant. Consequently, these matters are dutifully addressed in the submission.
(viii) the impact on, and any proposed improvements to, the public domain,	The public domain will be improved in accordance with Council's policies as part of the conditions of consent. Furthermore, the provision of an active street frontage on Neutral Avenue in addition to the shopping street of Auburn Road is above the requirements of CBLEP 2023 and will increase activation and the pedestrian experience in front of the site. New street trees on Neutral Avenue and street setback plantings will also improve the public domain and public domain experience.
(ix) the integration of utilities, building services and waste management infrastructure in the site layout and building design,	The visibility of services has been minimised. The residential waste room presence of the street façade has been reduced to a doorway, with the room sleeved behind a retail tenancy. The hydrant boosters are perpendicular to the street to reduce their prominence and the kiosk substation is of minimal visibility from the high traffic areas of the site.

	Residential waste will be collected from the street. Commercial waste will be collected from the loading bay, hidden from street view.
(x) Aboriginal cultural heritage,	The site is not identified as containing any Aboriginal cultural heritage.
(xi) the protection and promotion of green infrastructure,	The development incorporates green space on the podium, as part of the communal open space, and in the Neutral Avenue street setbacks and public domain, improving upon the existing, non-existent landscaping.
(e) whether the development integrates high quality landscape design in the site layout and building design,	The site is an urban centre context which limits deep soil. However, as guided by Council and the Design Review Panel, a pocket of deep soil has been centrally located within the site, providing deep soil for the central, podium communal open space. Additional deep soil is achieved in the eastern and northern setbacks which will support appropriately sized trees for their location and constraints (e.g. high voltage power lines). The landscape plan illustrates the planting outcome sought, which will integrate a high quality planting palette in sensible areas that contribute to the amenity of residents and soften the built form. Reference should be made to the landscape plan prepared by Concept Landscape Architects.
(f) how the development responds to the physical and cultural connection of the local Aboriginal community to the land.	The site is not identified as containing any Aboriginal cultural heritage.

In view of the above, the proposed development is deemed to achieve design excellence.

4.2 Any Proposed Instrument

There are no proposed instruments that affect the assessment of this application.

4.3 Any Development Control Plan

4.3.1 Canterbury-Bankstown Development Control Plan 2023

A compliance table assessment of the relevant sections of the Canterbury-Bankstown Development Control Plan ("DCP") 2023 is in **Appendix E** of this SEE.

Additional comments on specific controls are below.

4.3.1.(a) Chapter 7.1, Section 9 – 9.21 Development Adjacent to Residential Zones

To the east, the site adjoins land zoned R4 High Density Residential. Control 9.21 requires consideration of several matters which are discussed in turn below.

(a) whether any proposed building is compatible with the height, scale, siting and character of existing residential development within the adjoining residential zone;

Firstly, the land zoned R4 is a recent rezoning that is yet to see redevelopment to the intended desired future character. Currently, all properties in the vicinity remain at their single or two storey dwelling housing scale.

The proposed five storey building is compliant with the applicable height and FSR development standards (inclusive of the bonus provisions) and thus inherently presents as an appropriate form. Notwithstanding this, appropriate setbacks have been adopted and matters of visual bulk, visual and acoustic privacy and the character of the development have been managed to ensure a suitable interface that is respectful of the existing residential development.

(b) whether any goods, plant, equipment and other material used in carrying out the proposed development will be stored or suitably screened from residential development;

Specifically to the control, there are no goods, plant, equipment or other material necessary to carry out the construction of the development atypical of this type of development. The level of screening that will exist between properties will meet all relevant requirements under standard conditions of consent.

For the ongoing screening of the development, the interface with the eastern boundary and R4 zone is deemed appropriate given the site context.

As an active street frontage is required for the Auburn Road frontage under the Canterbury-Bankstown LEP 2023 and is recommended for the secondary street frontage to Neutral Avenue, the location of vehicle access is naturally at the zone boundary. Further, the site specific matter of the right of way for IGA necessitates vehicle access in its location and encourages the basement entry and loading bay to be accessed from this right of carriageway.

A deep soil planting zone is proposed adjacent to the right of carriageway and includes planting of a suitable scale to assist in managing this interface, including the substation and building.

(c) whether the proposed development will maintain reasonable solar access to residential development between the hours of 8.00am and 4.00pm at the mid-winter solstice;

The shadow diagrams submitted with the application illustrate that the residential properties to the east and west are largely unaffected by the proposed development, and reasonable solar access is maintained.

(d) whether noise generation from fixed sources or motor vehicles associated with the proposed development will be effectively insulated or otherwise minimised;

The current interface with the R4 zone is of the IGA and other uses loading zone along the boundary. This will be largely unchanged. The vehicle access cannot be located in any other location given the site constraint of the right of carriageway.

(e) whether the proposed development will otherwise cause nuisance to residents by way of noise, hours of operation, traffic movement, parking, headlight glare, security lighting, fumes, gases, smoke, dust or odours, or the like; and

The site is currently used for commercial purposes. The ground floor of the proposed development will remain for this purpose, as intended by the E1 Local Centre land zoning. The development seeks standard commercial uses at the ground level. No new, atypical acoustic considerations arise from the development that are not already present and/or unexpected by the land zoning.

Operational hours for the new tenancies are not sought as part of this application. However, no tenancy faces residential directly without a road between. No concerns arise.

No concerns arise from a traffic movement or parking perspective based on the traffic assessment by Varga Traffic Planning.

Headlight glare will be mitigated by the boundary fencing. Notwithstanding the right of way, the site context is such that the driveway is located in the logical position.

Standard conditions of consent will control security lighting.

No specific issues of fumes, gases, smoke, dust or odours arise from the application.

(f) whether any windows or balconies facing residential areas will be treated to avoid overlooking of private yard space or windows in residences.

The proposed building separation up to Level 4 is compliant with ADG and therefore no privacy treatments are required.

On Level 5, hood windows are adopted for the habitable room windows to direct views away from the boundary.

Accordingly, the interface to the adjacent residential zone has been appropriately managed and considered specific to the site context.

4.3.1.(b) Chapter 7.2, Section 3 – 3.2 Setbacks

The DCP prescribes specific setbacks under Chapter 7.2 for the Birrong Small Village Centre. These setbacks are illustrated in Figures 11 to 13 below.



Figure 3d: Setback controls (Auburn Road)

Figure 11: Extract of Setback Controls for Auburn Road (Source: Canterbury-Bankstown DCP 2023)

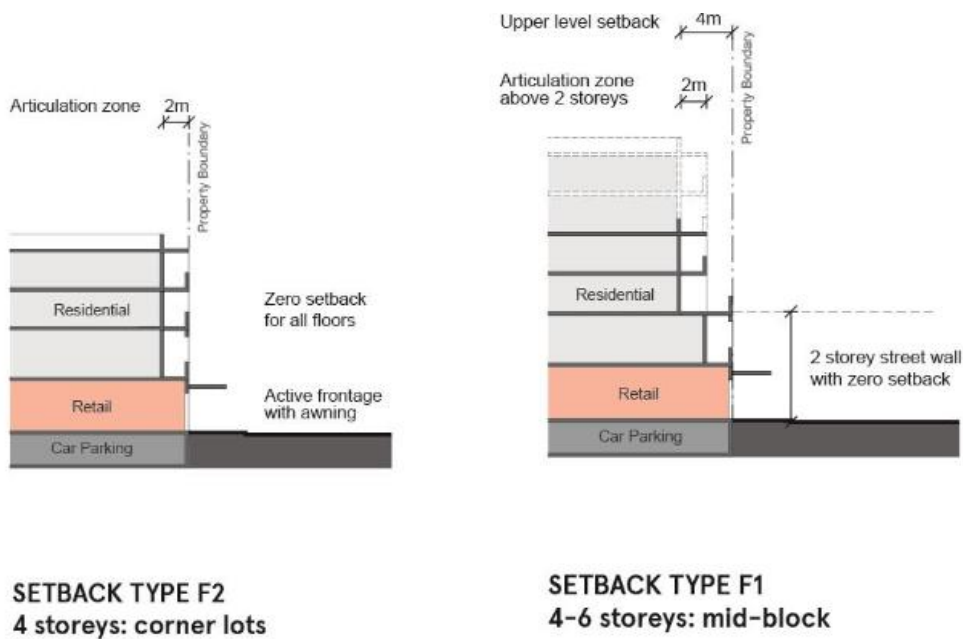
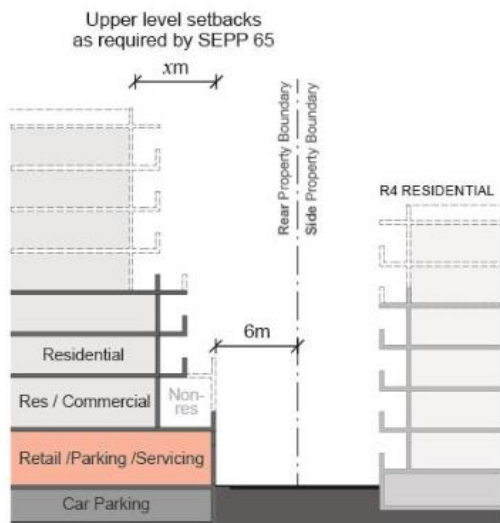


Figure 12: Extract of Setback Type Controls for the Corner (left) and Mid-Block (right)



SETBACK TYPE R6
4-8 storeys: B1/B2 rear to residential

Figure 13: Extract of Rear Setback Controls

The DCP intends for development to have the following setbacks:

- A nil setback street wall at the corner of Auburn Road and Neutral Avenue,

- A two storey street wall with a 2m setback and 2m articulation zone further from the corner, and
- A 6m commercial/9m residential setback for the first four storeys and 12m above to the R4 zone to the rear.

Each aspect is discussed below.

Corner – Setback Type F2

A nil setback is proposed for the corner portion of Auburn Road. However, a setback is proposed at the splay and on Neutral Avenue up to 3.7m.

The site is constrained by a clearance needed for high voltage power lines. Preliminary discussions with Endeavour Energy have determined the proposed setback as the necessary clearance.

Except for the site-specific power lines issue, this portion of the setbacks is compliant.

It is noted that Figure 12 illustrates a four storey development on the corner. Due to the in-fill affordable housing bonus provisions, an additional storey is proposed. The fifth storey setback at the corner is consistent with the levels below to reinforce the desired outcome of a prominent corner and (as discussed below) recessed appearance with distance from the corner.

Mid-Block – Setback Type F

Auburn Road

A nil setback two storey street wall is proposed on the Auburn Road frontage. Above, a 1.815m setback is proposed for balconies and a 3.965m setback is proposed for the external wall. The balconies encroach 185mm and the external walls 350mm.

The setback control intends to locate the balconies forward of the external wall setback 4m. However, to meet both Council's DCP (Control 9.4 under Chapter 7.1 General Requirements) and ADG (Objective 4E-1), a balcony is required to have a 2m depth for a 1 and 2 bedroom unit (and, in the case of a 3 bedroom unit under ADG, 2.4m depth). The balconies proposed have a 2m depth, however, this is the trafficable portion of the balcony. The balustrading then extends beyond and is the proposed encroachment.

The encroachment is negligible in scope, notably not occurring across the full frontages of Levels 3-5 (see Figure 14 below). Given the limited degree of variation, it will not be perceived from the public domain as non-compliant or excessively bulky. Consequently, the encroachment is deemed acceptable.

It is noted that Level 3 uses the slab of the lower two storeys for larger balcony private open spaces and a planter box at the street edge. The architectural language of this transition will still read as the intended two storey scale with recessed upper floors.

Similarly, the 350mm external wall encroachment is modest and will not be perceived as further forward than was intended by the planning controls. The design of the development, including the circulation requirements, room depths and dimensions and balconies has led to a slight encroachment into the setback distance.

The development maintains a two storey street wall with recessed upper levels as intended. The modest encroachments do not thwart the deliberate design philosophy envisioned for the Birrong Small Village Centre and can still be supported.

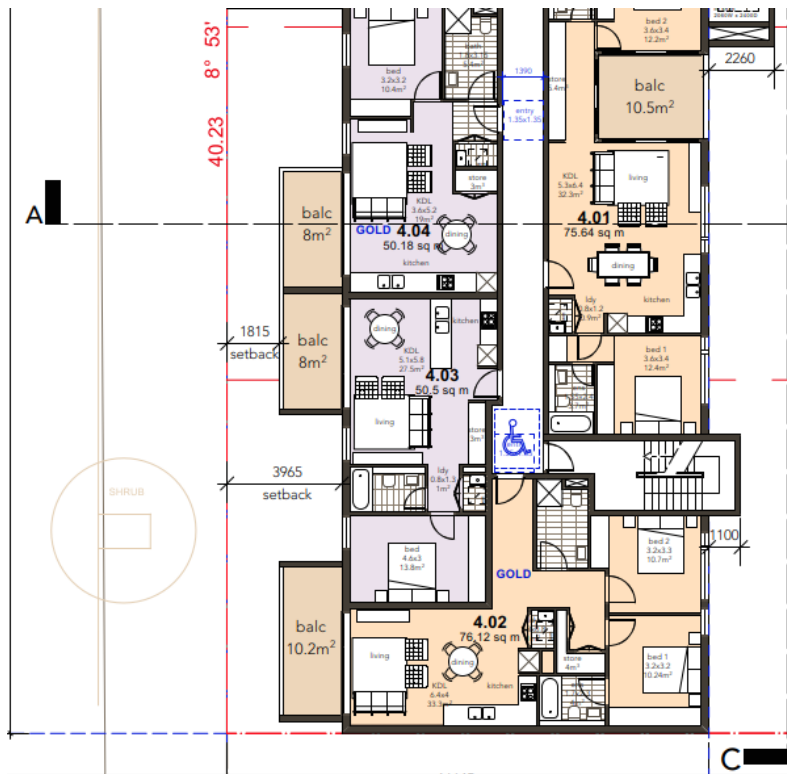


Figure 14: Extract of Level 4 Plan illustrating the street setback

Neutral Avenue

The Neutral Avenue frontage is intended to deliver the same two storey street wall with a 2m balcony and 4m external wall setback above. However, the Neutral Avenue frontage is constrained by the presence of high voltage powerlines, as discussed earlier. Consequently, a street setback is proposed.

It is submitted that the design intent is still achieved. Above the second storey, all unit floor area has been setback from the ground and first floor. Balconies on the third and fourth storey maintain the setback alignment of the levels below. For the third storey, the balconies occupy the full width of the building, matching the design of the Neutral Avenue frontage where the balconies utilise the roof slab of the level below. On the fourth storey, the balcony space is reduced, creating recessive and protruding elements that mitigate the bulk and scale of the façade.

While the development is five storeys in height, the floor area of the fifth storey is positioned elsewhere on the storey. A four storey street height is maintained along the Neutral Avenue frontage with the fifth storey area used for communal open space.

For the reasons above, the intent for a two storey street wall and recessed upper levels is considered to be achieved.

It is acknowledged that a portion of the built form is not setback as required by the DCP on the third storey and above at the eastern end of the building. The variation is driven by the curve in Neutral Avenue and the power line setback. A building following the curve in the street to provide the setback would result in irregular geometry within the building and affect the unit designs. Additionally, floor area that would be situated closer to the Neutral Avenue frontage has been lost from the development due to the high voltage power lines. A balanced approach is taken from the above items, resulting in a consistent building alignment that, as discussed above, still achieves the intended reduction in bulk and scale away from the corner.

Given the above, the deviation from the setback diagram is deemed supportable in the circumstances of the case.

Rear – Setback Type R6

The proposed rear setback is 9.25m at the minimum across all storeys with the lobby at 12.29m. The lobby is compliant, while on Level 5 the units encroach up to 2.75m.

To manage the visual privacy aspect of the floor area closer to a boundary than intended, the habitable room windows are designed as hood windows angled to direct sightlines toward Neutral Avenue and not the adjoining residential neighbour. Visual privacy is secured through this design element.

The site is somewhat constrained by the presence of a ROW over the eastern portion of the site, servicing the IGA site to the south. The ROW obstructs the expected location of built form on the ground floor. Figure 13 identifies an intended 6m setback between the site and the R4 zone for the commercial level. Due to the ROW, a 9.25m setback has been required. The lost floor area is effectively regained on Level 5 which creates the encroachment.

As above, the privacy aspect of the encroachment has been managed. The bulk and scale aspect is deemed to be resolved through the articulation provided by the materials and finishes and the hood windows themselves.

The encroachment does not result in unreasonable overshadowing, noting the residential neighbour receives uninterrupted solar from 9am to 12pm, and limited overshadowing until 2pm. No additional amenity control is affected.

Given the comments made, the setbacks proposed are considered worthy of support in the context of the case.

4.4 Any Planning Agreement or Draft Planning Agreement under Section 7.4

There are no planning agreements or draft planning agreements entered into under Section 7.4 relevant to the application.

4.5 Regulations

There are no prescribed matters that hinder the development.

4.6 Likely Impacts

Consideration must be made to the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

4.6.1 Impact on the Natural Environment

The development will have no impact on the natural environment. There is no vegetation on the site, and the land and locality have been developed for residential or commercial purposes.

The proposal will introduce landscaping of a variety of scales both as deep soil plantings and on-structure plantings. The landscape plan prepared by Conzept Landscape Architects details an appropriate planting density that is compatible with the desired future character of the area.

The stormwater design will ensure that there is no impact on the broader water catchment.

4.6.2 Impact on the Built Environment

The proposed shop top housing development directly responds to the E1 Local Centre zoning prescribed for the land. The proposed incorporates ample commercial floor space that activates both street frontages and complements the character of the neighbourhood. The residential levels are well designed and articulated to create a high quality building that will inform the expectations of additional redevelopment within the shopping precinct and broader locality.

While some setback controls are deviated from, these are driven by the site constraint of high voltage power lines. The development responds to the intent of the planning controls by reinforcing the corner as the focus of the building and recessive upper levels with distance from the corner.

4.6.3 Social and Economic Impacts on the Locality

The proposed development will result in a positive social and economic impact on the locality. From a social perspective, the proposal provides for new residential accommodation in an area well serviced by local infrastructure and new affordable housing. The proposed units comprise a mix of 1, 2 and 3 bedrooms, including adaptable designs, catering to a range of households. The units are well designed with areas of private open space that flow on from living areas and are generous in size. The proposed areas of landscaping throughout the development and communal open spaces ensure a high level of amenity for residents and visitors.

Additional commercial floor area is proposed. Although the use of the tenancies is subject to future applications, the proposal ensures future business and employment opportunities are possible on the site, reinforcing the commercial zoning which applies to the site.

4.7 Suitability of the Site

The land is appropriately zoned to permit the proposed shop top development. The development meets the long-term objectives of the E1 Local Centre zone and the Canterbury-Bankstown LEP 2023.

4.8 Submissions made in accordance with this Act or the regulations

Not relevant.

4.9 The Public Interest

The public interest would be served by approval of this development, as it achieves the desired future character envisioned for the Birrong neighbourhood centre. The proposed development promotes urban renewal, providing new residential and affordable housing accommodation as part of a shop top housing development. The proposed building is considered to be of a high standard of design and will contribute towards creating an attractive streetscape.

The proposed commercial tenancy will activate the street frontage and encourage employment opportunities reflective of the E1 Local Centre zone objectives.

It is considered that the development is conducive to Council's policies and does not result in any unreasonable impacts. Under the circumstances of the case, it is considered that the development is acceptable and should be supported.

5. CONCLUSION

The proposed development is for the demolition of existing structures and construction of a five (5) storey shop top housing development with affordable housing comprising eight (8) commercial tenancies, 50 residential units, basement car parking, landscaping and site works at 77-81 Auburn Road and 19 Neutral Avenue, Birrong.

The application has considered the surrounding land uses. It is submitted that all reasonable measures to mitigate any adverse environmental effects have been incorporated into the proposal.

The proposal has been assessed in accordance with the provisions of Section 4.15 Evaluation of the Environmental Planning and Assessment Act 1979 and found to be satisfactory. The proposal is permissible with the consent of Council.

The beneficial effects of the proposal include:

- The proposed shop top housing development is well designed and provides excellent presentation to both street frontages.
- The development has achieved a high level of internal and external amenity within its site constraints.
- The proposed commercial tenancy will ensure continued employment generating uses on the land.
- The development will facilitate the redevelopment of underutilised land and increase the provision of housing in the locality.
- There are no external physical or material impacts as a result of the application.
- The proposal is compatible with the Canterbury-Bankstown planning objectives and controls for the site and locality.
- The proposed development will have no significant impacts on the air or water quality in the locality.

The proposed development will have no significant impact on the air or water quality in the locality.

The proposed works do not result in any unreasonable impact on adjoining properties and are conducive to Council's policies and accordingly, it is sought that Council approves the application.

Appendix A 9 Principles of State Environmental Planning Policy (Housing) 2021, Chapter 4 Design of Residential Apartment Development

The following comments are provided to address the 9 Design Principles:

Principle 1 Context and Neighbourhood Character

Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character.

Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in the following areas—

- established areas,
- areas undergoing change,
- areas identified for change.

Comment:

The site is located on the southeastern corner of the intersection of Auburn Road and Neutral Avenue, the northernmost lots that form part of a E1 Local Centre land zoning associated with the Birrong neighbourhood centre. Land to the east is zoned R4 High Density Residential and R2 Low Density Residential to the north and west. Regardless of the current zoning, the locality is primarily single and two storey buildings. The site and neighbours to the east and south qualify as an area is identified for change.

The proposal seeks a shop top housing development, a permissible form of development in the zone that reflects the desired future character area. The zoning and development standards applying to the land permit 3 and 4 storey developments. The proposal, through use of in-fill affordable housing bonuses, seeks a five storey form.

The locality is well connected to public transport (buses and trains) and shops, services and amenities.

The proposed five storey development is considered to have taken positive attributes of the current context and incorporated these within the proposal, including the selection materials and finishes.

Principle 2 Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—

- building alignments and proportions,
- building type,
- building articulation,
- the manipulation of building elements.

Appropriate built form—

- defines the public domain,
- contributes to the character of streetscapes and parks, including their views and vistas, and
- provides internal amenity and outlook.

Comment:

The proposed development is the first within the precinct to developed to contemporary planning controls. Consequently, the immediate relationship is one discordant and thus represents an area identified for change. Notwithstanding this, the built form is appropriate.

As commercial land, a commercial ground floor with an active street frontage is desired. The proposal exceeds the expectations of the planning controls by continuing an active street frontage around the corner of Auburn Road, the primary shopping street, on to Neutral Avenue. While a setback is proposed to Neutral Avenue, this is driven by high voltage power line separation requirements. Nevertheless, the architectural design and street wall alignment defines the public domain.

The primarily brick and fibre cement cladding respond to the materials and colours of the locality. The built form will positively contribute to the character of the streetscape, as well as reinforcing the prominent street corner serving as the northern gateway into the neighbouring centre.

The five storey scale is compatible with the planning controls and associated in-fill affordable bonuses permitted on the land. The proposed floor area, inclusive of the bonuses employed, has been smartly designed to maximise internal amenity and outlook without compromising development potential or amenity on adjoining properties.

Principle 3 Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population.

Appropriate densities can be sustained by the following—

- existing or proposed infrastructure,
- public transport,
- access to jobs,
- community facilities,
- the environment.

Comment:

The proposed development proposes new residential accommodation in an accessible location where demand exists for increased density.

The proposed 50 units and 8 commercial tenancies are considered a density appropriate within the site's constraints and site-specific context. The land is within a commercial zone adjacent to a supermarket and other shops to meet immediate needs, with public transport within easy walking distance.

The density proposed benefits from in-fill affordable housing bonuses under State Environmental Planning Policy (Housing) 2021. Notably, the full potential 30% bonus is not sought, but rather a sensible portion of the bonus that creates a high quality built form and amenity outcome and recognises the constraints (e.g. high voltage power lines, ROW along the eastern boundary).

The development aligns with the desired future character expressed in CBDP 2023 and responds positively to the nil setback wall to the existing IGA development to the south.

Principle 4 Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes—

- use of natural cross ventilation and sunlight for the amenity and liveability of residents, and
- passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs.

Good sustainable design also includes the following—

- recycling and reuse of materials and waste,
- use of sustainable materials,
- deep soil zones for groundwater recharge and vegetation.

Comment:

The development complies with the solar access and natural cross-ventilation design guidance under ADG with 36/50 (72%) units and 34/50 (68%) units, respectively.

Where solar access is limited, natural light is considered to have been maximised. North facing units have also been maximised.

Other positive attributes of the sustainability of the design are the provision of deep soil landscaping, on-structure planting, solar panels, and hard wearing materials (e.g. brick and fibre cement cladding) as the main construction materials. The development is also compliant with the requirements of BASIX under State Environmental Planning Policy (Sustainable Buildings) 2022.

Principle 5 Landscape

Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.

A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—

- the local context,
- co-ordinating water and soil management,
- solar access,
- micro-climate,
- tree canopy,
- habitat values,
- preserving green networks.

Good landscape design optimises the following—

- usability,
- privacy and opportunities for social interaction,
- equitable access,
- respect for neighbours' amenity.

Good landscape design provides for practical establishment and long term management.

Comment:

The site is within a neighbourhood centre and currently contains no landscaping. Furthermore, the design guidance acknowledges potential for no deep soil in such circumstances. However, the proposed development has nevertheless provided 4.6% of the site as deep soil meeting a 3m dimension, with the primary area strategically positioned in the centre of the podium communal open space to maximise residential amenity. The planting outcome to be delivered by the landscape plan will substantially enhance the existing context and provide a high level of resident amenity.

Principle 6 Amenity

Good design positively influences internal and external amenity for residents and neighbours.

Good amenity contributes to positive living environments and resident wellbeing.

Good amenity combines the following—

- appropriate room dimensions and shapes,
- access to sunlight,
- natural ventilation,
- outlook,
- visual and acoustic privacy,
- storage,
- indoor and outdoor space,

- efficient layouts and service areas,
- ease of access for all age groups and degrees of mobility.

Comment:

Careful planning of the floor plate has ensured a high level of internal and external amenity for residents and neighbours in a high density environment. The design ensures visual and acoustic privacy, solar access, natural light and ventilation are achieved, with good outlook and internal spaces and storage are designed according to policy requirements. The building is accessible throughout.

A 2.7m floor to ceiling height is achieved for habitable rooms.

Principle 7 Safety

Good design optimises safety and security within the development and the public domain.

Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.

Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The proposed development has had regard to the principles of 'Safer by Design'. Aspects such as natural surveillance and controlled access have all been considered in the planning of the building.

The proposed development allows for excellent natural surveillance for public areas, being Auburn Road and Neutral Avenue. The common areas will be appropriately lit to ensure safety and visibility after dark.

The entrance to the upper level residential units from the foyer is via a controlled access entry and lift system. An intercom system will be provided adjacent to the entry lobby along Neutral Avenue for visitor access.

The street numbering and the identification of the building will be clear to prevent unintended access and to assist persons trying to find the building.

Principle 8 Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including—

- different types of communal spaces for a broad range of people, and
- opportunities for social interaction amongst residents.

Comment:

The proposed development provides new residential accommodation, including affordable housing, within an established urban area located in proximity to public infrastructure. A range of 1, 2 and 3 bedroom units – and a range of 1 and 2 bedroom units as affordable housing – are sought. Twenty units are also designed as Livable units. The proposed unit mix will cater to different housing needs and lifestyles.

Well landscaped and sensibly located communal spaces provide opportunities for residents to interact.

Principle 9 Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.

Good design uses a variety of materials, colours and textures.

The visual appearance of well designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The proposed development incorporates a composition of building elements, textures, materials and finishes which all contribute to an overall high quality and aesthetically appealing development. The location of the site, and bulk and scale of surrounding existing and potential future developments have been considered in the design of the development and its aesthetics. The building will be in harmony with the locality in the short and long-term.

Design Verification Statement

A Design Verification Statement has been prepared by Olsson Associates and is submitted with this development application.

Further to the above design quality principles, Clause 147(1)(b) of State Environmental Planning Policy (Housing) 2021 also requires residential apartment development to be designed in accordance with the Department of Planning's publication entitled *Apartment Design Guide*. The following table outlines compliance with the Apartment Design Guide, where specific and/or numerical requirements are specified.

Appendix B State Environmental Planning Policy (Housing) 2021 – Chapter 4 Design of Residential Apartment Development – Apartment Design Guide Compliance Table

STANDARD	OBJECTIVE	COMPLIANCE
3A Site Analysis	3A-1 - Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Refer to Drawing No. SK01 and Section 2.0 of this SEE.
3B Orientation	3B-1 - Building types and layouts respond to the streetscape and site while optimising solar access within the development.	Complies. The building has been oriented to maximise north facing units while also addressing the western, primary street frontage.
	3B-2 - Overshadowing of neighbouring properties is minimised during mid-winter.	Complies. Refer to the submitted shadow diagrams in Drawing No. A-600. Limited overshadowing occurs on neighbouring residential properties, with no impact until 1pm.
3C Public Domain Interface	3C-1 – Transition between private and public domain is achieved without compromising safety and security.	Complies. The residential lobby is distinguished on the Neutral Avenue façade, separate from the commercial tenancies and lobby.
	3C-2 – Amenity of the public domain is retained and enhanced.	Complies.
3D Communal and Public Open Space	3D-1 – An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping <i>Design criteria:</i> Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	Complies. Site area: 2,323m ² Requirement: 580.75m ² Provision: 585.1m ²

STANDARD	OBJECTIVE	COMPLIANCE												
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter).	Complies. The Level 5 COS receives comprehensive solar access all-year and accounts for 50% of the COS.												
	3D-2 – Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	Complies. Refer to the landscape plan prepared by Conzept Landscape Architects.												
	3D-3 – Communal open space is designed to maximise safety.	Complies.												
	3D-4 – Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.	N/A.												
3E Deep Soil Zones	<p>3E-1 - Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality</p> <p><i>Design criteria:</i> <i>Deep soil zones are to meet the following minimum requirements:</i></p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² - 1,500m²</td><td>3m</td></tr> <tr> <td>greater than 1,500m²</td><td>6m</td></tr> <tr> <td>greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m ²	-	7%	650m ² - 1,500m ²	3m	greater than 1,500m ²	6m	greater than 1,500m ² with significant existing tree cover	6m	<p>Site area: 2,323m²</p> <p>Deep soil required: 162.61m² (7%)</p> <p>Deep soil proposed: 107m² (4.6%) with a 3m dimension.</p> <p>Refer to Part 4.1.5.(b) of this SEE.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
less than 650m ²	-	7%												
650m ² - 1,500m ²	3m													
greater than 1,500m ²	6m													
greater than 1,500m ² with significant existing tree cover	6m													
3F Visual Privacy	<p>3F-1 - Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy</p> <p><i>Design criteria:</i> <i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances between building to the side and rear boundaries are as follows:</i></p>	Refer to Part 4.1.5.(b) of this SEE.												

STANDARD	OBJECTIVE	COMPLIANCE												
	<table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	
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up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												
	3F-2 - Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.	Complies.												
3G Pedestrian Access and Entries	3G-1 - Building entries and pedestrian access connects to and addresses the public domain.	Complies. Multiple entries are provided in a mixed use context, with commercial tenancies, a commercial lobby and the residential lobby activating both street frontages.												
	3G-2 - Access, entries and pathways are accessible and easy to identify.	Complies. The residential lobby entry will be distinguished on the façade by the elevated and extended awning.												
	3G-3 - Large sites provide pedestrian links for access to streets and connection to destinations	N/A.												
3H Vehicle Access	3H-1 - Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	Complies. Vehicle access is via the right of carriageway and into a new basement car park. The proposed is the most suitable												

STANDARD	OBJECTIVE	COMPLIANCE
		configuration and minimises conflicts with pedestrians and streetscape impact.
3J Bicycle and Car Parking	<p>3J-1 - Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p> <p><i>Design criteria:</i> <i>For development in the following locations:</i> <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</i> <i>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</i></p> <p><i>The car parking needs for a development must be provided off street.</i></p>	<p>Resident car parking is assessed under SEPP (Housing) 2021 in Appendix C.</p> <p>Bicycle parking is assessed under the DCP.</p>
	3J-2 – Parking and facilities are provided for other modes of transport	Complies. Compliant parking is provided in a well designed basement.
	3J-3 – Car park design and access is safe and secure.	Complies.
	3J-4 – Visual and environmental impacts of underground car parking are minimised.	Complies.
	3J-5 – Visual and environmental impacts of on-grade car parking are minimised.	N/A.
	3J-6 – Visual and environmental impacts of above ground enclosed car parking are minimised	N/A.
	<p>4A-1 - To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p><i>Design criteria:</i> <i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i> <i>In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter</i></p>	<p>Complies.</p> <p>36/50 units (72%) receive 2 or more hours of solar access to both their living rooms and POS.</p>
4A Solar and Daylight Access		

STANDARD	OBJECTIVE	COMPLIANCE
	<i>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</i>	8/50 units (16%) receive no solar access. While exceeding 15%, the variation is 0.5 units precisely – $7.5/50 = 15\%$. Given this, the “rounding up” of the number of units is considered to have met the intent of the control to minimise the number of units with no solar access.
	4A-2 – Daylight access is maximised where sunlight is limited.	Complies.
	4A-3 – Design incorporates shading and glare control, particularly for warmer months.	Complies.
4B Natural Ventilation	4B-1 – All habitable rooms are naturally ventilated.	Complies.
	4B-2 – The layout and design of single aspect apartments maximises natural ventilation.	Complies.
	4B-3 - The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.	Complies. 34/50 units are cross-ventilated (68%).
	<i>Design criteria: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</i>	
4C Ceiling Heights	4C-1 - Ceiling height achieves sufficient natural ventilation and daylight access. <i>Design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</i>	Complies. A 3.3m ground floor and 2.7m (habitable room) floor to ceiling height has been proposed via 3.2m residential floor to floor heights.

STANDARD	OBJECTIVE	COMPLIANCE												
	<table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> <p><i>These minimums do not preclude higher ceilings if desired.</i></p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	
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	4C-2 - Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	Complies.												
	4C-3 - Ceiling heights contribute to the flexibility of building use over the life of the building.	Complies.												
4D Apartment Size and Layout	4D-1 - The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity. <i>Design criteria:</i> <i>Apartments are required to have the following minimum internal areas:</i> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p><i>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</i> <i>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</i> <i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Complies. The unit sizes are identified on the floor plans and are consistent with the design criteria.		
	Apartment type	Minimum internal area												
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													
	4D-2 – Environmental performance of the apartment is maximised.	Complies.												

STANDARD	OBJECTIVE	COMPLIANCE															
	<p><i>Design criteria:</i> <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i> <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</i></p>																
	<p>4D-3 – Apartment layouts are designed to accommodate a variety of household activities and needs</p> <p><i>Design criteria:</i> <i>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i> <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i> Living rooms or combined living/dining rooms have a minimum width of: <i>3.6m for studio and 1 bedroom apartments</i> <i>4m for 2 and 3 bedroom apartments</i> <i>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</i></p>	Complies.															
4E Private Open Space and Balconies	<p>4E-1 – Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p><i>Design criteria:</i> <i>All apartments are required to have primary balconies as follows:</i></p> <table><thead><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr></thead><tbody><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></tbody></table> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</i> <i>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</i></p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Complies.
	Dwelling type	Minimum area	Minimum depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	4E-2 - Primary private open space and balconies are appropriately located to enhance liveability for residents.	Complies.															
	4E-3 - Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	Complies.															

STANDARD	OBJECTIVE	COMPLIANCE										
	4E-4 - Private open space and balcony design maximises safety	Complies.										
4F Common Circulation and Spaces	4F-1 - Common circulation spaces achieve good amenity and properly service the number of apartments <i>Design criteria:</i> The maximum number of apartments off a circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Complies. Maximum 10 units per lift floor to a lift core, as permitted by the design guidance. This only occurs on Levels 2 and 4, not all storeys.										
	4F-2 - Common circulation spaces promote safety and provide for social interaction between residents	Complies.										
4G Storage	4G-1 - Adequate, well designed storage is provided in each apartment <i>Design criteria:</i> <i>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</i> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> At least 50% of the required storage is to be located within the apartment.	Dwelling type	Storage size volume	Studio apartments	4m³	1 bedroom apartments	6m³	2 bedroom apartments	8m³	3+ bedroom apartments	10m³	Complies. Refer to the storage schedule on Drawing No. A-002.
	Dwelling type	Storage size volume										
Studio apartments	4m³											
1 bedroom apartments	6m³											
2 bedroom apartments	8m³											
3+ bedroom apartments	10m³											
	4G-2 - Additional storage is conveniently located, accessible and nominated for individual apartments.	Complies. Storage cages are proposed within the basement.										
4H Acoustic Privacy	4H-1 - Noise transfer is minimised through the siting of buildings and building layout	Complies.										
	4H-2 - Noise impacts are mitigated within apartments through layout and acoustic treatments.	Conditions of consent will ensure that the inter-tenancy acoustic requirements under the NCC will be met.										

STANDARD	OBJECTIVE	COMPLIANCE
4J Noise and Pollution	4J-1 - In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	Refer to the acoustic report prepared by Vipac Engineers and Scientists for road noise mitigation recommendations.
	4J-2 - Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	Appropriate noise attenuation will be installed as required by the NCC.
4K Apartment Mix	4K-1 - A range of apartment types and sizes is provided to cater for different household types now and into the future.	Complies. A mixture of 1, 2 and 3 bedroom units, including affordable units, will be introduced to the locality, catering to a variety of household types.
	4K-2 - The apartment mix is distributed to suitable locations within the building.	Complies.
4L Ground Floor Apartments	4L-1 - Street frontage activity is maximised where ground floor apartments are located	N/A.
	4L-2 - Design of ground floor apartments deliver amenity and safety for residents	N/A.
4M Facades	4M-1 - Building facades provide visual interest along the street while respecting the character of the local area.	Complies.
	4M-2 - Building functions are expressed by the façade.	Complies.
4N Roof Design	4N-1 – Roof treatments are integrated into the building design and positively respond to the street.	Complies. The flat roof proposed is consistent with contemporary shop top housing development and minimises visual bulk.
	4N-2 - Opportunities to use roof space for residential accommodation and open space are maximised	No rooftop COS has been proposed.
	4N-3 – Roof design incorporates sustainability features.	Refer to BASIX Certificate.
4O Landscape Design	4O-1 – Landscape design is viable and sustainable	Complies. Refer to the landscape plan.

STANDARD	OBJECTIVE	COMPLIANCE
	4O-2 – Landscape design contributes to the streetscape and amenity.	Complies. Refer to the landscape plan.
4P Planting on Structures	4P-1 – Appropriate soil profiles are provided.	Complies. Refer to the landscape plan.
	4P-2 – Plant growth is optimized with appropriate selection and maintenance.	Complies. Refer to the landscape plan.
	4P-3 - Planting on structures contributes to the quality and amenity of communal and public open spaces	Complies. Refer to the landscape plan.
4Q Universal Design	4Q-1 - Universal design features are included in apartment design to promote flexible housing for all community members.	Complies. 20 x Livable units are proposed with 10 x gold and 10 x silver.
	4Q-2 - A variety of apartments with adaptable designs are provided.	Complies.
	4Q-3 - Apartment layouts are flexible and accommodate a range of lifestyle needs.	Complies.
4R Adaptive Reuse	4R-1 - New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A.
	4R-2 - Adapted buildings provide residential amenity while not precluding future adaptive reuse.	N/A.
4S Mixed Use	4S-1 - Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	Complies. The site is within a neighbourhood centre with services and public transportation access, making it well suited for the proposed mixed use development. An active street frontage is provided to both street frontages over and above what is required by the Canterbury-Bankstown LEP 2023.

STANDARD	OBJECTIVE	COMPLIANCE
	4S-2 - Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	Complies. The residential entry has been separated from the commercial lobby and tenancy access, within the basement and above ground.
4T Awnings and Signage	4T-1 - Awnings are well located and complement and integrate with the building design.	Complies.
	4T-2 - Signage responds to the context and desired streetscape character.	No signage proposed.
4U Energy Efficiency	4U-1 - Development incorporates passive environmental design.	Refer to submitted BASIX Certificate. Complies.
	4U-2 - Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	Refer to submitted BASIX Certificate. Complies.
	4U-3 - Adequate natural ventilation minimises the need for mechanical ventilation.	Complies. All units and habitable rooms are naturally ventilated. Refer to the submitted BASIX Certificate.
4V Water Management and Conservation	4V-1 - Potable water use is minimised.	Refer to submitted BASIX Certificate. Complies.
	4V-2 - Urban stormwater is treated on site before being discharged to receiving waters.	Refer to submitted Stormwater Plans. Complies.
	4V-3 - Flood management systems are integrated into site design.	N/A.
4W Waste Management	4W-1 - Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	Complies. Residential and commercial waste are separated and proximate to their collection points, meeting the requirements of the DCP. Neither waste room is perceived from the street.

STANDARD	OBJECTIVE	COMPLIANCE
	4W-2 - Domestic waste is minimised by providing safe and convenient source separation and recycling.	Complies.
4X Building Maintenance	4X-1 – Building design detail provides protection from weathering.	Complies.
	4X-2 – Systems and access enable ease of maintenance.	Complies.
	4X-3 – Material selection reduces ongoing maintenance costs.	Complies.

Appendix C State Environmental Planning Policy (Housing) 2021, Part 2, Division 1 In-fill Affordable Housing Compliance Table

SECTION	DEVELOPMENT STANDARD/CONTROL	COMPLY/COMMENT
15C Development to which division applies	<ul style="list-style-type: none"> This division applies to development that includes residential development if— <ul style="list-style-type: none"> (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and (b) the affordable housing component is at least 10%, and (c) all or part of the development is carried out— <ul style="list-style-type: none"> (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone. Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division. In this section—relevant zone means the following— <ul style="list-style-type: none"> (a) Zone E1 Local Centre, (b) Zone MU1 Mixed Use, (c) Zone B1 Neighbourhood Centre, (d) Zone B2 Local Centre, (e) Zone B4 Mixed Use. 	<ul style="list-style-type: none"> Complies. The development is permissible with consent under the Canterbury-Bankstown LEP 2023. Complies. The affordable housing component is 814.7m² / 15.05% of the total GFA. Complies. The site is 420m walking distance from Birrong Train Station, meeting the definition of an accessible area. N/A. Noted.
16 Affordable housing requirements for additional floor space ratio	<ul style="list-style-type: none"> The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2). The minimum affordable housing component, which must be at least 10%, is calculated as follows— 	<ul style="list-style-type: none"> Refer to Part 4.1.5.(a) of this SEE.

SECTION	DEVELOPMENT STANDARD/CONTROL	COMPLY/COMMENT
	<p>affordable housing component = $\frac{\text{additional floor space ratio}}{2}$ (as a percentage)</p> <ul style="list-style-type: none"> If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1). Example— Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing. This section does not apply to development on land for which there is no maximum permissible floor space ratio. 	<ul style="list-style-type: none"> N/A.
18 Affordable housing requirements for additional building height	<ul style="list-style-type: none"> This section applies to development that includes residential development to which this division applies if the development— (a) includes residential flat buildings or shop top housing, and (b) does not use the additional floor space ratio permitted under section 16. The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3). The minimum affordable housing component, which must be at least 10%, is calculated as follows— affordable housing component = $\frac{\text{additional building height}}{2}$ (as a percentage) 	<ul style="list-style-type: none"> N/A.
19 Non-discretionary development standards—the Act, s 4.15	<ul style="list-style-type: none"> The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. Note— 	

SECTION	DEVELOPMENT STANDARD/CONTROL	COMPLY/COMMENT
	<p>See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.</p> <ul style="list-style-type: none"> The following are non-discretionary development standards in relation to the residential development to which this division applies— <ul style="list-style-type: none"> (a) a minimum site area of 450m², (b) a minimum landscaped area that is the lesser of— <ul style="list-style-type: none"> (i) 35m² per dwelling, or (ii) 30% of the site area, (c) a deep soil zone on at least 15% of the site area, where— <ul style="list-style-type: none"> (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site, (d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter, (e) the following number of parking spaces for dwellings used for affordable housing— <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space, (f) the following number of parking spaces for dwellings not used for affordable housing— <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces, (g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development, (h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide, (i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom—65m², 	<ul style="list-style-type: none"> Complies. The site area is 2,323m². Required: 2,323m² x 0.3 = 696.6m² Proposed: 672.35m² / 28.95%. A variation is proposed. A Clause 4.6 has been prepared and is submitted under Appendix F. N/A. Per (3). N/A. Per (3). Complies. <u>Affordable Parking</u> 3 x 1 bedroom units: 0.4 x 3 = 1.2 spaces 8 x 2 bedroom units: 0.5 x 8 = 5.2 spaces <u>Non-Affordable Parking</u> 9 x 1 bedroom units: 0.5 x 9 = 4.5 spaces 25 x 2 bedroom units: 1 x 25 = 25 spaces 5 x 3 bedroom units: 1.5 x 5 = 7.5 spaces Total required: 54.5 (55) spaces Total proposed: 60 spaces Complies. All units meet their minimum sizes under ADG. N/A. N/A.

SECTION	DEVELOPMENT STANDARD/CONTROL	COMPLY/COMMENT
	<ul style="list-style-type: none"> (ii) for each dwelling containing 2 bedrooms—90m², (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms. • Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies. 	<ul style="list-style-type: none"> • Noted.
20 Design requirements	<ul style="list-style-type: none"> • Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy. • Subsection (1) does not apply to development to which Chapter 4 applies. • Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— <ul style="list-style-type: none"> (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct. 	<ul style="list-style-type: none"> • N/A. • Noted. Chapter 4 applies. • The proposed development is a shop top housing, the primary envisioned use in the E1 land zones. While the proposed development is functionally the first to develop in the immediate Birrong precinct, it is a development type suitably representative of the desired future character. A comparison between the LEP permissible four storeys and SEPP (Housing) 2021 affordable housing bonus permissible five storeys will not stand out as out of character for the local neighbourhood. Brick is the predominant material and is consistent with the other buildings in the shopping strip as well as residential development in the locality.
21 Must be used for affordable housing for at least 15 years	<ul style="list-style-type: none"> • Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— <ul style="list-style-type: none"> (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider. 	<ul style="list-style-type: none"> • A condition of consent would be imposed to secure the relevant units as affordable for a period of at least 15 years.

SECTION	DEVELOPMENT STANDARD/CONTROL	COMPLY/COMMENT
	<ul style="list-style-type: none"> This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation. 	
22 Subdivision permitted with consent	<ul style="list-style-type: none"> Land on which development has been carried out under this division may be subdivided with development consent. 	<ul style="list-style-type: none"> Noted.

Appendix D Canterbury-Bankstown Local Environmental Plan 2023 Compliance Table

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
Zoning	<ul style="list-style-type: none"> Zone E1 Local Centre <p>2 Permitted without consent <i>Home occupations</i></p> <p>3 Permitted with consent <i>Amusement centres; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Home industries; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Oyster aquaculture; Places of public worship; Public administration buildings; Recreation facilities (indoor); Respite day care centres; Service stations; Shop top housing; Tank-based aquaculture; Veterinary hospitals; Any other development not specified in item 2 or 4</i></p> <p>4 Prohibited <i>Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Ecotourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Sewerage systems; Sex services premises; Signage; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities; Wholesale supplies</i></p>	<ul style="list-style-type: none"> Shop top housing is listed as permitted with consent. <p>Refer to Part 4.1.6.(a) of this SEE.</p>
Clause 2.7 Demolition	<ul style="list-style-type: none"> The demolition of a building or work may be carried out only with development consent. 	<ul style="list-style-type: none"> Demolition of all existing structures is proposed. Refer to Drawing No. A-005.
Clause 4.3 Height of buildings	<ul style="list-style-type: none"> 14m. 	<ul style="list-style-type: none"> A bonus height applies under Section 16 of SEPP (Housing) 2021. Refer to Appendix C.

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
Clause 4.4 Floor Space Ratio	<ul style="list-style-type: none"> 2:1 	<ul style="list-style-type: none"> A bonus FSR applies under Section 16 of SEPP (Housing) 2021. Refer to Appendix C.
Clause 5.10 Heritage Conservation	<ul style="list-style-type: none"> The objectives of this clause are as follows: <ul style="list-style-type: none"> (a) To conserve the environmental heritage of Canterbury-Bankstown, (b) To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) To conserve archaeological sites, (d) To conserve Aboriginal objects and Aboriginal places of heritage significance. 	<ul style="list-style-type: none"> N/A. The site is not identified on the map as an item of heritage, in a conservation area or proximity to any items.
Clause 5.21 Flood Planning	<ul style="list-style-type: none"> Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development— <ul style="list-style-type: none"> (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood, and (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. 	<ul style="list-style-type: none"> The site is not known to the flood affected.
Clause 6.1 Acid Sulfate Soils	<ul style="list-style-type: none"> Development consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. 	<ul style="list-style-type: none"> N/A. The site is not identified on the map as affected by acid sulfate soils.
Clause 6.2 Earthworks	<ul style="list-style-type: none"> The objectives of this clause are as follows— <ul style="list-style-type: none"> (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, (b) to allow earthworks of a minor nature without requiring separate development consent. 	<ul style="list-style-type: none"> Consent is sought as part of this application for the earthworks associated with two basement levels. <p>Refer to the Geotechnical Investigation prepared by EI Australia.</p>
Clause 6.3 Stormwater Management and Water	<ul style="list-style-type: none"> Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development— <ul style="list-style-type: none"> (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 	<ul style="list-style-type: none"> Refer to the stormwater plans prepared by S&G Consultants.

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
Sensitive Urban Design	<ul style="list-style-type: none"> (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and (c) avoids significant adverse impacts of stormwater runoff on the land on which the development is carried out, adjoining properties and infrastructure, native bushland and receiving waters, or if the impact cannot be reasonably avoided, minimises and mitigates the impact, and (d) includes riparian, stormwater and flooding measures, and (e) is designed to incorporate the following water sensitive urban design principles— <ul style="list-style-type: none"> (i) protection and enhancement of water quality, by improving the quality of stormwater runoff from urban catchments, (ii) minimisation of harmful impacts of urban development on water balance and on surface and groundwater flow regimes, (iii) integration of stormwater management systems into the landscape in a way that provides multiple benefits, including water quality protection, stormwater retention and detention, public open space and recreational and visual amenity. 	
Clause 6.4 Biodiversity	<ul style="list-style-type: none"> This clause applies to land identified as “Biodiversity” on the Biodiversity Map. 	<ul style="list-style-type: none"> N/A. The site is not identified on the map as Biodiversity.
Clause 6.5 Riparian Land and Watercourses	<ul style="list-style-type: none"> This clause applies to— <ul style="list-style-type: none"> (a) land identified as “Riparian land” on the Riparian Lands and Watercourses Map, and (b) land identified as “Watercourse” on that map. 	<ul style="list-style-type: none"> N/A. The site is not identified on the map as riparian land or near a watercourse.
Clause 6.9 Essential Services	<ul style="list-style-type: none"> Development consent must not be granted to development unless the consent authority is satisfied that 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) waste management, (f) suitable vehicular access. 	<ul style="list-style-type: none"> Complies. The site has connections to water and sewage that will be upgraded if required. The application proposes a substation to meet the needs of the development. It also seeks appropriate stormwater drainage, waste management and new vehicle access to meet relevant requirements, which will be confirmed through the assessment of the application.
Clause 6.10 Active Street Frontage	<ul style="list-style-type: none"> Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied — <ul style="list-style-type: none"> (a) the building will— 	<ul style="list-style-type: none"> Complies. The Auburn Road frontage is identified on the active street frontage map. The

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
	<ul style="list-style-type: none"> (i) have an active street frontage, and (ii) consist of design elements that encourage interaction and flow between the inside of the building and the external public areas of the building, and (iii) be used for purposes that encourage the movement and flow of people between the internal and the external public areas of the building, and (b) the development ensures that conflicts between pedestrians, cyclists and vehicles will be minimised. • An active street frontage is not required for part of a building used for the following— <ul style="list-style-type: none"> (a) entrances and lobbies, including as part of mixed use development, (b) access for fire services, (c) vehicular access. 	<p>entirety of the frontage comprises retail tenancies and an entry to the commercial lobby, in accordance with (4).</p> <p>While not required, an active street frontage has also largely been accommodated on the Neutral Avenue frontage.</p>
Clause 6.12 Special Provisions for Shop Top Housing	<ul style="list-style-type: none"> • This clause applies to land identified as “Area 6” on the Special Provisions Map. 	<ul style="list-style-type: none"> • N/A. The site is not within Area 6.
Clause 6.15 Design Excellence	<ul style="list-style-type: none"> • Development consent must not be granted to development to which this clause applies unless the consent authority is satisfied the development exhibits design excellence. • In deciding whether the development exhibits design excellence, the consent authority must consider the following— <ul style="list-style-type: none"> (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved, (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain, (c) whether the development detrimentally impacts on view corridors, (d) how the development addresses the following matters— <ul style="list-style-type: none"> (i) heritage issues, (ii) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form, (iii) bulk, massing and modulation of buildings, (iv) street frontage heights, (v) environmental impacts, including sustainable design, overshadowing, wind and reflectivity, (vi) the achievement of the principles of ecologically sustainable development, (vii) pedestrian, cycle, vehicular and service access, circulation and requirements, 	<ul style="list-style-type: none"> • The development involves a shop top housing development which has at least four storeys. Consequently, the design excellence clause applies. <p>Refer to comments under Part 4.1.6.(b) of this SEE.</p>

CLAUSE	DEVELOPMENT STANDARD/CONTROL	COMPLIANCE
	<p>(viii) the impact on, and any proposed improvements to, the public domain,</p> <p>(ix) the integration of utilities, building services and waste management infrastructure in the site layout and building design,</p> <p>(e) whether the development integrates high quality landscape design in the site layout and building design</p>	
<p>Clause 6.21</p> <p>Restrictions on Development in Zones E1 and E3</p>	<ul style="list-style-type: none"> • This clause applies to the following land— <ul style="list-style-type: none"> (a) land in Zone E1 Local Centre, (c) land in Zone E3 Productivity Support identified as “Area 9” on the <i>Special Provisions Map</i>. • Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the ground level of a building resulting from the development will not be used for residential accommodation. 	<ul style="list-style-type: none"> • Complies. The site is zoned E1 Local Centre and no residential accommodation is proposed on the ground level.

Appendix E Canterbury-Bankstown Development Control Plan 2023 Compliance Table

SECTION	CONTROL	COMPLIANCE
CHAPTER 2 SITE CONSIDERATIONS		
2.1 Site Analysis		
Development Controls	<ul style="list-style-type: none"> Development for the following purposes must submit a site analysis plan. 	<ul style="list-style-type: none"> Refer to Drawing No. A-103 and Part 2.0 of this SEE.
2.3 Tree Management		
Objectives	<ul style="list-style-type: none"> To sustainably manage the tree resources to improve the visual, physical and environmental amenity of Canterbury-Bankstown. 	<ul style="list-style-type: none"> No tree removal is required to facilitate the proposed works.
CHAPTER 3 GENERAL REQUIREMENTS		
3.1 Development Engineering Standards		
Objectives	<ul style="list-style-type: none"> To ensure that development provides a satisfactory level of engineering infrastructure 	<ul style="list-style-type: none"> Refer to the stormwater plans, architectural plans and the traffic report for details of the proposed drainage and driveway design.
3.2 Parking		
Section 2 – Off-Street Parking Rates		
Development Controls	<ul style="list-style-type: none"> Development must use the Off-Street Parking Schedule to calculate the amount of car, bicycle and service vehicle parking spaces that are required on the site. In calculating the total number of car parking spaces required for development, these must be: <ul style="list-style-type: none"> (a) rounded down if the fraction of the total calculation is less than half (0.5) a space; or (b) rounded up if the fraction of the total calculation is equal or more than half (0.5) a space; and (c) must include a room that is capable of being converted to a bedroom. Development comprising more than one land use must provide the combined parking requirement based on the individual rates of parking for each land use identified in the Off-Street Parking Schedule. Car parking (and associated space such as access aisles) in excess of the Off-Street Parking Schedule will be counted as gross floor area. 	<ul style="list-style-type: none"> Complies. Resident parking is assessed under the SEPP (Housing) 2021 car parking rates. Visitor and commercial parking is assessed below. <p><u>Residential Car Parking Requirement:</u> 1 space per 1 bed = 12 x 1 = 12 spaces 1.2 spaces per 2 bed = 33 x 1.2 = 39.6 spaces 1.5 spaces per 3 bed = 5 x 1.5 = 7.5 spaces Total required: 59.1 spaces Proposed: 60 spaces</p>

SECTION	CONTROL	COMPLIANCE
	<p><u>Zones R4, B1, B2 and B6</u></p> <p>1 car space per 1 bedroom dwelling; 1.2 car spaces per 2 bedroom dwelling; 1.5 car spaces per 3 or more bedroom dwelling; 1 visitor car space per 5 dwellings.</p> <p><u>Other locations in the former Bankstown LGA</u></p> <p>1 car space per 40m² gross floor area.</p>	<p><u>Residential Visitors Parking</u> Requirement: 1 per 5 dwellings 50 units / 5 = 10 spaces Proposed: 10 visitor spaces</p> <p><u>Commercial Premises</u> Requirement: 1 space per 40m² Commercial GFA: 682.07m² 682.07m² / 40m² = 17.05 spaces Proposed: 18 spaces</p> <p><u>Bicycle Parking</u> Residential: 1 visitor per 10 dwellings 50 units / 10 dwellings = 5 spaces Proposed: 5 spaces</p> <p>Commercial: 1 space per 300m² GFA for staff 682.07m² / 300m² = 2.27 spaces Proposed: 3 spaces</p>
Section 3 Design and Layout		
Development Controls	<ul style="list-style-type: none"> Development must not locate entries to car parking or delivery areas: <ul style="list-style-type: none"> (a) close to intersections and signalised junctions; (b) on crests or curves; (c) where adequate sight distance is not available; (d) opposite parking entries of other buildings that generate a large amount of traffic (unless separated by a raised median island); (e) where right turning traffic entering may obstruct through traffic; (f) where vehicles entering might interfere with operations of bus stops, taxi ranks, loading zones or pedestrian crossings; or (g) where there are obstructions which may prevent drivers from having a clear view of pedestrians and vehicles. 	<ul style="list-style-type: none"> Car parking is entirely accommodated within two basement levels.

SECTION	CONTROL	COMPLIANCE
	<ul style="list-style-type: none"> Parking areas for people with disabilities should be close to an entrance to development. Access from the parking area to the development should be by ramps or lifts where there are separate levels. Where above ground parking is the only solution possible, locate to the rear of buildings. <p><u>Loading and Unloading Facilities</u></p> <ul style="list-style-type: none"> Mixed use development must provide appropriate loading/unloading or furniture pick-up spaces. If no provision is made for the facilities, applications must provide justification why they are not necessary. <p><u>Electric Vehicle Charging Equipment</u></p> <ul style="list-style-type: none"> All car spaces in Class 2 buildings must be serviced by a cable tray: <ul style="list-style-type: none"> (a) located within 10m of the car spaces; (b) sized to accommodate the same number of cables as car spaces that the cable tray serves; (c) that terminates at the closest electric vehicle distribution board as required by section J9D4 of the National Construction Code 2022 Volume One; (d) that enables installation of charging stations in individual car spaces without works that require the consent of the building owner. 	<ul style="list-style-type: none"> Complies. N/A. All within the basements. A loading bay is proposed at the rear which will be used by commercial waste vehicles and removalists. Can be conditioned.
3.3 Waste Management		
Objectives	<ul style="list-style-type: none"> To maximise resource recovery and encourage source separation of waste, reuse and recycling by ensuring development provides adequate and appropriate bin storage and collection areas. 	<ul style="list-style-type: none"> Refer to the Waste Management Plan. <p>Separate commercial and residential waste rooms are proposed. The commercial waste room is adjacent to the loading bay where commercial waste will be collected.</p> <p>The residential waste room is sleeved behind a retail tenancy. However, the doorway is within 10m of the proposed collection point on Neutral Avenue. Waste is</p>

SECTION	CONTROL	COMPLIANCE
		intended to be collected by Council's waste collection service. A residential bulky waste room is also proposed.
3.4 Sustainable Development		
Section 2 Water Conservation		
Development Controls	<ul style="list-style-type: none"> Proposals for new development with a gross floor area less than 5,000m² and proposals for extensions to existing developments below 5,000m² seeking to expand by 50% or more of the existing floor area must comply with Requirement W1. Proposals for new development or extensions with a floor area greater than or equal to 5,000m² of gross floor area must comply with Requirements W1 and W2 	<ul style="list-style-type: none"> Refer to the stormwater plans prepared by S&G Consultants and BASIX Certificate for the water conservation measures proposed.
Section 3 Energy Minimisation		
Development Controls	<ul style="list-style-type: none"> Proposals for new development where the total gross floor area is below 5,000m²; and extensions to existing uses below 5,000m² that involve an increase in 50% or more of the existing gross floor area must comply with Requirements E1 and E2. 	<ul style="list-style-type: none"> Refer to the BASIX Certificate for the energy minimization measures proposed.
3.7 Landscaping		
Section 2 Landscape Design		
Development Controls	<p><u>Existing Vegetation and Natural Features</u></p> <ul style="list-style-type: none"> New landscaping is to complement the existing street landscaping and improve the quality of the streetscape. Development, including alterations and additions, is to minimise earthworks (cut and fill) in order to conserve site soil. Where excavation is necessary, the reuse of excavated soil on site is encouraged. <p><u>Design and Location of Landscape</u></p> <ul style="list-style-type: none"> The landscape design is to contribute to and take advantage of the site characteristics. The landscape design is to improve the quality of the streetscape and communal open spaces by: <ul style="list-style-type: none"> (a) providing appropriate shade from trees or structures; (b) defining accessible and attractive routes through the communal open space and between buildings; (c) providing screens and buffers that contribute to privacy, casual surveillance, urban design and environmental protection, where relevant; (d) improving the microclimate of communal open spaces and hard paved areas; 	<ul style="list-style-type: none"> Refer to the landscape plan prepared by Conzept Landscape Architects. <p>There are no trees on the site and two street trees proximate on Auburn Road. Both trees will be retained as part of the proposal.</p> <p>New landscaping is proposed on the site in the podium communal open space, within the Level 5 terrace, in other, on-structure planting areas and at-grade on Neutral Avenue and adjacent to the driveway. The landscaping proposed is of an appropriate size</p>

SECTION	CONTROL	COMPLIANCE
	<p>(e) locating plants appropriately in relation to their size including mature size; (f) softening the visual and physical impact of hard paved areas and building mass with landscaping that is appropriate in scale; (g) including suitably sized trees, shrubs and groundcovers to aid climate control by providing shade in summer and sunlight in winter.</p> <ul style="list-style-type: none"> The landscape of setbacks and deep soil zones must: <ul style="list-style-type: none"> (a) provide sufficient depth of soil to enable the growth of mature trees; (b) use a combination of groundcovers, shrubs and trees; (c) use shrubs that do not obstruct sightlines between the site and the public domain; and (d) where buffer or screen planting is required, use continuous evergreen planting consisting of shrubs and trees to screen the structure, maintain privacy and function as an environmental buffer. <p><u>Trees</u></p> <ul style="list-style-type: none"> Development must consider the retention of existing trees, including street trees, in the building design. 	and scale to assist in greening the development and providing amenity to residents.
CHAPTER 7 COMMERCIAL CENTRES		
Section 2 Active Street Frontages		
Development Controls	<p><u>Building Design (Active Street Frontage)</u></p> <ul style="list-style-type: none"> The ground floor design must incorporate active street frontages particularly where addressing main streets, public open space and pedestrian links. The design of active street frontages must include: <ul style="list-style-type: none"> (a) a minimum 80% glazing (including doors); (b) well-detailed shopfronts with pedestrian entries at least every 10m–15m; (c) zero setback to the front building line (however this may incorporate indented entries or bays where consistent with the existing street character); (d) high quality external materials; (e) openable facades encouraging natural ventilation where possible; (f) outdoor dining where possible. The design of active street frontages must not incorporate security roller doors and window bars. Ground floor business and office uses must utilise internal fitouts for privacy. The use of frosted screens or opaque glass for privacy is discouraged. 	<ul style="list-style-type: none"> Complies. Properties on this block of Auburn Road is required under the Canterbury-Bankstown LEP 2023 to provide an active street frontage. There is no such requirement for Neutral Avenue. However, the proposal seeks an active street frontage for the entire building to the street frontages with extensive glazing and opportunities for outdoor dining. None proposed. Can be conditioned. No uses are sought yet. Clear glazing proposed.

SECTION	CONTROL	COMPLIANCE
	<ul style="list-style-type: none"> The ground floor entries to retail, commercial, community and residential uses are to have the same finished floor level as the adjacent footpath and are to be accessible directly from the street. Ground floor entries which have a finished floor level above or below the adjacent footpath are discouraged. Where the finished floor level is raised due to flood impacts, the active street frontage must incorporate universal access between the street and ground floor uses, or accommodate level changes within the building. <p><u>Building Design (Car Parking)</u></p> <ul style="list-style-type: none"> Vehicle access to off-street parking and loading bays is to be from a secondary street or rear lane. Where sites adjoin a rear lane, Council may allow above ground car parking at the rear of the site provided that: <ul style="list-style-type: none"> (a) the car park occupies only the rear of the first storey (i.e. the ground floor) and second storey; and (b) the car park must be setback a minimum 18m from the front building line to allow the gross floor area at the front of the building to be used for retail, commercial, community and residential; and (c) the building design must promote natural surveillance on the lane. For sites that do not adjoin a secondary street or rear lane, off-street parking and loading bays are to locate in the basement level or sleeved at ground level. Vehicle access is to be no more than a single driveway from the primary street and must ensure that: <ul style="list-style-type: none"> (a) the vehicle footpath crossing is as narrow as possible; (b) car park entries, driveways and loading docks are not located at the corners of street intersections. <p><u>Building Design (Pedestrian Entrances)</u></p> <ul style="list-style-type: none"> Entrances must locate on the primary street. Residential entrances must be secure and separate from non-residential entrances. 	<ul style="list-style-type: none"> The site is sloped. Tenancies are stepped to align with the footpath whenever possible. N/A. Complies. The basement entry is hidden behind the building accessed from the right of way on the secondary street, Neutral Avenue. N/A. N/A. Complies. Residential entry is on the secondary street to maximise commercial activity on Auburn Road.

SECTION	CONTROL	COMPLIANCE
	<p><u>Building Design (Utilities and Building Services)</u></p> <ul style="list-style-type: none"> Development must show the location and design of utilities and building services (such as waste storage areas, plant rooms, hydrants, mechanical ventilation stacks, exhaust stacks, equipment and the like) on the plans. Development must locate utilities and building services on the secondary street or rear lane. Where this is not possible, development must integrate utilities and building services with the building design and conceal the utilities and building services from public view. <p><u>Building Design (Substations)</u></p> <ul style="list-style-type: none"> Development must show the location and design of substations on the plans. Development must locate substations underground. Where this is not possible, development must integrate substations with the building design and conceal the substations from public view. Substations must not locate forward of the front building line. 	<ul style="list-style-type: none"> Complies. Complies. The hydrant boosters and substation are located on Neutral Avenue, the secondary street frontage. An enclosure for the boosters can be conditioned. The substation will be screened in part by vegetation behind it, as none can be placed forward due to authority requirements. The substation is behind the front building line.
Section 3 Façade Design		
Development Controls	<ul style="list-style-type: none"> The vertical articulation dimensions are: <ul style="list-style-type: none"> (a) the facade design of the podium is to reflect the fine grain that is in accordance with, or similar to, that of the local streetscape; or (b) where there is no prevailing fine grain streetscape, the minimum vertical articulation dimension is 8m for the podium. The minimum vertical articulation dimension for tower buildings above the podium is 10m, which reflects the average width of an apartment. Facade designs may include but are not limited to: <ul style="list-style-type: none"> (a) Articulating building entries. (b) Distinguishing between the podium (base), middle and top sections of the facade. (c) Expressing the building towers above the podium through a change in façade details, materials and colour. (d) Selecting balcony types that respond to the building orientation and proximity to public domain. (e) Using architectural features such as awnings to give a human scale at street level. (f) Recessing elements such as windows or balconies to create visual depth in the facade. (g) Emphasising the difference between solid and void to create a sense of shadow and light. (h) Using any other architectural elements to Council's satisfaction. Building designs and window openings should be vertically proportioned in height, form and articulation. 	<ul style="list-style-type: none"> Complies. As relevant, the vertical articulation proposed is generally in the order of 8m to 10m sections. Noted. Complies.

SECTION	CONTROL	COMPLIANCE
	<ul style="list-style-type: none"> • Facade designs must comprise high quality materials and finishes. • Building services such as downpipes and balcony drainage must integrate with the facade design. • The design of balcony balustrades on the lower levels may be predominantly solid and/or opaque to provide privacy to residents and to screen drying areas. <p><u>Blank Walls</u></p> <ul style="list-style-type: none"> • Large areas of blank, minimally or poorly articulated walls are not acceptable. Measures to avoid this may include windows, awnings, sun shading devices, pergolas, green walls, public art or a recognisable increased setback to the upper storey. • Blank walls are not permitted where facing the public domain. • The maximum length of any blank wall must not exceed 5m. • The maximum height of a blank wall must not exceed 3m. • Where adjacent development is unlikely to occur in the short term, blank side walls should include public art or murals. 	<ul style="list-style-type: none"> • Complies. • Complies. • Complies. • No blank walls to street elevations. • The southern blank wall is not considered to be of sufficient size to benefit from public art or murals. Council can condition if required.
Section 4 Visual Bulk		
Development Controls	<ul style="list-style-type: none"> • Building designs are to comprise a podium with tower buildings above as shown in Figure 4a. The podium height must be the street wall height. • The vertical articulation dimensions are: <ul style="list-style-type: none"> (a) the facade design of the podium is to reflect the fine grain that is in accordance with, or similar to, that of the local streetscape; or (b) where there is no prevailing fine grain streetscape, the minimum vertical articulation dimension is 8m for the podium. The minimum vertical articulation dimension for tower buildings above the podium is 10m, which reflects the average width of an apartment. • Avoid uninterrupted or uniform building facades without articulation, such as blank walls, walls with minimal openings and glass curtain walls. 	<ul style="list-style-type: none"> • The proposal has aligned with the specific Birrong Small Village Centre controls in Chapter 7.2 of the DCP discussed below. • Complies. As relevant, the vertical articulation proposed is generally in the order of 8m to 10m sections. • Complies. No blank walls are proposed for street elevations. A nil setback is proposed to the south which will be visible in the short to medium term. The wall will be constructed of brick to

SECTION	CONTROL	COMPLIANCE
	<p><u>Sites with a 40-65m Wide Street Frontage</u></p> <ul style="list-style-type: none"> An addition to clauses 4.1–4.3, the tower buildings must be separated into at least two distinct building elements as shown in Figure 4c. The minimum separation distance between the two distinct building elements may be in the form of: <ul style="list-style-type: none"> (a) a 6m wide recess along the street frontage which is setback a minimum 4m from the building line; or (b) a minimum break of 3m that continues to the circulation corridor, unless otherwise required by the building separation controls under the State Environment Planning Policy (Housing) 2021 (Chapter 4). 	<p>positively present as a long-lasting nil setback material.</p> <ul style="list-style-type: none"> The site has a 40.23m frontage to Auburn Road. While technically falling within the site area range, only a single building form is considered appropriate in this instance. The street elevations are well modulated and articulated physically and materially to break up the bulk and scale, achieving the intent of the control.
Section 5 Corner Buildings		
Development Controls	<ul style="list-style-type: none"> Development on corner sites must ensure the building design incorporates one or more of the following elements at the street corner: <ul style="list-style-type: none"> (a) architectural roof feature; (b) stepping down or recessing of the built form from the corner; (c) splayed treatments; (d) use of materials/colours; (e) any other architectural elements to Council's satisfaction. 	<ul style="list-style-type: none"> Complies. The Birrong Small Village Centre setback controls reinforce a nil setback to the corner and setbacks above two storeys away from the corner. The building aligns with this intent. Material changes and other articulation also serve to align with this control.
Section 6 Roof Design		
Development Controls	<ul style="list-style-type: none"> Development must incorporate a high quality roof design that: <ul style="list-style-type: none"> (a) achieves a unique and contemporary architectural appearance; and (b) combines high quality materials and finishes. Attics are not permitted. Pitched roofs should use light coloured metal decking to improve energy performance. Pitched roofs to the street facade are not permitted. Plant and service equipment must be concealed or satisfactorily screened from public view. Where the roof design incorporates a roof terrace: <ul style="list-style-type: none"> (a) The roof terrace must not function as the principal useable part of the communal open space. 	<ul style="list-style-type: none"> Complies. N/A. No attic proposed. N/A. Complies. N/A. No roof terrace is proposed.

SECTION	CONTROL	COMPLIANCE
	<p>(b) The parapet should function as the roof top balustrade. Where there is no parapet, the roof top balustrade should be visually permeable (such as glass or slats) and be setback a minimum 1.5m from the roof edge to minimise visibility from the street.</p> <p>(c) Shade structures and pergolas should be centrally located to minimise visibility from the street and potential overshadowing.</p> <p>For the purposes of this clause, the principal useable part of the communal open space means a consolidated part of the communal open space that is designed as the primary focus of recreational activity and social interaction.</p> <ul style="list-style-type: none"> The roof form may exceed the maximum building height provided it complies with clause 5.6 of the Canterbury-Bankstown Local Environmental Plan 2023 to Council's satisfaction. Otherwise the Height of Buildings Map applies. <p>Architectural roof features must comprise a decorative element and may have a functional purpose if it is fully integrated into the design of the roof features.</p>	<ul style="list-style-type: none"> No variation is sought to the bonus height permitted under Section 16 of SEPP (Housing) 2021.
Section 7 Materials and Finishes		
Development Controls	<ul style="list-style-type: none"> Development must incorporate quality, textured and low maintenance materials such as brickwork in the building elevations. Development must avoid large expanses of white render or other finishes which increase the visual bulk of buildings. Where rendered finish is proposed, it must be in combination with at least two other finishes and should not be the predominant finish in the facade. Use varied materials and contrasting colours to: <ul style="list-style-type: none"> (a) highlight feature elements; (b) delineate vertical articulation dimensions; or (c) reduce the impact of other building elements (e.g. reducing the dominance of upper floors or masking unsightly building services). Glazing in combination with quality external materials is appropriate for ground floor retail. Reflective glass to shopfronts is not permitted. The security door or grille to a shopfront facing the street must be transparent or an open grille type shutter. Solid roller doors or shutters are not permitted. 	<ul style="list-style-type: none"> Refer to the elevations and materials and finishes in the plans prepared by Olsson Associates. <p>Brickwork dominates the materials, with multiple colour schemes to vary the palette. Render is used modestly.</p> <p>Glazing is used extensively at the ground level to activate shopfronts. No specific security measures are proposed.</p>
Section 8 Awning Design		
Development Controls	<ul style="list-style-type: none"> Awnings are required in streets with high pedestrian activity and active street frontages. Continuous awnings are required on the primary street and are to wrap around the building on corner sites to cover at least all active street frontages or a minimum 40% of the secondary street, whichever is the greater. 	<ul style="list-style-type: none"> Complies. Complies. The awning extends beyond 40% and to all commercial shops and the residential entry on Neutral Anveue.

SECTION	CONTROL	COMPLIANCE
	<ul style="list-style-type: none"> The awning height must be compatible with the street gradient. The awning design must be compatible with the height, projection and depth of existing traditional box awnings in the street. Where there are no awnings adjacent or nearby: <ul style="list-style-type: none"> (a) The underside of the awning is to be between 3.2m and 4m above ground level (existing). (b) The awning may incorporate a contemporary design where it is considered to be an integral feature of the building design. Canvas blinds along the outer edge of awnings are desirable for sun shading to east and west facing frontages. Glass awnings, ineffective awnings or awnings with cut-outs for trees or light poles are not permitted. Lighting must be provided to the underside of an awning using vandal resistant, high mounted light fixtures. 	<ul style="list-style-type: none"> Complies. The awning depth is 2.5m, and the height varies from 3.22m to 3.95m. None proposed at this stage. Not proposed. Can be conditioned.
Section 9 General Design and Amenity		
Development Controls	<p><u>Building Design</u></p> <ul style="list-style-type: none"> Council applies the State Environment Planning Policy (Housing) 2021 (Chapter 4) and the Apartment Design Guide to residential flat buildings, shop top housing, serviced apartments, boarding houses and mixed use development (containing dwellings). This includes buildings that are two storeys or less, or contain less than four dwellings. <p><u>Access to Sunlight</u></p> <ul style="list-style-type: none"> The living areas for at least 70% of dwellings in a development must receive a minimum sum of three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement access to sunlight. However, these building elements must not be the primary source of sunlight to living areas. The living areas of a dwelling on an adjoining site must receive a minimum sum of three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling. <p><u>Private Open Space</u></p> <ul style="list-style-type: none"> The private open space per dwelling must have a minimum depth of 2m and the private open space may be in the form of a balcony. 	<ul style="list-style-type: none"> Refer to the ADG assessment in Appendix B. Not relevant. The solar access controls in ADG prevail which only requires 2 hours. The properties to the south are commercial and are not relevant. The residential to the east and west (over Auburn Road) are not sufficiently affected to vary this control. Complies.

SECTION	CONTROL	COMPLIANCE				
	<p><u>Livable Housing</u></p> <ul style="list-style-type: none">Development must comply with the Livable Housing Design Guidelines (Livable Housing Australia) as follows: <table><tr><th>Development types</th><th>Development controls</th></tr><tr><td>Residential flat buildings and shop top housing</td><td><p>A minimum 40% of new dwellings must comply with the Livable Housing Design Guidelines (Livable Housing Australia), to be split as follows:</p><ul style="list-style-type: none">a minimum 20% of new dwellings must achieve the Silver Standard; anda minimum 20% of new dwellings must achieve the Gold Standard.<p>However, it is noted that shop top housing will not deliver dwellings at the ground floor as this would be inconsistent with the LEP definition.</p></td></tr></table> <ul style="list-style-type: none">Despite clause 9.5, Council may vary the Livable Housing Design Guidelines (Design Element 1–Dwelling Access) if it is demonstrated to Council’s satisfaction that it is not possible to achieve step-free pathways. <p><u>Landscape</u></p> <ul style="list-style-type: none">Commercial development, shop top housing and residential flat buildings must provide at least one street tree per 5m of the length of the primary street. Council may vary this requirement if a street tree already exists in good condition, if an awning or site constraints limit their inclusion, or a public domain plan is yet to determine the location of trees in a centre.Council may require development adjoining Council land to incorporate public open space. The intended outcome is to expand existing open space wherever possible to enhance the amenity for people who work in, live in and visit the centres.	Development types	Development controls	Residential flat buildings and shop top housing	<p>A minimum 40% of new dwellings must comply with the Livable Housing Design Guidelines (Livable Housing Australia), to be split as follows:</p> <ul style="list-style-type: none">a minimum 20% of new dwellings must achieve the Silver Standard; anda minimum 20% of new dwellings must achieve the Gold Standard. <p>However, it is noted that shop top housing will not deliver dwellings at the ground floor as this would be inconsistent with the LEP definition.</p>	<ul style="list-style-type: none">Complies. A total of 20 Livable units are proposed (40%) with 10 (20%) each of gold and silver standards.There are two street trees present on Auburn Road. Additional street trees can be conditioned if required. Note that street trees are restricted by the high voltage power lines on Neutral Avenue.Not relevant to this site.
Development types	Development controls					
Residential flat buildings and shop top housing	<p>A minimum 40% of new dwellings must comply with the Livable Housing Design Guidelines (Livable Housing Australia), to be split as follows:</p> <ul style="list-style-type: none">a minimum 20% of new dwellings must achieve the Silver Standard; anda minimum 20% of new dwellings must achieve the Gold Standard. <p>However, it is noted that shop top housing will not deliver dwellings at the ground floor as this would be inconsistent with the LEP definition.</p>					

SECTION	CONTROL	COMPLIANCE
	<p><u>Front Fences</u></p> <ul style="list-style-type: none"> The maximum fence height for a front fence is 1.8m. The external appearance of a front fence along the street boundary of the site must ensure: <ul style="list-style-type: none"> (a) the section of the front fence that comprises solid construction (not including solid piers) does not exceed a fence height of 1m above ground level (existing); and (b) the remaining height of the front fence comprises open style construction such as spaced timber pickets or wrought iron that enhance and unify the building design. Council does not allow the following types of front fences along the street boundary of the site: <ul style="list-style-type: none"> (a) chain wire, metal sheeting, brushwood and electric fences; and (b) noise attenuation walls. <p><u>Safety and Security</u></p> <ul style="list-style-type: none"> The main entrance or entrances to development must face the street. Windows to the living areas of front dwellings, or the windows on the upper floors of development must overlook the street. Above ground car parking must be setback a minimum 6m from the front building line to allow the gross floor area at the front of the building to be used for commercial, retail or residential purposes. This clause does not apply to the front building line that faces a rear lane. A public arcade or underpass in buildings must be wide and direct to avoid potential hiding places. External lighting to development must give consideration to the impact of glare on the amenity of adjoining residents. <p><u>Amenity</u></p> <ul style="list-style-type: none"> In determining an application that relates to shop top housing or mixed use development comprising dwellings, Council must take into consideration the following matters: <ul style="list-style-type: none"> (a) whether noise generation from fixed sources or motor vehicles associated with the proposed development will be effectively insulated or otherwise minimised; (b) whether the proposed development will adversely impact on the amenity of dwellings within the same development by way of noise, hours of operation, traffic movement, parking, 	<ul style="list-style-type: none"> No front fencing is proposed or warranted in this instance. Complies. Complies. No aboveground parking is proposed. A commercial lobby is proposed solely to allow access between the basement commercial car spaces and the street to access the tenancies. The width is suitable for this function. Can be conditioned. Can be conditioned. Auburn Road is not a busy road that triggers Section 2,120 of SEPP (Transport and Infrastructure) 2021 to need an acoustic report. It is also unlikely to generate unexpected noise or other amenity levels to

SECTION	CONTROL	COMPLIANCE
	<p>headlight glare, security lighting, fumes, gases, smoke, dust or odours, or the like, and the ability to manage the impacts.</p> <p><u>Development Adjacent to Residential Zones</u></p> <ul style="list-style-type: none"> In determining an application that relates to a site adjoining land in Zone R2, R3 or R4, Council must take into consideration the following matters: <ul style="list-style-type: none"> (a) whether any proposed building is compatible with the height, scale, siting and character of existing residential development within the adjoining residential zone; (b) whether any goods, plant, equipment and other material used in carrying out the proposed development will be stored or suitably screened from residential development; (c) whether the proposed development will maintain reasonable solar access to residential development between the hours of 8.00am and 4.00pm at the mid-winter solstice; (d) whether noise generation from fixed sources or motor vehicles associated with the proposed development will be effectively insulated or otherwise minimised; (e) whether the proposed development will otherwise cause nuisance to residents by way of noise, hours of operation, traffic movement, parking, headlight glare, security lighting, fumes, gases, smoke, dust or odours, or the like; and (f) whether any windows or balconies facing residential areas will be treated to avoid overlooking of private yard space or windows in residences. <p><u>Food Premises</u></p> <ul style="list-style-type: none"> The design, construction, and operation of a food premises must comply with: <ul style="list-style-type: none"> (a) Food Act 2003; (b) Food Regulation 2010; (c) FSANZ Food Standards Code; and (d) Australian Standard AS 4674–2004, Design, construction and fitout of food premises. <p><u>Undergrounding of Overhead Wires</u></p> <ul style="list-style-type: none"> New buildings must ensure: <ul style="list-style-type: none"> (a) all overhead wires, including but not limited to electrical and telecommunication services wires, along the street frontages of the site are located underground as part of the development; (b) any redundant power poles are removed and replaced with underground supplied street lighting columns; (c) all works are carried out at the landowner's expense. 	<p>adjoining properties beyond those anticipated by additional residential density.</p> <ul style="list-style-type: none"> Refer to Part 4.3.1.(a) of this SEE. N/A. No specific uses are sought at this stage. Can be conditioned if required.

SECTION	CONTROL	COMPLIANCE						
7.2 City West								
Section 3 Birrong Small Village Centre								
Storey Limits	<ul style="list-style-type: none">Development must comply with the storey limit that corresponds with the maximum building height shown for the site on the Height of Building Map as follows:<table><tr><th>Maximum building height as shown on the Height of Buildings Map (Canterbury-Bankstown LEP 2023)</th><th>Storey limit (not including basements)</th></tr><tr><td>14m</td><td>4 storeys (no attic)</td></tr><tr><td>20m</td><td>6 storeys (no attic)</td></tr></table>	Maximum building height as shown on the Height of Buildings Map (Canterbury-Bankstown LEP 2023)	Storey limit (not including basements)	14m	4 storeys (no attic)	20m	6 storeys (no attic)	<ul style="list-style-type: none">A five (5) storey building is proposed in view of the additional FSR and height permitted under Section 16 of SEPP (Housing) 2021. Considered acceptable noting the HOB and FSR development standards supersede the storey controls within the DCP and it is expected that any affordable housing bonus would result in additional storeys and/or density.
Maximum building height as shown on the Height of Buildings Map (Canterbury-Bankstown LEP 2023)	Storey limit (not including basements)							
14m	4 storeys (no attic)							
20m	6 storeys (no attic)							
Setbacks	<ul style="list-style-type: none">Development must:<ul style="list-style-type: none">(a) comply with the minimum setbacks shown in Figures 3d and 3e and Appendix 1;(b) comply with Setback Type S1 to maintain continuous street walls unless otherwise indicated in Figures 3d and 3e and Appendix 1;(c) provide a two storey street wall to the primary and secondary street frontages.	<ul style="list-style-type: none">Refer to Part 4.3.1.(b) of this SEE.						

Appendix F Clause 4.6 Variation to Section 19(2) of State Environmental Planning Policy (Housing) 2021

CLAUSE 4.6 VARIATION
SECTION 19(2)(b) NON-DISCRETIONARY DEVELOPMENT STANDARDS
STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021
May 2025

1. EXECUTIVE SUMMARY

This submission under Clause 4.6 of Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP23) seeks a variation to Section 19(2)(b) of State Environmental Planning Policy (Housing) 2021 (SEPP Housing 2021), which pertains to landscaped area for in-fill affordable housing development.

The variation is sought in relation to a development application for the demolition of existing structures and construction of a five (5) storey shop top housing development with affordable housing comprising eight (8) commercial tenancies, 50 residential units, basement car parking, landscaping and site works at 77-81 Auburn Road and 19 Neutral Avenue, Birrong.

As detailed in this written request for a variation to the landscaped area non-discretionary development standard under Section 19(2)(b) of SEPP Housing 2021, the proposed development meets the requirements prescribed under Clause 4.6 of the CBLEP23.

2. SITE DESCRIPTION

The subject site consists of five (5) lots of land commonly known as 77-81 Auburn Road and 19 Neutral Avenue, Birrong, and legally defined as Lots X and Y in Deposited Plan 401043, Lots B and C in Deposited Plan 323054 and Lot 2 in Deposited Plan 387131. The site is on the southeastern corner of the intersection of Auburn Road and Neutral Avenue.

The site is irregular in shape. The primary frontage to Auburn Road is 40.23m and the secondary street frontage consists of a total length of 52.25m with a 5.175m long corner splay. The eastern boundary measures 36.74m and the southern measures 54.56m. The overall site area is 2,323m².

The land experiences a modest fall to the southwest with a high point of RL 41.89m AHD and a low point of RL 40.36m AHD. Refer to Figure 1 Site Location Map.

The land is zoned E1 Local Centre under CBLEP23. Refer to Figure 2 Land Zoning Map.

Currently, the improvements on the site include:

- 77 Auburn Road: A single storey brick commercial building and metal roof, currently operating as a café “The Coffee Project”, a takeaway food “Banh Mi Anna” and bakery “Dianne’s Pantry.”
- 79 Auburn Road: Birrong Hardware, a commercial building with a metal roof.
- 81 Auburn Road: A single storey brick and fibro building operating as “The Barber Lab” and “Asian Grocery Shop.”
- 19 Neutral Avenue: an open storage area associated with Birrong Hardware.

A 6.095m wide right of carriageway benefiting 83-85 Auburn Road traverses the rear 79 Auburn Road (part but not all of Lot 2 DP 387131), and thus the entire rear of the site, comprising the loading access to IGA.



Figure 1: Site Location and Context (Source: SIX Maps)

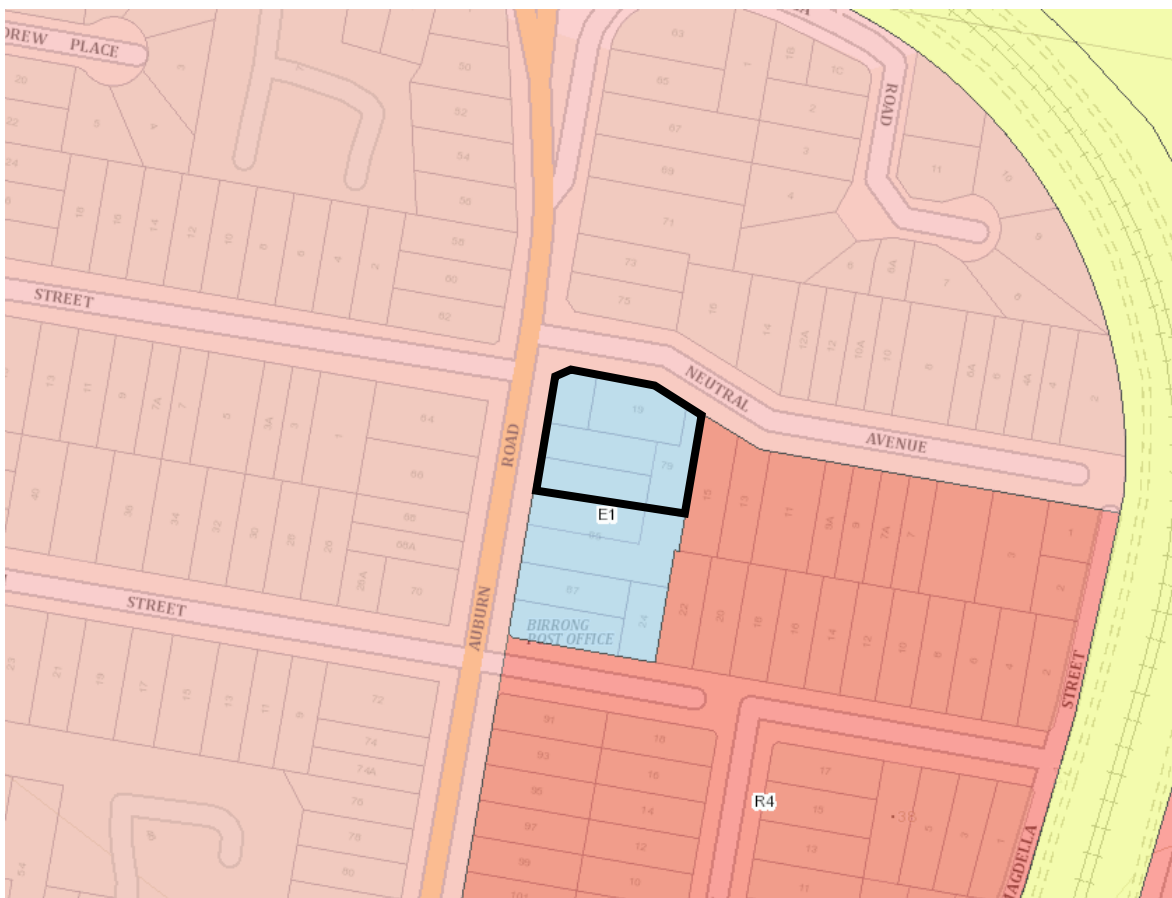


Figure 2: Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

Adjacent to the site are high-voltage powerlines along the Neutral Avenue frontage.

Development around the site is commercial along the eastern side of Auburn Road and residential on the western side of Auburn Road and along Neutral Avenue. The scale of the existing development is primarily single storey with some contemporary dwellings two storeys in height.

Notably, the land to the east and southeast is zoned R4 High Density Residential. It is anticipated, in the short to medium term, residential flat building development will replace the older housing stock.

The specific immediate properties include:

- North: A Council car park on the northern side of Neutral Avenue.
- East: A single storey older stock fibro dwelling with a tile roof on 15 Neutral Avenue.
- West: Single storey older stock fibro dwellings with tile roofs at 64 and 66 Auburn Road.
- South: A single storey commercial building operating as “Carlo’s IGA” at 83-85 Auburn Road.

Auburn Road is identified as an unclassified regional road under the purview of Council.

The site is well serviced by public transport being 100m from bus stops on Auburn Road, 420m walking distance from Birrong Train Station and 800m from Regents Park. The land is also proximate to an Australia Post (in Birrong Pharmacy), supermarkets (IGA) and public open space (Jim Ring Reserve, 46m west). Finally, the land is close to child care centres, public and high schools and an aquatic centre, making it well suited for additional density.

3. VARIATION SOUGHT: SECTION 19(2)(b) NON-DISCRETIONARY DEVELOPMENT STANDARDS

The Environmental Planning Instrument to which this variation relates is the State Environmental Planning Policy (Housing) 2021. The development standard to which this variation relates is under Section 19, which reads as follows:

19 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—

(a) a minimum site area of 450m²,

(b) a minimum landscaped area that is the lesser of—

(i) 35m² per dwelling, or

(ii) 30% of the site area,

(c) a deep soil zone on at least 15% of the site area, where—

- (i) each deep soil zone has minimum dimensions of 3m, and*
- (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,*
- (d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,*
- (e) the following number of parking spaces for dwellings used for affordable housing—*
 - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,*
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,*
 - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,*
- (f) the following number of parking spaces for dwellings not used for affordable housing—*
 - (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,*
 - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,*
 - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,*
- (g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,*
- (h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,*
 - (i) if paragraphs (g) and (h) do not apply, the following minimum floor areas—*
 - (i) for each dwelling containing 1 bedroom—65m²,*
 - (ii) for each dwelling containing 2 bedrooms—90m²,*
 - (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms.*

(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.

Underline emphasis added.

Section 19(2)(b) identifies a minimum landscaped area that is the lesser of 35m² per dwelling or 30% of the site area.

4. EXTENT OF NON-COMPLIANCE

As above, an in-fill affordable housing development is to provide a minimum landscaped area that is the lesser of 35m² per dwelling or 30% of the site area under Section 19(2)(b) of SEPP Housing 2021.

The minimum landscaped area required under both scenarios is:

- 35m² per dwelling = 1,750m²
- 30% of the site area = 696.9m²

The site area metric is the lesser of the two, making it the applicable development standard.

Under SEPP Housing 2021, Schedule 10 Dictionary, landscaped area is defined as:

landscaped area means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.

Calculation of the landscaped area proposed in the subject development application indicates that 672.35m² (28.95% of the site area) will be achieved. Consequently, a variation of 24.55m² (3.5%) is sought.

The areas included in the calculation include:

- Ground Level (Level 1): the east setback deep soil area and the northern setback deep soil areas.
- Level 2: the communal open space that is unroofed, as an “open air recreation facility”.
- Level 5: the communal open space that is unroofed, as an “open air recreation facility”.

It is our submission that the contravention of the landscaped area development standard is acceptable, and will not impact the amenity of the development or adjoining properties, nor will the variation compromise the landscape outcome of the development. A degree of flexibility is considered reasonable in this instance as is detailed within this statement below.

5. CLAUSE 4.6

This submission is made under Clause 4.6 of the CBLEP23 *Exceptions to development standards*. Clause 4.6 states the following:

4.6 Exceptions to development standards

- (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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) *(Repealed)*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *(Repealed)*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (ba) *clause 4.4, to the extent that it applies to land in Zone B4 that has a maximum floor space ratio of 3:1,*
 - (c) *clause 5.4,*
 - (caa) *clause 5.5,*
 - (ca) *clause 6.27.*

Application of Clause 4.6

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

Subclauses 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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),*

Additionally, this submission has been prepared having regard to 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')
- *Micaul Holdings Pty v Randwick City Council* [2015] NSWLEC 1386;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118; and
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

6. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827 are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five tests are as set out below:

TEST	METHOD	APPLICABLE
First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development offers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.</i>	✓
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary</i>	N/A
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.</i>	✓
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in</i>	N/A

	<i>granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.</i>	
Fifth	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.</i>	N/A

A discussion against the ‘tests’ in determining whether the standard is unreasonable or unnecessary in the circumstances of the case is provided below under the applicable test/methods:

First Method: Objectives of the Development Standard

The objectives supporting the development standard being varied are discussed below. Consistency with the objectives would demonstrate that strict compliance with the standards would be unreasonable and unnecessary in this instance.

Section 19 of SEPP Housing 2021 contains only one objective. The sole objective states:

“The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.”

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.”

In accordance with the objective, if the development standard is not complied with, the consent authority may still grant development consent. This Clause 4.6 variation request seeks to employ the discretion of the consent authority to permit a variation.

The broader objective of Division 1 In-fill affordable housing under SEPP (Housing) 2021 is stated in Section 15A. The objective states:

“The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.”

The proposed development provides ten (10) affordable housing units comprising 3 x 1 bedroom units and 7 x 2 bedroom units. The development will provide housing to meet the needs of very low, low and moderate income households within an accessible area. This objective is met notwithstanding the contravention of the landscaped area development standard.

The development (inclusive of its variation) is consistent with the objective of the specific section and Division of SEPP (Housing) 2021 to which the variation relates.

It is observed that the objective of Section 19 and the objective of Division 1 In-fill affordable housing are not specific to the development standard that is the subject of this variation request. Consequently, it is deemed relevant to consider the Principles of Policy detailed in Section 3 of SEPP (Housing) 2021 as part of the assessment. The Principles and a response are provided below.

The principles of this Policy are as follows—

(a) enabling the development of diverse housing types, including purpose-built rental housing,

The proposed development offers a diverse housing type, the subject of this policy, in the form of affordable housing.

(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,

All specified affordable units will be conditioned (with any approval) to be affordable for a period of at least 15 years, as required by Section 21 of SEPP (Housing) 2021. These units are housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households.

The development is not specifically for seniors or people with disability.

(c) ensuring new housing development provides residents with a reasonable level of amenity,

The proposal is considered to provide residents with a reasonable level of amenity. This is articulated through consistency with the planning controls that apply to in-fill affordable housing and the development type (e.g. shop top housing), generally as described below:

- Solar access: 36/50 units (72%) achieve a minimum of 2 hours of solar access.
- Cross-ventilation: 34/50 units (68%) achieve natural cross-ventilation.
- All unit sizes and room sizes meet or exceed the design criteria under ADG.
- All private open space areas are compliant with their minimum size and dimensions under ADG.
- Two (2) communal open space areas are proposed, which are well landscaped, serving different functions (e.g. podium COS delivers a quieter, shaded area, and the Level 5 COS serves a broader recreation purpose).
- The majority of units have their primary outlook to streets, and visual privacy is otherwise appropriately managed without compromising amenity.
- Although a business or employment land zone and deep soil is not strictly required, 4.6% of the site has been set aside for deep soil and is strategically located to serve high quality outcomes through tree planting the podium communal open space and screen planting along the eastern boundary at the interface between the E1 and R4 High Density Residential zone.
- Although in-ground planting may be limited due to the high level of site coverage, significant planting is accommodated in the podium communal open space, the Level 5 communal open space and adjacent to balconies in strategic locations which soften the built form and enhance the amenity of residents.

Although a contravention is also sought to the landscaped area development standard, the development provides a reasonable level of amenity.

(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

The site is identified as an area for increased density in the CBLEP 2023, with a 2:1 FSR and 14m building height. The locality has yet to embrace the upzoning with development approvals or construction. However, increased density is forecast.

As a site within a neighbourhood centre, it is well located to shops and services, particularly the adjacent IGA. The provision of additional housing in this location will make good use of the existing infrastructure in the Birrong centre and suburb and will support planned infrastructure and services in the area.

(e) minimising adverse climate and environmental impacts of new housing development,

The development has minimised adverse climate and environmental impacts.

(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

The site and zone are prescribed a 2:1 FSR and 14m building height under the CLBEP 2023, equating to a four storey built form. The development employs infill affordable housing bonuses to achieve a fifth storey, complying with the bonuses FSR and building heights permitted by the policy.

A shop top housing development is characterised by a high level of site coverage, compared to a residential flat building. The consequence of this is a variation to the landscaped area requirement under Section 19(2) of SEPP (Housing) 2021.

The built form is consistent with a shop top housing development, whether affordable bonuses would be employed or not. All unit and private open spaces are compliant. Units have been maximised to face north and west to the street frontages. Building articulation is expressed through a consistent street wall at the corner and steps above two storeys along the two street frontages. Appropriate separation is provided internally and to adjoining properties.

The building will primarily be constructed of brick, the typical material in the neighbourhood centre and locality.

The development provides new commercial floor area in the form of eight tenancies with potential for amalgamation to suit larger tenants. Further, the active street frontage is not only fronting Auburn Road as required by the CBLEP 2023 but wraps around to Neutral Avenue for further activation.

The shortfall in landscaped area does not result in a built form atypical of the desired future character.

(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,

The development does not involve short-term rental accommodation.

(h) mitigating the loss of existing affordable rental housing.

The development does not involve the loss of existing affordable rental housing.

As illustrated above, the contravention of the development standard does not result in a development that is inconsistent with the relevant objectives. A variation can be supported in this instance under the first method.

Third Method: The Underlying Objective or Purpose Would be Defeated or Thwarted if Compliance was Required

As detailed under the first method, the objective of Division 1 In-fill affordable housing is to deliver new in-fill affordable housing to meet the needs of very low, low and moderate income households. The incentive offered to encourage the development of affordable housing is a bonus of up to 30% of FSR and height under the applicable Local Environmental Plan, with a series of development standards then to be met under Section 19 of SEPP (Housing) 2021.

It is submitted that the landscaped area development standard conflicts with the delivery of in-fill affordable housing when it is sought to occur in a business or employment land zone. Development in business or employment zones, by nature, is anticipated to have a higher site coverage than development in residential zones, which is borne from the expectation of commercial ground floors. This is partially recognised in Section 19(2)(c) and 19(3) which state:

- “(c) a deep soil zone on at least 15% of the site area, where—*
(i) each deep soil zone has minimum dimensions of 3m, and
(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,
- (3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.”*

Chapter 4 Design of residential apartment development, Section 147(1) requires a consent authority to consider the Apartment Design Guide (ADG). ADG identifies a deep soil target under Section 3E. This deep soil target is a minimum of 7%. However, ADG acknowledges under the design guidance the following:

“Achieving the design criteria may not be possible on sites including where:

- the location and building typology have limited or not space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)*
- there is 100% site coverage or non-residential uses at ground floor level.*

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.”

The land is a constrained site due to the right of carriageway across the eastern side boundary, requiring a driveway where landscaped area or deep soil may otherwise have been positioned within the building setback zone. Further, the site is in a high density area (i.e. 2:1 FSR under the CBLEP 2023), a centre (Birrong neighbourhood centre), and the proposal incorporates non-residential uses at ground floor. Three of the mentioned types of sites where ADG acknowledges reduced deep soil is possible (and thus landscaped area) are met.

Section 19(2)(c) provides a separate, more onerous 15% of the site area deep soil development standard. However, Section 19(3) acknowledges the conflict between the two deep soil requirements and thus Section 19(2)(c) doesn't apply to an affordable housing ADG development.

The same issue arises with the landscaped area development standard. While the definition is more flexible than the Standard Instrument – Local Environmental Plan definition of landscaped area, it still requires areas of at least 30% of the site area to not be occupied by a building. This inherently conflicts with a shop top housing development typology.

Further to the above, the Canterbury-Bankstown Development Control Plan (CBDPCP) 2023 in Chapter 7.4 Neighbourhood Centres identifies specific setbacks for built form on the land. Specifically, nil street setbacks are intended for both street frontages and the southern boundary, and a 6m ground floor setback to the eastern, R4 High Density Residential zoned neighbouring property. Alignment with these setbacks would not deliver 30% of the site as landscaped area.

Strict enforcement of the landscaped area development standard would essentially result in smaller buildings on business or employment zoned land, reducing both commercial and residential floor area, resulting in a diminished development outcome contrary to zone objectives. The ultimate consequence of strict enforcement would be that affordable housing would be a detriment to development in a business or employment zone, as it simply could not be achieved without a smaller building footprint than is permitted for a shop top housing development under ADG.

The purpose of the landscaped area can be presumed to be the delivery of amenity for residents as well as green space on the site. The development still supplies such areas in the form of the Level 1 podium and Level 5 communal open space areas, and supplementary planting in the Neutral Avenue street setback, eastern setback and adjacent to balconies.

Consequently, it is asserted that the delivery of affordable housing on a business or employment land zoning would be thwarted if compliance was required.

The development still achieves an appropriate balance of landscaping and built form.

Given this, the third method is invoked and deemed to be relevant and appropriate for the context of the case.

It is therefore clear that compliance with the landscaped area development standard is unreasonable and unnecessary in the circumstances, given that the proposal is consistent with the objectives of the development standards and the underlying objective or purpose (i.e. the delivery of affordable housing) would be thwarted if compliance was required.

7. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

In addition to demonstrating that the compliance with the standard is unnecessary and unreasonable in this instance, it is asserted that there are sufficient environmental planning grounds to support the contravention.

The proposal seeks to deliver affordable housing in a business/employment land zone. However, between the land zoning, the expected typology of development on the land and the site constraints, compliance is not achievable.

The site constraint of relevance is the existence of the right-of-carriageway (ROW), which provides access from Neutral Avenue to the rear, delivery dock of IGA, the southern adjoining property. It is necessary to retain the ROW as no other access point is available for IGA. Accordingly, the eastern setback of the building is a paved driveway area. As the area of separation between the two land zones, this land would have been the likely best portion of the site to serve as a landscaped area. The constraint of the ROW is therefore of significant importance in the shortfall of landscaped area, and is sufficient environmental planning grounds.

Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161 at [39]-[40] determined that a contravention of the height of buildings development standard through the delivery of new affordable housing was properly described as an environmental planning ground within the meaning identified by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council (2018)*. As discussed earlier, strict enforcement of the landscaped area standard would result in a smaller building footprint, which inherently conflicts with the delivery of affordable housing with its associated bonuses to support investment in such housing. Consequently, the delivery of

affordable housing is a relevant environmental planning ground as it is only due to the provision that this contravention arises.

For the reasons outlined above, strict compliance is unnecessary and unreasonable, and there are sufficient environmental planning grounds to support the contravention of the development standard.

Lastly, it is our view that consistency with the zone objectives is a relevant aspect of the merit consideration for demonstrating sufficient environmental planning grounds to support the contravention. The objectives of the **E1 Local Centre** zone are as follows:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To promote a high standard of urban design and local amenity.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

In response to the above, the following is provided:

- The proposed development incorporates eight (8) commercial tenancies to support retail, business, and community uses that serve the needs of people who live or work in the surrounding neighbourhood. Several tenancies are capable of consolidating into larger sizes to suit market demands.
- The redevelopment of the land with eight (8) commercial tenancies at ground floor reflects the desired future character of the site and Birrong centre. The development will generate employment opportunities and economic growth.
- The proposal incorporates residential development above ground level commercial that will contribute to the vibrancy of the Birrong centre through a higher population and enhanced street activation delivered as part of the proposal. The density of development is consistent with Council's LEP development standards and the affordable housing bonus applicable under SEPP Housing 2021.
- The ground floor primarily comprises commercial floor space, ensuring non-residential land uses have been suitably maximised at the ground level.
- The proposal delivers employment opportunities within an accessible location, 100m walking distance from appropriately serviced bus stops and 420m from Birrong Train Station.

- The development is close to public transport, as detailed above and also provides for appropriate bicycle parking. The Birrong centre is walkable and provides key services for residents. The development is considered to reasonably maximise the potential for public transport patronage and encourage walking and cycling.
- The proposal is deemed to have achieved a high standard of urban design and local amenity, representing a positive redevelopment example of the Birrong neighbourhood centre. The compliance with amenity targets expressed within this SEE and a high quality external appearance collectively achieves a proposal of design excellence. A positive balance of landscaped and built upon areas is proposed that reflects the land zoning, site constraints (i.e. high voltage power lines, and right-of-carriageway along the eastern boundary) and high density desired future character.
- The proposal provides an active street frontage along Auburn Road and extends it around the majority of the Neutral Avenue frontage, which will attract pedestrian traffic and contribute to the Birrong centre being vibrant, diverse and functional. The landscaping proposed in the street setbacks will also enhance the public spaces.

The development is consistent with the zone objectives, inclusive of the proposed variation to the landscaped area development standard.

The above demonstrates there are sufficient environmental planning grounds to support the variation.

8. IS THE VARIATION WELL FOUNDED?

It is considered that this has been adequately addressed within this written submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the CBLEP23 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the underlying objectives of the standard to be varied (Section 19 of SEPP Housing 2021) and objectives of the E1 Local Centre zoning of the land;
- The proposed development is in the public interest, and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State or Regional Significance.

Based on the above, the variation is considered to be well founded.

9. GENERAL

Clause 4.6 also states that:

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry,

Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (ba) clause 4.4, to the extent that it applies to land in Zone B4 that has a maximum floor space ratio of 3:1,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.27.*

This variation does not relate to the subdivision of land in the stated land use zones. The variation is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been submitted with the application.

The development does not rely on or conflict with any of the clauses referenced in (ba) through to (ca).

10. CONCLUSION

The proposal does not strictly comply with the landscaped area development standard under Section 19(2) of SEPP Housing 2021. Having evaluated the likely effects arising from this contravention, we are satisfied that the objectives of Clause 4.6 of the CBLEP23 have been met as there are sufficient environmental planning grounds and the objectives of the standards are still met.

Consequently, strict compliance with this development standard is unreasonable and unnecessary and the use of Clause 4.6 of the CBLEP23 to vary this development standard is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the bonus provisions is unnecessary and that a better outcome is achieved for this development by allowing flexibility in the application.

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