



Statement of Environmental Effects

Section 4.55(1A) Modification

DA-922/2017

Residential Apartment Development

25, 25A, 27, 27A & 29B Rookwood Road Yagoona

&

27C Rookwood Road Bankstown

May 2025

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1.0 Introduction

On 26 September 2018, pursuant to DA-922/2017 Canterbury Bankstown Council (CBC) granted development consent to Mr Ramiro Lopez Pena, to consolidate all existing lots, removal of trees and construct an Infill Affordable Housing development utilising the provisions of SEPP (Affordable Rental Housing) 2009, comprising two (2) four (4) storey residential apartment buildings containing 87 units over basement car parking.

The original (Parent) consent was granted a conditional approval for a period of 5 years, lapsing on 26 September 2023 however because the consent was approved before 25 March 2020, the NSW Governments COVID 19 response increased the lapsing period for an additional 2 years, with the Parent consent now lapsing on 26 September 2025.

Given the above, the applicant has obtained their Construction Certificate (CC) and is about to commence demolition and carry out earthworks, which will activate the consent.

This Statement of Environmental Effects (SEE) has been prepared by Caladines Town Planning Pty Ltd on instructions from Zhinar Architects and accompanies a Section 4.55 (1A) – Modifications Involving Minimal Environmental Impact application to CBC, seeking to modify the Parent consent by carrying out the following cosmetic building works:

Ground Floor

- Stairs leading up from the basement to the ground floor are to be enclosed and
- All units have been modified to achieve Silver Level Certification Status.

Levels 1-2

- Added lid/cover to open stairs;
- All units modified achieve Silver Level Certification Status.

Level 3

- All units modified achieve Silver Level Certification Status.

Elevations

- Increase the buildings height by between 2.96m (roof) to 3.0m approximately (lift overrun);
- Metal balustrading removed and replaced by glass balustrading;
- Brick facades on upper levels changed to a rendered;
- Ground floor wall amended to face brickwork;
- Privacy screens adjusted;
- RL amended to achieve 3.1 floor to ceiling heights and 3.2m on level 3;

Roof

- Lift overruns extending above the approved height be between 0.5m and 0.9m as a result of the increase in floor to ceiling heights mentioned above.

Overshadowing

- Minor increase in overshadowing because of the increase in floor to ceiling height and lift overruns.

This town planning report has been prepared pursuant to Section 4.12 'Application' of the Environmental Planning and Assessment (EP&A) Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation (EPA Reg's), 2021.

This report provides a description of the site and surrounds, a comprehensive description of the proposed modified development, a summary of the relevant planning controls and an assessment of the environmental effects that the modified development will have on the surrounding urban environment.

The report concludes that after examining the environmental effects of the modified development against the Evaluation criteria as set out under Section 4.15 of the EPA Act 1979, it is considered that the proposal will not generate any adverse environmental impacts upon the surrounding built and natural environments to that originally approved and accordingly, it is our opinion that this application is worthy of approval.

2.0 The Site and Surrounding Environment

The site is located on the eastern side of Rookwood Road between Stacey Road and Davis Lane. See **Figure 1**.

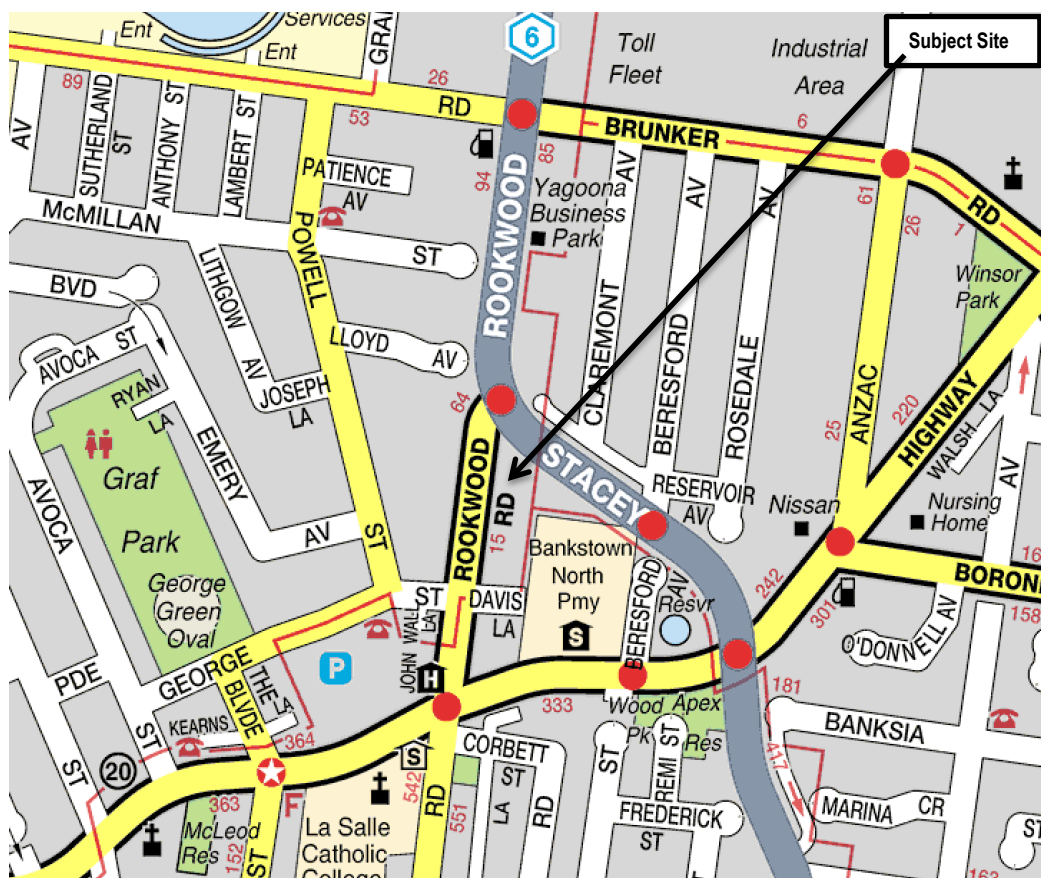


Figure 1
Source: UBD

The subject site is legally described as Lots 1, 2, 3, & 4 in DP 581963 and 11 in DP 1000689(25,25A, 27, 27A and 29B) Rookwood Road Yagoona and Lot 13 in DP 1000689, (27C) Rookwood Road Bankstown.

The site is located within a low to medium density residential neighbourhood that is slowly transitioning to higher densities that is consistent with the objectives of urban consolidation.

3.0 The Proposal

On 26 September 2018, pursuant to DA-922/2017 Canterbury Bankstown Council (CBC) granted approval to Mr Ramiro Lopez Pena, to consolidate all existing lots, removal of trees and construct an Infill Affordable Housing development utilising the provisions of SEPP (Affordable Rental Housing) 2009, comprising two (2) four storey buildings containing a total of 87 units over basement car parking.

The Parent consent was granted was conditional for a period of 5 years, lapsing on 26 September 2023, however because the consent was approved before 25 March 2020, the NSW Governments COVID 19 response increased the lapsing period for an additional 2 years, with the Parent consent lapsing on 26 September 2025.

The proponent has obtained their CC and is about to commence demolition and earthworks, triggering the consent to be activated.

This application is made pursuant to s4.55(1A) – Modifications Involving Minimal Environmental Impact of the EP&A Act 1979 and seeks to modify the Parent consent by carrying out the following cosmetic modifications:

Ground Floor

- Stairs leading up from the basement to the ground floor are to be enclosed and
- All units have been modified to achieve Silver Level Certification Status.

Levels 1-2

- Added lid/cover to open stairs;
- All units modified achieve Silver Level Certification Status.

Level 3

- All units modified achieve Silver Level Certification Status.

Elevations

- Increase the buildings height by between 2.96m (roof) to 3.0m approximately (lift overrun);
- Metal balustrading removed and replaced by glass balustrading;
- Brick facades on upper levels changed to a rendered;
- Ground floor wall amended to face brickwork;
- Privacy screens adjusted;
- RL amended to achieve 3.1 floor to ceiling heights and 3.2m on level 3;

Roof

- Lift overruns extending above the approved height and current building height control by between 400mm and 900mm as a result of the increase in floor to ceiling heights mentioned above.

Overshadowing

- Minor increase in overshadowing because of the increase in floor to ceiling height and lift overruns.

The height increase is a direct result of changes to the minimum floor to floor heights as required by the ADG, which vary by 3.1m (ground to level 2) and 3.2m (level 3) of each building. See **Figures 2-4**.

See modified colour and material schedule at **Figure 5**.



Approved South Elevation

Figure 2

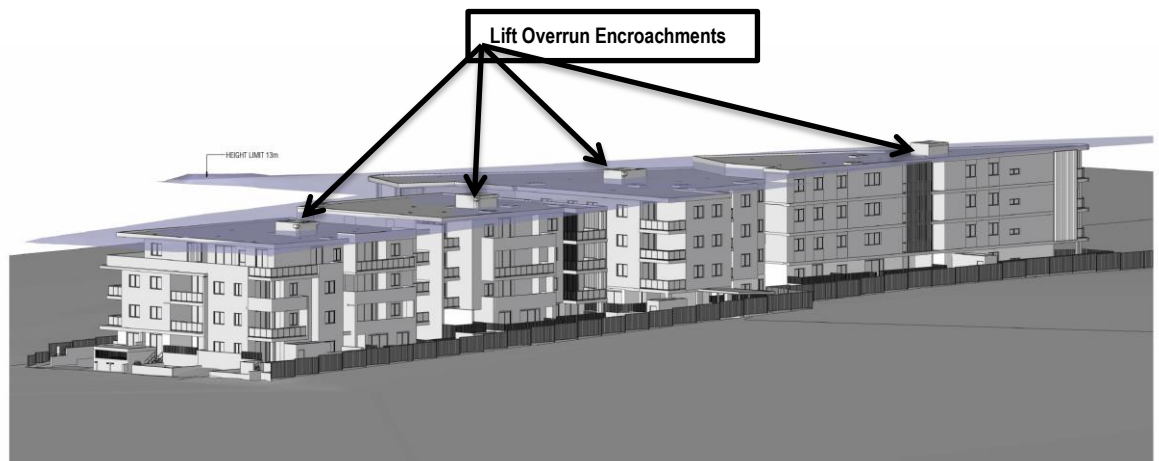
Source: Zhinar Architects



Proposed South Elevation

Figure 3

Source: Zhinar Architects



Height Blanket Diagram

Figure 4

Source: Zhinar Architects

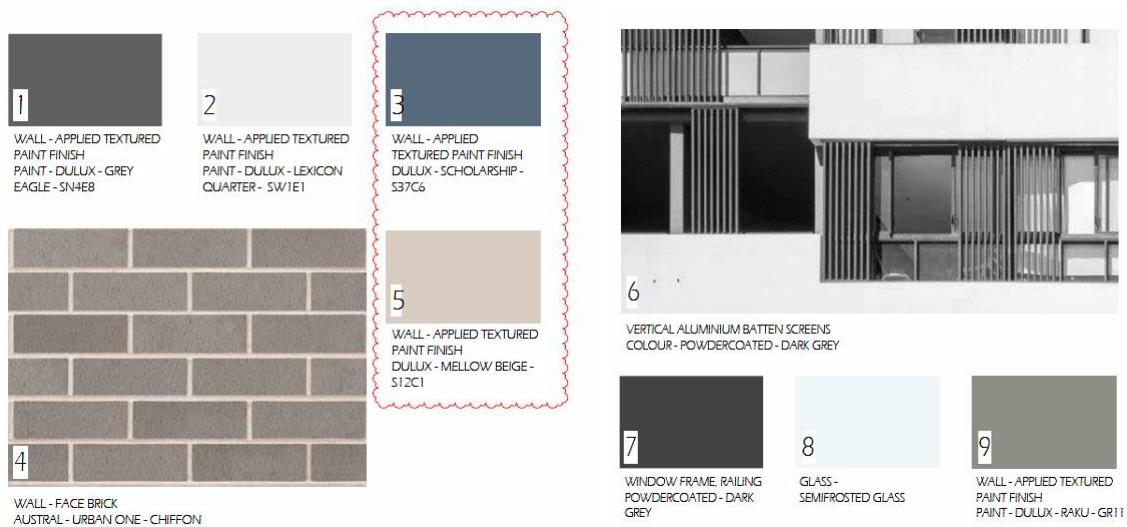


Figure 5
Source: Zhinar Architects

Comments

The above elevations demonstrate that the height departures now proposed as part of this application are not unreasonable and are primarily proposed to comply with regulatory controls within the ADG that require increased floor to ceiling heights. These changes result in greater amenity outcomes for future residents of each unit within this complex.

In view of the above comments and as is demonstrated throughout the accompanying drawings, the proposal as originally approved clearly remains substantially the same development without generating any unreasonable amenity impacts on the surrounding environment or within the development, in terms of:

- View loss;
- Casting any unreasonable additional shadow within and outside of the site and
- Increased bulk and scale, making the development visually displeasing and
- Substantial change to the approved built form.

4.0 Statutory Compliance Assessment

The following is a summary assessment of the proposed development under the heads of consideration pursuant to Section 4.15 (1) of the EP&A Act 1979.

Section 4.55 (1A) “Modifications Involving Minimal Environmental Impact” of the Environmental Planning & Assessment Act 1979

Section 4.55 (1A) “Modifications Involving Minimal Environmental Impact” Environmental Planning & Assessment Act 1979 states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

Comment

The test in seeking to modify the original consent pursuant to Section 4.55 (1A) of the EP&A Act 1979, is one where Council must be satisfied that the modified development as proposed is substantially the same as originally approved.

As previously mentioned, the Parent consent was granted a conditional approval on 26 September 2018 for a period of 5 years, lapsing on 26 September 2023, however because the consent was approved before 25 March 2020, the NSW Governments COVID 19 response increased the lapsing period for an additional 2 years, with the Parent consent now lapsing on 26 September 2025. The proponent has received a CC and are proposing to undertake earth works and the demolition of structures shortly to activate the consent.

In regards to modifying the Parent consent, the Land and Environment Court ruled in *Moto Projects No.2 Pty Ltd v North Sydney Council* (1999) NSW LEC 280 that:

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

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum, rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

The comparison between the development as approved and the development to be modified as set out in detail under Section 3 of this report will be “essentially or materially” the same because:

- the proposed modifications to the approved RFB development are permissible under the sites R4 High Density Residential zone;
- the buildings bulk, scale, form and height does not significantly change from that originally approved;
- no additional units are proposed and both the mix and density remain the same;
- no additional car spaces are proposed and therefore there will be no additional traffic movements generated by the proposal to that already approved;
- the buildings visual presentation to the street has marginally changed with only cosmetic changes proposed to the fabric and colours to better serve the aesthetics of the approved building, which are deemed to be more modern and only seek to introduce new environmental features to promote a quality living environment for future residents;
- the proposal does not cast any significant additional shadow to that already approved under the Parent scheme. This is primarily a result of the need for the building to comply with the floor to ceiling heights of 3.1m (minimum) set out under the ADG. Level 4 ;
- the volume of floor space within the building does not substantially change from that approved and
- the changes proposed are best described as cosmetic and will not generate any additional amenity impacts upon the surrounding built and natural environments to that already approved under the Parent consent.

Land and Environment Court Case Law

In that particular case, Section 4.55(1A) – Modifications Involving Minimal Environmental Impact is the relevant section prescribed under the EPA Act 1979. Having regard to *ACM Landmark Pty Limited v Cessnock City Council* [2005] NSWLEC 645, Watts C found that development consent can be validly modified under s96(1A) (now s4.55) of the EPA Act 1979 in circumstances where there would not be any adverse impact on amenity.

The modification application now before Council is consistent with the outcomes of that judgment, in that the original development consent can be validly modified under s4.55(1A) of the EPA Act 1979.

In *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8, the threshold test of determining as to whether a proposed development is “substantially the same development” was considered by Justice Stein, who made the following comments:

“In assessing whether the consent as modified will be substantially the same development one needs to compare the before and after situation. In approaching the exercise one should not fall into the trap of saying the development was for a certain use and as amended will be for precisely the same use and accordingly is substantially the same development.”

In *Moto Projects (No2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 (17 December 1999), Justice Lloyd held:

“that the comparative task does not merely involve a comparison of a physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather the comparison involves an appreciation qualitative as well as quantitative of the development being compared in their proper context, including the circumstances in which the development consent was granted.”

In *North Sydney Council v Michael Standley* (1998) 43 NSWLR 468:

“modify has been held to mean to alter without radical transformation and substantially the same to mean essentially or materially the same.”

The Four Fold Test

The case law of *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 emphasizes that each case must be considered on its own facts and merits, and therefore the Court has not provided a definitive formula, which is universally applicable to test if the development is substantially the same. However, it is possible to distil from the case law that the following questions that one ought to ask when determining whether a proposal can be properly dealt with under s4.55 of the EPA Act 1979. In this particular case, s4.55(1A) “Modifications Involving Minimal Environmental Impact”. The following questions should be asked:

Question 1: *Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?*

Comment: Yes. The proposal does not increase the buildings approved FSR and the majority of the overall design does not change with only changes being to:

- stairs from basement to ground floor;
- Silver Level Certification Status of all units;
- Metal balustrade removed and changes to glass
- Changes to building fabric on ground floor to face brickwork;
- Privacy screens adjusted
- floor to ceiling heights amended to increase the approved height limit and the current permissible height control of 13m;
- changes to lift overrun on each building and
- cosmetic changes to building fabric on the ground floor of each building.

Each buildings overall bulk, scale, form and height are almost identical to that originally approved when viewed from the surrounding environment. No substantial additional shadow is cast and no views are lost. See shadow diagrams that show the approved shadows and what is now proposed. In general, a small number of changes have been made but overall, the modifications proposed do not radically transform the overall approved development.

A proposal can only be regarded a modification if it involves “alteration without radical transformation” (*Sydney City Council v Ilene Pty Ltd* [1984]). The proposal seeks consent to make an “alteration without radical transformation”. It does not seek to substantially increase each buildings, bulk, scale, form and height or introducing another parcel of land into the development.

If the proposed modification is doing more than simply correcting minor errors, the consent authority must also be “satisfied” that the modified development will be “substantially the same development” as approved by the Parent consent.

This means that, among other things, one needs to compare the proposed modified development against the development as it was originally approved. That is a factual exercise. The environmental

impacts of the proposed modification are relevant to the legal question of whether it is “substantially the same development”. This means it is possible for some issues that might be characterised as “merit” issues, to also arise in addressing the “substantially the same” test.

Question 2: *Is the proposed development essentially or materially the same development as the development for which consent was originally granted?*

Comment: Yes. The modified development retains the same number of units. RFB’s are permissible in the zone and compatible with the sites R4 High Density Residential zone objectives.

The modifications proposed do not radically change the buildings overall bulk, scale, form and height. As mentioned above, the floor plates on each level are identical to those approved. Floor to floor level heights in each building over each level have changed to comply with the amended ADG controls and represents a better planning outcome.

Question 3: *Is the way in which the development to be carried out essentially or materially the same?*

Comment: Yes. The use of the land for medium to high rise residential flat buildings, consisting of constructing two (2) four (4) storey RFB’s containing 87 apartments with basement car parking as well as common and private open space remains the same.

Question 4: *Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?*

Comment No

The proposed modifications will have no discernible environmental impacts that were important, material or essential to the approved development. A general view of the approved development against that now proposed, demonstrates that the proposed development is almost identical to that approved.

The extent of the proposed modifications is both quantitatively and qualitatively negligible. The change demonstrates better outcomes for and from the development being beneficial and facultative to the applicant and future residents of the proposed RFB’s.

Quantitatively

- The approved FSR of 1.45:1 does not change;
- The height of the building remains substantially the same as that approved except for changes to lift overruns,
- The building envelope of each building is identical to that approved;
- The character of the building and its appearance when viewed from the public domain will remain the same;
- The application does not seek to increase or decrease car parking numbers;
- There are no changes to building setbacks, landscaping and open space and
- There is no change to the unit numbers or unit mix and
- No change to the number of affordable housing units approved.

Qualitatively

- General minor changes to the fabric of each building;

Overall, the proposal is consistent with the buildings approved building form. The alterations do not change an essential physical element of the approved development and do not significantly qualitatively change the proposed development.

State Environmental Planning Policy (SEPP) Housing 2021

SEPP Housing 2021 is a consideration in the assessment and determination of this application.

Chapter 4 sets out the design requirements for residential apartment buildings. See below, Chapter 4 and Sections 142 and Section 149 and Schedule 9 Design principles for residential apartment development

Chapter 4 Design of residential apartment development

142 Aims of chapter

- (1) *The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—*
- (a) *to ensure residential apartment development contributes to the sustainable development of New South Wales by—*
- (i) providing socially and environmentally sustainable housing, and*
 - (ii) being a long-term asset to the neighbourhood, and*
 - (iii) achieving the urban planning policies for local and regional areas,*
- (b) *to achieve better built form and aesthetics of buildings, streetscapes and public spaces,*
- (c) *to maximise the amenity, safety and security of the residents of residential apartment development and the community,*
- (d) *to better satisfy the increasing demand for residential apartment development, considering—*
- (i) the changing social and demographic profile of the community, and*
 - (ii) the needs of a wide range of people, including persons with disability, children and seniors,*
- (e) *to contribute to the provision of a variety of dwelling types to meet population growth,*
- (f) *to support housing affordability,*
- (g) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,*
- (h) *to facilitate the timely and efficient assessment of development applications to which this chapter applies.*
- (2) *This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design.*

Response

It is well accepted that good design is a creative process which, when applied to towns and cities, results in the development of good urban places: including buildings, streets, squares and parks. Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas.

Good design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges. These design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merits of the proposed solutions. See Design Quality Principles Verification Statement accompanying the application.

Zhinar Architects are the projects registered architects associated with the design of this development. They have undertaken an assessment of the proposal against the 9 design principles set out under SEPP Housing 2021 and have concluded that the modified proposal is a responsive design approach that will ensure the proposed changes to the approved building form will enhance the surrounding built urban environments and provide a quality living environment for future residents.

149 Apartment Design Guide Prevails Over Development Control Plans

- (1) *A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter:*
- (a) *visual privacy,*
 - (b) *solar and daylight access,*
 - (c) *common circulation and spaces,*
 - (d) *apartment size and layout,*
 - (e) *ceiling heights,*
 - (f) *private open space and balconies,*
 - (g) *natural ventilation,*
 - (h) *storage.*
- (2) *This section applies regardless of when the development control plan was made.*

Comment

There are no controls within Canterbury Bankstown DCP 2023 that derogate against the statutory planning controls mentioned above.

The submission now before Council has considered all of the above controls. The project registered architect has addressed the 9 Design Principles set out under Schedule 9 – Design Principles for Residential Apartment Development of SEPP Housing 2021.

The proposed modifications to the approved residential housing development also seeks to further increase the design quality of this form of medium to high density residential development sited throughout this neighbourhood.

It is well accepted that good design is a creative process which, when applied to towns and cities, results in the development of good urban places: buildings, streets, squares and parks. Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas.

Good design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges. These design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

Zhinar Architects are registered architectural firm who has with this modification application, carried out a comprehensive assessment of the proposal against the 9 design principles set out under Schedule 9 – Design Principles for Residential Apartment Development. They have concluded that the modified design approach is a responsive solution to ensure the two (2) approved buildings will continue to readily fit within the surrounding transitional urban context.

The 9 design principles are set out below and should be read in conjunction with the signed Architectural Design Verification Statement accompanying the application.

Schedule 9 Design principles for residential apartment development

1 Context and neighbourhood character

- (1) *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.*
- (2) *Responding to context involves identifying the desirable elements of an area's existing or future character.*
- (3) *Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*
- (4) *Consideration of local context is important for all sites, including sites in the following areas—*
 - (a) *established areas,*
 - (b) *areas undergoing change,*
 - (c) *areas identified for change.*

Response

The site is located on the interface with Rookwood Road and Stacey Street, which both are afforded regular public bus services on a daily basis. The site is within a short walk (250m) of the Yagoona business centre and 800m of the Bankstown City Centre.

The proposal is consistent with the desired future character of this neighbourhood, creating a dynamic multi-level medium to high density residential precinct which includes new accommodation for future residents. It needs to be understood that the development includes a large number of affordable housing units that will be operated by a social housing provider for low income workers.

The proposal aligns with the objectives for a high density development adjacent to a lower order business centre. This includes:

- Delivering an appropriate mix of units and sizes;
- Contributing to the character of the area and streetscapes,
- Giving due consideration to the interfaces and transition to the residential context and
- Encouraging a vibrant, connected and walkable centre that is an attractive place to live and work.

The proposal carefully considers the street frontage of the site and transitions to neighbouring precincts. The proposal includes an integrated landscape design to continue the areas transitional character of tree canopies and gardens. That does not change from that approved.

Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location along both street frontages the site has an interface to.

2 Built form and scale

- (1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*
- (2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—*
 - (a) building alignments and proportions,*
 - (b) building type,*
 - (c) building articulation,*
 - (d) the manipulation of building elements.*
- (3) Appropriate built form—*
 - (a) defines the public domain, and*
 - (b) contributes to the character of streetscapes and parks, including their views and vistas, and*
 - (c) provides internal amenity and outlook.*

Response

The scale of the proposed development does not result in any noncomplying impacts on the surrounding properties in terms of loss of solar access, loss of privacy or visual impacts.

The modifications to the building design are in keeping with the desired scale and building form envisaged for this precinct.

The buildings respond to the sites topography and will readily fit within the transitional character of this precinct as a lower order business centre with medium to high rise residential development within and on the fringes of the centre.

3 Density

- (1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*
- (2) Appropriate densities are consistent with the area's existing or projected population.*
- (3) Appropriate densities are sustained by the following—*
 - (a) existing or proposed infrastructure,*
 - (b) public transport,*
 - (c) access to jobs,*
 - (d) community facilities,*
 - (e) the environment.*

Response

The proposed development consists of 87 units of which a portion has been allocated as affordable housing as part of the Parent consent. No increase in unit numbers are proposed.

The number of units proposed is at a comparable density to other new medium to high density apartment developments within this precinct. The site is ideally located to serve the needs of future residents in terms of local shopping, industrial precincts and commercial offices, public transport, jobs, churches, childcare, public parks, schools and community services.

The density is responsive to the sites location to public services and amenities.

4 Sustainability

- (1) *Good design combines positive environmental, social and economic outcomes.*
- (2) *Good sustainable design includes—*
 - (a) *use of natural cross ventilation and sunlight for the amenity and liveability of residents, and*
 - (b) *passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs.*
- (3) *Good sustainable design also includes the following—*
 - (a) *recycling and reuse of materials and waste,*
 - (b) *use of sustainable materials,*
 - (c) *deep soil zones for groundwater recharge and vegetation.*

Response

The proposed development has been designed with sustainability at the forefront. The proposed modifications do not change this. The development makes a significant commitment to sustainability through the implementation of thermal insulation, energy efficient appliances, on-site water harvesting systems, rainwater collection and re-use, and embedded electricity networks that manage peak energy demand and loads.

The sustainability targets for the development represent the highest standard for residential apartments in this neighbourhood and are innovative in their design.

These commitments reflect the desired future character of this neighbourhood in terms of sustainability and enhancing future tenants living environment.

5 Landscape

- (1) *Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.*
- (2) *A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.*
- (3) *Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—*
 - (a) *the local context,*
 - (b) *co-ordinating water and soil management,*
 - (c) *solar access,*
 - (d) *micro-climate,*
 - (e) *tree canopy,*
 - (f) *habitat values,*
 - (g) *preserving green networks.*
- (4) *Good landscape design optimises the following—*
 - (a) *usability,*
 - (b) *privacy and opportunities for social interaction,*
 - (c) *equitable access,*
 - (d) *respect for neighbours' amenity.*
- (5) *Good landscape design provides for practical establishment and long term management.*

Response

Extensive landscaping is proposed for private and public areas within the development within a focus on creating a development that is in keeping with the envisaged character for this neighbourhood.

The landscaping provides a high level of amenity, with gardens and passive activity centres on the roof for the future resident community.

The proposed modifications do not change this design approach.

6 Amenity

- (1) Good design positively influences internal and external amenity for residents and neighbours.*
- (2) Good amenity contributes to positive living environments and resident well-being.*
- (3) Good amenity combines the following—*
 - (a) appropriate room dimensions and shapes,*
 - (b) access to sunlight,*
 - (c) natural ventilation,*
 - (d) outlook,*
 - (e) visual and acoustic privacy,*
 - (f) storage,*
 - (g) indoor and outdoor space,*
 - (h) efficient layouts and service areas,*
 - (i) ease of access for all age groups and degrees of mobility.*

Response

The site is located on the interface with the Rookwood Road and Stacey Street, which is a State Road that generates more than 40,000 traffic movements each day and regular bus services are available for residents along both streets.

The proposed building inclusive of the modifications proposed is designed to maximise visual and acoustic privacy to future residents, ensuring existing neighbouring properties maintain a quality level of residential environment.

Residential amenity is a key consideration of the approved design and has been a determining factor to establish and enhance the building form.

Apartments are designed with ample storage areas, room dimensions that meet and typically exceed the ADG guidelines, arrangements that blur the interior and exterior areas of the apartment, spaces that are easy to furnish, and have logical and efficient circulation strategies. The proposed modifications do not change the approved design response.

7 Safety

- (1) Good design optimises safety and security within the development and the public domain.*
- (2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.*
- (3) Opportunities to maximise passive surveillance of public and communal areas promote safety.*
- (4) 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.*

Response

Safety does not change as a result of the proposed modifications. The approved development provides clear pedestrian entry points, separate to the vehicular ingress/egress points.

Pathways leading to the building are clearly visible and will be well-lit of an evening to improve safety and ease of access. CCTV is being introduced to enhance safety at various access points to the site. Suitable security gates and fencing are proposed to enhance residential safety.

In addition, passive surveillance to the street is enhanced through the placement of windows and balconies overlooking these areas.

Communal areas and private terraces are separated from the public domain with legible and secure fence and gate lines.

8 Housing diversity and social interaction

- (1) *Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*
- (2) *Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix.*
- (3) *Good design involves practical and flexible features, including—*
 - (a) *different types of communal spaces for a broad range of people, and*
 - (b) *opportunities for social interaction among residents.*

Response

The proposed development provides for a diverse mix of 1, 2 and 3 bedroom apartments that vary in size, design and layout. Provision is made for affordable housing units that will be managed by a social housing provider, which is in keeping with the ADG and market expectations for the area.

The apartments cater to a large diversity of people and household types with stair cases, lifts and common areas, providing opportunities for social interaction.

The proposal also includes a variety of apartment sizes and configurations to suit a wide range of demographics.

Overall, housing diversity and social interaction from that approved does not change as a result of the proposed modifications.

9 Aesthetics

- (1) *Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.*
- (2) *Good design uses a variety of materials, colours and textures.*
- (3) *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.*

Response

The proposed residential flat buildings are considered to be of a high quality design with appropriate scale and articulation. The design reflects a modern approach with a flat roofing form, ensuring an interesting and attractive new addition to the streetscape.

The development is an exemplary example of the type of density and capacity envisioned by SEPP Housing 2021 and the ADG.

The overall design of each building presents high levels of amenity, generous areas of open space and quality levels of living and environmental performance for future occupants. In addition, the development achieves an appropriate fit with the evolving character of medium to high density housing in this precinct. It could be argued that it provides a more sensitive response to the existing surrounding residential and mixed use environment to the south and east. Overall, the modifications proposed do not impact upon the buildings aesthetics as approved.

The conclusion after assessing these principles for the approved and now modified development demonstrates that the proposal satisfies the design quality principles set out under Schedule 9 of SEPP Housing 2021.

State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021

SEPP (Biodiversity and Conservation) 2021 applies to land that falls within the catchment of Sydney Harbour, as identified in the SEPP. The land drains into Sydney Harbour Catchment via Parramatta River. The proposed modifications to the approved development do not conflict with the provisions contained within SEPP (Biodiversity and Conservation) 2021.

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

The aim of this policy is to ensure there is consistency in the implementation of the BASIX Scheme throughout the State. The application is accompanied by a new BASIX Certificate.

State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 aims to provide a State wide planning approach to the remediation of contaminated land, in particular, it promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or to the environment in general:

“by specifying when consent is required, and when it is not required, for a remediation work, and by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work, in particular, and by requiring that a remediation work meet certain standards and notification requirements.”

Comment

The original development was considered under SEPP 65 and the ADG. Council formed the view that the land was suitable for the purpose for which development consent was sought or whether remediation of the land needs to occur prior to the approved development commencing.

Council formed the view that the site is suitable for the approved development and this view should not change as a result of the modifications proposed.

Canterbury Bankstown Local Environmental Plan 2023

The site is zoned R4 High Density Residential under the provisions of Canterbury Bankstown LEP (CBLEP) 2023. See extract of zone map at **Figure 6**. The zone objectives and permissible land uses in the zone are also set out below:

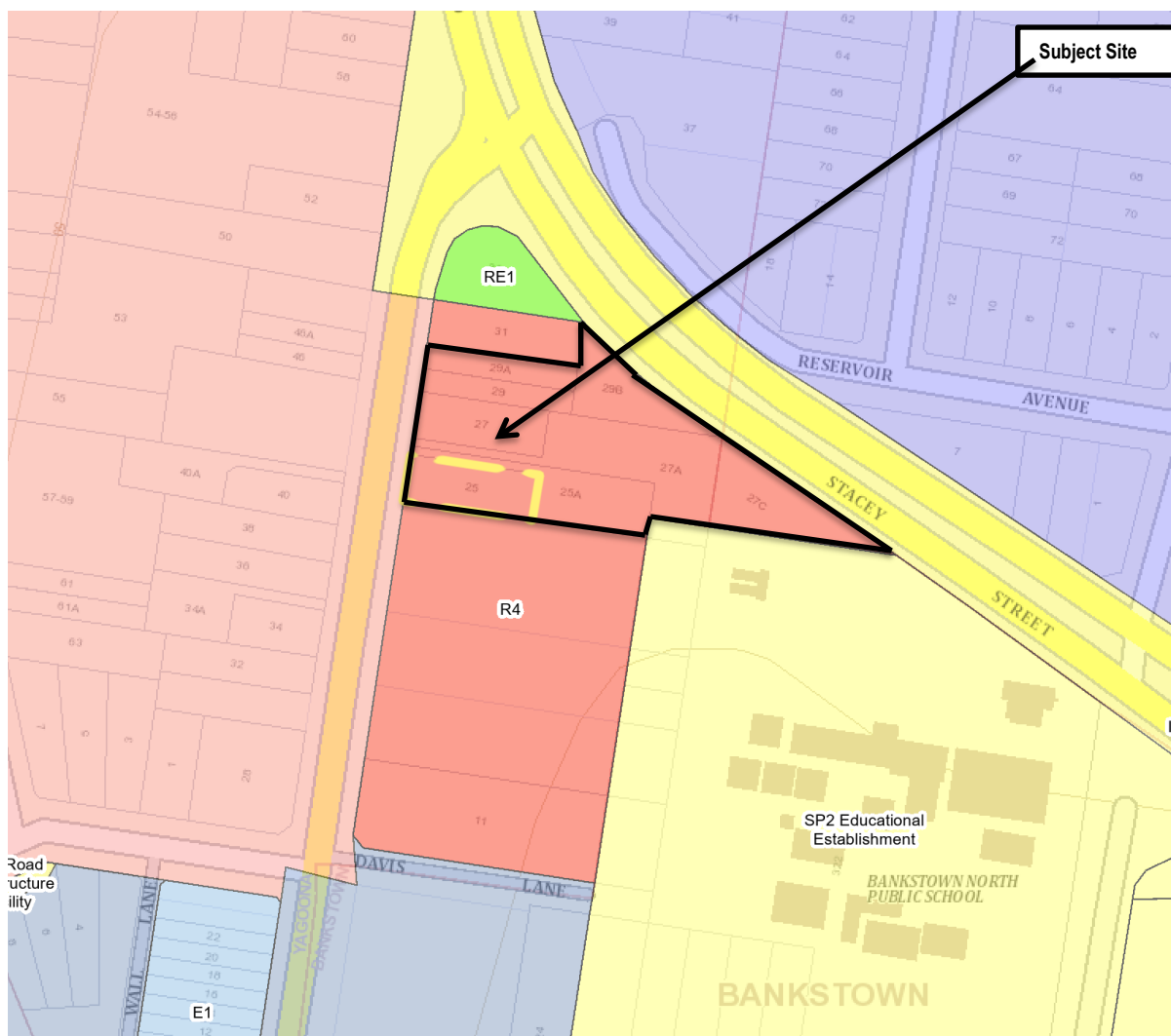


Figure 6
Zone Map
Source: CBLEP 2023

Zone R4 High Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling.
- To promote a high standard of urban design and local amenity.

2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; Dwelling houses; Early education and care facilities; Environmental facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Home businesses; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; **Residential flat buildings**; Respite day care centres; Roads; Secondary dwellings; Serviced apartments; Shop top housing

4 Prohibited

Any development not specified in item 2 or 3

The proposed residential development and associated modifications are permissible with consent and satisfies the zone objectives because:

- It provides for a medium to high density residential development that will support the delivery of new housing stock in a neighbourhood that is supported by good public transport, employment, local services and amenities;
- It provides a good mix, size and types of units, including affordable housing units and
- The proposal is aesthetically pleasing when viewed from the street.

4.3 Height of Buildings

An extract of the height of buildings map is provided at **Figure 7**.

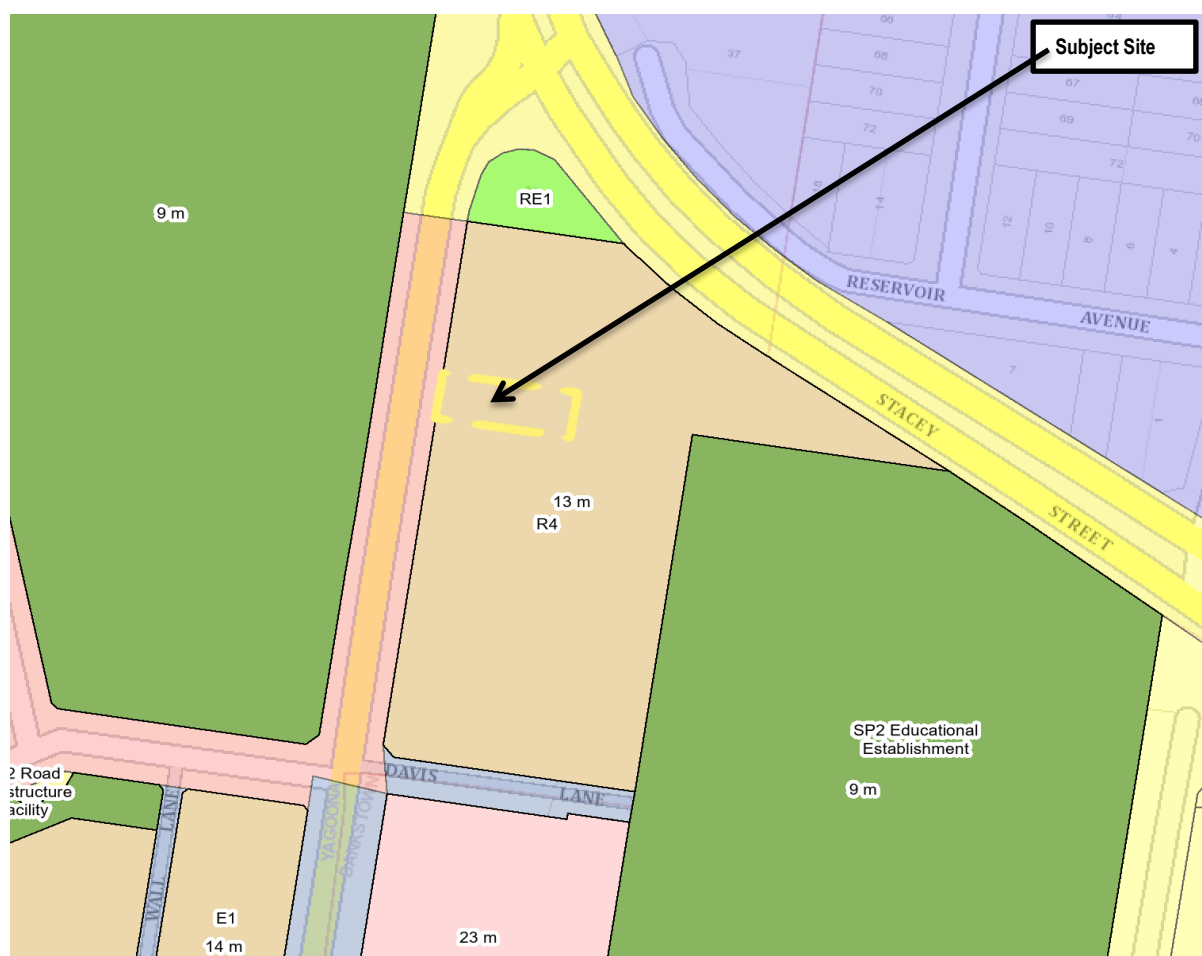


Figure 7
Height of Buildings Map
Source: CBLEP 2023

Comment

The maximum building height control for the subject site is 13m. The lift overruns extend above the maximum building height control by between 400mm and 900mm (approx). Because the lift overruns are sited in the centre of each building, they are not visible from the street or from ground level. The additional shadow that each lift overrun casts does not extend outside of the roofs floor plate and the approved shadow cast by the Parent approved design.

The building height departures mentioned above are deemed minor in the context of the overall application and not unreasonable having regards to the reasons for these variations. The variations do not generate any additional environmental impacts to that of a compliant design scheme. Visibility

of these structures from the surrounding area would be negligible and not detract from the transitional character that this neighbourhood is undergoing.

A clause 4.6 submission is not required to be lodged with this modification application as the application is being considered under s4.55(1A) of the EP&A Act 1979.

Section 4.15 (1) (a) (iii) **Development Control Plan (DCP)**

Canterbury Bankstown Development Control Plan (CBDCP) 2023

The DCP sets out the objectives and controls that must be considered in the assessment of this application, which dovetail in with the controls contained within SEPP Housing 2021 and the ADG. The controls within the DCP are however subservient to those same controls prescribed by the ADG. The proposed modifications have been designed with particular attention to the amenity of its future occupants and neighbouring properties.

The proposed development is responsive to the opportunities and constraints of the site with regard to topography, vegetation, neighbouring buildings, internal layout of units, crime prevention, noise, impact of street traffic, solar access and views. This has culminated in generating a unique design which creates a sense of space, connectivity to public and private space, solar access and privacy to each new unit. This is achieved by the following the below design initiatives:

- enhance the amenity of future residents through the provision of solar access and cross ventilation;
- minor increase in overshadowing as a result of the increase in floor to ceiling heights. The shadow diagrams demonstrate that the increase is extremely minor;
- the balustrade of each unit have been are afforded glass balustrading, allowing better natural light onto balconies and inside living rooms and
- providing each unit with good solar access and cross ventilation to comply and exceed standards set out under the ADG;

Section 4.15 (a) (iiia)

Any Planning Agreement That has Been Entered into Under Section 7.4 or any Draft Planning Agreement that a Developer has Offered to Enter Into Under Section 7.4

The applicant has at this stage not entered into or has been asked to enter into any agreement under Section 7.4.

Section 4.15 (1) (a) (iv)

Matters Prescribed by the Regulations

There are no matters prescribed by the Regulations applicable to this application.

Section 4.15 (b)

Likely Impacts of That Development

Amenity

The modifications proposed have been primarily designed to make each building/unit more functional to provide future residents with a quality living environment.

As discussed in detail in previous comments about each buildings design, the proposed development is responsive to the opportunities and constraints of the site and it surrounds in regards to topography, vegetation, neighbouring buildings, noise, impact of street traffic, over shadowing, over-looking, solar access and views. This has culminated in generating a unique design which creates a sense of space to better promote solar access and cross ventilation for more units.

Careful consideration has been undertaken to mitigate potential adverse amenity impacts of the design which could degrade the quality and live ability of residents in each unit, both individually and for the development as a whole.

We consider that the additional positive amenity impacts that the modified proposal generates will provide future residents with a much desirable development to live within.

Section 4.15 (1) (c)

The suitability of the site for the development

The site is well suited to this form of development. It is located within a short walk of good public transport and other services, including schools, public open space and shops.

- The proposed development will improve safety in the surrounding neighbourhood by increasing the population and as such greater passive surveillance over the public and private domains;
- All utility services will be augmented suitable to accommodate the proposed shop top housing development;
- No significant views or vistas will be lost or interrupted by the proposed increase in building heights;
- As discussed previously, the site is not contaminated or flood affected;
- The top floors of each building will have exceptional local and district views and most apartments benefit from the local views;

Overall, the modifications proposed do not have any undesirable impacts upon the approved development.

Section 4.15 (1) (d) Submissions Made in Accordance With The Act or The Regulations.

To be determined by Council after public consultation and receipt of referrals from other Council Departments and State Government agencies.

Section 4.15 (1) (e) The Public Interest

The public interest is well served by the proposed modifications. The minor changes to the overall building design make a positive architectural statement that will be to the betterment of the Canterbury Bankstown LGA in terms of design quality and how each building functions.

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "*Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

In summary, the public advantages of this development are:

- provision is made for affordable housing units. The approved number of these units do not change;
- The proposal will provide short term employment for tradesmen;
- Increasing housing supply in an area which is free of any adverse natural or built constraints;
- Creating a design outcome that promotes the controls and design outcomes expected by the aims and objectives of all relevant SEPP's, the ADG, governing LEP and subservient DCP for the future development of this neighbourhood and

- Providing a high quality built form and presentation which will set a standard for future urban renewal in this precinct.

On balance, the proposal and modifications now proposed are considered to be in the wider public interest as it will provide the local community with a form of high quality, diverse housing stock that takes advantage of its proximity to the full range of urban facilities and services in the locality.

5.0 Conclusion

The site is zoned R4 High Density Residential under the provisions of CBLEP 2023. The proposed modifications to the approved residential apartment development are permissible with consent of Council.

The design responds well to the surrounding residential context and provides an appropriate form of medium to high density housing in a well-established neighbourhood by seeking to optimize the number of dwellings and to better utilize the excellent public amenities and services provided in this area.

This planning report addresses key aspects of the site and implications of the proposed development and collectively, confirm that the proposed development and those modifications proposed will operate without adverse environmental impact or generate any adverse impacts on the amenity of residents to be housed on site or those within the surrounding area.

The application is subject to a number of statutory planning instruments and policy controls of which the proposal has been assessed against, enabling a conclusion that the proposal meets the objectives behind the controls that are applicable to this form of development.

Other plans and reports comprising the project application address key aspects of the development and its implications for the existing and desired future character. Collectively, these reports and the assessment of other issues in this report confirm the proposed development will have no unreasonable impacts upon the surrounding environment in which the building is to be sited.

In view of the comments contained within this report, we are satisfied that this proposal has properly responded to all relevant matters for consideration under Section 4.15 (1) of the EP&A Act 1979, and the accompanying EP&A Reg's 2021, and accordingly, the proposed modifications will comfortably fit within this urban context and accordingly warrants approval.