Our Ref: 0115/15lt2 18 November 2015

The General Manager
Canterbury City Council
PO BOX 77
Campsie NSW 2194

Attention: Emma TZ Brown

Dear Emma,

ADDITIONAL INFORMATION SUBMISSION FOR DA-171/2015
1188-1200 CANTERBURY ROAD, ROSELANDS

Introduction

As you are aware, we act on behalf of the applicant in relation to the proposed development at the above property. This letter accompanies a revised scheme in response to Council's letter dated 24 August 2015, subsequent meetings with Council's General Manager and Director of City Planning and an email from Ms Emma TZ Brown dated 1 October 2015.

The subject application was lodged on 27 April 2015 seeking consent to demolish the existing building and construct a 6 storey mixed use development including 120 residential apartments, 2 commercial shops and basement car parking. The submitted plans provide a response to the key concerns raised by Council in correspondence and subsequent discussions and are also accompanied by a revised Landscape Plan, BASIX Certificate and Stormwater Plans.

The purpose of this submission is to identify the changes to the originally submitted scheme and to respond to key matters of compliance with the applicable planning policies to demonstrate that the proposal satisfies the matters of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979. This letter is supplementary to the originally submitted Statement of Environmental Effects.

Key Design Changes

The subject application has been amended by:

- Providing a 9m setback to the residential properties adjoining the rear boundary of the site;
- Reducing the size of the ground floor commercial tenancies;
- Setting back the residential apartments 9m from the rear boundaries at the lower levels;
- The massing of the building at the rear of the site has been redesigned to step back from the southern boundary to comply with the envelope requirements of the DCP where a site adjoins a residential property;
- The building form has been configured to provide a three storey podium level with three separate tower elements above ranging from 6 – 8 storeys in height. The massing of the revised proposal provides a finer grain presentation to the street and avoids long unbroken massing of the development as originally proposed and allows for significantly improved shadow impacts on the adjoining southern properties;

- As a result of the above design changes, the proposal provides a total of 110 residential apartments with a unit mix of 23 x 1 bedroom, 80 x 2 bedroom and 7 x 3 bedroom dwellings; and
- Parking for 150 residents, 24 visitors and 42 spaces associated with the retail use is provided within the basement levels.

Planning Control Assessment

Provided below is an assessment of the amended design against the relevant planning controls that applied to the proposal at the time of lodgement.

SEPP No. 55 – Remediation of Lane

This State Environmental Planning Policy (SEPP) was gazetted on 28 August 1989 and applies to the whole State. It introduces planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected.

In respect to the suitability of the site for mixed use development, refer to the Preliminary Site Investigation that accompanies this application.

SEPP (Infrastructure) 2007

This State Environmental Planning Policy (SEPP) applies to the State and seeks to facilitate the effective and timely delivery of infrastructure and protect existing infrastructure from incompatible development. The subject site has a frontage to Canterbury Road which is identified as an RMS State Classified Road. The provisions of Clause 101 and 102 of the SEPP apply to the proposal and are considered in Table 1 below.

TABLE 1: SEPP (INFRASTRUCTURE) 2007 - CLAUSE 101 & 102

CLAUSE	REQUIREMENT	PROPOSAL
Cl 101	(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:	
	a) where practicable, vehicular access to the land is provided by a road other than the classified road, and	The proposed development will rely on access from Fairview Avenue.
	b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:	
	(i) the design of the vehicular access to the land, or	Vehicular access is gained from Fairview Avenue.
	(ii) the emission of smoke or dust from the development, or	No dust or emissions will affect the operation of Canterbury Road subject to standard construction practices.
	(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and	The proposal will not result in a level of traffic that would impact on the operation of Canterbury Road as verified in the submitted Traffic Report.
	(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or	The proposed residential development is entirely capable of complying with the requirements of Clause 102 as detailed in the submitted Acoustic Report.

TABLE 1: SEPP (INFRASTRUCTURE) 2007 - CLAUSE 101 & 102		
CLAUSE	**REQUIREMENT**	**PROPOSAL**
	includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.	
Cl 102	(3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded: (a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am, (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.	Refer to the submitted Acoustic Report prepared by Acoustic Solutions which details design measures to ensure that the required maximum internal noise levels will be achieved.

In light of the above, the proposal satisfies the relevant provisions of SEPP (Infrastructure) 2007.

SEPP No. 65 Design Quality of Residential Flat Buildings

The subject application was lodged prior to the amendment of SEPP No. 65 and as such the Residential Flat Design Guide applies to the site. Notwithstanding, in Council's letter dated 24 August 2015 it was requested that the design of the development respond to the amended provision of the SEPP which refer to the Apartment Design Guide.

Provided at Annexure A is an assessment of the proposal against the relevant Design Criteria of the Apartment Design Guide. As demonstrated the proposal is compliant or compliant on merit in relation to all applicable design criteria of the Apartment Design Guide.

Canterbury Local Environmental Plan 2012

Under the provisions of the LEP the subject site is located within *Zone B5 – Business Development*. Schedule 1 of the LEP relates to additional permitted uses and identifies the site as a Key Site. Schedule 1 prescribes that development for the purpose of residential accommodation is permitted with development consent, but only as part of a mixed use development. Notwithstanding Schedule 1, the proposed development is best described as a shop top housing development and the development remains permissible with consent in the B5 zone.

The provisions of Canterbury LEP are considered below at Table 1.

TABLE 2: CANTERBURY LEP 2012 – COMPLIANCE TABLE		
Clause / Requirement	**Response**	**Complies?**
Part 4: Principle Development Standards		
2.7 Demolition *The demolition of a building or work may be carried out only with development consent.*	Demolition of the existing building is proposed with this application.	✓
4.3 Height of Buildings The building is not to exceed 18m in height.	The proposal seeks to vary the maximum building height. Refer to the Clause 4.6 variation request provided at Annexure B.	Refer to Annexure B

TABLE 2: CANTERBURY LEP 2012 – COMPLIANCE TABLE		
Clause / Requirement	**Response**	**Complies?**
4.6 Exceptions to Development Standards *(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:* *a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and* *b) that there are sufficient environmental planning grounds to justify contravening the development standard.*	Refer to clause 4.6 variation request provided at Annexure B.	✓
Part 6: Local Provisions		
6.7 Mixed Use development in Business Zones: (1) This clause applies to land in the following zones: (a) Zone B1 Neighbourhood Centre, (b) Zone B2 Local Centre, (c) Zone B5 Business Development. (2) Despite any other provision of this Plan, development consent may be granted to a mixed use development, on land to which this clause applies, incorporating residential accommodation and a medical centre.	N/A – the proposed development is best defined as shop top housing and is permissible with consent from Council in the B5 zone.	N/A

Canterbury Development Control Plan 2012

Provided at Annexure C is a DCP compliance table detailing compliance with the relevant DCP provisions. As indicated in the compliance table, the proposal complies with the relevant controls or is acceptable on merit for the reasons detailed.

Conclusion

As demonstrated above, the proposal has been amended in response to the concerns raised by Council in a letter, subsequent meetings and in email correspondence. We are confident that the abovementioned design changes indicated in the submitted plans adequately address the concerns raised by Council and raise no further significant planning issues.

The modified design remains permissible with consent from Council and complies with the relevant LEP provisions except in relation to the maximum building height. A Clause 4.6 variation request has been submitted with the application demonstrating how the proposal represents an appropriate urban form and the that the development results in a better outcome for and from the development as a result of the height breach. The proposal satisfies the statutory tests set out under Clause 4.6 and the variation request relating to the building height is therefore acceptable.

In addition, the proposal has been assessed in relation to the relevant Design Criteria of the Apartment Design Guide and it is demonstrated that the development represents an outcome that is encouraged by the relevant Design Criteria.

Furthermore, the proposal complies with the relevant DCP controls and represents a scale and form of development reasonably expected at the site. In light of general compliance with the planning controls and the improved outcome at the site achieved by varying the maximum height limit, Council should have comfort in supporting the application in its current form.

Should you require any further information or clarification in this regard, please do not hesitate to contact our office.

Yours faithfully,
Planning Ingenuity Pty Ltd

Michael Vine
SENIOR PLANNER

ANNEXURE A

APARTMENT DESIGN GUIDE – COMPLIANCE TABLE

PLANNING INGENUITY

<table>
<tr><th colspan="3">SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE</th></tr>
<tr><th>Design Criteria</th><th>PROPOSAL</th><th>COMPLIES</th></tr>
<tr><td><u>Communal and Public Open Space</u>

Communal open space has a minimum area equal to 25% of the site (261m² of COS)

Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</td><td>The proposal provides a total of 1456m² or 35.3% of the site as common open space. The common open space areas are provided at the podium level as well as within individual roof terraces on top of each residential tower element.

The principle areas of open space are located on top of each residential tower and each area receives sunlight to well in excess of 50% of the main common open space area for 2 hours during mid-winter.</td><td>Yes

Yes</td></tr>
<tr><td><u>Deep Soil Zones</u>

Deep soil zones are to meet the following minimum requirements:

<table>
<tr><th>Site Area</th><th>Minimum Dimension</th><th>Deep Soil Zone (% of site area)</th></tr>
<tr><td>Less that 650m²</td><td>-</td><td>7% of the site area</td></tr>
<tr><td>650m² to 1,500m²</td><td>3m</td><td></td></tr>
<tr><td>Above 1,500m²</td><td>6m</td><td></td></tr>
</table></td><td>310m² or 7.5% of the site area is provided as deep soil area. All calculable deep soil areas are 3m in depth. In addition to the deep soil areas provided at the site frontage, the proposal contains large areas of landscaping within open space areas on the podium and roof terraces that will encourage good level of water infiltration and balance the built and natural features at the site.</td><td>Yes</td></tr>
<tr><td><u>Visual Privacy</u>

Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table>
<tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr>
<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>
</table>
Separation distances between buildings on the same site should combine required building separations depending on the type of room.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</td><td>The site contains three street frontages at which point the setback requirements do not apply. The separation requirements apply to the rear boundary of the site. The proposed development contains 8 levels and as such the requirements applying to Level 1 to 3 as well as the requirements applying to Levels 5-8 are considered as follows:

<u>Levels 1-3</u>
The podium level dwellings are setback 9m from the rear boundary and exceeds the required setback 6m by 3m. Internally, all opposing apartments are setback 12m from opposing habitable rooms in the residential towers.

<u>Levels 4 – 8</u>
The building steps back from the rear boundary in response to the DCP setback requirement. At the fifth level, the dwellings contain habitable rooms and balconies that are setback between 11m and 12m from the rear boundary, thereby providing a significantly greater setback than what is otherwise applicable under the ADG.</td><td>Yes

On Merit</td></tr>
</table>

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE		
Design Criteria	**PROPOSAL**	**COMPLIES**
	In terms of the internal relationship of the adjacent apartments, the proposal contains adjacent habitable spaces that are setback 12m and opaque glass has been provided for all dwellings above level 4 to ensure that visual privacy is maintained to the adjacent dwellings.	
Bicycle and Car Parking For development in the following locations: • 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 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.	The site is not located within 800m of a railway station and as such the parking provisions of the DCP apply.	N/A
Solar Access and Daylight 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	85 of the proposed 110 dwellings (77.2%) receive in excess of 2 hours of sunlight to living room windows and private open space areas during mid winter.	Yes
Natural Ventilation 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	87 of the 110 or 77% are naturally cross ventilated.	Yes
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Cross over and cross through apartments do not exceed 18m.	Yes
Ceiling Height Measured from finished floor level to finished ceiling level, minimum ceiling heights are: • Habitable Rooms – 2.7m • Non-habitable rooms – 2.4m • 2 storey apartments - 2.7m for main living area and 2.4m for second floor where its	All habitable rooms have 2.7m ceiling heights. Non-habitable rooms contain ceiling heights that are at least 2.4m N/A	Yes Yes Yes

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE		
Design Criteria	**PROPOSAL**	**COMPLIES**
area does not exceeds 50% of the apartment area		Yes
• Attic Spaces - 1.8m at the edge of the room with a 30 degree minimum ceiling slope.	N/A	Yes
• If located in a mixed use area - 3.3m for ground and first floor to promote future flexibility	N/A	
These minimums do not preclude higher ceilings if desired.	Noted.	Yes
Apartment Layout		
Apartments are required to have the following minimum internal areas: • Studio - 35m^2		
• 1 Bedroom - 50m^2	All 1 bedroom apartments exceed 50m^2	Yes
• 2 Bedroom - 70m^2	All 2 bedroom apartments exceed 70m^2	Yes
• 3 Bedroom - 90m^2	All 3 bedroom apartments exceed 90m^2	Yes
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each	Where additional bathrooms are proposed an additional 5m^2 is added to the apartment with the exception of some apartments that are up to 1m^2 short of the requirements. On merit, and in light of the fact that the RFDC actually applies to the proposal, the apartment areas are considered to be acceptable.	On Merit
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m^2 each	N/A	N/A
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	All windows meet the requirements of the BCA.	Yes
Master bedrooms have a minimum area of 10m^2 and other bedrooms 9m^2 (excluding wardrobe space)	Proposed room areas comply with the relevant requirements.	Yes
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)		
Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments	Refer to the plans for compliance.	Yes
• 4m for 2 and 3 bedroom apartments	Refer to the plans for compliance.	Yes
The width of cross-over or cross-through apartments are at least 4m internally to avoid	Refer to the plans for compliance.	Yes

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE		
Design Criteria	**PROPOSAL**	**COMPLIES**
deep narrow apartment layouts		
Environmental Performance Habitable room depths are limited to a maximum of 2.5 x the ceiling height In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Refer to plans for compliance.	Yes
Open Space All apartments are required to have primary balconies as follows: • Studio - 4m^2 • 1 Bedroom - 8m^2 (Minimum depth of 2m) • 2 Bedroom - 10m^2 (Minimum depth of 2m) • 3 Bedroom - 12m^2 (Minimum depth of 2.4m) The minimum balcony depth to be counted as contributing to the balcony area is 1m 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 15m^2 and a minimum depth of 3m.	 All 1 bedroom apartments exceed 2m in depth and 8m^2 All 2 bedroom apartments exceed 2m in depth and 10m^2 All 3 bedroom apartments exceed 2.4m in depth and 12m^2 Noted.	 Yes Yes Yes -
Common Circulation Space 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	Maximum of 5 dwellings of a single circulation space.	Yes
Storage In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio - 4m^2 • 1 Bedroom - 6m^2 • 2 Bedroom - 8m^2 • 3 Bedroom - 10m^2 At least 50% of the required storage is to be located within the apartment	 Require storage is provided within the basement and within each dwelling as indicated on the submitted plans. Storage is provided within each apartment.	 Yes Yes

ANNEXURE B

CLAUSE 4.6 VARIATION REQUEST – BUILDING HEIGHT

PLANNING INGENUITY

CLAUSE 4.6 VARIATION STATEMENT 1188-1200 CANTERBURY ROAD, ROSELANDS - MAXIMUM HEIGHT (CLAUSE 4.3)

Clause 4.3(2) of Canterbury LEP 2012 relates to the maximum height requirements and refers to the *Height of Buildings Map.* The relevant map identifies the subject site as having a maximum height of 18m. Building height is defined as:

> *" **building height** (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

Figures 1, 2 and 3 below provides elevational views of the proposal indicating the degree of height non-compliances at each property boundary. As indicated in the relevant figures, the height non-compliances relate to the upper two storeys of the buildings that are located at the eastern and western portions of the site within an 8 storey form, and a very small element of the central building that contains 6 storeys. The height non-compliances also relate to lift overruns and fire escape stairs that are required as part of providing roof terraces to each building.

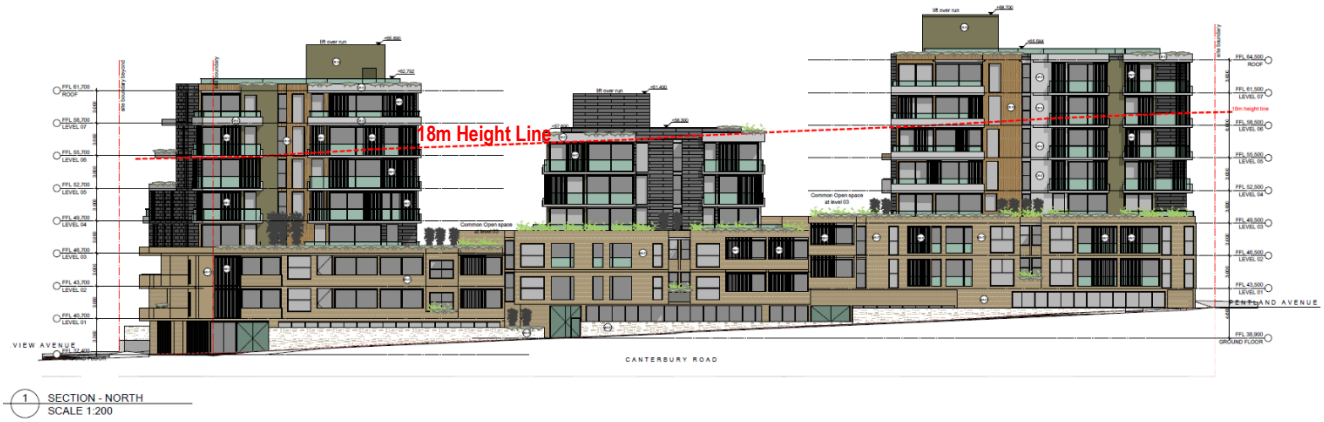


Figure 1: Height non-compliance at the northern elevation (viewed from Canterbury Road)

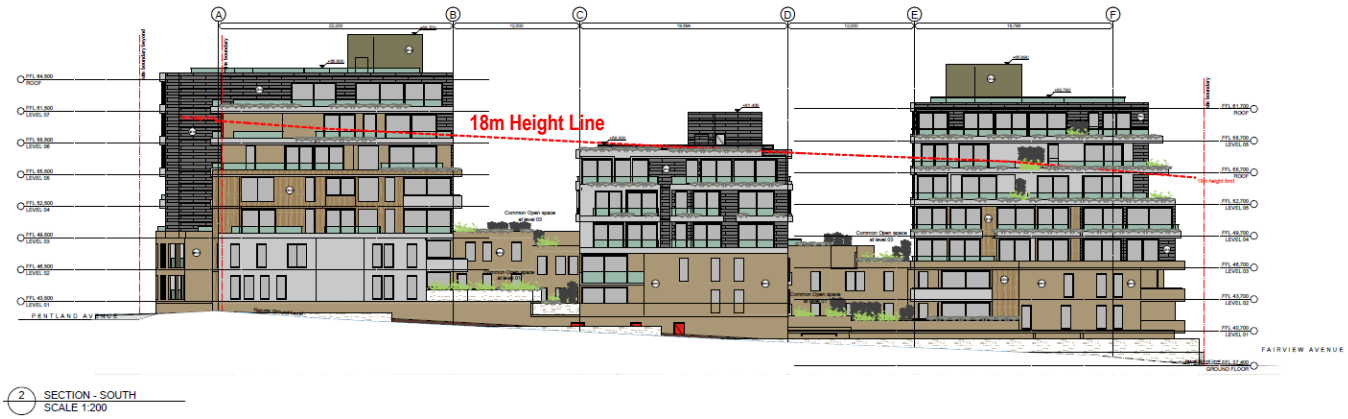


Figure 2: Height non-compliance at the southern elevation (viewed from residential properties)

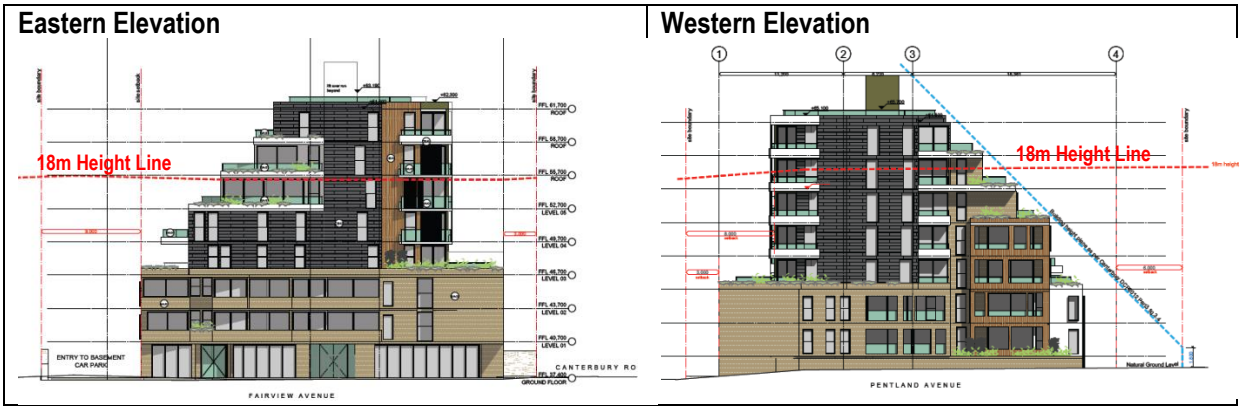


Figure 3: Height non-compliance at the eastern and western elevations

Maximum height control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP. The objectives and provisions of clause 4.6 are as follows:

"

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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.

***Note.** When this Plan was made it did not include 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(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,

(c) clause 5.4."

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

*" **4.3 Height of buildings***

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

(a) to establish and maintain the desirable attributes and character of an area,

(b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,

(c) to support building design that contributes positively to the streetscape and visual amenity of an area,

(d) to reinforce important road frontages in specific localities.

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

(2A) Despite subclause (2), the height of a dwelling house or dual occupancy must not exceed 8.5 metres if the dwelling house or dual occupancy is to be located on land in Zone R4 High Density Residential."

The *Height of Buildings Map* nominates a maximum height of 18m for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum height of 23.4m in relation to the roof elements of the eastern and western buildings and 27.6m in relation to the lift overruns of the eastern and western elements of the building.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of clause 4.4 are addressed in turn below.

Objective (a):

Objective (a) seeks to to establish and maintain the desirable attributes and character of an area. The "area" for the purpose of this objective is taken to be the adjoining properties and more significantly the properties that are located along the Canterbury Road Corridor that form part of the visual catchment of the site. There are a number of properties in the vicinity of the site that are yet to be developed and

therefore do not represent the desired future character of the area. In addition, this site represents a unique situation as it occupies the full extent of a single street block that fronts Canterbury Road. The width of the site provides opportunities to achieve a distinctive built form that contributes to the revitalisation of the Canterbury Corridor and the desired attributes of the area.

The development has been redesigned in response to extensive liaison with Council staff. The originally submitted building form achieved modulating by containing recessed elements at the northern façade to Canterbury Road, however, did not provide any complete breaks in the building above the podium level. The proposal has been designed to provide a consistent podium level and three separate towers that assist with providing a finer grain development typology and ultimately promote solar penetration and the desired rhythm of development along Canterbury Road.

The subject site is linear in shape and the proposal represents a superior built form outcome that provides the intended density at the site within taller tower elements. In doing so, it is our view that the proposal results in a building form that maintains and is compatible with the intended attributes and character of the area.

Density at the site is not established by an FSR control as the achievable density at a site relates to the massing of the development within the permitted building envelope. The previously submitted application achieved compliance with the height requirements albeit resulting in an unbroken form that resulted in an inferior built form outcome.

The proposal provides a suitable level of density at the site in terms of the volumetric mass of building permitted by the envelopes, however, the development provides pronounced elements at each corner location which allows for substantial voids to be achieved between the buildings which assist with solar penetration.

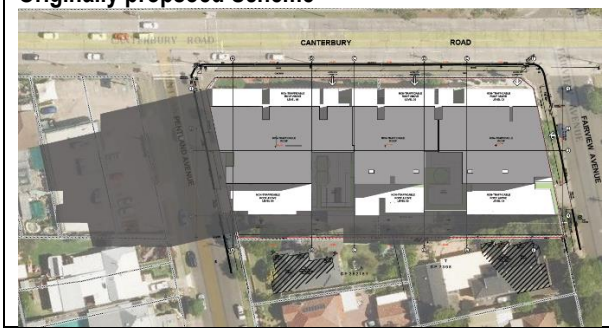
Therefore, the proposal provides a level of density that is consistent with a compliant scheme, however, the pronounced corner massing and breaks in the building form result in a projection above the height limit and in our view, provide a superior built form outcome that is consistent with the desired attributes of the area.

Objective (b):
Objective (b) seeks to minimise overshadowing and ensure there is a desired level of solar access and public open space. As detailed at Annexure A of this submission, the proposal provides the required number of apartments that achieve solar access pursuant to the Apartment Design Guide. In addition, the amended proposal provides common open space areas at the podium level and within roof top open space areas that significantly exceed the minimum requirements.

In relation to overshadowing, the redesign of the proposal and the height breaches proposed were predicated on achieving the permitted density within a form that has improved impacts in terms of overshadowing. The shadow diagrams for the proposal have been provided with this submission and detail the level of overshadowing cast during mid-winter.

The shadow cast from the proposal is compared below in relation to the shadows cast by a building that achieved compliance with the height requirements with exception to minor isolated portions. As indicated at Figure 4, due to the orientation of the site, the shadow impacts at 9.00am remain minimal in relation to the residential properties to the south of the site with slight improvements resulting from the narrower form of development.

Originally propsoed Scheme



Revised Design

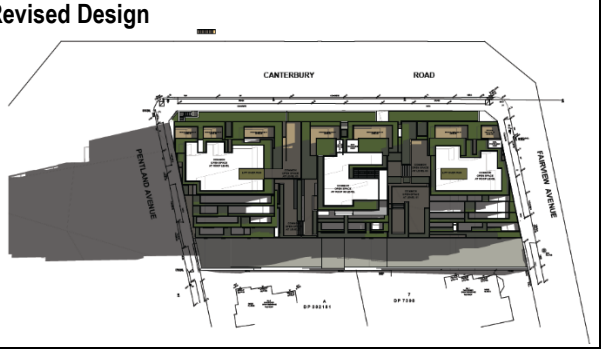


Figure 4: Shadow Cast at 9.00am during mid-winter

Figure 5 indicates the shadow cast at 12.00 noon and notes that the shadow impacts are similar to that of the originally proposed scheme.

Originally propsoed Scheme

Revised Design

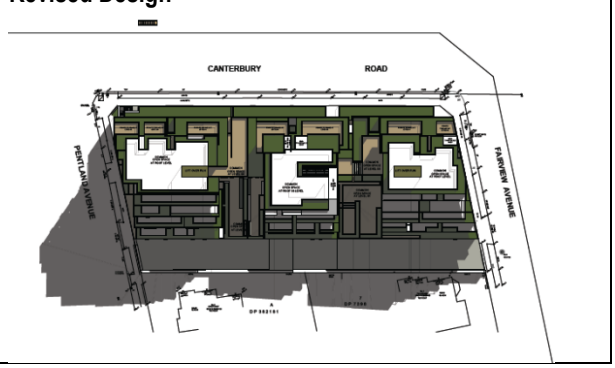


Figure 5: Shadow Cast at 12.00pm during mid-winter

The most significant improvement to the shadow impacts of the proposal are evident at 3.00pm whereby the breaks in the building that is achieved by massing the development with taller towers at each corner allows for solar permeation though the site and ensures that all rear yard areas of the adjoining southern properties retains solar access to the most significant parts of their properties.

Originally propsoed Scheme

Revised Design

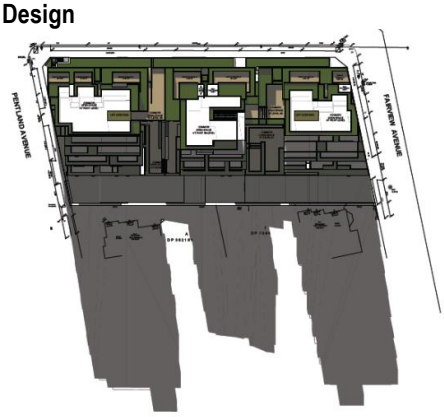


Figure 6: Shadow Cast at 3.00pm during mid-winter

In light of the above, despite the numerical non-compliance, the proposal achieves an improved result in terms of allowing solar penetration to the southern properties and achieves compliance with this objective despite the numerical non-compliance.

Objective (c):
This objective seeks to support building design that contributes positively to the streetscape and visual amenity of an area. As detailed in this submission, the redesigned building has achieved an improved urban form outcome by allocating the permitted density at the site in a form of development that maintains a 3 storey podium level with three distinct towers. The towers, emphasis each street corner and the central tower provides a building height that is consistent with the LEP height limit with exception to minor elements of the upper level.

In our view a significantly improved urban outcome has resulted from the redesign of this building that promotes a finer grain form and a rhythm of development that is desired in the Canterbury Road Corridor.

Objective (d):
This objective seeks to reinforce important road frontages in specific localities. The subject site is located along Canterbury Road and forms part of a significant corridor that traverses the local government area of Canterbury from east to west. The proposal will provide a scale of development that is consistent with the volume of a fully compliant building, however, the density is massed to provide a distinctive built form that contains strong presentations to each street corner and a suitable rhythm of development along Canterbury Road.

The development provides the intended urban revitalisation of the street block and will achieve a suitable scale of development at the street level though the use of the continuous 3 storey podium. The tower elements promote solar penetration to the southern properties and create three distinctive buildings that achieve a suitable rhythm of development and ultimately reinforces the importance of the Canterbury Road corridor.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of the *B5 – Business Development* zone are as follows:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design.*
- *To support urban renewal that encourages an increased use of public transport, walking and cycling.*
- *To encourage employment opportunities on Canterbury Road and in accessible locations.*

The proposal is consistent with the zone objectives in that it provides residential development in conjunction with ground floor commercial uses. The ground floor commercial uses will facilitate a range of end uses consistent with the desired future character of the Canterbury Road Corridor. The proposed development activates the Canterbury Road frontage and provides additional employment opportunities within an accessible location.

Environmental Planning Grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the assessment of this numerical non-compliance is guided by the recent decision of the NSW *LEC Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* whereby Justice Pain ratified the decision of commissioner Pearson.

On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development" in this particular case, the height non-compliance has arisen as a result of reallocating the massing at the site to result in improved outcomes in relation to solar access, streetscape presentation and the provision of significant areas of common open space in the form of roof terraces. Collectively, the proposal improves both amenity of future occupants and that of the adjoining southern properties.

In relation to the improved solar access, the subject site is linear and extends from east to west with a long southern boundary. As such, without a site specific resolution the degree of shadow cast from a fully compliant scheme could be significant. The proposal has provided the intended density at the site within a form that achieves narrow tower elements and voids between the buildings. As mentioned above, the significant overshadowing improvement relates to the afternoon period during mid-winter. The originally submitted development resulted in the obliteration of solar access for a number of residential properties to the south. The proposal significantly improves the shadow impacts by allowing fingers of sunlight to reach the rear yard areas of the southern properties during the afternoon period where it would have otherwise been lost. This represents a clear improvement that is specific to the site.

In terms of the built form outcome, the site has a long frontage to Canterbury Road and the massing of the development as proposed allows for breaks in the building that will provide views of the sky between the building and will also promote a finer grain pattern of development rather than a continuous and unbroken mass. This design solution has been the subject of extensive discussions with Council and it is agreed that the proposal represents a significant streetscape improvement.

Finally, the non-compliances affecting the upper level of each of the three towers result from the provision of common open space areas and equitable access to roof terraces. This represents an improved urban design outcome for the subject site by providing more than the required open space areas within separate useable spaces.

Unreasonable and Unnecessary

Returning to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

> " *An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

> *" The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the

policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives.

Therefore, insistence upon strict compliance with that maximum building height development standard in this instance is unreasonable and on the basis of the above, the statutory tests set out in Clause 4.6 of Canterbury LEP are satisfied.

ANNEXURE B

CANTERBURY DCP – COMPLIANCE TABLE

PLANNING INGENUITY

<table>
<tr><th colspan="3">CANTERBURY DEVELOPMENT CONTROL PLAN 2012 – COMPLIANCE TABLE</th></tr>
<tr><th>Control / Requirement</th><th>Proposal</th><th>Complies?</th></tr>
<tr><td colspan="3">PART 3 – BUSINESS ZONES</td></tr>
<tr><td colspan="3">PART 3.1 – ENVELOPE CONTROLS</td></tr>
<tr><td>3.1.2 Site Amalgamation
• Where comprehensive redevelopment is proposed in the B5 zone, the minimum site frontage is 30m.</td><td>The site frontage exceeds 30m.</td><td>✓</td></tr>
<tr><td>3.1.4 Avoid Isolating undeveloped sites
• Land adjoining a development site is not left sterilised or isolated so that it is incapable of being developed under the applicable controls.</td><td>The proposal does not isolate any adjoining sites.</td><td>✓</td></tr>
<tr><td>3.1.6 Height
• Refer to the CLEP for maximum height of buildings in metres.
• 3.3m minimum floor to ceiling height for business tenancies
• 2.7m floor minimum to ceiling height for residential uses
• 2.8m minimum for car parking areas</td><td>The proposal seeks a departure from the 18m height limit as detailed at Annexure B.
3.3m ceiling heights proposed for the commercial tenancies.
2.7m min for residential units
2.8m min for the basement</td><td>✓
✓
✓
✓</td></tr>
<tr><td>3.1.7 Depth/footprint
Residential
• Max 18m glass line to glass line
• 18m depth is not to include a light well for calculation purposes

Commercial and Retail
• Max depth 24m
• Min depth 10m</td><td>N/A – Annexure A.

23m depth to commercial and retail spaces.
All commercial areas exceed 10m in depth.</td><td>N/A

On Merit
✓</td></tr>
<tr><td>3.1.8 Setbacks
B5 Zone:
i. Comply with the street level setback, number of storeys at the street level, and upper level setback in the following table.
<table>
<tr><td></td><td>Number of storeys at the street and setback</td><td>Upper level setback</td></tr>
<tr><td>B5 zones (buildings with no ground floor residential)</td><td>1-4 storeys a minimum setback of 3m from street boundary.</td><td>Above 4 storeys – an additional 5m</td></tr>
</table></td><td>At the Canterbury Road frontage the ground floor level to level 3 (1 – 4 storeys) is setback 3m from the site frontage and Levels 5 and 6 are setback 8m from the site frontage.

At the Fairview Avenue and Pentland Avenue Street frontages (secondary frontages) the building is constructed to the boundary from the ground floor to the upper levels.</td><td>✓

Acceptable on mertit.</td></tr>
</table>

CANTERBURY DEVELOPMENT CONTROL PLAN 2012 – COMPLIANCE TABLE		
Control / Requirement	**Proposal**	**Complies?**
On boundary with residential zone – rear setback xi. Establish a 45º height plane projected at 6m from the residential boundary. xii. Provide minimum 6m setback to the residential zone boundary. xiii. A two-storey limit on the boundary with residential zone applies	As detailed on the submitted sectional drawings and elevations the proposal has been redesigned to achieve full compliance with this requirement.	✓
3.1.9 Building separation • *Separation is required as follows:* - *Up to 3 storeys = 6m habitable to habitable, 4m habitable to non-habitable & 3m non-habitable to non-habitable* - *4 storey = 12m habitable to habitable, 9m habitable to non-habitable & 6m non-habitable to non-habitable* - *5th to 8th storey 18m habitable to habitable, 13m habitable to non-habitable & 9m non-habitable to non-habitable*	Refer to Annexure A.	✓
3.1.10 Exceptions to Setbacks *The following minor building elements may project into the minimum setback area:* • *Underground parking,* • *Awnings,* • *Balconies and bay windows.*	The proposal includes minor balcony projections in relation to Canterbury Road. These encroachments are very minor and only serve to provide improved building articulation.	✓
3.1.12 Car parking • *To be in accordance with the specified rates* • *Only allow basement podiums to protrude 1m above natural ground level where reasonable parking alternatives are not available*	Refer Section 6.8 below. Basement parking does not rise greater than 1m above natural ground level.	- ✓
PART 3.2 – DESIGN CONTROLS		
3.2.2 Street Address • *Locate entries to relate to the street* • *Provide an awning over the entry*	The pedestrian and vehicular entries are clearly visible from Fairview Avenue and Canterbury Road. A colonade style awning will be provided at the entry foyers at the Canterbury Road frontage.	✓ ✓
3.2.4 Facade Details • *Balcones and voids to be used in moderation and are not to dominate publicly visible facades* • *Use solid to void ratio with each facade measured independently.*	Refer to the Design Verification Statement and consideration of the design principles prepared by Urban Link Architecture.	✓

CANTERBURY DEVELOPMENT CONTROL PLAN 2012 – COMPLIANCE TABLE		
Control / Requirement	**Proposal**	**Complies?**
• *Balconies are to be varied with regard to types, orientation and street context* • *Lightweight materials with slender frames and glazing are to be used.* • *Locate windows to minimise scale and bulk.*		
3.2.5 Shopfront • *Windows are to be transparent without roller shutters.* • *Security grilles should be discreet and placed behind the shop windows.* • *Consider the installation of security alarms, CCTV and the like.*	 Transparent windows proposed. Noted. Noted.	 ✓ - -
3.2.7 Frontage types *i. Provide the frontage type identified on the relevant public structure diagrams.* *ii. Where there is no specific requirement identified on the diagrams, match the frontage type to the characteristic frontage type in the street*	 N/A There are no specific frontage types in the vicinity of the site. The proposal provides a colonade awning to Canterbury Road.	 ✓ ✓
3.2.8 Roof design • *Relate roof design, size and scale to the building elevations and building form.* • *Respond roof design and orientation to the site and context.* • *Integrate service elements and future sustainable functions into the roof form.* • *Use materials which will not produce glare.*	 Contemporary and low profile roof form is proposed. Roof design is appropriate to the site context. Services will be integrated into the building design. Non-reflective materials proposed.	 ✓ ✓ ✓ ✓
3.2.9 Service and utility areas • *Facilities should be integrated and not visually intrusive. Meters, fire appliances, air conditioning units, water heaters etc should be suitably treated or screened as appropriate.* • *Separate common open space or thoroughfares from habitable room windows.* • *Provide communal aerials.* • *Mailboxes are to be in accordance with Australia Post standards.* • *Solar hot water systems are not to be visible from public areas.*	 Noted. Council may impose a suitable condition. Appropriate separation provided and screening has been provided where necessary. Council may impose a suitable condition. Mail boxes will be provided. None proposed.	 ✓ ✓ ✓ ✓ ✓
PART 3.3 – PERFORMANCE CONTROLS		
3.3.1 Visual privacy • *Locate and orient new development to maximise visual privacy between buildings on and adjacent to the site, and to minimise direct overlooking of rooms and private open space.*	 Visual privacy has been achieved due to general compliance with the separation requirements of the ADG. As indicated, where the upper level dwellings provide less than the	 ✓

CANTERBURY DEVELOPMENT CONTROL PLAN 2012 – COMPLIANCE TABLE		
Control / Requirement	**Proposal**	**Complies?**
	required separation to adjacent dwellings opaque glass is used to preclude visual privacy impacts.	
3.3.4 Internal dwelling design		
• *Living areas and master bedroom to have a minimum width of 3.5m.*	Refer to the plans for suitable internal configurations.	✓
• *Secondary bedrooms to have a minimum width of 3m*	Minimum bedroom dimension is 3m.	✓
• *Provide storage in addition to kitchens and wardrobes internally and/or as lockable garage space.*	Dedicated storage areas provided for each unit.	✓
• *The minimum amount of storage required is 6m³ for one bedroom dwellings 8m³ for two bedroom dwellings, or 10m³ for dwellings with three or more bedrooms.*	Compliant storage areas provided. Refer to architectural plans for further details.	✓
3.3.5 Housing choice		
• *Include a mix of unit sizes, layouts including differing balconies and terraces etc.*	The proposal provides a mixture of apartment sizes, configurations and orientations that will cater for a wide range of future occupant needs.	✓
• Provide 10% of residential units, in each building with more than 30 units, as accessible and adaptable apartments,	11 dwellings or 10% are provided as adaptable dwellings.	✓
PART 6.8 – PARKING AND VEHICLE ACCESS		
6.8.3 Minimum parking and servicing requirements *Shop Top Housing (the same rate as for Residential Flat Building* • *1 bedroom: 1 space per dwelling (23 x 1 bed = 23 spaces)* • *2 bedroom: 1.2 spaces per dwelling (80 x 2 bed – 96 spaces)* • *3 bedroom of more: 2 spaces per dwelling (7 x 3 bed – 21 spaces)* • *Visitor Parking: 1 space per 5 dwellings (120 /5 = 22 spaces)*		
TOTAL RESIDENTIAL – 162 spaces	174 residential spaces including 24 visitor spaces.	✓
Commercial – *Total commercial floor space is 1,567m² requires parking at 1 / 40m² – 39.1 spaces* ***Warehouse -*** *Storage and packing areas are 762m² and requires 1 space per 300m² – 3 parking spaces*	42 parking spaces provided for the commercial and warehouse floor area.	✓
6.8.8 Bicycle parking		
• *Provide a mix of storage facilities to cater for short and long stay parking.*	Secure bicycle parking racks can be provided within the basement levels.	✓
• *Residents 1 space per 5 dwellings (22 spaces), Visitors 1 space per 10 dwellings (11 spaces),*	33 bike spaces can be provided in the basement.	✓
• *Staff: Minimum 1 space per 200m² or part thereof (7.8 spaces required)*	Can be provided if necessary.	-

CANTERBURY DEVELOPMENT CONTROL PLAN 2012 – COMPLIANCE TABLE		
Control / Requirement	**Proposal**	**Complies?**
6.8.16 Car wash bays • *Car wash bays are in addition to visitor parking and are not shared.*	1 carwash bay is provided within Basement 1.	✓
6.8.17 Ventilation • *Provide ventilation to basement parking.*	The basement will be mechanically ventilated.	✓
PART 6.9 – WASTE MANAGEMENT		
6.9.1 Demolition and construction phase statement • *Submit a statement in relation to the waste that will be generated in the demolition and construction phase, addressing Council's requirements.*	Refer to the waste management plan provided separately.	✓
6.9.2 Waste management plan • *Submit a detailed Waste Management Plan for the on-going use of the development once completed, addressing Council's requirements.*	Refer to the waste management plan provided separately.	✓
6.9.3 Waste collection and storage • *Store waste and recycling bins on the premises in a dedicated and compliant area.* • *Rubbish allocation and sizing for dwellings and commercial are to be as per Council requirements.*	Dedicated bin storage area provided. Noted.	✓ -
6.9.4 Design and access waste and recycling store • *Bin storage and presentation areas are to be capable of accommodating the allocated number of standard waste containers. Clearly signpost all areas and separate bin storage rooms/areas for commercial and residential occupants.*	Suitable waste areas are provided for the required number of bins.	✓
6.9.4.2 Construction • *Use masonry construction for waste storage and recycling structures* • *Provide adequate openings, travel paths, water, light and ventilation to bin storage/presentation areas.*	Masonry / concrete construction proposed. Direct and easy access to the bin storage areas is available. A tap will be provided for cleaning of the area. Mechanical ventilation of the garbage room will be provided.	✓ ✓