

Summary of issues raised in the submission and responses from the Applicant and Council officers

As a result of the public exhibition of this Development Application (DA), one submission was received objecting to the proposal. A summary of the concerns raised is provided below at Part A. This is followed at Part B by material demonstrating the relationship between the submitter's development currently under construction on their site and this proposal.

Given the extensive and detailed issues raised by the submitter, we requested the Applicant provide a detailed response to the issues raised, a copy of which is provided at Part C of this attachment.

Following this, our response to the issues raised is provided at Part D.

Part A - Summary of issues raised in the submission

1. Setbacks:
 - a. The nil setback to the western boundary of the site for the services core of the proposed development is inadequate and results in adverse associated impacts including:
 - overlooking
 - acoustic impacts
 - ventilation
 - solar access
 - amenity for the future residents at 28 Second Avenue
 - structural integrity.
 - b. The setback to the western boundary (being only 3 metres to the access corridor and 4.7 metres to the apartments) should be a minimum of 6 metres. The development at 28 Second Avenue achieves a 6 metres setback for the majority of the building.
 - c. There are no other approved or existing developments in the CBD with a nil building setback for the tower form.
2. Inadequacy of the Applicant's Statement of Environmental Effects (SEE) and clause 4.6 request to justify departures from the development standards and controls and assessment of impacts as a result of this application.
3. Failure to adequately address clause 7.7 Design Excellence of Blacktown Local Environmental Plan (LEP) 2015. The specific concerns raised include:
 - a. Loss of the view corridor to the city
 - b. The narrow allotment is unsuitable for the proposed development
 - c. Streetscape impacts as the proposed podium and tower are misaligned to the development at 28 Second Avenue
 - d. Poor relationship in terms of separation, setbacks, amenity and urban form
 - e. Overshadowing and solar access issues for 28 Second Avenue
 - f. Flaws with the internal servicing of the development, including the substation design and fire control systems.

4. Issues with the scaffolding, other construction support systems and associated easements required to construct the proposed development with a nil setback to 28 Second Avenue. This will also affect the amenity and open space of future residents at 28 Second Avenue.
5. Other impacts caused by the nil setback to the western boundary which are not considered in the SEE and Applicant's geotechnical report include:
 - a. Deeper basement excavation will need to be carefully carried out with adequate recommendations from a geotechnical engineer to avoid undermining the footings of 28 Second Avenue along the common boundary
 - b. The proposed new building should have adequate setback to avoid 'pounding' under wind and earthquake loads
 - c. Formwork of all new elements on the boundary will need to be designed to avoid exerting lateral pressure on the existing wall at the common boundary with 28 Second Avenue
 - d. Lateral loads ('out of balance earth pressures') should not be permitted to be applied to the building under construction at 28 Second Avenue.
6. The Applicant has not submitted an adequate site analysis and has not complied with clause 6.3 of the Blacktown Development Control Plan (DCP) 2015.
7. Non-compliance with the minimum dimensions of the site, including a minimum frontage of 30 metres.
8. No justification for the height of building variation to justify the exceedance on the basis that only 'functional elements' exist above the height limit.
9. Side setbacks are to be 6 metres.
10. Building separation is to be at least 12 metres.
11. Lack of solar access to the future residents at 28 Second Avenue, with the apartment within the south-east of 28 Second Avenue receiving no solar access at midwinter.
12. Significant weight should be attributed to the controls in the ADG as part of the assessment of the DA. However, the setback requirements of the DCP also have full effect as discussed in the recent case *Malass v Blacktown City Council* [2017] NSWLEC 1043. The reduced setbacks proposed in this application will limit the solar access to the adjoining properties which is not appropriate and will not result in the orderly and economic development of these two properties.
13. Only 25% of apartments achieve compliant cross ventilation which does not comply with the minimum requirement of 60% as required by the Apartment Design Guide.
14. The siting of the proposed building is poorly located.

Part B – Material demonstrating the relationship between the submitter's development currently under construction on their site and this proposal

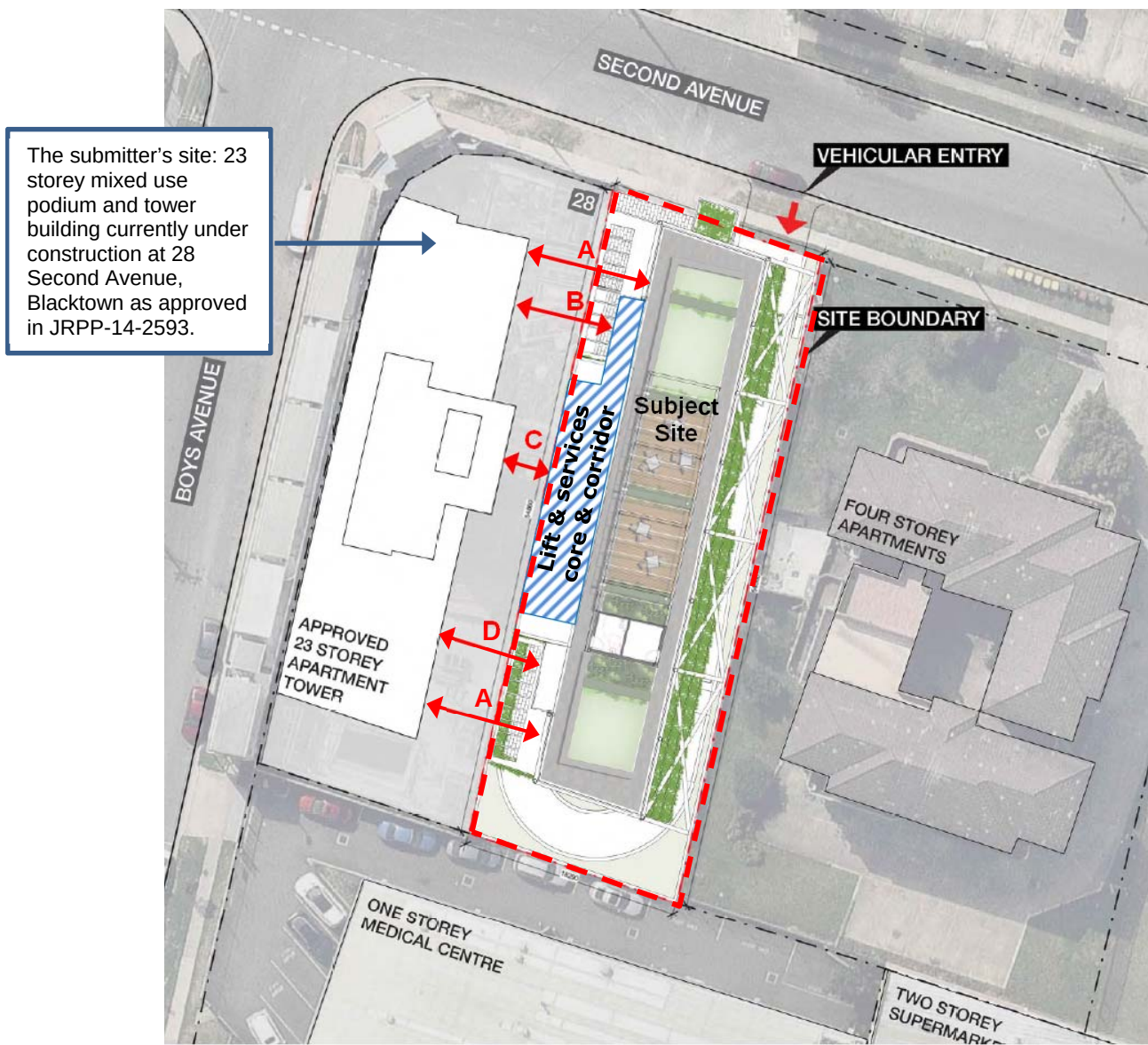


Figure 1: Extract from the proposed Site Plan A1000 demonstrating the relationship of the proposed development site (outlined in red) and development currently under construction at 28 Second Avenue, Blacktown

Table 1: This table demonstrates the boundary setbacks of the above developments to their shared boundary, as well as the combined distance between these buildings:

Marker	Submitter's development at 28 Second Avenue	Proposed development at 26 Second Avenue	Distance between these buildings
A	Living room and balcony with window openings – 6 metres from the boundary	Blank wall to apartments - 4.7 metres from the boundary	10.7 metres
B	Bedrooms with window openings – 6 metres from the boundary	Access corridor (includes unopenable windows) - 3 metres from the boundary	9 metres
C	Blank wall to the lift and services core – 2.8 metres	Blank wall to the lift and services core – nil setback to the boundary	2.8 metres
D	Living room, balconies and bedrooms with window openings – 6 metres from the boundary	Blank wall and 1 window opening to apartments - 3 metres from the boundary	9 metres

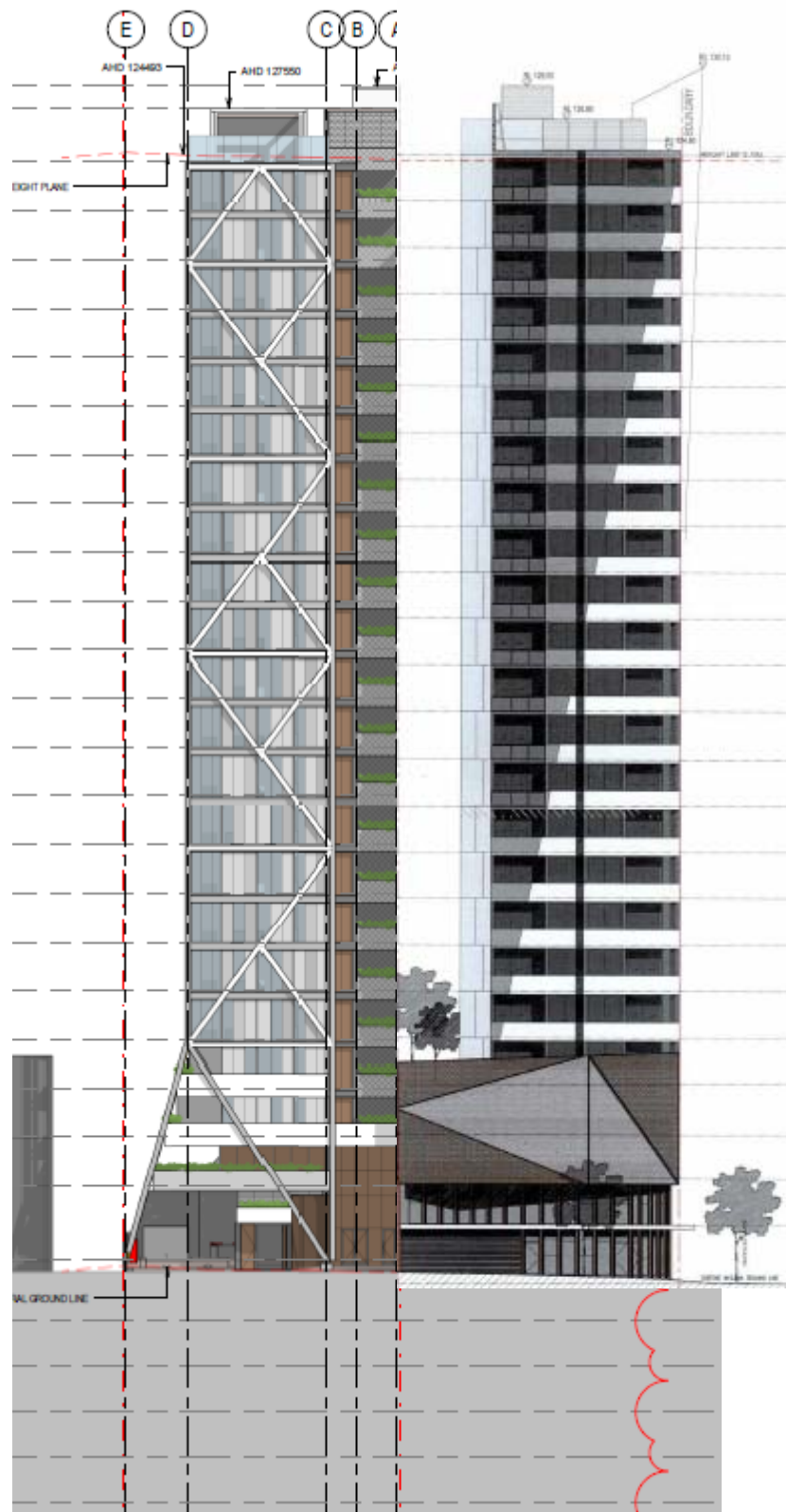


Figure 2: Extract from the proposed North Elevation Plan A3000 demonstrating the streetscape presentation of the proposed development (left) and the approved north elevation plan of the development currently under construction at 28 Second Avenue, Blacktown (overlaid on the right).

Part C – A copy of the Applicant's response to the issues raised in the submission

Given the extensive and detailed issues raised by the submitter, we requested the Applicant provide a detailed response to the issues raised. A copy of their response is provided below:

Response to objection to proposed development of land described as 26 Second Avenue, Blacktown (Lot 80 DP11157)

1.0 Introduction

Thank you for providing the Merhis Blacktown Pty Ltd ('the applicant') with a copy of RCBS Landco Pty Ltd's ('RCBS's') objection to its proposed mixed use development (the 'proposal') on the land described above ('the site'). The applicant has engaged HC9 Planning & Development Consultants ('HC9') to respond to this objection. Before turning to the more technical grounds detailed in the objection, HC9 would like to address RCBS' 'Summary of Objections'.

The applicant absolutely refutes RCBS' claim that the site is constrained. The applicant has established the site has very few constraints, noting:

- its topography is flat (refer to the Survey Plan originally submitted);
- it is devoid of significant vegetation (refer to the Survey Plan originally submitted);
- it does not host terrestrial biodiversity values (per the LEP mapping);
- it neither hosts nor adjoins a heritage item and it is not within a heritage conservation area (per the LEP mapping); and
- it will be remediated, where necessary, in accordance with the Stage 2 Environmental Site Assessment previously submitted.

The site is largely unconstrained but importantly it affords opportunities too. It is well serviced by infrastructure, noting the Blacktown railway station is within walking distance as well as being in close proximity to the Blacktown City Centre. The site is serviced by reticulated water and sewer infrastructure, adequate drainage infrastructure and acceptable telecommunications infrastructure. It is these opportunities, as well as the absence of constraints, which are reflected in the site's zoning and the broader zoning pattern of the locality.

The applicant also refutes RCBS' claim that the site is not capable of sustaining the proposed density. The proposal delivers on the stated objectives of the zone because the site is accessible and its proposed density will *maximise public transport patronage and encourage walking and cycling*. Whilst acknowledging that every site is unique, it's worth noting that the proposed density is somewhat lower

than that approved in RCBS' development, despite the applicant's site being greater in land area. Any assertion by RCBS that the site is incapable of sustaining the proposed density runs counter to its progress and arguments for developing its own land.

When assessing a development proposal's likely impacts on the amenity of neighbouring developments (existing or proposed), whilst still important, a greater level of tolerance is normally provided within higher density localities such as in this instance and that future occupants are usually aware of this. In the case of those who have contracted to purchase an apartment in RCBS' development, the very nature and scale of the development into which they have purchased is sufficient notice of the potential for a similar development on the applicant's site.

Furthermore, the zoning and principal development standards were (and remain) information freely available and easily accessible to those investors. For at least these reasons we do not give credence to RCBS's speculation that they will suffer 'economic impacts.' Future occupants and investors should conduct their own thorough due diligence as to the present and future character as well as the potential for development to occur upon adjoining land and within the broader locality. It should also be noted that loss of property value we submit are purported to be the 'economic impacts' referred to in the submission are not grounds or a consideration of the consent authority in determining a development application.

Similarly, RCBS' suggestion that the proposed development will compromise the structural integrity of its development is baseless and HC9 sees no reason to address this contention any further than to state that applicant welcomes a reasonable condition of consent to mitigate any such potential.

Lastly, the applicant has chosen to prepare an amended clause 4.6 variation (under separate cover) request to further substantiate the case for exceeding the building height development standard. The amended clause 4.6 variation request accompanies this correspondence and HC9 believes that it appropriately addresses RCBS' criticism of the original version.

2.0 Response to 'Schedule 1' of RCBS' objection

2.1 The statement of environmental effects

The following dot-point responses correspond with the dot-points from Part 1 of RCBS's Schedule 1 and should be read accordingly:

- It is HC9's view that RCBS' has misinterpreted the meaning of 'view corridor' as it is used in sub-sub-clause 7.7 (4) (c) of Blacktown Local Environmental Plan 2015 ("BLEP 2015"). RCBS is objecting to the obstruction of views, or more precisely the possible obstruction of *expectations* of views in the future, from some apartments in its development. However, 'views' in this sense is not the equivalent of view *corridors*, for the purposes of sub-sub-clause 7.7 (4) (c) of BLEP 2015. HC9 understands a view corridor to necessarily or inherently be of broader and more public value than the context in which RCBS seems to have understood the terminology. The proposed development will not obstruct any known view corridor and so the Statement of Environmental Effects ("SEE") is not flawed in this respect.
- The SEE accurately reports on compliance with the Blacktown Development Control Plan 2015 (BDCP 2015) – refer to section 2.3 (below) for a response to RCBS's contentions regarding non-compliance with BDCP 2015.

- In no sense is the site 'inherently unsuitable for the Proposed Development' and in this regard we refer BCC to the relevant commentary in section 1.0 (above).
- HC9 understands RCBS is citing inconsistencies between its approved podium and applicant's proposed podium. Inconsistencies in this regard will not result in an undesirable streetscape outcome. HC9 understands Conrad Gargett Ancher Mortlock Woolley ("CGAMW") worked closely with Mr Bill Tsakalos of BCC in workshoping a building typology and envelope, which BCC would support. The current design is reflective of what was agreed in that process. Early discussions with BCC revealed the emphasis was on establishing an active frontage along Second Avenue, with the critical issue being the establishment on non-residential land uses at ground and first floors rather than necessarily a distinct and uniformly consistent podium for the entire streetscape.
- The objection to the relationship between RCBS' approved development and applicant's proposal in terms of separation and setbacks is discussed in sections 2.3.4 and 2.3.5 (below). In respect of amenity we refer BCC to the relevant commentary in section 1.0 (above).
- For a discussion of overshadowing refer to section 3.2 (below).
- We reject RCBS' contentions regarding 'internal servicing' of the proposed development and refer BCC to material submitted to date in this regard.

2.1.1 Construction impacts

Part of the scaffolding may intrude into RCBS's site depending on the future construction methodologies. A permit from the RCBS or the future property owner will be obtained by the builder if such works is required. It is noted that a permit to RCBS for temporary access and using the applicant's land was granted by the applicant to assist the construction works at RCBS's site. The permission of temporary site access will be managed by the applicant/contractor in the construction stage but it is not a reason to refuse the DA.

The nature of the developing locality in which the site resides, will result in some short term inconvenience in terms of amenity within RCBS's development. Any consent granted will be subject to appropriate conditions to mitigate such short-term amenity impacts.

2.1.2 Basement/structural concerns

This is a construction rather than a planning issue. The geotechnical report submitted as part of the application demonstrates the ground condition is suitable for the proposed development. The basement will be designed appropriate by qualified engineer as per recommendations in the geotechnical report, ensuring it will not have adverse impact on the structural of RCBS's building.

2.2 BLEP 2015

2.2.1 Building heights

The overall height of the building has been lowered building by 300mm. The proposal is, therefore, now lower than adjoining building and the original approval on the site.

Consistent with the applicant's view, RCBS accepts that the degree of exceedance is only minor by acknowledging that the proposed height exceeds the development standard "by only approximately 5 metres." RCBS accepting that the degree of exceedance is only minor is consistent with the view it took on the building height proposed for its own development, the peak of which is higher than the applicant's proposed tower. Acknowledging these facts, its case that the proposed height "militates against" satisfying objectives (a) and (b) of clause 4.3 of BLEP 2015 is flawed. Those objectives seek to minimise certain adverse impacts of development and establish consistency in building height, bulk and scale in the locality. These objectives, when read alongside those of the principal development standards, are not compromised by the proposal.

2.3 BDCP 2015

2.3.1 Site requirements

The applicant and, we understand, BCC, are wholly familiar with the nature and characteristics of the site. The SEE provides a written description of the site and the Survey Plan which accompanies the application adequately supplements the written description so as to satisfy the objective of the relevant provisions of BDCP 2015.

2.3.2 Site density controls

The provision to which RCBS refers is within Part C of BDCP 2015 and clause 1.1 specifically states that Part C only applies to land zoned for residential purposes under BLEP 2015. The site is zoned 'B4 – Mixed Use' under BLEP 2015. The B4 zone is a business zone, not one of the residential zones (R1, R2, R3 and R4), hence why Part C of BDCP 2015 was not addressed in the applicant's SEE. On these grounds RCBS' statements regarding non-compliance with Part C are irrelevant. Going further than this, the statements run counter to the position RCBS adopted regarding the dimensions of its own site when it was seeking development consent.

Beyond the technical failings of RCBS' objections, it's important to recognise that RCBS effectively alienated the applicant's site when it embarked upon a stand-alone development of 28 Second Avenue. It was almost inevitable that the land which remained between RCBS' proposed development and the substantial four-storey apartment building at 22-24 Second Avenue would be proposed for development before a redevelopment of 22-24 Second Avenue became possible or feasible. Almost as inevitable as this was the likelihood that such a development would be largely consistent in nature and scale with RCBS' proposed development, given the two sites share similar dimensions, the same zoning and the same development standards for building height and floor space ratio ("FSR"). In this light RCBS' objections are vexatious more than deriving from genuine, valid concerns.

2.3.3 Building height

Refer to section 2.2.1 (above).

2.3.4 Setbacks

Again, the provision to which RCBS refers is within Part C of BDCP 2015 which, as stated above, is not applicable to an assessment of the proposed development. In fact, it is clause 4.3 of Part D of BDCP 2015 which is the relevant provision regarding boundary setbacks. Clause 4.3 clearly contemplates development with a 'zero building setback' stating this 'may be acceptable'. In this case, it's important to realise that the proposed boundary setbacks have originated from CGAMW and Mr Bill Tsakalos of

BCC workshopping the options. HC9 understands that BCC is supportive of the proposed boundary setbacks and clause 4.3 of Part D of BDCP 2015 provides grounding for this support.

2.3.5 Separation between buildings

The issue of building separation was resolved through extensive negotiations between Council's and the applicant's architectural team. The outcomes of these discussions were provided in sketch form and provided as part of the application submitted to Council.

Again, the provision to which RCBS refers is within Part C of BDCP 2015 and so it is not applicable to an assessment of the proposal. We address the issue of building separation in the context of the Apartment Design Guide ("ADG") in section 2.4.1 (below).

2.3.6 Views

Once again, the provision to which RCBS refers is within Part C of BDCP 2015 and so it is not applicable to an assessment of the proposed development.

2.3.7 Privacy

Once again, the provision to which RCBS refers is within Part C of BDCP 2015 and so it is not applicable to an assessment of the proposed development. For a discussion of privacy please refer to section 2.4.1 (below).

2.4 Apartment Design Guide

2.4.1 Parts 2F & 3F

To the extent possible, the proposal has been designed in accordance with the ADG, but the separation distances between applicant's tower and RCBS' tower do not strictly comply with the design criteria guide under Objective 3F-1. This is the case for two reasons:

1. A development which best supports the objectives of the zoning and principal development standards is not possible on the site if the design criteria is strictly and numerically imposed; and
2. RCBS' development does not make an equitable contribution to compliant separation distances.

On the matter of meeting numerical compliance of the guidelines within the ADG, it is important to note the NSW Department of Environment and Planning's planning circular PS17-001, titled Using the Apartment Design Guide, dated 29 June 2017, which states:

Apart from the non-discretionary development standards in SEPP 65, the ADG is not intended to be and should not be applied as a set of strict development standards

As stated previously, the proposal delivers on the stated objectives of the zone because the site is accessible and the proposed density would reasonably *maximise public transport patronage and encourage walking and cycling*. A development in strict accordance with the design criteria under Objective 3F-1 of the ADG would be a development, which would fail the objectives of the zone because

the achievable building envelope would be a fraction of that proposed, meaning the density would be significantly lower. In fact, a development in strict accordance with the relevant design criteria would be unfeasible because the floor plate would simply be too small. So, a strict imposition of the numerical design guide criteria under Objective 3F-1 of the ADG would effectively quarantine the site's development potential.

It's clear from sub-sub-clause 30 (2) (b) of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ("SEPP 65") that a consent authority may approve development which doesn't satisfy relevant design criteria guidelines under the ADG, provided the applicant demonstrates that 'adequate regard has been given' to the objectives corresponding to those design criteria. Relevant in this instance then, Objective 3F-1 of the ADG reads as follows:

'[a]dequate building separation distances are shared equitably between neighbouring sites, **to achieve reasonable levels of external and internal visual privacy.**' The single stated objective of the building separation design criteria under the ADG solely concerns visual privacy. Accordingly, the consent authority must be satisfied that the applicant has had adequate regard for achieving reasonable levels of visual privacy to and from RCBS' development. In this regard, it is important to recognise the following aspects of the proposal:

- It is the building core which is proposed along the common property boundary, not spaces which afford any prolonged casual surveillance opportunities into (future) neighbouring apartments;
- The building core necessarily presents a window-less blank wall to RCBS' development, to achieve the minimum fire safety rating, and so privacy is not jeopardised to any degree;
- All apartments are oriented to the east and are almost uniformly a minimum of 4.7 metres from the building's outer extremities and/or 6m from the proposed glass line to the common property boundary (and thereby typically a minimum of 10.7 metres from apartments in RCBS' neighbouring development);
- 50 of the 90 apartments have absolutely no line of sight to RCBS' development given their position central to the building (with the common corridor and building core obscuring any westerly aspect);
- Only 19 of the other 40 apartments have a window facing west (Apartment Type 'Cc' on Level 02, Apartment Type 'Cb' on Level 03 and Apartment Type 'Ca' on Levels 4-21) and in each case it is only one small window near the front door to each apartment; and
- The building core obscures most of the westerly views from the rooftop communal open space.

There can be no doubting that the applicant has had adequate regard to the objectives of the building separation design criteria guideline in the ADG and we trust the consent authority will acknowledge this. On these bases:

1. HC9 absolutely rejects the validity of RCBS' contentions in section 4.2 of its submission; and
2. we submit that its discussions in sections 4.3 and 6 of its submission is redundant.

2.5 The balance

In completing a response to Schedule 1 of the objection:

1. we attach an amended clause 4.6 variation request which addresses RCBS' discussion in section 5; and

2. we unequivocally refute RCBS' submission in section 7.

3.0 Response to Schedule 2 of RCBS' objection

3.1 Building separation

Refer to the discussion in section 2.4.1 (above).

3.2 Solar access

The proposal will overshadow RCBS' development but this is unavoidable given the orientation of the site and those adjoining and if it is to be developed in accordance with the objectives of the zone. Given the high-density context of the locality in which the site and the land adjoining is located, it is unreasonable of RCBS to expect uninterrupted solar access to its apartments. The shadow diagrams prepared by CGAMW suggest that the proposal will not overshadow RCBS's development beyond circa 10am at the winter solstice. Subsequently, the proposal it will have negligible impacts on the performance of RCBS' development when measured against the design criteria of Objective 4A-1 of the ADG.

3.3 Cross ventilation

Given the narrow width of the site, in order to achieve adequate cross ventilation, the design has incorporated a single-loaded floor plate (one row of apartments off a common corridor). In the first nine storeys, 50% of the apartments are dual-aspect and thereby cross-ventilated. In respect of the other apartments, we understand ventilation can be aided by sliding doors to the balconies being operated to create air pressure tension. In this manner, the proposed development supports Objective 4B-3 of the ADG.

3.4 Podium relationship

Refer to the comment regarding the podium arrangement in section 2.1 (above).

3.5 General

HC9 rejects the 'recommendation' in Schedule 2 for the reasons stated herein and previously throughout this application process.

4.0 Conclusion

For the reasons stated herein, HC9 Planning & Development Consultants ("HC9") firmly believe the proposal is worthy of BCC's support and, ultimately recommending approval of the related development application.

Part D – Council officers' response to the issues raised in the submission

Our assessment of the proposal in light of the concerns raised is as follows:

Siting of the building, streetscape and height / skyline

The Blacktown Central Business District (CBD) is subject to ongoing redevelopment and transformation to create and renew this growing centre. This strategic centre is afforded a substantial building height (72 metres for this site) to support a variety of land uses, whilst also ensuring design excellence outcomes for new development within the city centre.

In the past, the development of the CBD has been undertaken in a piecemeal manner and has been influenced by certain factors, including the specific needs of landowners and a broad range of site areas and dimensions. The fragmentation of existing sites has resulted in uncertainty in the consistency and cohesiveness of the redevelopment of each lot. This is evidenced by the design of the submitter's development approved in JRPP-14-02593 at 28 Second Avenue, Blacktown which adjoins the subject site to the west. The following figure is an extract from the approved street elevation plan for 28 Second Avenue, and includes the building envelope approved in DA-13-1143 for a 9 storey mixed use development on the subject site.

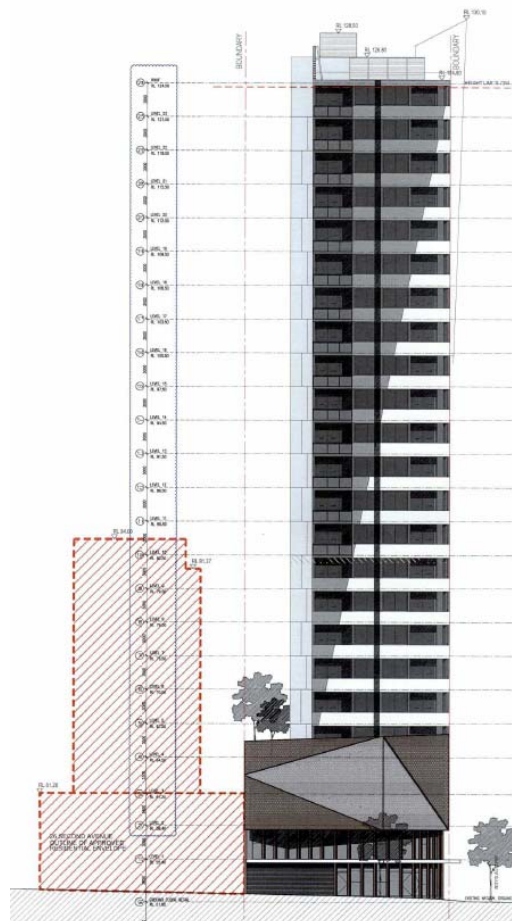


Figure 3: Extract of the approved street elevation plan for 28 Second Avenue (right). The approved building envelope for a 9 storey mixed use development approved at 26 Second Avenue (left) is outlined in red (Source: Tony Owen Partners, February 2015).



Figure 4: Extract of photomontage of the approved development currently under construction at 28 Second Avenue (right). The previously approved building envelope for 26 Second Avenue is shown on the left (Source: Tony Owen Partners, March 2015).

The approved development at 28 Second Avenue provides an interesting and unique architectural design, however we do not consider that it offers a design which is either a continuation of the scale of the podium previously approved at 26 Second Avenue, or likely to be continued by the redevelopment of any adjoining sites. Similarly, the proposal the subject of this application provides an overall tower form which is consistent with the development at 28 Second Avenue, however does not strictly copy the scale of the podium and tower form of 28 Second Avenue. As demonstrated in **Figure 2** on page 5, this application proposes a distinct podium and tower form which is generally the same overall width of the tower at 28 Second Avenue. This approach enables both sites to achieve a suitable building footprint for each level, which is sited to the western side of each site.

We consider the proposal to provide a suitable outcome with regard to the siting of the podium and tower form, its streetscape presentation and overall height and skyline. Furthermore, the proposal is supported by our City Architect as this proposal is considered to offer a positive outcome and contribution with regard to street activation and design excellence.

Obstruction of views

The submission objects to their future residents' views to the east being obstructed by this development. We do not consider that view corridors from the objector's site to Sydney city are automatically available, guaranteed or a right. As demonstrated in **Figure 5** below, the submitter's site and the site the subject of this DA, are generally centrally located within the Northern Precinct of the CBD. The redevelopment of the CBD envisages and supports the redevelopment of sites at the perimeter of the CBD to create a strong skyline, street edges and to create 'gateway effects' for entry into the CBD. This will result in low likelihood for developments (other than those at the perimeter of the CBD) to maintain full and unobstructed distant views to Sydney City to the south-east in the long term.

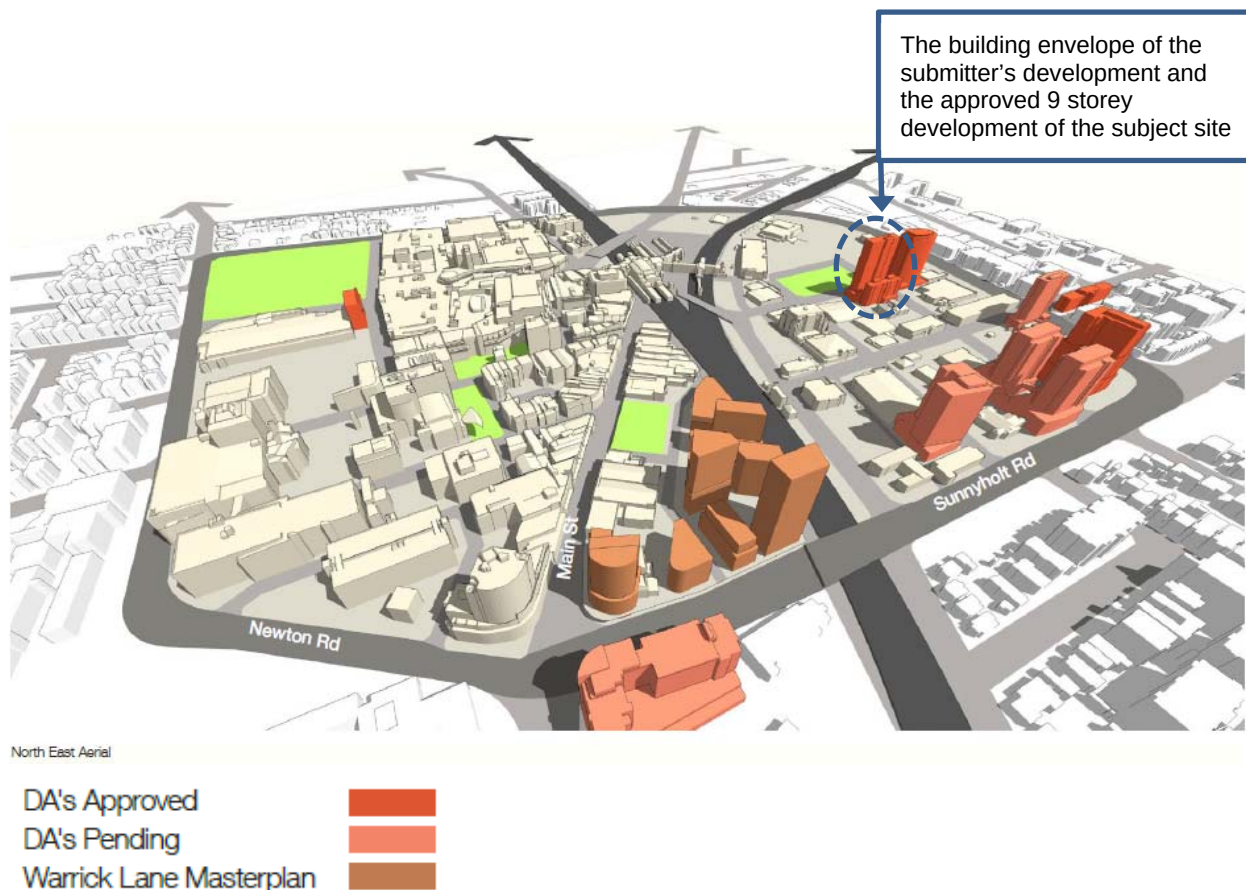


Figure 5: Extract from the Blacktown and Mount Druitt CBD Studies, prepared by Bates Smart dated June 2016, demonstrating the building envelopes proposed and approved for the Blacktown CBD as at June 2016.

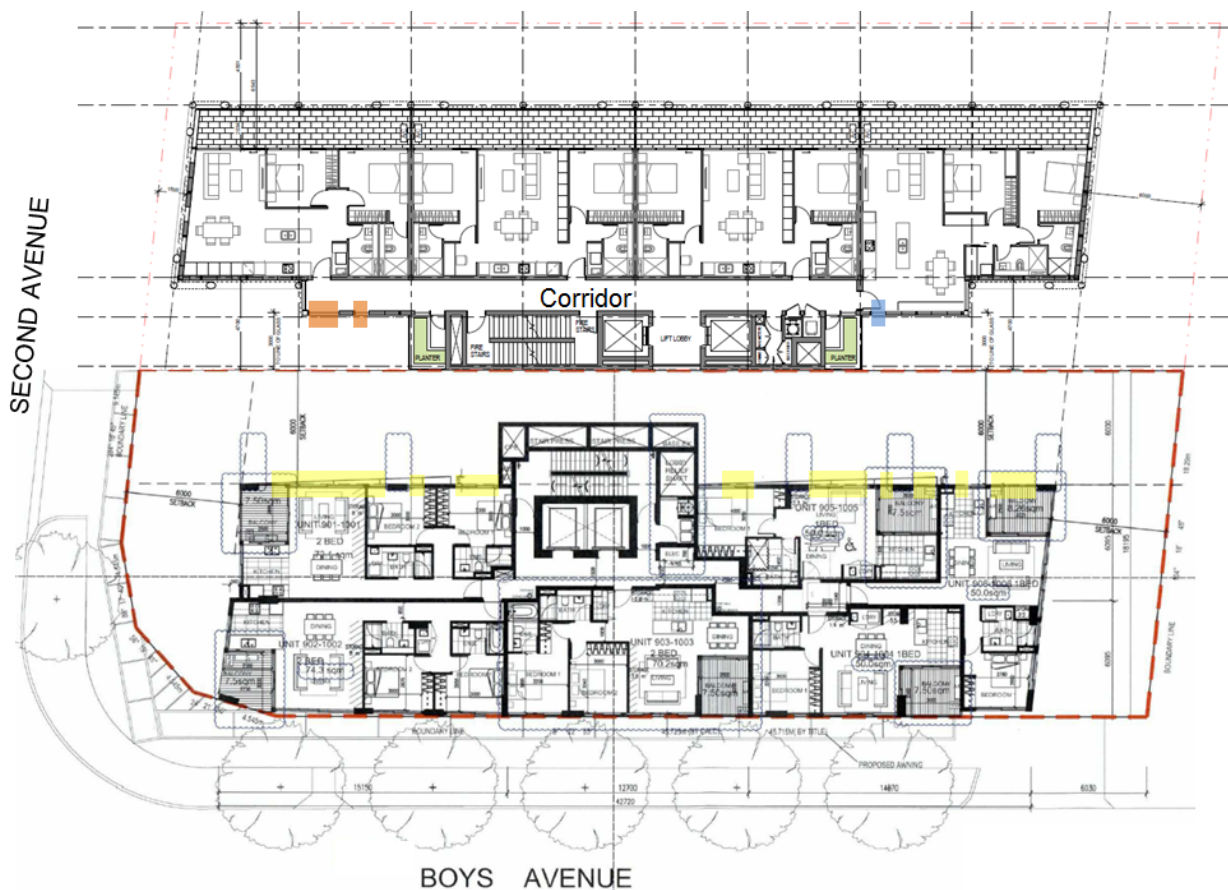
Therefore, we do not consider that obstruction of views is a sufficient reason to warrant the refusal of this DA.

Impact of setbacks on acoustic and visual privacy, overlooking, ventilation, solar access and amenity of the development at 28 Second Avenue

The proposed setbacks of this development, and their relationship to the adjoining property to the west at 28 Second Avenue, are detailed in **Part B** above.

The proposed setbacks do not strictly comply with the ADG as detailed in Section 7 of the Assessment Report.

The western façade of this proposal to 28 Second Avenue generally comprises a blank wall, with the exception of window openings to the access corridor and window openings to the southern-most apartment on Levels 2 to 21 inclusive. The figure below demonstrates the location of these window openings and their relationship to the window openings of the adjoining development at 28 Second Avenue.



- Key:**
- = Location of an opening to a habitable room or balcony on Levels 10 and 11 of the mixed use development at 28 Second Avenue, Blacktown.
 - = Location of windows to the entry foyer/open plan living areas of the rear apartments on Levels 3 to 22 of the proposed development.
 - = Location of windows to the corridor on Levels 3 to 22 of the proposed development.

Figure 6: Analysis of the relationship between the window/balcony openings of the proposed development (above) and the adjoining mixed use development at 28 Second Avenue (below). The example shown is for Levels 10 and 11.

Acoustic privacy

The submitter has raised concern with regard to acoustic privacy impacts due to the close proximity of habitable rooms between the two developments. The proposed development comprises a blank wall for the majority of the western elevation, an unopenable window to the entry foyer/open plan living areas of the rear apartments on Levels 3 to 22 (3 metres from the shared boundary), and 2 unopenable windows to the access corridor (3 metres from the shared boundary). The orientation and design of the proposed building directs noise generating sources away from the objector's property and is not considered to result in acoustic privacy impacts.

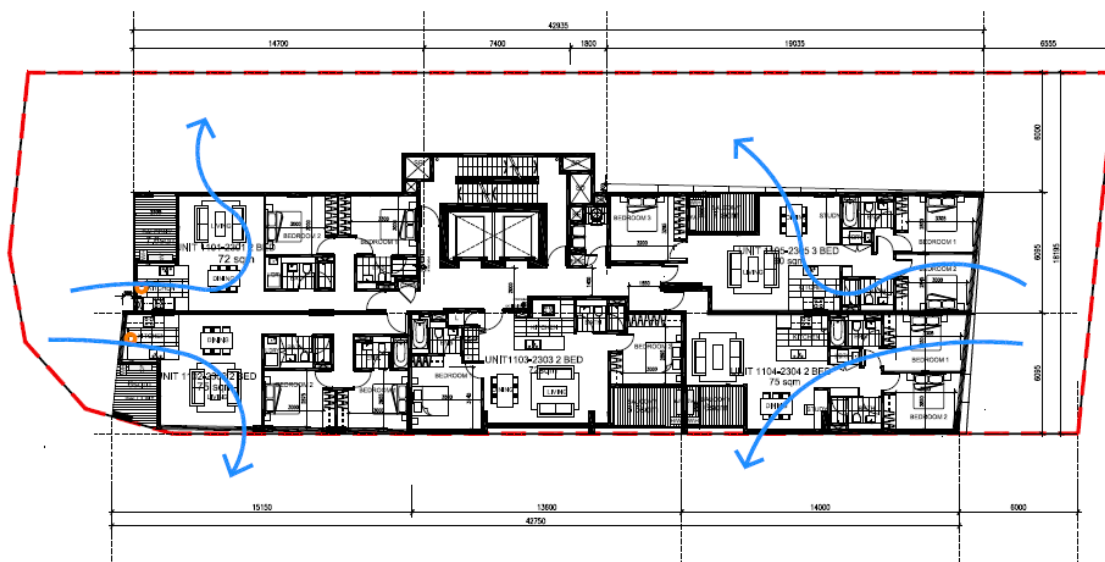
Visual privacy and overlooking

The submitter has raised concern with regard to visual privacy and overlooking impacts due to the close proximity of habitable rooms between the two developments. The proposed development comprises a blank wall for the majority of the western elevation, an unopenable window to the entry foyer / open plan living areas of the rear apartments on Levels 3 to 22 (3 metres from the shared boundary), and 2 unopenable windows to the access corridor (3 metres from the shared boundary).

These windows are proposed in this location at our request due to the large extent of blank wall along the western façade of this building, to break up the building mass. These windows are proposed to be 'bronzed' glazing, to create a tinted and visually interesting effect. Although direct lines of sight can be achieved from these windows to the objector's development, it is recommended that the glazing of these windows is also translucent to ensure that the visual privacy of neighbouring apartments is protected. A condition of consent is recommended to be imposed to this effect.

Ventilation

The submitter has objected to the nil setback of this proposed development due to its impact on the ventilation to the future occupants at 28 Second Avenue, as it will diminish their amenity and access to ventilation. The development at 28 Second Avenue which is currently under construction comprises window and door openings to apartments from Level 4 and above which provide natural ventilation. The ventilation diagram for the development at 28 Second Avenue (JRPP-14-02593) indicates that the corner apartments within the development achieve natural ventilation by relying on inflows from wind for the windows facing north and south. This development does not obstruct those flows as shown in the figure below.



VENTILATION DIAGRAM: LEVEL 11-23

Figure 7: Extract from the Ventilation Diagram for the development at 28 Second Avenue, which demonstrates the natural cross ventilation for Levels 11-23 (Source Tony Owen Architects).

The subject application is accompanied by a Qualitative Wind Assessment prepared by SLR Consulting dated April 2017 which explains the characteristics of the Sydney region wind climate as follows:

Sydney is affected by 2 primary wind seasons:

- Summer winds occur mainly from the north-east, south-east and south.
 - While north-east winds are the more common prevailing wind direction (occurring typically as offshore land-sea breezes), south-east and south winds generally provide the strongest gusts during summer.
- Winter/early Spring winds occur mainly from the west and the south.
 - West quadrant winds (south-west to north-west) provide the strongest winds during winter and in fact for the whole year.

The following figure is the Annual Sydney Wind Rose for years 2005-2009, which shows the stronger winds in dark blue from the north-east, south and west.

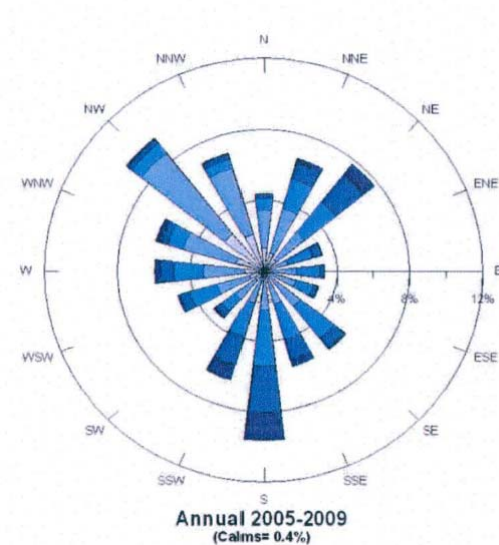


Figure 8: Annual Sydney Wind Rose for years 2005-2009

Refer to the aerial view below which demonstrates the orientation of the subject site and objector's site relative to the above prevailing wind directions.



Figure 9: Aerial view of the subject site (outlined in red) and the submitter's site at 28 Second Avenue to the west (on the corner of Second Avenue and Boys Avenue).

The number and location of openings which contribute to natural cross ventilation for the development at 28 Second Avenue are not blocked or reduced as a result of this development. The building footprint of the tower at 28 Second Avenue features a centrally located services core which has a reduced setback to the shared boundary of 2.8 metres. The proposed development has a similar layout, with a nil setback to the shared boundary. The culmination of these building footprints creates a corridor between the two buildings, with a pinch point between their service cores which is centrally located along their shared boundary.

For the northern portion of the development at 28 Second Avenue, ventilation is expected to continue to be provided to these window and balcony openings on its eastern elevation from the north and north-eastern prevailing winds, in particular given the proposed development is gradually stepped away from this elevation. Any winds from a eastern direction would not be expected to be directly available to 28 Second Avenue, given any form of similar permissible redevelopment at the subject site.

For the southern portion of the development at 28 Second Avenue, ventilation is expected to continue to be provided to these window and balcony openings on its southern and western elevations from the southern prevailing winds.

In the context of redevelopment of a high density CBD with varied allotment sizes and dimensions, it is anticipated that neighbouring developments will impact on each other to varying degrees.

Solar access

The allotment at 28 Second Avenue is orientated so as to predominantly benefit from solar access from the north and the west, as demonstrated in the shadow diagrams which accompanied their DA:

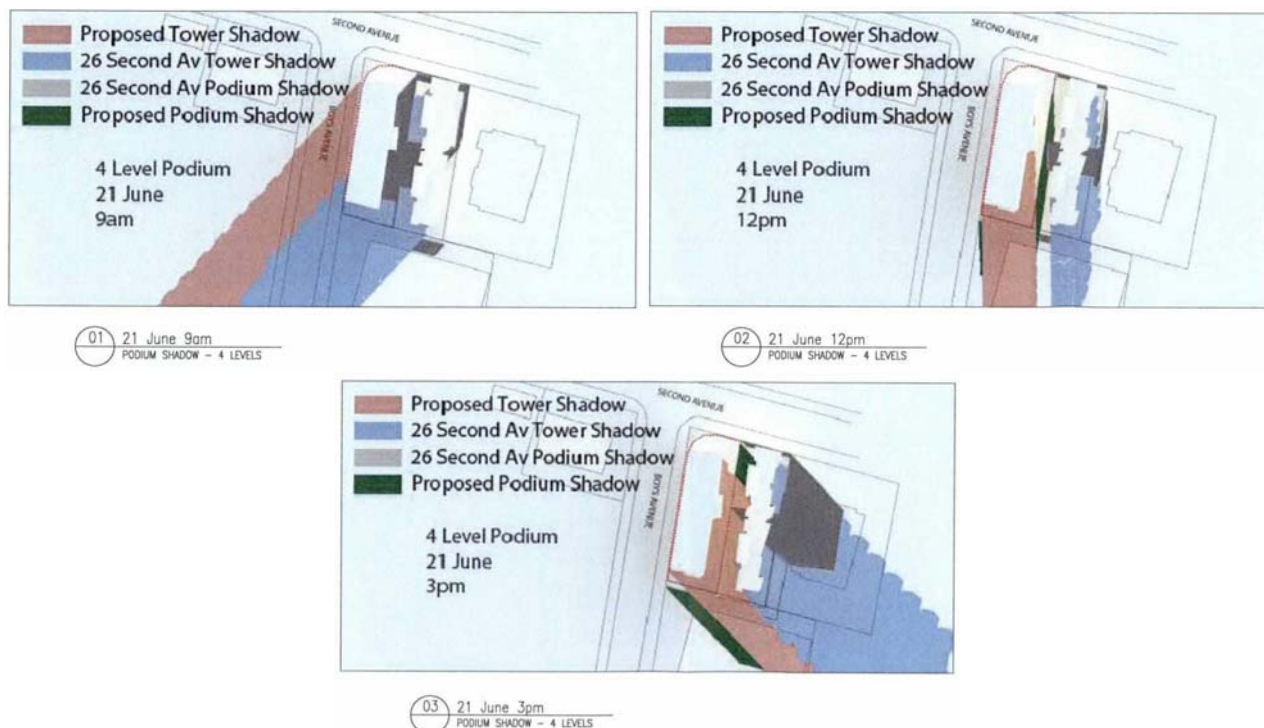


Figure 8: Extract from the Shadow Diagrams for JRPP-14-02593 for the mixed use development at 28 Second Avenue, Blacktown (Source: Tony Owen Architects, dated December 2014).

As demonstrated in the above figure, it is anticipated that the redevelopment of 28 Second Avenue will overshadow the majority of the building at 28 Second Avenue at 9 am at midwinter. By midday, neither of the developments overshadow each other at midwinter. From approximately 1 pm onwards at midwinter, the development at 28 Second Avenue begins to overshadow the subject site.

The proposed Shadow Diagrams provided at **Attachment 5** indicate that the proposed development will overshadow the adjoining site at 28 Second Avenue in the morning throughout the year, however the shadow impacts are clear of 28 Second Avenue by midday. However, this overshadowing is minimal.

Amenity

The submitter objects to the reduced setback and presentation of the western elevation and blank wall effect of the proposed development, and the resulting loss of amenity for the future occupants at 28 Second Avenue.

Of the 106 apartments at 28 Second Avenue, 6 are solely east facing (located on levels 5 to 10). A further 40 apartments are also east facing, however their primary orientation is either to the north, or to the south and west. The following figure identifies the location of these 6 apartments which are solely east facing and their relationship with the proposed development.

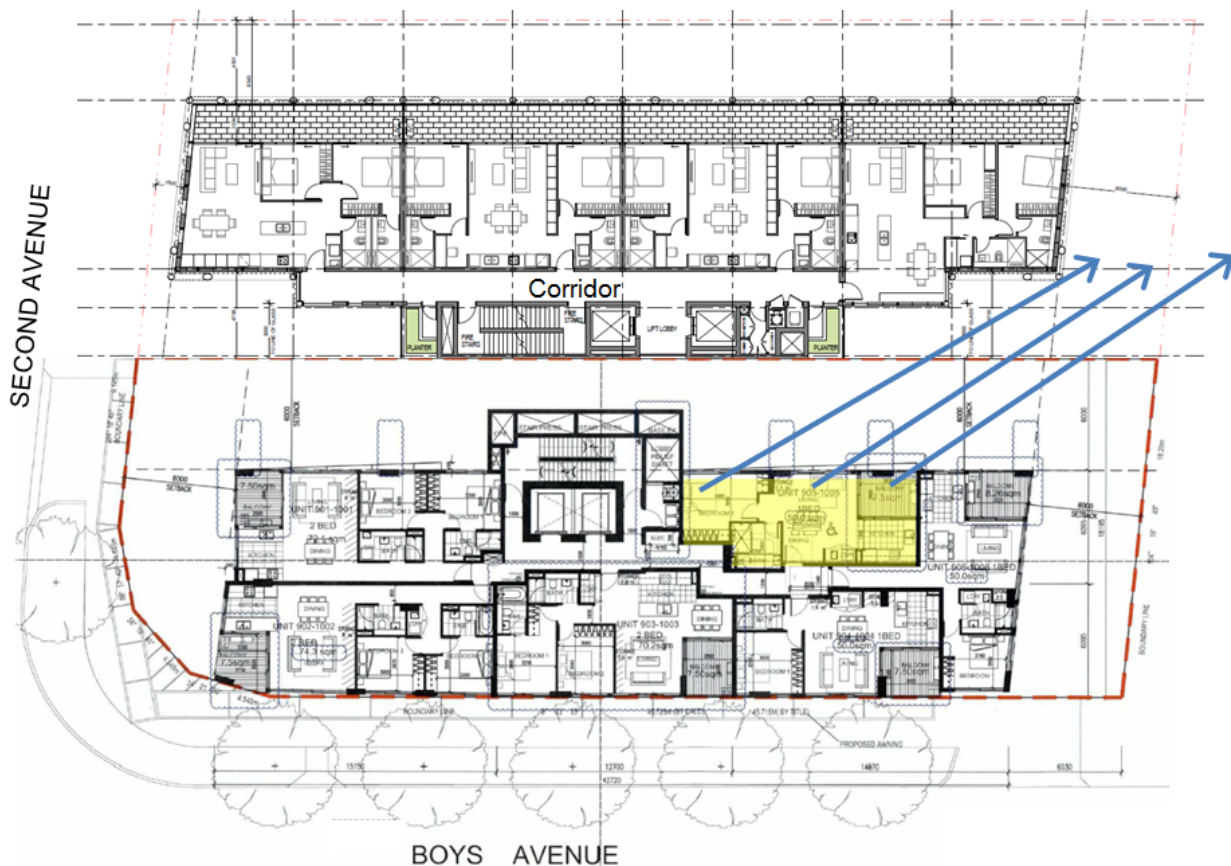


Figure 9: Analysis of the orientation of the 6 apartments (highlighted in yellow) on Levels 5 to 10 within the development at 28 Second Avenue, Blacktown which are single aspect to the west. The potential view lines, which are clear of the proposed development, are demonstrated by the blue lines.

The presentation of the proposal as viewed from these 6 apartments is shown in the figure below.

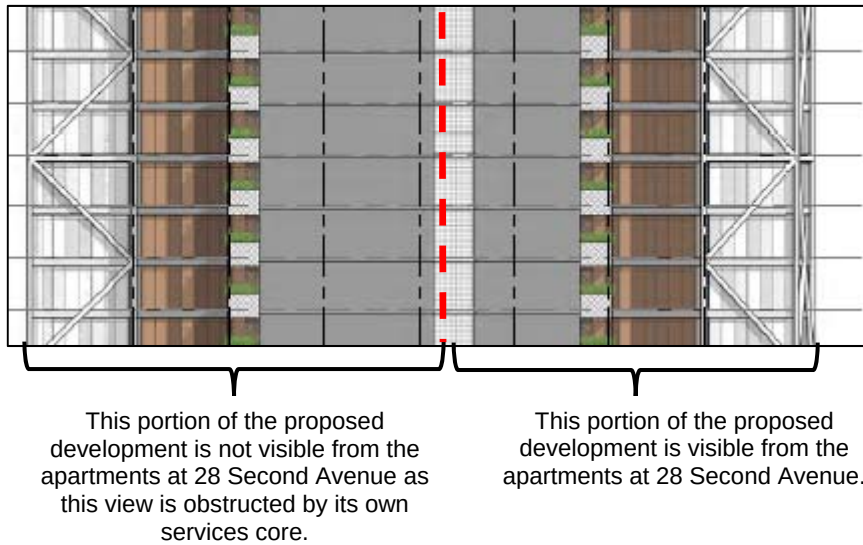


Figure 10: Outlook of the proposed development as viewed from the 6 single aspect (east facing) apartments on Levels 5 to 10 within the development at 28 Second Avenue, Blacktown.

The outlook from these 6 single aspect apartments is a mix of finishes and materials with a gradually increasing setback, being 2.8 m to the services core (concrete panel rendered in a mid-grey colour), 9 m to apartments (concrete panel rendered in a brown colour and a bronze glazed window element) and 10.7 m to further setback apartments (panels in tones of grey and silver and external steel structures to provide articulation).

Although there are only a small number of apartments at 28 Second Avenue which do not benefit from a secondary outlook away from the subject site (only 6 out of 106 apartments), consideration is to be given as to the impact of this reduced setback on their amenity and sense of openness. These 6 apartments were designed to have their windows and balcony directly to the east, with the expectation that the outlook from their windows and balcony is the 9 storey mixed use development on the subject site approved under DA-13-01143 as shown in the figure below.

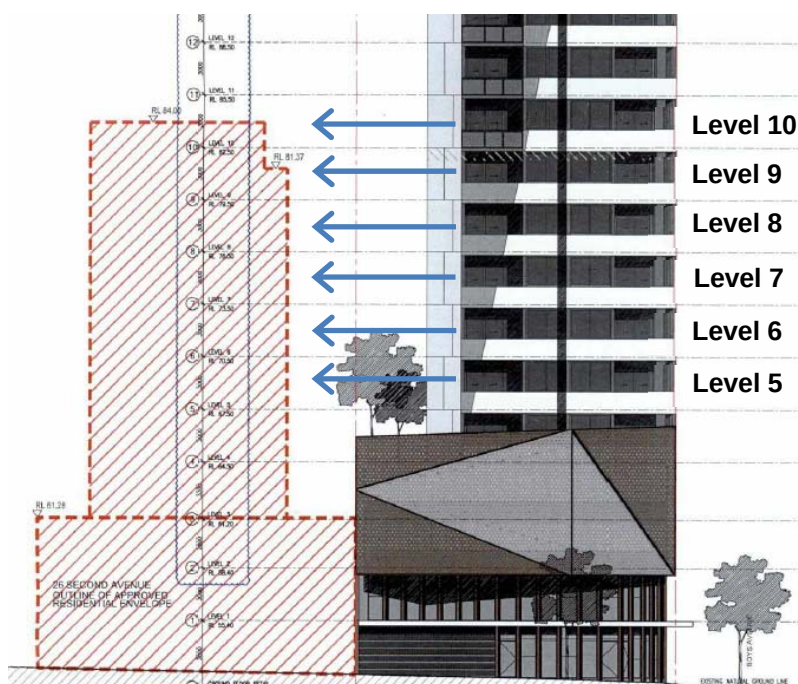


Figure 11: Extract from the approved North Elevation plan showing the relationship between the development at 28 Second Avenue and the building envelope approved in DA-13-01143 on the subject site.

When considered in light of the previously approved development on the subject site (DA-13-01143), the building separation to these 6 east facing apartments at 28 Second Avenue ranges from 10 m to 12 m. This application reduces this building separation from 2.8 m to 10.7 m. We acknowledge that this reduced building separation distance will appear visually closer from the perspective of these 6 east facing apartments.

However, should a development be proposed on the subject site which satisfies the minimum building separation with a setback to the shared boundary of 6 m, the western elevation of such a development would reasonably include window openings and balconies, similar to that already approved on the site in DA-13-01143 as shown in the figure below.



Figure 12: Extract from the approved West Elevation plan showing the windows and balconies at a setback of 6 m from the shared boundary as approved in DA-13-01143 on the subject site.

In comparison, the proposed development orientates its outlook away from the development at 28 Second Avenue and improves its level of visual and acoustic privacy. On balance, the reduced setback of the proposed development is considered satisfactory as the visual and acoustic privacy of the future occupants at 28 Second Avenue is protected, and the western elevation of the proposed development provides an interesting mix of materials and finishes which is gradually stepped away from the shared boundary to provide an interesting visual appearance.

However, given the strong concerns raised by the submitter and in consultation with our City Architect, we consider it appropriate to impose further amendments to the proposal including:

Required amendment	Reason for amendment
Increasing the setback of the core from nil to 100 mm to the western boundary. Decorating the western elevation of the core with a pattern panelling system.	To provide space for construction access to enable the patterned finish of the western elevation of the core.
Relocating the core approximately 6 metres to the north.	To open up the outlook looking south-east for the apartments in 28 Second Avenue which have a single outlook towards this development.
Incorporating additional fire rated glass blocks along the western elevation of the fire stair.	To break up the appearance of the building's core.

Required amendment	Reason for amendment
Treating all west facing windows to be tinted and translucent.	To ensure these windows allow for light to pass through, but not detailed shapes.
Deletion of the planter boxes on all levels along the building's core.	To reduce the length of the core by approximately 4 metres.

These requirements are proposed be imposed as deferred commencement conditions.

Impact of the setbacks on the structural integrity of the adjoining development

The application is accompanied by a Geotechnical Investigation Report prepared by JK Geotechnics, dated 8 June 2016. This report comprises drilling, sampling and in-situ testing of the site. This investigation considered geology and subsurface conditions of the site, the ground materials of the site including existing fill, residual clay materials and shale bedrock and an absence of groundwater seepage. The report provides principal geotechnical findings, issues and recommendations to be considered in the planning, design and construction considerations for the development as follows:

- “1. Prior to demolition or excavation commencing, dilapidation reports are to be compiled on adjoining or neighbouring structures.
2. The excavation will be carried through fill and residual soils as well as through shale bedrock. Hard rock excavation conditions will be encountered in the lower shale profile below depths of around 7 m to 8 m. Most of the bedrock profile will require the use of rock excavation equipment, which may transmit vibrations through the rock mass that could affect adjoining buildings. Vibration effects on adjoining structures must be considered.
3. The proposed basement will extend to the site boundaries and, therefore, will be in close proximity to the neighbouring buildings to the west (where a multi-level building with deep basement is under construction), east and south. The basement excavations will require support by anchored or propped shoring pile walls, over both the soil sections and the shale of variable quality, preferably down to below the lowest excavation level.
4. Groundwater is not expected to be a significant issue since groundwater was not observed in BH2 at all and not much evidence of groundwater seepage was noticed within the excavation (which was around 7 metres deep) being carried out in the adjoining property (No. 28) to the west on the days of the fieldwork. Also, in our opinion the groundwater level measured in BH1 well does not represent a groundwater table as such but rather the presence of perched or transitory water within the rock mass that is moving to greater depths. Further consideration of the groundwater is recommended during the later detailed design and construction stages of the proposed development.
5. The only competent foundation for the proposed building is the shale bedrock. We recommend footings be founded uniformly into the shale of at least medium strength, which is expected to occur below the proposed lowest basement level.
6. The residual clays are considered to be highly reactive, i.e. similar to Class H2 clays in AS2870-2011.
7. A waste classification will need to be assigned to any soil excavated from the site prior to off-site disposal. Subject to the appropriate testing, material can be classified as Virgin Excavated Natural Material (VENM), General Solid, Restricted Solid or Hazardous Waste. If the natural soil has been stockpiled, classification of this soil as Excavated Natural Material (ENM) could also be undertaken. However, the criteria for ENM are more stringent and the cost associated with attempting to meet these criteria

may be significant. In this respect, reference must be made to a separate report, Ref. E29344K, which has been prepared by our specialist division Environmental Investigation Services (EIS)."

The report also states that the detailed structural design of the proposed development will be undertaken prior to the issue of any Construction Certificate, at which point further detailed investigations will be undertaken by the Applicant.

It is recommended that a condition of consent is imposed on any consent issued requiring the submission of a report prepared by a suitably qualified structural engineer prior to the issue of any Construction Certificate. This report is to verify that the proposed development is structurally sound, and appropriate measures are to be implemented in the design, excavation and construction of this development to protect the structural integrity of the adjoining property at 28 Second Avenue.

Subject to the imposition of this condition of consent, we consider that the issue raised with regard to the impact of the development on the structural integrity of the adjoining building is capable of being resolved.

Impact of construction scaffolding on the adjoining site

The Applicant acknowledges that should they be required to obtain an easement for access over adjoining sites to enable the erection of scaffolding within adjoining sites, specifically 28 Second Avenue, that they will be responsible for requesting that easement for access from the relevant property owner(s). This is an issue which is the responsibility of the person acting on the consent during the construction stage of the development.

It is recommended that a condition of consent is imposed requiring a Construction Management Plan to be submitted to Council which details the construction methodologies of this development and any requirements for accessing adjoining properties, and evidence of agreement from the affected adjoining property owner(s) to permit construction access within their site, prior to the issue of any Construction Certificate.

Subject to the imposition of this condition of consent, we consider that the issue raised with regard to construction scaffolding within the adjoining site is capable of being resolved given the agreement of the Applicant to obtain permission for this temporary site access.

Non-compliant site dimensions

Clause 5.3.1 of BDCP 2015 requires a minimum site width of 30 metres. The width of the site is 18.29 metres along the Second Avenue (northern) boundary, which is a shortfall of 11.71 metres.

The DCP also states "notwithstanding this, development must have regard to existing, adjacent sites which could become isolated as a consequence of that development. In these instances the developer will need to demonstrate how those sites not incorporated in the Development Application could be redeveloped successfully on their own in compliance with the provisions of the DCP." The redevelopment of this site does not constrain the redevelopment of any surrounding sites.

As previously stated, the historical development of the CBD has been undertaken in a piecemeal manner and has been influenced by certain factors, including the specific needs of landowners and a broad range of site areas and dimensions. The varied dimensions of the sites in the CBD requires us to consider if the redevelopment of each site forces an adjoining site to become isolated and unable to be redeveloped successfully. The adjoining site to the west, 28 Second Avenue, is already nearing completion and its redevelopment is not hindered. The adjoining site to the east, 22 Second Avenue, has a width of approximately 37 m, and is capable of being redeveloped successfully on its own. The property to the south, 23 First Avenue, has frontage to both Boys Avenue and First Avenue of approximately 55 m and is capable of being redeveloped

successfully on its own. Refer to **Figure 6** below which demonstrates the relationship between the subject site and the adjoining properties.

Given the Applicant has demonstrated that the adjoining sites are being, or are capable of being, redeveloped successfully on their own, we do not object to the redevelopment of this site in isolation, or to the reduced width.

This site is not isolated by tower developments on both sides, however, given the adjoining site to the east at 22 Second Avenue is existing housing owned by NSW Land and Housing Corporation, it virtually isolates this site. This is due to the potential sale of 22 Second Avenue being highly dependent on an Expression of Interest or tender process, the Applicant being successful in winning the tender and incorporating 22 Second Avenue into this development site. This approach is very difficult given the Government's lengthy land sale process.

Therefore we support this proposed standalone redevelopment of this narrow site.



Figure 6: Aerial photo of the site and immediate surrounds, demonstrating the dimensions of the sites (Source: Nearmaps, January 2018).

Cross-ventilation

Of the proposed 90 apartments, 40 (44 %) achieve natural cross ventilation, being the corner apartments only. The remainder of the apartments have windows and doors which open to each apartment's balcony to the east.

Section 4B Natural ventilation of the ADG includes the following design criteria:

- "1. At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building. Apartments at 10 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.

2. Overall depth of a cross-over or cross-through apartment does not exceed 18 m, measured glass line to glass line.”

The first 9 storeys of the development consists of 28 apartments, 24 (50%) of which are corner apartments and are naturally cross ventilated. This is a shortfall of 3 apartments (10%).

Above the first 9 storeys, 50% of the apartments are cross-through (corner) apartments which do not exceed a depth of 18 metres, and all apartments consist of open balconies with openable doors to all open plan living rooms and all bedrooms which allow for adequate natural ventilation and which cannot be fully enclosed. This is consistent with the design criteria of the ADG.

Therefore, the proposal is consistent with the ADG design criteria for natural ventilation, with the exception of 3 apartments. We consider this to be a minor departure from the ADG, in particular given the apartments achieve a comfortable indoor environment for residents. The departure from the ADG design criteria is supported in this instance.

Moreover, we consider the concerns raised in the public submissions to be resolved through the careful design of this proposal and to be capable of being managed by conditions of consent. Therefore the concerns raised in the public submissions are not considered sufficient to warrant the refusal of this application.