

## Report to Sydney Central City Planning Panel

<b>Panel reference</b>	2016SWC007 DA
<b>DA number</b>	JRPP-16-04459
<b>Proposed development</b>	Construction of a 22 storey mixed use development comprising retail and commercial space, 90 residential units, 103 car parking spaces within 5 basement levels, drainage works and associated landscaping
<b>Street address</b>	26 Second Avenue, Blacktown
<b>Applicant</b>	Merhis Blacktown Pty Ltd
<b>Owner</b>	Better Buildings Pty Ltd
<b>Date of DA lodgement</b>	22 November 2016
<b>Number of submissions</b>	1
<b>Regional development criteria (s9.1 EP&amp;A Act)</b>	Capital investment value (CIV) over \$20 million (DA has CIV of \$23.6 million)
<b>All relevant s4.15 matters</b>	<ul style="list-style-type: none"> <li>• Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>• Blacktown Local Environmental Plan (BLEP) 2015</li> <li>• Blacktown Development Control Plan (BDCP) 2015</li> <li>• Central City District Plan 2018</li> </ul>
<b>Report prepared by</b>	Blacktown City Council
<b>Report date</b>	10 May 2018
<b>Recommendation</b>	Approval subject to deferred commencement conditions

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? Yes

**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments, where the consent authority must be satisfied about a particular matter, been listed and relevant recommendations summarised in the Executive Summary of the assessment report? Yes

**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? Yes

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (s94EF)? No

**Conditions**

Have draft conditions been provided to the Applicant for comment? Yes

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## ATTACHMENTS

- Attachment 1 – Location map
- Attachment 2 – Aerial image
- Attachment 3 – Zoning extract
- Attachment 4 – Detailed information about proposal and DA submission material
- Attachment 5 – Development Application plans
- Attachment 6 – Assessment against planning controls
- Attachment 7 – Applicant's clause 4.6 request
- Attachment 8 – Council assessment of clause 4.6 request
- Attachment 9 – Consideration of the issues raised in the submission
- Attachment 10 – Draft conditions of consent

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## 1 Executive summary

- 1.1 This report considers a Development Application (DA) for the construction of a 22 storey mixed use development comprising 55 squares metres of retail space, 98 squares metres of commercial space, 90 residential units, 103 car parking spaces within 5 basement levels, drainage works and associated landscaping at 26 Second Avenue, Blacktown.
- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments have not identified any issues of concern that cannot be dealt with by conditions of consent, including deferred commencement conditions.
- 1.3 The Applicant's request to vary the Blacktown Local Environmental Plan 2015 development standard for height of buildings has been assessed, being a variation of up to 4 metres above the permissible height limit of 72 metres relating to rooftop plant and equipment elements. We consider the proposed tower development to be consistent with the scale of development envisaged and planned for in the Blacktown Central Business District.

- 1.4 Assessment of the application has been undertaken in accordance with clause 7 of *State Environmental Planning Policy No. 55 (Remediation of Land)* and we are satisfied that the site is suitable for the proposed commercial premises and shop top housing development.
- 1.5 The application is satisfactory when evaluated against section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- 1.6 This report recommends that the Panel approve the application subject to the recommended conditions, including deferred commencement conditions.

## 2 Key issues list

- 2.1 The key issues that need to be considered by the Panel in respect of this application are:
  - a. **Building height variation (Section 7.1)**

The Applicant seeks a building height variation of 5.6%. This comprises 350 mm for a minor portion of the roofline, and for rooftop plant and equipment up to 4 m above the permissible height limit. The variation has been assessed and is considered acceptable on its merits.
  - b. **Building separation (Section 7.2)**

The Applicant seeks a reduced building separation to a minimum 6 metres between the buildings, which is non-compliant with the numerical building separation under the Apartment Design Guide which requires up to 24 metres building separation for buildings of this height. However, the Apartment Design Guide also allows for reduced building separation. The proposed building separation does meet the daylight access, urban form context and acoustic and visual privacy objectives of the control. Further, the allowance for a reduced building separation is consistent with other approved developments within the Blacktown CBD. The reduced building separation predominantly relates to the portion of the development which has minimal windows fronting the adjoining mixed use development currently under construction at 28 Second Avenue, and is considered to protect their amenity, visual and acoustic privacy. We recommend amendments to the western elevation of the development, which primarily comprises the relocation of the lift core to the north by a distance of 6 metres. Subject to these amendments, the departure from this guideline is considered satisfactory on its merits.
  - c. **Natural ventilation (Section 7.3)**

The proposal achieves natural cross ventilation to 50% of the apartments in the first 9 storeys of the building, which is a shortfall of 3 apartments as required by Part 4B of the ADG. This is satisfactory as all apartments benefit from large sized windows and doors which open to their balconies, and are afforded a comfortable indoor environment for residents.
  - d. **Side setbacks (Section 7.4)**

The Applicant seeks a reduced building setback to the eastern and western side boundaries. The DCP requires a minimum setback of 6 metres. The proposal provides a varied setback of zero to 4.5 metres to its eastern boundary, and zero to 4.7 metres to its western boundary. The Applicant has demonstrated that the proposed setback provides for adequate solar access and privacy for the future residents of the neighbouring high rise building. Given the constraints of this narrow site, the reduced setback is considered satisfactory on its merits.

- e. **Site width** (Section 7.5)  
The DCP states that the minimum site width at the street shall be 30 metres for sites within sub-regional centres and that development must have regard to existing, adjacent sites which could become isolated as a consequence of that development. The site has a width of 18.29 metres, being a shortfall of 11.71 metres. However, the redevelopment of this site does not constrain the redevelopment of any surrounding sites. Effectively, this site is isolated as the site to the west is separately under development and the site to the east is existing housing owned by NSW Land and Housing Corporation, which is not easily capable of purchase, being subject to the tender process of a State Government agency. Therefore we support the redevelopment of this narrow and somewhat isolated site.
- f. **Issues raised by the submitter** (Section 8)  
The submission was received from the adjoining property owner to the west, whose site is currently under construction for a 24 storey mixed use development. The submission objected to the reduced setbacks and building separation and resulting impacts on the future residents at 28 Second Avenue with regard to amenity, ventilation and solar access, inadequacy of the DA submission material, failure to satisfy clause 7.7 Design Excellence of BLEP 2015, construction methods for the nil setback portion of the proposal, non-compliance with the site width requirements of BDCP 2015 and cross ventilation. Issues raised in the submission have been assessed and we believe they do not warrant the refusal of this DA.

### 3 Location

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- 3.1 The site is located within the Blacktown Central Business District (CBD) on the northern side of the railway line.
- 3.2 The location of the site is shown in **attachment 1**. The land immediately to the north, south, west and east of the site is zoned B4 Mixed Use. The land immediately to the east, west and south has a building height limit of 72 metres and the land immediately to the north has a building height limit of 56 metres.
- 3.3 The site is located approximately 200 metres north-east of Blacktown Station on the western rail line.

### 4 Site description

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- 4.1 The 992.7 square metres site is rectangular in shape with a narrow road frontage of 18.29 metres to Second Avenue.
- 4.2 The real property description of the land is Lot 80 DP 11157. The site is vacant and is temporarily being used as a construction staging area for the adjoining site to the west.
- 4.3 An aerial image of the site and surrounding area is at **attachment 2**.
- 4.4 The site is zoned B4 Mixed Use under Blacktown Local Environmental Plan 2015 and has a height limit of 72 metres. A copy of the zoning map is at **attachment 3**.
- 4.5 The site benefits from an existing approval for a 9 storey mixed use development approved on 17 September 2014 under DA-13-01143.

### 5 The proposal

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- 5.1 The Development Application has been lodged by Merhis Blacktown Pty Ltd for the construction of a mixed use development at 26 Second Avenue, Blacktown.

- 5.2 The Applicant proposes to construct a 22 storey mixed use development comprising 55 square metres retail space, 98 square metres commercial space, 90 residential units and communal open space areas. Vehicular access is via Second Avenue, with arrangements for waste storage and collection provided at-grade within the building. The proposal includes 103 car parking spaces within 5 basement levels. The proposal also includes stormwater drainage works and landscaping.
- 5.3 The application includes a clause 4.6 variation request to vary the building height by up to 4 metres above the permissible height limit of 72 metres. The height exceedance relates to the rooftop plant and equipment to provide access to the rooftop communal open space area.
- 5.4 Refer to **attachment 4** for further details of the proposal with regard to floor space ratio, building height, setbacks, dwelling mix, communal and private open space, landscaping, design verification, traffic, parking, noise impacts, stormwater and the pipeline infrastructure under Second Avenue.
- 5.5 Refer to **attachment 5** for a copy of the development plans.

## **6 Assessment against planning controls**

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- 6.1 A full assessment of the DA against relevant planning controls is provided in **attachment 6**, including:
- a. Environmental Planning and Assessment Act 1979
  - b. Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River
  - c. State Environmental Planning Policy (State and Regional Development) 2011
  - d. State Environmental Planning Policy (Infrastructure) 2007
  - e. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
  - f. State Environmental Planning Policy No. 55 – Remediation of Land
  - g. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
  - h. Blacktown Local Environmental Plan 2015
  - i. Blacktown Development Control Plan 2015
  - j. Central City District Plan 2018

## **7 Key planning issues assessment**

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- 7.1 **Building height variation to the Blacktown LEP 2015 development standard**
- a. The proposal seeks to vary the building height by up to 4 metres above the permissible height limit of 72 metres, being a variation of 5.6%.
  - b. The height exceedance relates to the lift overrun and roof structures to provide access to the rooftop common open space.

- c. The Applicant has submitted a written clause 4.6 request (see **attachment 7**) to justify that compliance with the height development standard is unreasonable and unnecessary in this instance. The Applicant's justification for supporting the variation is that it results in planning benefits as it facilitates the delivery of additional and improved access to the communal open space located on the roof of the building.
- d. **Attachment 8** identifies our assessment of the relevant Land and Environment Court matters for a consent authority to take into consideration when deciding whether to grant concurrence to the variation to a development standard.
- e. In our view there are sufficient environmental planning grounds to justify varying the development standard and we consider that the variation will not have unreasonable impacts on the neighbouring properties or the character of the area. Also, the variation to the height limit will result in a better planning outcome for the future residents as:
- The portions of the rooftop structures which exceed the height limit are not dominant and will not result in an adverse visual impact. They do not result in adverse shadow and amenity impacts on surrounding properties.
  - Given that the additional height does not result in any commercial gain for the developer (in terms of yield or number of storeys) and will result in a better designed building by providing access to rooftop common open space, it is considered that the proposed variation to the height standard should be supported in this instance. Similar variations have been approved within the northern precinct of the CBD, including the development at 28 Second Avenue and 2 - 10 First Avenue, Blacktown.
  - The proposed 22 storey building is considered to be consistent with the 72 metre height limit permitted on the site.
  - The proposal is consistent with the objectives of the development standard and the R3 Medium Density Residential zone.

## 7.2 Building separation

SEPP 65 requires that, when assessing an application, consideration must be given to the requirements of the Apartment Design Guide (ADG). Council's assessing officer's assessment against the relevant design concepts and numerical guidelines of the ADG is held at **attachment 6**. The development complies with the ADG with the exception of the proposed building separation as discussed below.

### (a) Building separation

- i Under the ADG the building separation controls increase as the height of the development increases, as follows:
- *Up to 4 storeys/12 metres*
    - 12 metres between habitable rooms/balconies
    - 9 metres between habitable rooms/balconies and non-habitable rooms
    - 6 metres between non-habitable rooms.
  - *5 to 8 storeys/up to 25 metres*
    - 18 metres between habitable rooms/balconies
    - 13 metres between habitable rooms/balconies and non-habitable rooms
    - 9 metres between non-habitable rooms.

- 9 storeys and above/over 25 metres
    - 24 metres between habitable rooms/balconies
    - 18 metres between habitable rooms/balconies and non-habitable rooms
    - 12 metres between non-habitable rooms.
- ii The proposal provides a 4 storey 'podium' form which has a nil setback to the western boundary and gradually tapers away from the eastern boundary. Above this podium form, the proposed development provides:
- Setbacks to the western (side) boundary
    - Nil setback to the centrally located services core
    - 3 metres setback to the access corridor (blank wall with the exception of 2 windows) and a small apartment wall south of lift core (blank wall with the exception of 1 window)
    - 4.7 metres to the blank apartment wall at the northern and southern corners.
  - A 4.5 metres setback from the balconies to the eastern (side) boundary
  - A 6 metres setback to the southern (rear) boundary.
- iii The proposed development does not satisfy the above building separation requirements. Due to the narrow width of this site (18.29 metres), the strict application of these guidelines would result in a building footprint with a width of 290 mm for the lower tower portion of the development, however for the 9<sup>th</sup> storey and above the building separation requirements mean that no development can occur on this site. Therefore, it is suitable to consider a reduced building setback for all tower levels of the development, as is the case in the adjoining approved development at 28 Second Avenue, which has a setback of 6 metres to habitable rooms and 2.8 metres to the services core for the 5<sup>th</sup> to top storeys inclusive.
- iv In this respect, the non-compliances from the western boundary include:
- The nil setback for the services core, where 3 metres is required under the ADG.
  - The 3 metres setback to part of the wall of the rear apartments, where 4.5 metres is required.
  - The 4.7 metres setback to part of the wall of the rear apartments where 6 metres is required. However, this part of the wall has no window openings and has a 'blank wall' effect, and therefore a distance of 4.5 metres is satisfactory and is achieved.
- v The non-compliance from the eastern boundary is:
- A 4.5 metres setback to balconies, where 6 metres is required under the ADG.
- vi The ADG, however, is a guide only and allows building separation controls to be varied in response to site and context constraints. Where a proposed development intends to provide less than the recommended distance separation, it must demonstrate that daylight access, urban form and visual and acoustic privacy has been satisfactorily achieved.
- As this proposal does seek to vary the building separation, these key parameters are each considered below for compliance.

### **Daylight access**

The proposed development provides solar access to 100% of the apartments, which complies with the minimum requirement for 70% of apartments to receive at least 2 hours of direct sunlight between 9 am and 3 pm in midwinter. Given the north-south orientation of the site, adjoining properties are not overshadowed by the development for at least 2 hours a day. With regard to the adjoining development at 28 Second Avenue, the apartments on its eastern elevation will be overshadowed by this proposal. However, a review of the solar analysis plans submitted for that development (JRPP-14-02593) identified that the eastern elevation of the neighbouring development does not achieve at least 2 hours solar access for the purpose of the ADG. Therefore, this proposal does not diminish the provision of solar access for 28 Second Avenue in accordance with the ADG. The building separation is therefore considered satisfactory as the proposal and adjoining sites will receive (or maintain) adequate solar access.

### **Urban form**

In considering the existing urban form, consideration should be given to other DAs approved in the Northern Precinct of the CBD, which similarly have side and rear reduced setbacks. The table below compares the subject development with other approvals in the area.

<b>Address</b>	<b>Development</b>	<b>Side Setbacks (above podium)</b>	<b>Determination</b>
20 Second Avenue	DA-02-5551 11 storeys mixed use	1 - 5.7 metres (average 3.3 metres)	Approved 24/10/2004
29-31 Second Avenue	JRPP-09-1574 20 storeys mixed use	6 metres – 16 metres (point encroachments to 5 metres)	Approved 26/08/2010
26 Second Avenue <b>(subject site)</b>	DA-13-1143 9 storeys mixed use	6 metres (point encroachments to 3.5 metres)	Approved 15/09/2014
28 Second Avenue <b>(site to west)</b>	JRPP-14-2593 24 storeys mixed use	6 metres (point encroachments to 4 metres)	Approved 23/06/2015
2-10 First Avenue	JRPP-15-2087 18 storeys mixed use	Minimum 6 metres with no point encroachments	Approved 26/07/2016
16 Third Avenue	DA-15-00467 18 storeys mixed-use	3 - 8 metres	Approved 04/11/2016
16 Second Avenue	JRPP-15-02533 19 storeys mixed use	Minimum 6 metres with no point encroachments	Approved 04/04/2017

It can be seen from the table that the proposed development is consistent with the setbacks established by previous approvals in the area. Further, the quality and character of the development is consistent with the objectives of the B4 Mixed Use zone, being *'to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.'* The design of the development encourages an active street frontage and achieves a very high design quality, with suitable bulk and scale that considers the restrictions of the site.

Part D of BDCP 2015 establishes the development controls which shape the urban form for the Blacktown CBD. The BDCP establishes setback requirements, enabling a building within the CBD to have a setback of 6 metres, with balcony encroachments to be considered on their merits. The plans demonstrate a 6 metres setback from the eastern boundary with balcony encroachments to 4.5 metres. The future development of the adjoining site to the east, at 22 Second Avenue, will be expected to provide a setback of 6 metres to provide an overall building separation distance of 12.5 metres to the apartments and 10.5 metres to the balconies of this proposed application. Although this is a minor shortfall, suitable measures are capable of being integrated into the design of the future development at 22 Second Avenue to protect the amenity and privacy of both developments. Therefore, the departure from the 6 metres building separation/setback is considered to be satisfactory on merit in this instance.

The proposed nil setback to the western boundary for the services core has not yet been approved in the CBD. This is a unique design approach which creates a 'blank wall' effect as viewed from the adjoining property. As viewed from the public domain, the access corridor and services core will be recessive in appearance, due to being setback behind the primary façade of the building and being treated with contrasting colours and materials.

However, given the strong concerns raised by the submitter and in consultation with our City Architects, we consider it appropriate to impose further amendments to the proposal by deferred commencement conditions to address the following:

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
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

Therefore, based on the urban form established by previous approvals in the area, as well as carefully considered recessive design for the corridor and services core of the building, and subject to the above amendments to the proposal, the development is considered to be compatible with the surrounding and future urban form.

#### ***Visual and acoustic privacy***

All of the proposed balconies are oriented towards the east. The proposed design is to create an open effect and therefore the majority of the elevation and the entirety of its balcony balustrades are glazed. Although these balconies have a setback of only 4.5 metres (being a shortfall of 1.5 metres), the habitable rooms have a 6.5 metres setback, being an additional 0.5 metres. This creates a balance which will assist with protecting the privacy of the future development of the adjoining site at 22 Second Avenue.

The proposal orientates the development away from the west and creates a 'blank wall' effect, with the exception of 3 windows which will not permit direct viewing as they will be bronze glazed and translucent. The absence of windows and balconies to this western elevation ensures that no visual and acoustic privacy impacts will result.

Based on the above assessment of solar access, urban form and visual and acoustic privacy, the proposed building separation of the development is considered satisfactory, and therefore a variation to the suggested building separation requirement is considered reasonable in this circumstance. It is also noted that the numerical standards in the ADG are guidelines only and that variations should not warrant refusal of the application. This development is considered to offer architectural merit through its carefully considered distinct and contemporary design.

### **7.3 Natural ventilation**

The proposal achieves natural cross ventilation to 50% of the apartments in the first 9 storeys of the building, which is a shortfall of 3 apartments as required by Part 4B of the ADG. This is satisfactory as all apartments benefit from large sized windows and doors which open to their balconies, and are afforded a comfortable indoor environment for residents.

### **7.4 Side setbacks**

The DCP requires a minimum setback of 6 metres. The proposal comprises a reduced building setback to both of the side boundaries. As discussed at Section 7.1 above, the proposed design of the building is unique in response to the narrow width of this site. The proposed setbacks enable a narrow tower building form to be constructed on this site, which is sited to the western side of the site (similar to the adjoining development at 28 Second Avenue). The Applicant has demonstrated that the proposed setback provides for adequate solar access and privacy for the future residents of the CBD. Given the constraints of this narrow site, the reduced setback is therefore considered satisfactory on its merits.

## 7.5 Site width

The DCP states that the minimum site width at the street shall be 30 metres for sites within sub-regional centres and that development must have regard to existing, adjacent sites which could become isolated as a consequence of that development. The site has a width of 18.29 metres being a shortfall of 11.71 metres. However, the redevelopment of this site does not constrain the redevelopment of any surrounding sites. In particular, the similar narrow site to the west on the corner of Second and Boys Avenue, which is currently under construction for a 24 storey mixed use development as approved in JRPP-14-02593.

This site is not isolated by tower developments on both sides, however given the adjoining site to the west at 22 Second Avenue is an 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.

## 8 Issues raised by the public

- 8.1 The proposed development was notified to property owners and occupiers within the locality between 19 July and 2 August 2017. The DA was also advertised in the local newspapers, including the Blacktown Advocate, and a sign was erected on the site.
- 8.2 During the notification period, one submission was received from the adjoining property owner to the west, which has a building currently under construction for a 24 storey mixed use development. The submission objected to the reduced setbacks and building separation and resulting impacts on the future residents at 28 Second Avenue with regard to amenity, ventilation and solar access, inadequacy of the DA submission material, failure to satisfy clause 7.7 Design Excellence of BLEP 2015, construction methods for the nil setback portion of the proposal, non-compliance with the site width requirements of BDCP 2015 and cross ventilation.
- 8.3 Refer to **attachment 9** for a detailed description of the issues raised, a detailed response to each item provided by the Applicant, and our consideration and response to the public submission.
- 8.4 We consider the concerns raised in the public submission to be resolved through the careful design of this proposal, which exhibits significant architectural merit, 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.

## 9 External referrals

- 9.1 The DA was referred to the following external authorities for comment:

Section	Comments
Roads and Maritime Services	Acceptable, subject to conditions.
TfNSW	Acceptable, subject to conditions.
NSW Police	Acceptable, subject to conditions.
Caltex Australia Petroleum Pty Ltd	Acceptable, subject to conditions.

## 10 Internal referrals

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- 10.1 The DA was referred to the internal sections of Council and is considered acceptable subject to conditions.
- 10.2 Our City Architect has carefully evaluated this application and advises that, subject to the abovementioned recommended design changes, the proposed design provides a site specific solution that exhibits design excellence through careful consideration of all major design issues including streetscape, amenity for residents, impact on neighbours and the resolution of structural and construction issues. The design maximises the opportunity for street activation by providing a retail tenancy with a direct connection to the public domain.
- 10.3 The streetscape presentation to 26 Second Avenue is complimentary to the adjoining development at 28 Second Avenue. Both designs incorporate triangular shapes into their external façade features to derive a sense of both variety and singularity to their buildings. The proposal exhibits architectural design merit and is a favourable outcome for this site and the CBD.

## 11 Conclusion

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- 11.1 The proposed development has been assessed against all matters for consideration and is considered to be satisfactory. The likely impacts of the development have been satisfactorily addressed and we conclude that the proposal is in the public interest. The site is considered suitable for the proposed development subject to conditions.
- 11.2 The issues raised in the public submission have been addressed by the Applicant, ameliorated through proposed amendments to the plans, or are capable of being managed by us through conditions of consent. Therefore the issues raised do not warrant the refusal of the application.

## 12 Recommendation

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- 12.1 Uphold the variation to the height of buildings development standard in clause 4.3 of the Blacktown Local Environmental Plan 2015 using clause 4.6 for the following reasons:
- a. The request is well founded and warrants approval.
  - b. Adherence to the height standard is unnecessary in this instance as no adverse impacts will result from the height breach.
  - c. The breach will enable access to rooftop communal open space, thus providing sufficient environmental planning grounds to justify the variation. The breach will enable development that is consistent with relevant zone objectives and thus is in the public interest.
  - d. We consider that the request is satisfactory and we support the variation.
- 12.2 Approve Development Application JRPP-16-04459 for the reasons listed below, and subject to the deferred commencement conditions listed at attachment 10.
- a. The proposal is in the public interest.
  - b. The site is considered suitable for the proposed development.
  - c. The requested clause 4.6 variation is acceptable.

JRPP-16-04459 – Mixed use development at 26 Second Avenue, Blacktown

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12.3 The submitter be notified of the Planning Panel's decision.



Holly Palmer  
Senior Project Planner

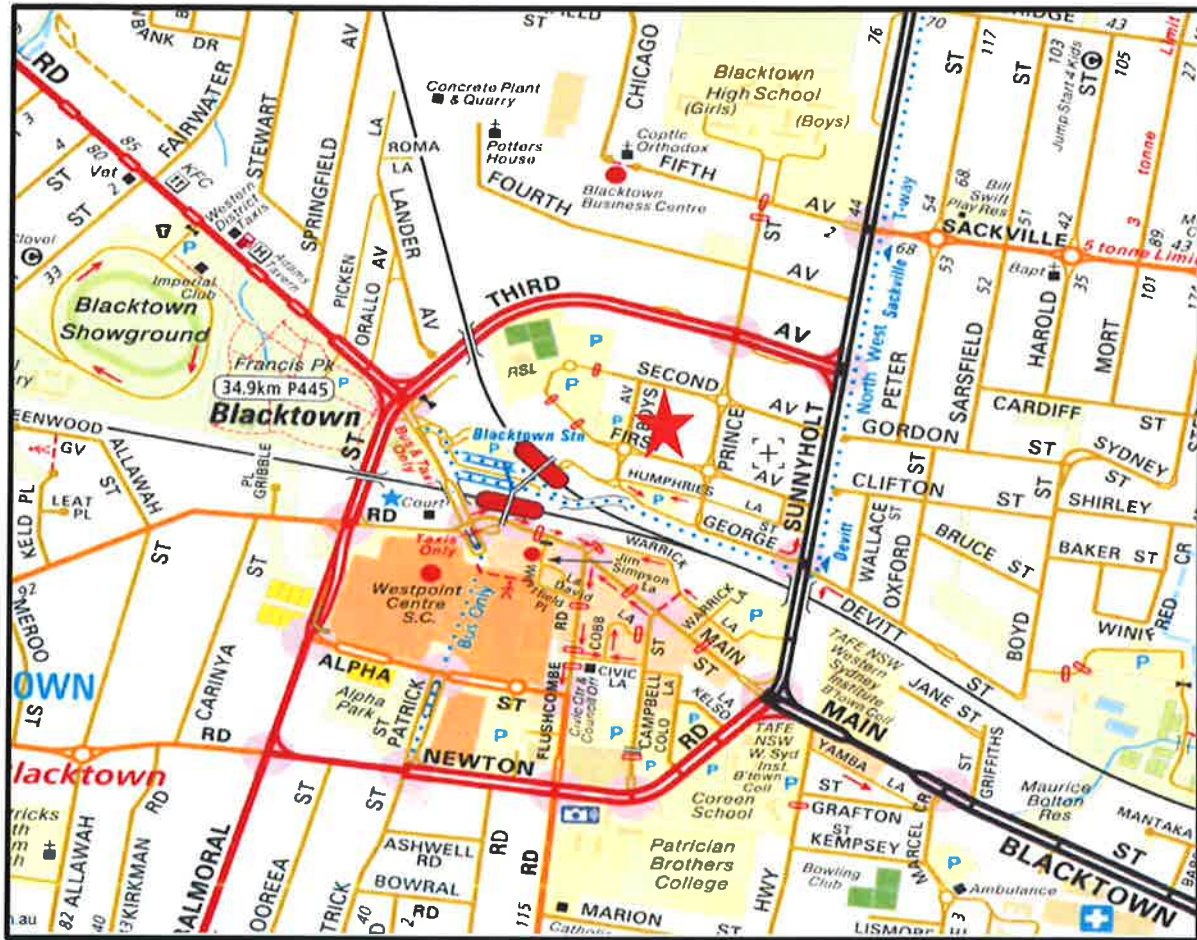


Judith Portelli  
Manager Development Assessment



Glennys James  
Director Design and Development

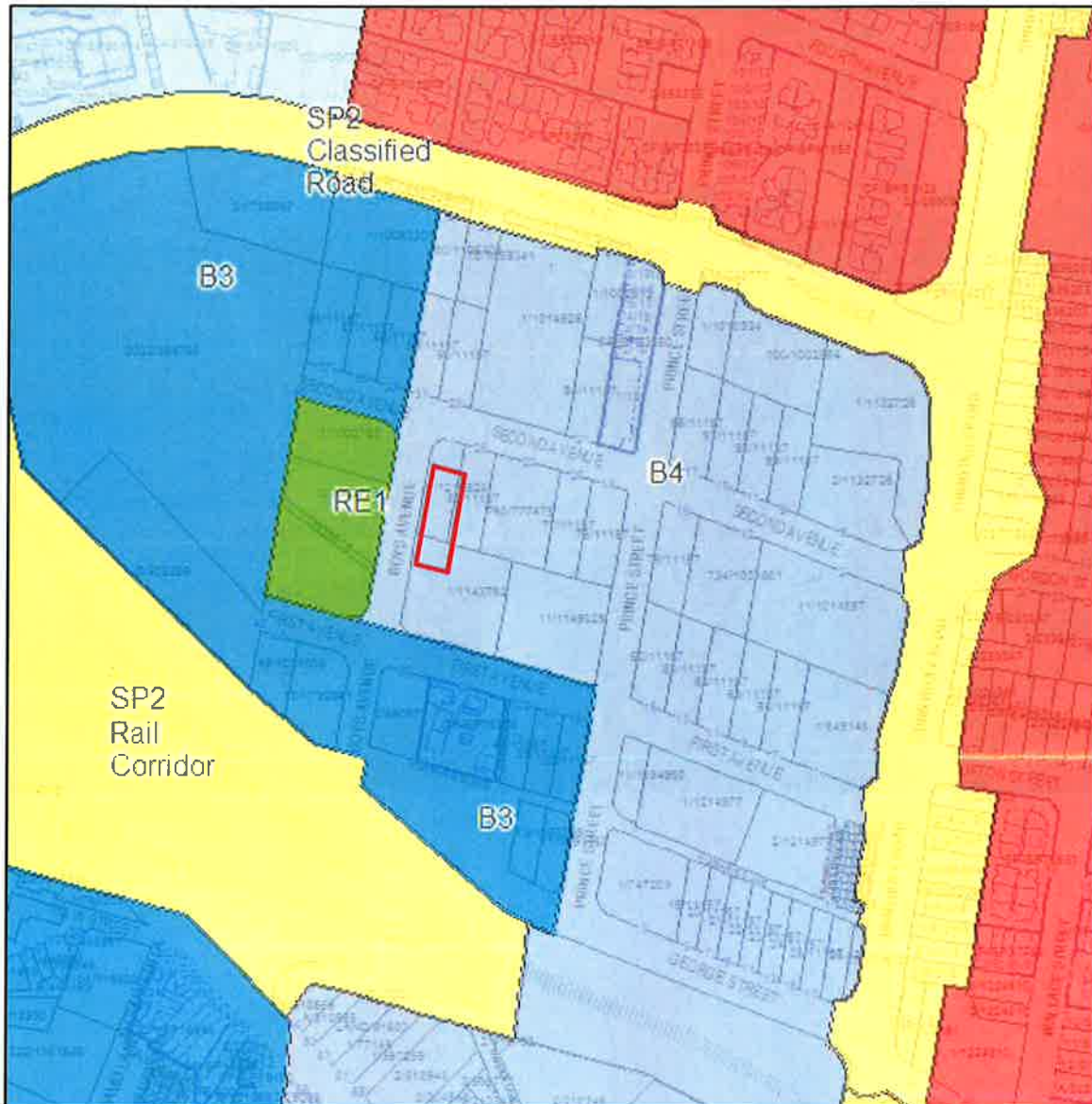
### Location map



Aerial image as of 18 January 2018



# Blacktown Local Environmental Plan 2015



- B4** Mixed Use
- B3** Commercial Core
- R4** High Density Residential
- SP2** Infrastructure
- RE1** Public Recreation
- B7** Business Park

## Detailed information about proposal and DA submission material

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### 1 The proposal

- 1.1 The Development Application (DA) has been lodged by Merhis Blacktown Pty Ltd for the following works at 26 Second Avenue, Blacktown:
- Construction of a 22 storey mixed use development
  - The ground level consists of a 55 square metres retail tenancy with direct frontage to the footpath, residential lobby, services, an access driveway and a loading bay towards the rear of the site with provision for a turntable for the use of residents and waste collection
  - Level 1 consists of a 98 square metres commercial tenancy, a recreation space/room and outdoor terrace for the use of residents
  - Levels 2 to 21 consist of 90 residential apartments
  - 5 basement car parking levels with access via Second Avenue along the northern boundary of the site. 103 car parking spaces are provided in the basement comprising 86 residential spaces, 13 resident visitor spaces, 2 retail car parking spaces and 2 commercial car parking spaces
  - Communal open space areas on Level 1 (indoor and outdoor) and the rooftop
  - Stormwater drainage works
  - Landscaping.
- 1.2 The proposal has an FSR of 8:1, which is compliant with the maximum FSR of 8.5:1 permissible on the site under BLEP 2015.
- 1.3 The majority of the roofline has a building height of 71.65 metres and satisfies the maximum building height of 72 metres under BLEP 2015. Due to the existing slope of the land towards the south of the site, the southern portion of the roofline has a building height of 72.35 metres, and exceeds the maximum building height under the BLEP 2015 by 350 mm.
- 1.4 The proposal also comprises a rooftop communal open space area with shading structures, a lift overrun and access stairs, which have a building height of up to 76 metres. These rooftop structures exceed the maximum building height of the development of 72 metres under the BLEP 2015 by 4 metres.
- 1.5 The ground level is generally a zero setback to the front (northern) boundary. The Level 1 front setback ranges from 6.5 metres to 9.5 metres. Levels 2 to 21 have a 1.5 metres front setback. These setbacks create a comfortable street scale and are in keeping with the desired future character of this CBD precinct. The setbacks and external steel structures provide articulation and an interesting appearance.
- 1.6 To the western (side) boundary the ground level has a zero setback, and the core of the building for Levels 1 to 21 and also the roof level have a zero setback. The northern and southern wings of Levels 1 to 21 have a 3 metres setback to the corridor and a 4.7 metres setback to the blank walls of the apartments.

- 1.7 To the eastern (side) setback, the ground level has a zero setback with a 300 mm to 500 mm setback for landscaping and the façade's external column structures. Level 1 has a 2 metres setback. The setback to Levels 2 to 21 gradually increases, and is 2.88 metres for Level 2, 3.6 metres for Level 3 and 4.5 metres for Levels 4 to 21.
- 1.8 To the south (rear), the ground level setback is at least 300 mm, and for Levels 1 to 21 the setback is 6 metres.
- 1.9 The apartment mix consists of 30 x 1 bedroom apartments (33 %) and 60 x 2 bedroom apartments (67 %).
- 1.10 The communal open space areas include an indoor recreation space on Level 1 and an outdoor terrace on Level 1 with seating and a playground area comprising a timber decked area for an open deck or sandpit. This area also comprises feature landscaping, including a green wall along the eastern side of the building. A communal open space area is also provided on the rooftop, with seating areas, lawn areas with raised perimeter seating and facilities. The rooftop area is broken up by planters, green walls and a trellis with vines growing over for shade. Lift and stair access is provided to the communal open space areas.
- 1.11 All apartments feature generously sized balconies with direct access from the living area and each bedroom. The balcony balustrades of the apartments on Levels 2 and 3 are solid and have planters for privacy.
- 1.12 Landscaping plans indicate a selection of trees, shrubs, groundcovers, vines and climbers and green walls, including Australian native plants. Deep soil areas for tree planting are provided at the south-eastern and south-western corners of the site.
- 1.13 9 adaptable dwellings are provided, being 10% of the apartments.
- 1.14 The proposal presents a contemporary architectural style with careful consideration of the constraints of the site and surrounding properties. The building is orientated to address the narrow street frontage, and incorporates steel structures painted in dark grey, white and yellow to create the appearance of an 'exo skeleton', to create an interesting and cohesive pattern on the façade of the building.
- 1.15 This design approach is effective in creating recessions and projections in the appearance of the development, and complements the other external building materials, including concrete balustrades painted in white, modular framed façade panels in grey and silver, glazing, metal screening for a landscaped wall trellis, and precast concrete panels in brown and grey.
- 1.16 The western side of the building has been designed to respond to the adjoining mixed use building which is currently under construction at 28 Second Avenue. This is achieved by siting the building and orientating the floorplan layout so as to avoid any direct lines of sight from the habitable rooms within this development to the adjoining development.
- 1.17 The design complements other development in the immediate area which are recently approved and/or currently under construction. The development assists with setting a high quality standard for the transitioning character of the Blacktown Central Business District, is locality and creates a desirable streetscape.
- 1.18 A Design Verification Statement prepared by registered architect Bruce Wolfe of Conrad Gargett Pty Ltd Architects has been prepared for the development, in accordance with the requirements of SEPP 65.

## 2 Traffic and parking

- 2.1 The application is accompanied by a Traffic and Parking Impact Assessment prepared by ML Traffic Engineers. The report provides a traffic impact assessment that includes a review of the surrounding road network, public parking opportunities, existing traffic controls, existing traffic volumes, intersection assessment and public transport. The assessment considers the proposal's parking requirements and concludes that the proposed provision of car parking is sufficient to minimise parking overspill into public areas, in particular given the ease of access to public transport.
- 2.2 The assessment identifies that the development is a moderate trip generator for the weekday morning and afternoon peak hours and concludes that the additional trips can be accommodated at the nearby intersections and road network without noticeably affecting intersection performance, delays or queues.

## 3 Noise

- 3.1 This DA is required to demonstrate the proposed development will satisfy the requirements of State Environmental Planning Policy (Infrastructure) 2007 and *Development near Railway Corridors and Busy Roads – Interim Guidelines*. The application is accompanied by a DA Stage Environmental Noise Assessment prepared by Koikas Acoustics Pty Ltd, which includes recommendations for the installation of acoustic treatments to protect against noise intrusion to future occupants of the building from road traffic, mechanical plant noise and inter-tenancy noise transmission between adjoining units.

## 4 Contamination

- 4.1 The application is accompanied by a Stage 2 Environmental Site Assessment prepared by Environmental Investigation Services. This assessment included soil samples due to fill material being identified on site, including asbestos. The assessment concludes that the site can be made suitable for the proposed development subject to the preparation of an Asbestos Management Plan for the site prior to excavation. The assessment also recommends that, following removal of the fill material, additional tests of the underlying natural soil / bedrock need to confirm that it is classified as virgin excavated natural material.

## 5 Stormwater and Flooding

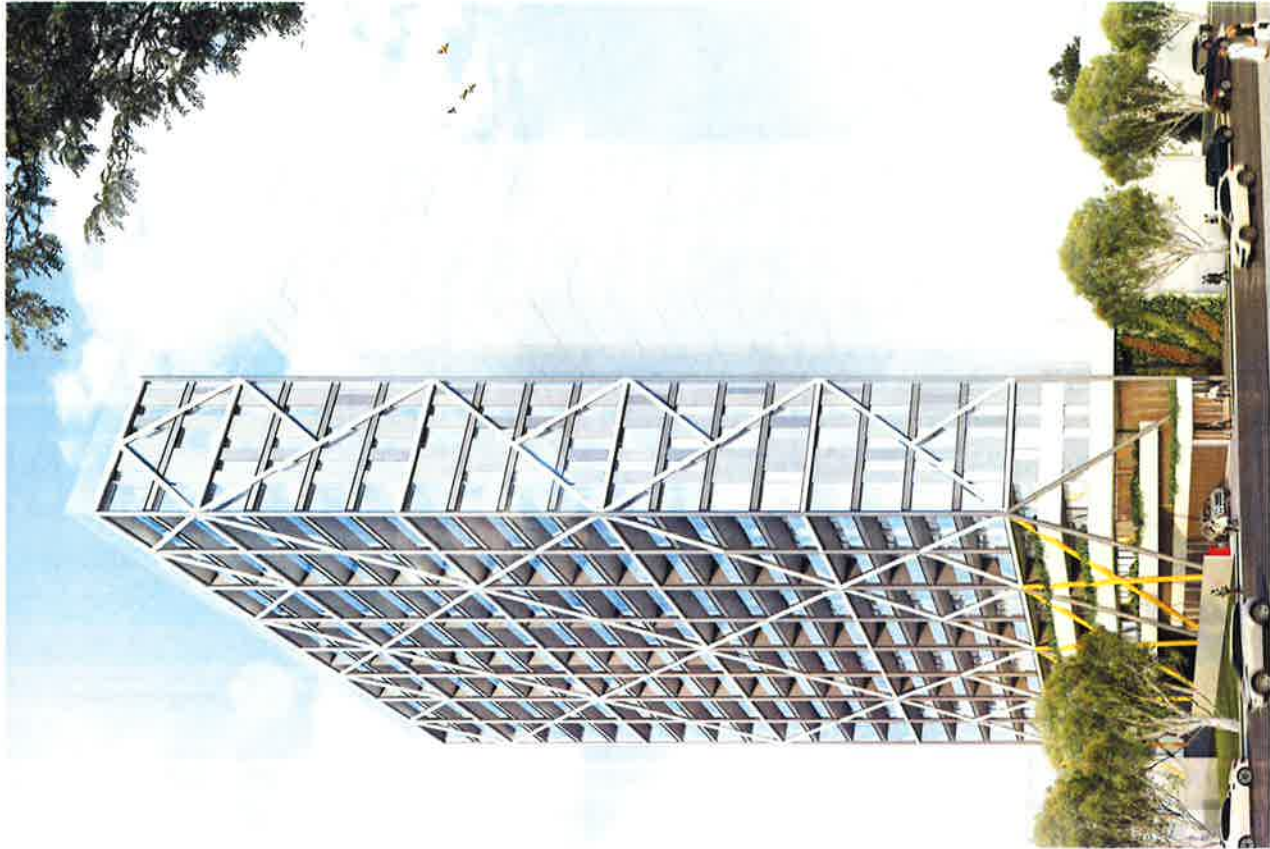
- 5.1 The existing contours of the immediate area of the site have the potential to result in main stream flooding to the west of the site. In large storm events, stormwater flows could travel through the site from the street. This application is accompanied by a Flood Study prepared by Optimal Stormwater Pty Ltd, which considers the capacity of the underground stormwater pipe within Second Avenue, the overland flow on Second Avenue and the potential flooding impact on this site. The flood modelling completed within this study concludes that the estimated 100 year flood level adjacent to the site in Second Avenue is 52.66 Australian Height Datum (AHD). In accordance with the Blacktown City Council's Engineering Guide for Development 2005, the ridge level of the basement driveway is to be 300 mm above this flood level, being at least 52.96 AHD to protect the basement carpark from flooding. The proposed ridge level of the basement driveway is 52.96 AHD, which satisfies this minimum requirement.

## 6 Pipeline infrastructure

- 6.1 Pipeline infrastructure is located underneath Second Avenue. The owner and operator of this pipeline, Caltex Australia Petroleum Pty Ltd, has advised that the pipeline carries gasoline, diesel and jet fuel. Caltex has not raised any objection to this application and recommends that, prior to the commencement of works on site, a Safety Management Study (SMS) is to be carried out in consultation with Caltex and must be conducted to comply with AS 2885 'Pipelines – Gas and Liquid Petroleum' and the Pipelines Regulation. Any recommendations from this Study are to be incorporated into the design of this development.
- 6.2 The applicant was requested to provide the SMS at DA stage, however the applicant has objected to this as some of the information required to complete the SMS, especially that related to detailed construction methodology and detailed design, is not fully available at DA stage. Given Caltex has confirmed that the SMS can be completed in the Construction Certificate stage prior to construction commencing, the applicant has requested that a condition of consent is imposed to this effect.

# Development Applications plans

# Attachment 5



## PROPOSED UNITS DEVELOPMENT AT 26 SECOND AVENUE BLACKTOWN

Sheet Number	Sheet Name	Current Revision	Revised Date
A0000	Cover Sheet	9	02/05/17
A1000	Site Plan	4	DA Update
A1100	Shadow Diagrams	4	DA Update
A2101	Level B5 General Arrangement Plan	9	DA Update
A2102	Level B4 General Arrangement Plan	10	DA Update
A2103	Level B3 General Arrangement Plan	10	DA Update
A2104	Level B2 General Arrangement Plan	12	DA Update
A2105	Level B1 General Arrangement Plan	13	DA Update
A2110	Level G1 General Arrangement Plan	16	DA Update
A2111	Level G2 General Arrangement Plan	10	DA Update
A2112	Level G3 General Arrangement Plan	6	DA Update
A2114	Level G4-11 General Arrangement Plan	10	DA Update
A2121	Level Z2 General Arrangement Plan	10	DA Update
A2122	Level Z3 General Arrangement Plan	8	DA Update
A3000	North and South Elevations	9	DA Update
A3001	East and West Elevations	4	DA Update
A3000	Sections	2	DA Update
A3001	Sections	2	DA Update
A3000	Facade Details 1	3	Development Application
A3001	Facade Details 2	3	Development Application
A3002	Facade Details 3	3	Development Application
A3003	Facade Details 4	3	Development Application
A6001	Key Plan - Accessible Apartments	2	Development Application
A6002	Key Plan - Accessible Apartments	2	Development Application
A6001	Materials and Finishes	3	Development Application
A6002	Materials and Finishes	3	Development Application

DEVELOPMENT SUMMARY	
GFA	7779sqm
Net GFA	5679sqm
Commercial GFA	5679sqm
Residential GFA	7794sqm
Site Area	8884sqm
Site Coverage	7.94%
Car Spaces	86
Visitors	13
Staff	2
Total	101
Unit Mix	#11%
1 Bed	20 (20.2%)
2 Bed	60 (60.0%)
3 Bed	21 (21.0%)

APARTMENT AREA SCHEDULE		COMMON AREA SCHEDULE	
UNIT TYPE	AREA	LEVEL	AREA
A1	22.20sqm	Level 1 - Reception Space	22.20sqm
A2	22.20sqm	Level 1 - Lobbies	22.20sqm
A3	22.20sqm	Level 1 - Corridors	22.20sqm
A4	22.20sqm	Level 1 - Staircases	22.20sqm
A5	22.20sqm	Level 1 - Lift Shafts	22.20sqm
A6	22.20sqm	Level 1 - Plant Rooms	22.20sqm
A7	22.20sqm	Level 1 - Common Areas	22.20sqm
A8	22.20sqm	Level 1 - Other	22.20sqm
A9	22.20sqm	Level 1 - Total	22.20sqm
A10	22.20sqm	Level 1 - Total	22.20sqm
A11	22.20sqm	Level 1 - Total	22.20sqm
A12	22.20sqm	Level 1 - Total	22.20sqm
A13	22.20sqm	Level 1 - Total	22.20sqm
A14	22.20sqm	Level 1 - Total	22.20sqm
A15	22.20sqm	Level 1 - Total	22.20sqm
A16	22.20sqm	Level 1 - Total	22.20sqm
A17	22.20sqm	Level 1 - Total	22.20sqm
A18	22.20sqm	Level 1 - Total	22.20sqm
A19	22.20sqm	Level 1 - Total	22.20sqm
A20	22.20sqm	Level 1 - Total	22.20sqm
A21	22.20sqm	Level 1 - Total	22.20sqm
A22	22.20sqm	Level 1 - Total	22.20sqm
A23	22.20sqm	Level 1 - Total	22.20sqm
A24	22.20sqm	Level 1 - Total	22.20sqm
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A44	22.20sqm	Level 1 - Total	22.20sqm
A45	22.20sqm	Level 1 - Total	22.20sqm
A46	22.20sqm	Level 1 - Total	22.20sqm
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A96	22.20sqm	Level 1 - Total	22.20sqm
A97	22.20sqm	Level 1 - Total	22.20sqm
A98	22.20sqm	Level 1 - Total	22.20sqm
A99	22.20sqm	Level 1 - Total	22.20sqm
A100	22.20sqm	Level 1 - Total	22.20sqm

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ANCHER  
WOOLLEY  
CONRAD  
GARGET

PROJECT  
26 Second Avenue,  
Blacktown

CLIENT  
Meritis Blacktown Pty Ltd

DRAWING  
Level B5 General  
Arrangement Plan

PROJECT NO  
15 323  
DRAWING NO  
AZ101  
DATE  
9  
SCALE  
1:100

PRELIMINARY



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	15/03/2017
2	ISSUED FOR PERMIT	15/03/2017
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100	ISSUED FOR PERMIT	15/03/2017

ANCHER  
CONRAD GARGET ARCHITECTS  
WOOLLEY

PROJECT  
26 Second Avenue,  
Blacktown

CLIENT  
Merhis Blacktown Pty Ltd

DRAWING  
Level B4 General  
Arrangement Plan

PROJECT NO  
15 323  
DRAWING NO  
A2102 10



PRELIMINARY



SCALE: 1:100  
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 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]  
 CLIENT: Meritis Blacktown Pty Ltd

ANCHER  
 ARCHITECTS  
 WOOLLEY

PROJECT  
 26 Second Avenue,  
 Blacktown

PRELIMINARY

CLIENT  
 Meritis Blacktown Pty Ltd

DRAWING  
 Level B3 General  
 Arrangement Plan

PROJECT NO  
 15 323  
 STATUS  
 SD  
 DRAWING NO  
 A2103 10  
 SCALE  
 1 : 100



SCALE 1:50 @ A1

ANCHOR MOBITLOCK WOOLLEY

PROJECT: 26 Second Avenue, Blacktown

DATE: 12/12/20

REV: 01

NO.	DESCRIPTION	DATE	BY
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4	Issue for Tender	12/12/20	AM
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14	Issue for Tender	12/12/20	AM
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18	Issue for Tender	12/12/20	AM
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ANCHOR MOBITLOCK WOOLLEY

CONRAD GARGET

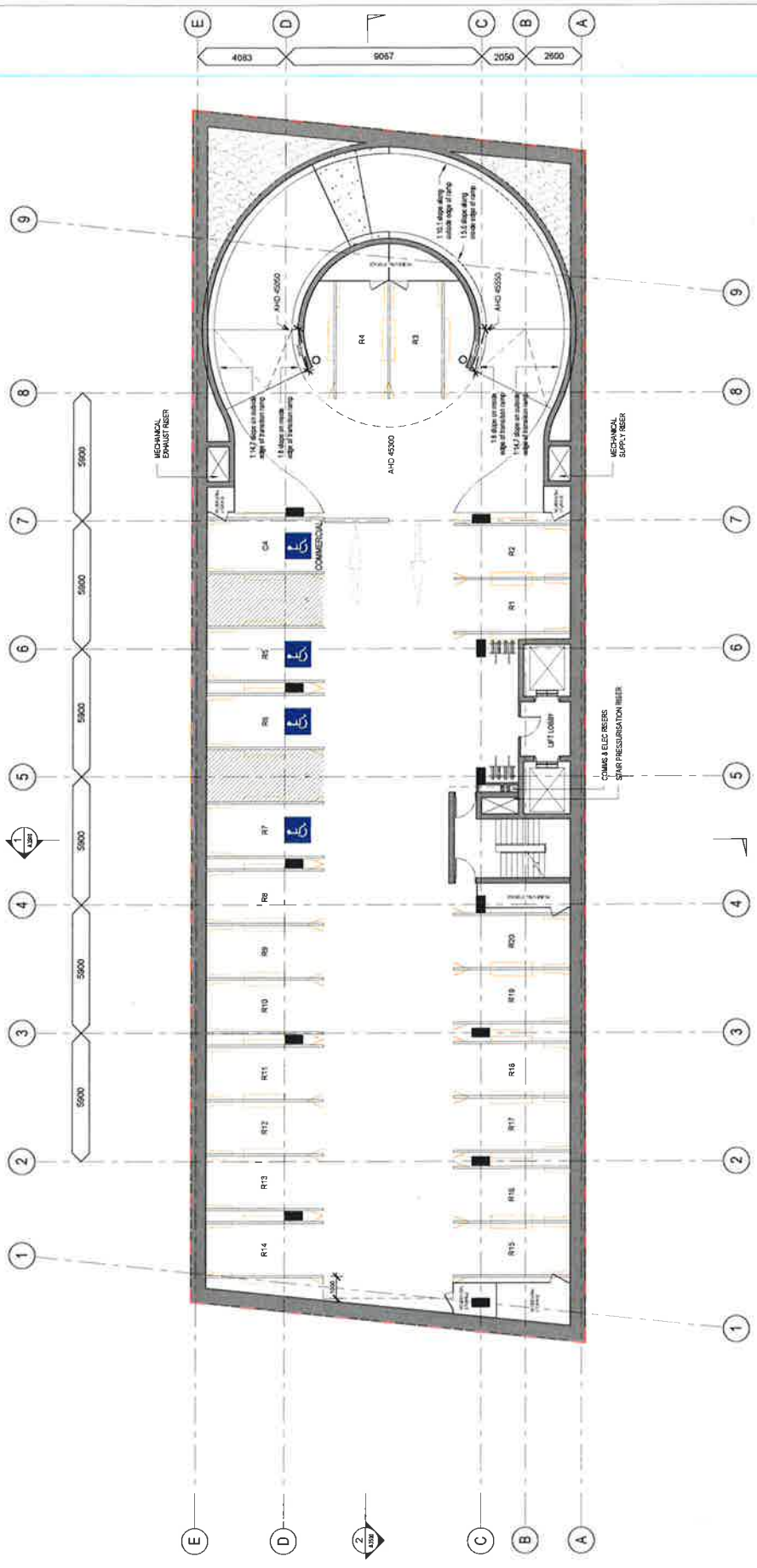
PROJECT: 26 Second Avenue, Blacktown

CLIENT: Merhis Blacktown Pty Ltd

WORKING: Level B2 General Arrangement Plan

PROJECT NO: 15 323  
 STATUS: SD  
 DRAWING NO: A2104 12  
 SCALE: 1:100

PRELIMINARY







SCALE: 1/8" = 1'-0"

NO.	DESCRIPTION	DATE	BY
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ANCHER WOODLOCK  
WOOLLEY  
CONRAD GARGET

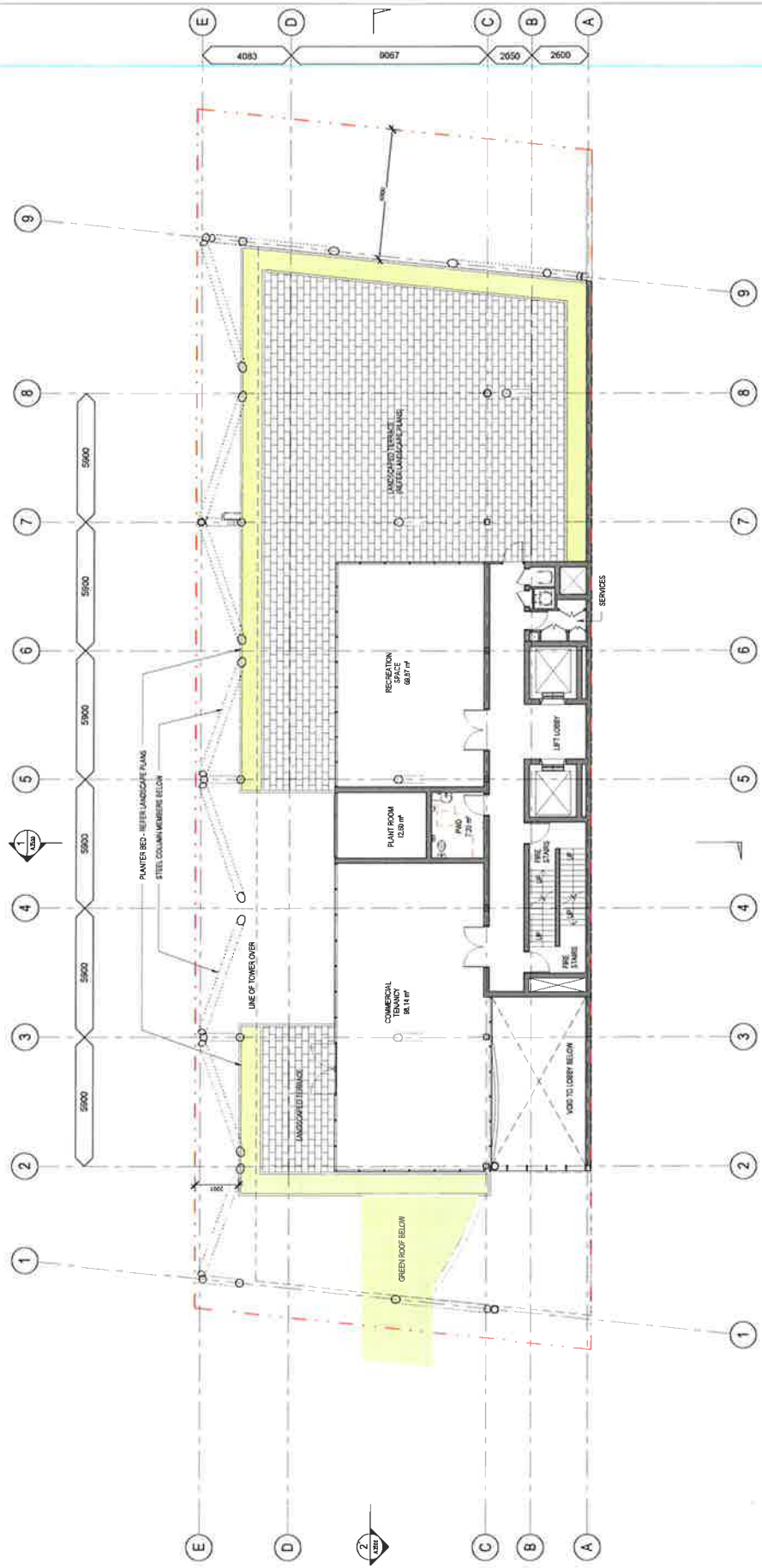
PROJECT  
26 Second Avenue,  
Blacktown

CLIENT  
Merhis Blacktown Pty Ltd

DRAWING  
Level 01 General  
Arrangement Plan

PROJECT NO  
15 323  
DRAWING NO  
A2111 10  
STATUS  
SD  
DATE  
10  
SCALE  
1:100

PRELIMINARY





SCALE 1:100  
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 METERS  
 CONRAD GARGET ANCHER BLACK WOODLEY  
 25 SECOND AVENUE  
 BLACKTOWN  
 NSW 2148  
 PROJECT NO. 15323  
 DRAWING NO. A2113

CONRAD GARGET  
 ANCHER BLACK WOODLEY

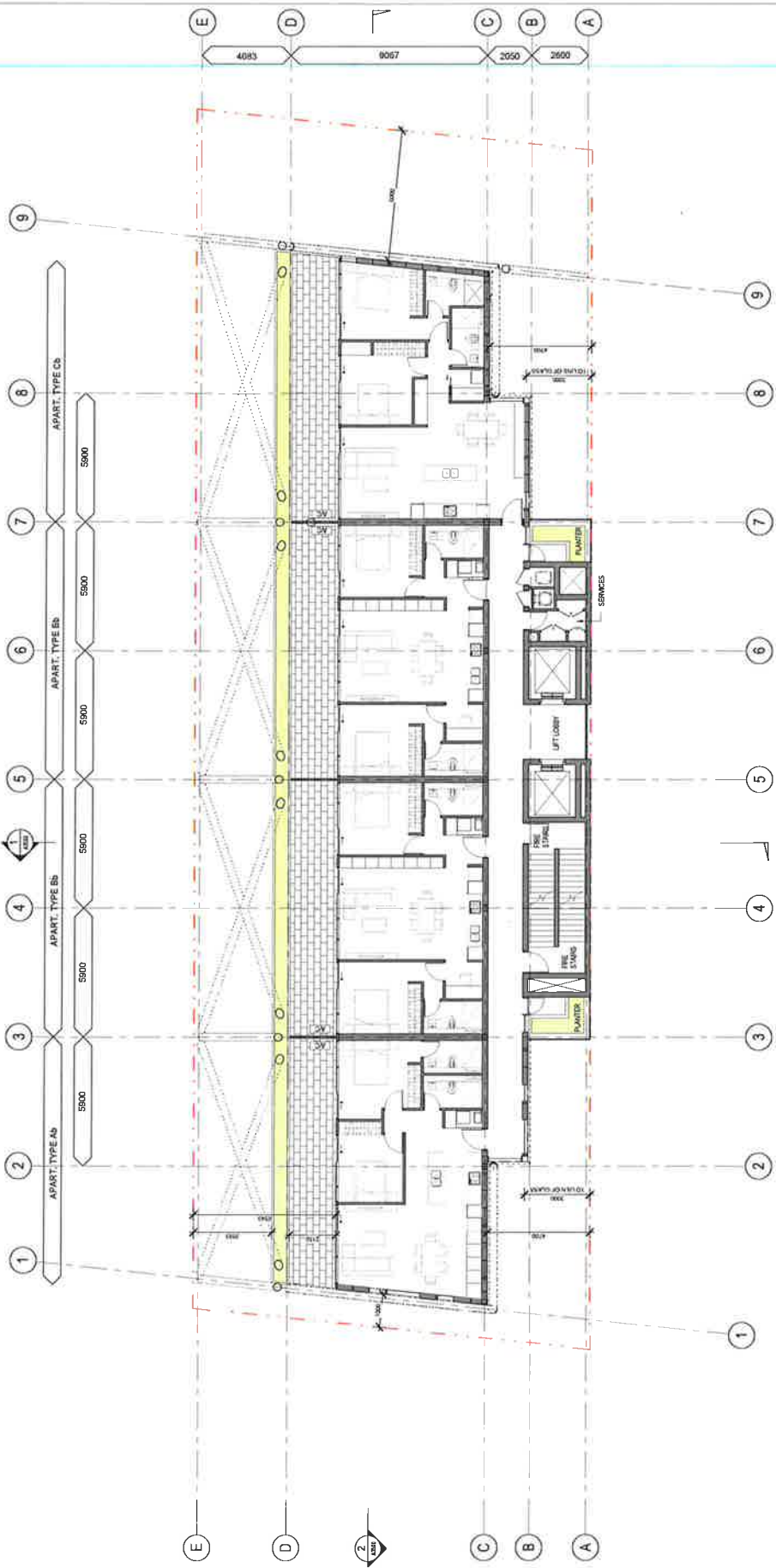
PROJECT  
 25 Second Avenue,  
 Blacktown

CLIENT  
 Menhis Blacktown Pty Ltd

DRAWING  
 Level 03 General  
 Arrangement Plan

PROJECT NO. 15323  
 DRAWING NO. A2113  
 STATUS SD  
 REVISION 6  
 AT SCALE 1:100

PRELIMINARY



SCALE 1:60  
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 METRES

PROJECT NO. 15323  
 DRAWING NO. A2114  
 DATE 21/03/2017

CLIENT  
 Merhis Blacktown Pty Ltd

DESIGNER  
 CONRAD GARGET ARCHITECTS WOOLLEY

DATE 21/03/2017

CONRAD GARGET ARCHITECTS  
 WOOLLEY

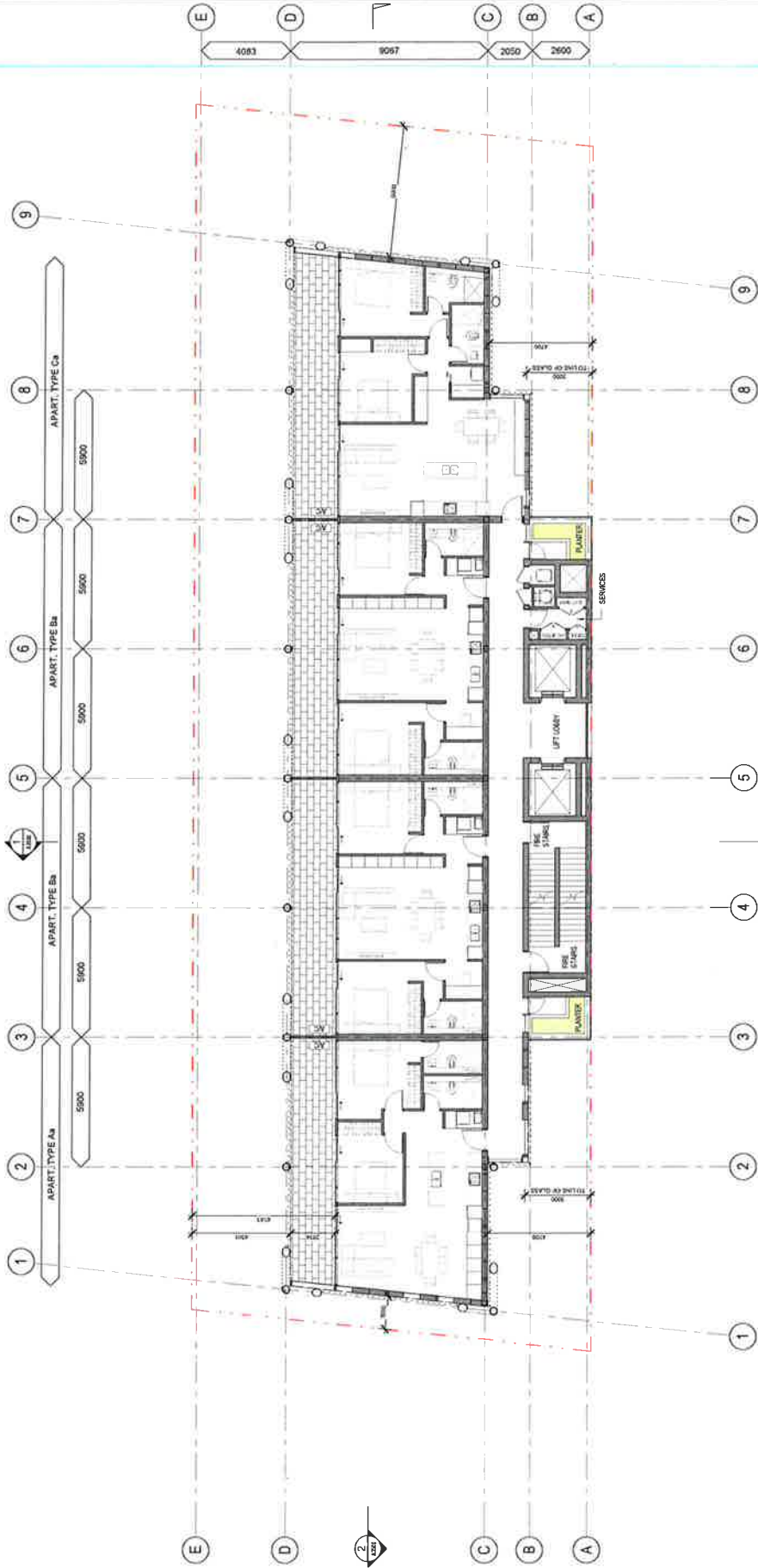
PROJECT  
 26 Second Avenue,  
 Blacktown

PRELIMINARY

CLIENT  
 Merhis Blacktown Pty Ltd

DRAWING  
 Level 04-11 General  
 Arrangement Plan

PROJECT NO. 15323  
 DRAWING NO. A2114  
 STATUS SD  
 REV 6  
 AT SCALE 1:100



SCALE: 1:50  
 0 1 2 3 4 5  
 CONRAD GARRETT ARCHITECTS/BLACKWOOD WOOLLEY  
 25 THE SQUARE, WINDYBUSH, NSW 2151  
 TEL: (02) 9371 4000 FAX: (02) 9371 4001  
 WWW: WWW.CGAWO.COM.AU  
 DATE: 10/10/10  
 DRAWN BY: J. GARDNER  
 CHECKED BY: J. GARDNER  
 APPROVED BY: J. GARDNER  
 PROJECT NO: 15 323  
 SHEET NO: A2121

CONRAD GARRETT ARCHITECTS/BLACKWOOD WOOLLEY

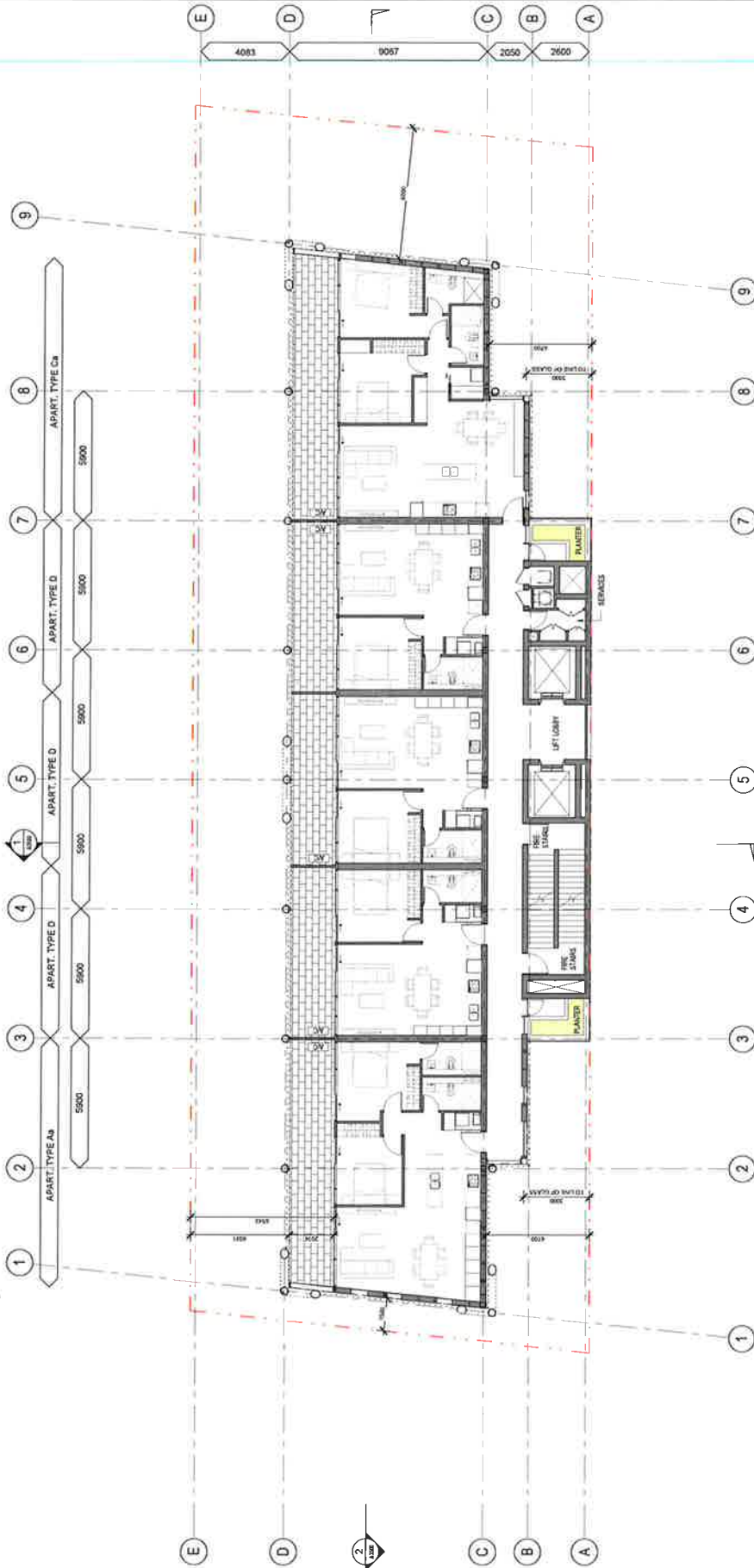
PROJECT  
 26 Second Avenue,  
 Blacktown

CLIENT  
 Meritis Blacktown Pty Ltd

DRAWN  
 Level 12-21 General  
 Arrangement Plan

PROJECT NO: 15 323  
 DRAWING NO: A2121  
 STATUS: SD  
 SCALE: 1:100

PRELIMINARY





DO NOT SCALE  
DRAWING

**CONRAD GARRETT ARCHER MORTIMER WOOLLEY**  
 ARCHITECTS  
 1100 WEST 10TH AVENUE, SUITE 100  
 VANCOUVER, BC V6H 1T1  
 TEL: 604.681.1111 FAX: 604.681.1112  
 WWW.CONRADGARRETTARCHERMORTIMERWOOLLEY.COM

**PROJECT:** Merthis Blacktown Pty Ltd  
**DATE:** 2024.08.01  
**SCALE:** 1:200

**REVISIONS:**

NO.	DATE	DESCRIPTION
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**CONRAD GARRETT ARCHER MORTIMER WOOLLEY**

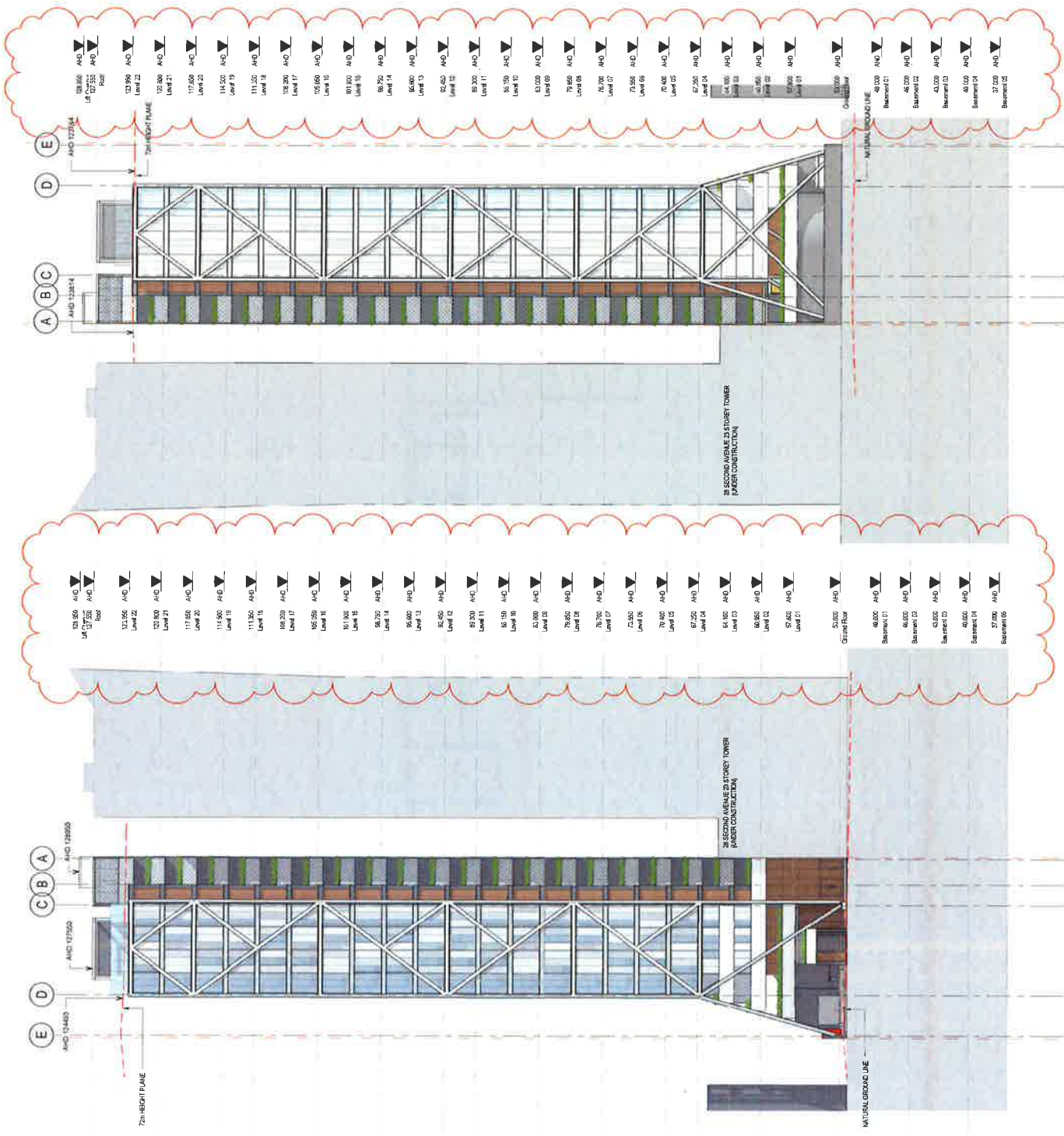
PRELIMINARY

**PROJECT:** 26 Second Avenue, Blacktown

**CLIENT:** Merthis Blacktown Pty Ltd

**RENDER:** North and South Elevations

**PROJECT No:** 15 323  
**STATUS:** SD  
**DRAWING No:** A3000  
**REV:** 9  
**SCALE:** 1 : 200



2 South Elevation  
1:200

1 North Elevation  
1:200



DO NOT SCALE  
DRAWING

SCALE: 1:100  
 0 5 10 15 20 25 30 35 40 45 50  
 2 CONRAD GARGET ARCHER MORTLOCK WOOLLEY  
 1100 WEST HURONTARIO STREET, SUITE 100  
 TORONTO, ONTARIO M5S 1B5  
 DATE: 04/17/2024  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NO: A3150

CONRAD  
 ARCHER  
 MORTLOCK  
 WOOLLEY

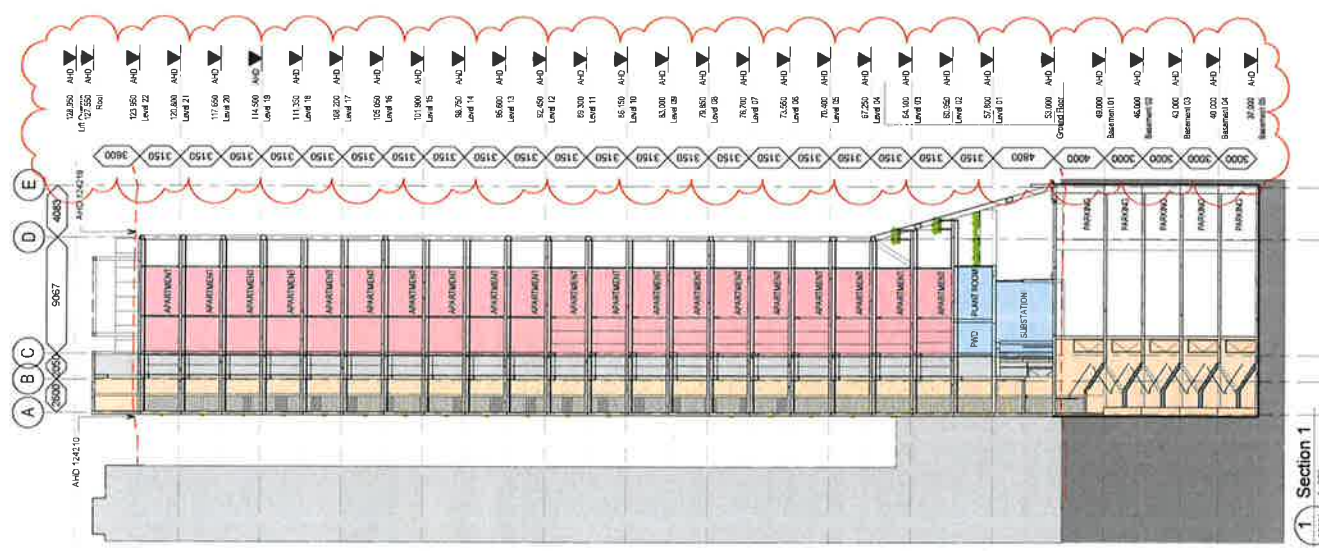
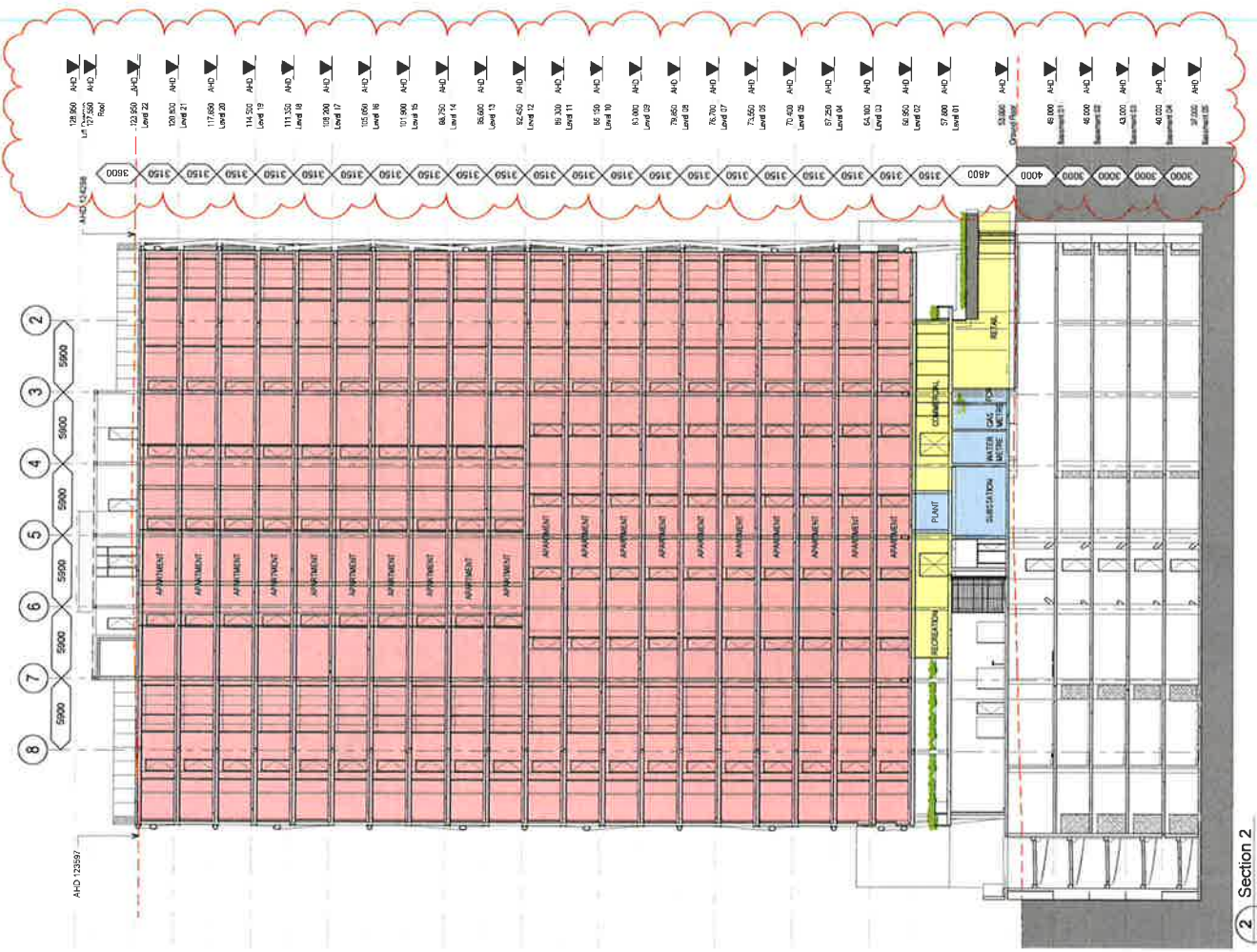
PROJECT  
 26 Second Avenue,  
 Blacktown

Client  
 Merhis Blacktown Pty Ltd

Sections

PROJECT NO: A3150  
 STATUS: SD  
 DRAWING NO: 5  
 AT SCALE: 1:200

PRELIMINARY



SCALE: 1:100  
 PROJECT: 15 323  
 DRAWING: A9500  
 DATE: 15/03/2017  
 PROJECT: 15 323  
 DRAWING: A9500  
 DATE: 15/03/2017

CONRAD  
 GARGET  
 ARCHITECTS  
 WOOLLEY

PROJECT:  
 26 Second Avenue,  
 Blacktown

CLIENT:  
 Merhis Blacktown Pty Ltd

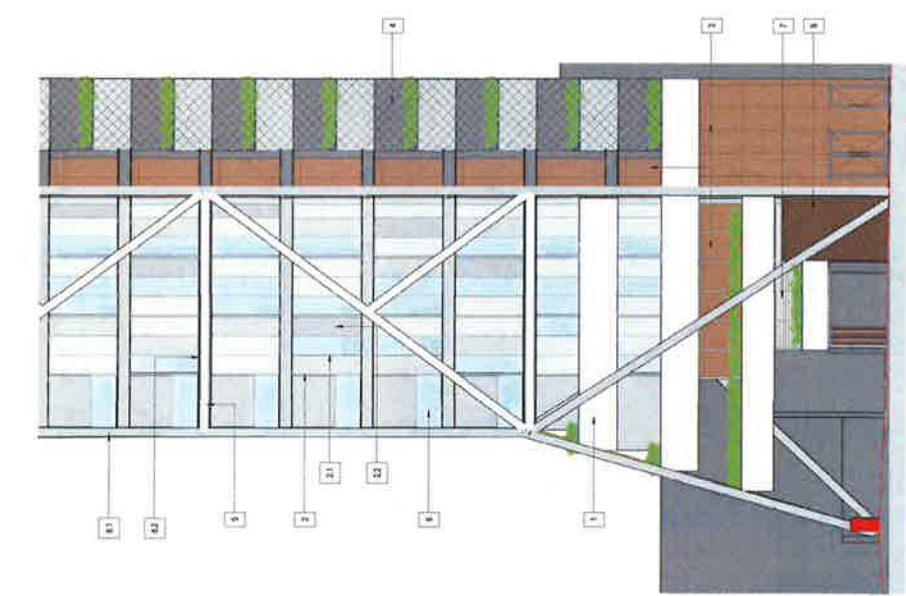
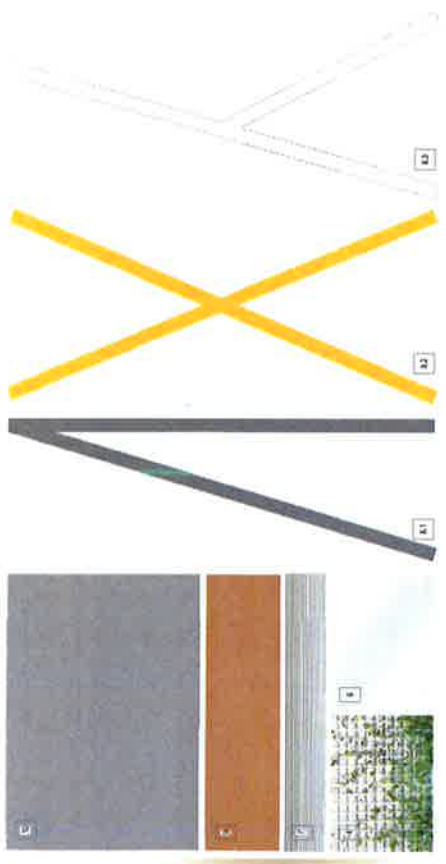
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 Materials and Finishes

PROJECT NO: 15 323  
 DRAWING NO: A9500  
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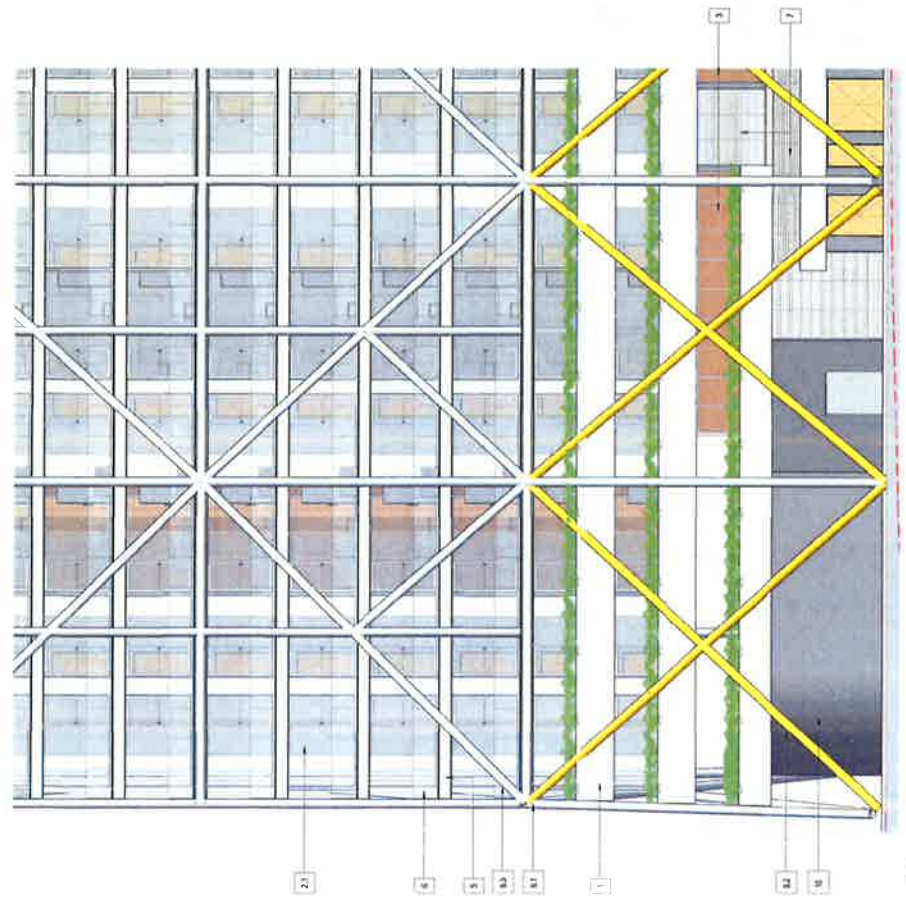
PRELIMINARY

LEGEND - MATERIALS

1	PAINTED CONCRETE BALUSTRADE - WHITE
2	MODULAR FRAMED PAVING PANEL
3	GLAZING - LIGHT GREY/GAUZE
4	CFC VITRA PANEL - THREE TONES OF GREY/BLACK
5	GLAZING - BRONZE
6	METAL SCREEN WALL - TITANIUM
7	STEEL FASCIA
8	FRAMELESS GLAZING UPSTAND
9	LOUVER - DARK GREY
10	STEEL STRUCTURE
11	STEEL STRUCTURE - PAINTED DARK GREY
12	STEEL STRUCTURE - PAINTED WHITE
13	STEEL STRUCTURE - PAINTED YELLOW
14	PRECAST CONCRETE PANEL - HONEYCOMB BROWN
15	PRECAST CONCRETE PANEL - HONEYCOMB MID GREY



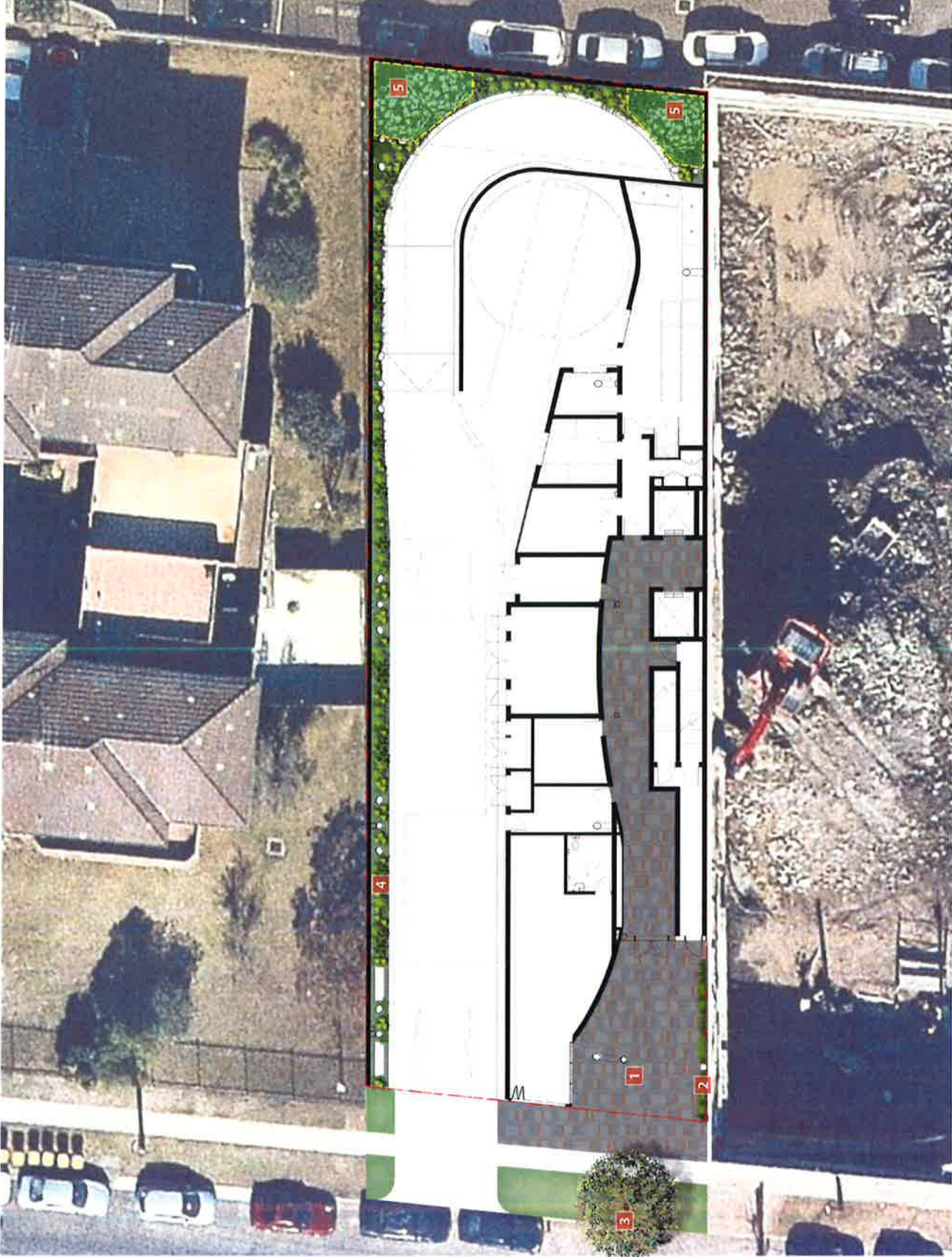
1 North Elevation - Materials and Finishes  
 1:100



01 East Elevation - Materials and Finishes  
 1:100

LEGEND

- 1 Accent Paving to Entry and Foyer
- 2 Green Wall Entry Statement
- 3 Street Tree to Second Avenue
- 4 Planters
- 5 Deep Root Planting Zone



**CONRAD GARGET** | ANCHER MORTLOCK WOOLLEY

CLIENT  
Merhis Projects Pty Ltd

DRAWING  
Landscape Ground Floor Plan  
LANDSCAPE DA PACKAGE

SCALE  
1 : 100

ISSUE REVISION DESCRIPTION  
A FOR INFORMATION

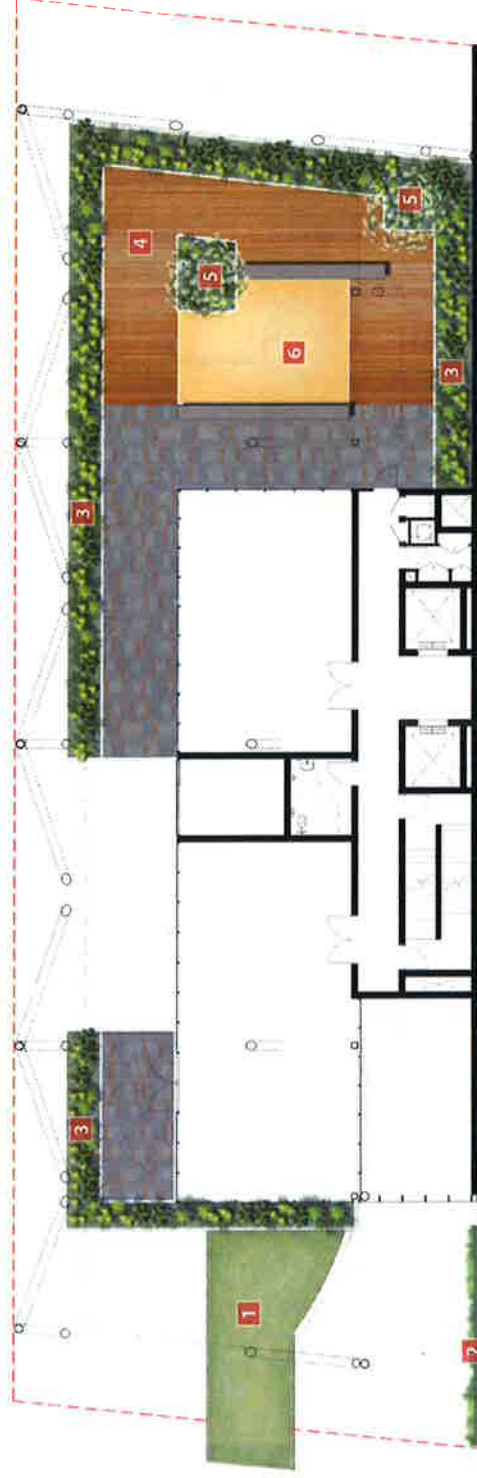
DATE  
08/08/18

APD  
RHW

PROJECT  
26 Second Avenue, BLACKTOWN  
PROJECT NUMBER  
15323  
DRAWING NUMBER  
L0001

LEGEND

- 1** Green Roof
- 2** Green Wall from Ground Floor
- 3** Planters
- 4** Timber Decking as part of playground
- 5** Raised Planters
- 6** Open Deck or Sandpit as part of playground

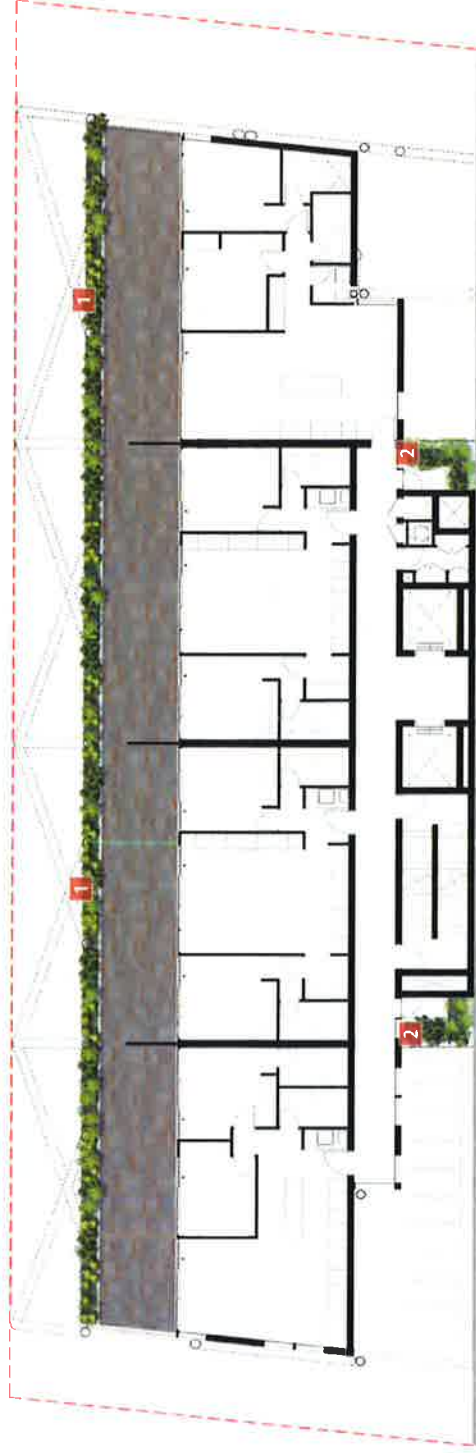


LEGEND

1 Planters

2 Planting every floor with

Trellis



**CONRAD  
& GARGETT** | ANCHER  
MORTLOCK  
WOOLLEY

CLIENT  
Merhis Projects Pty Ltd

DRAWING  
Landscape Level 02 Plan  
LANDSCAPE DA PACKAGE

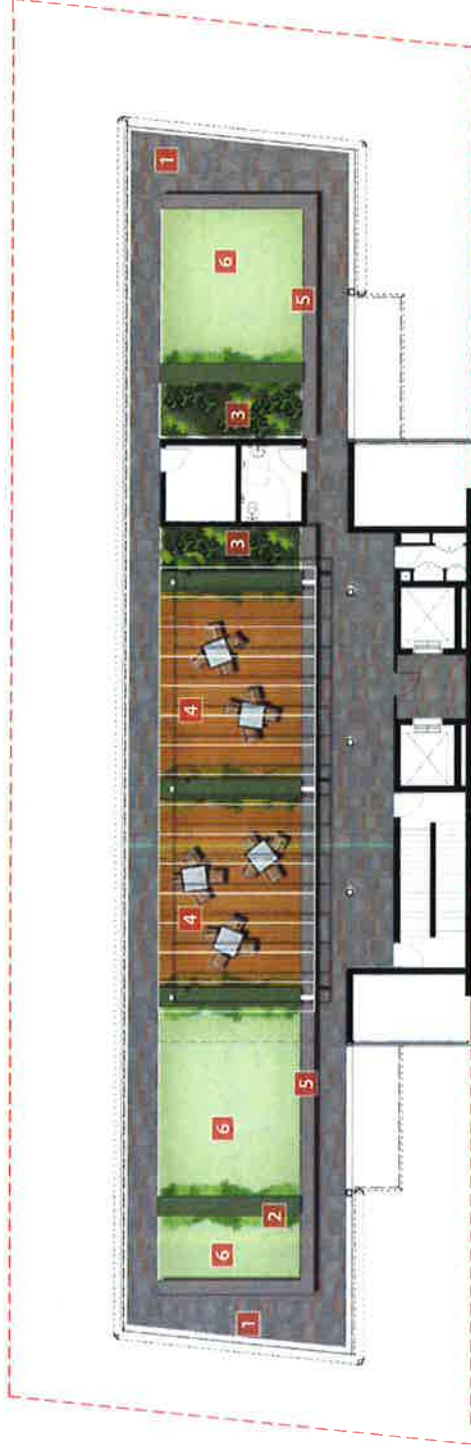
ISSUE REVISION DESCRIPTION  
FOR INFORMATION  
A  
B  
C  
UPDATED NOTES

DATE  
APD  
REVISED  
BY  
DATE

PROJECT  
26 Second Avenue, BLACKTOWN  
PROJECT NUMBER  
15323  
DRAWING NUMBER  
L0001

LEGEND

- 1 Perimeter pathway
- 2 Green Walls to create intimate spaces for recreation
- 3 Planters
- 4 Timber Decking with vine covered trellis over for filtered shade
- 5 Raised Seating Edge
- 6 Raised Lawn Areas



**TREES**



*Tristaniopsis laurina* 'Luscious'  
WATER GUM [max. H 7m X W 4m]



*Plumeria obtusa*  
FRANGIPANI [max. H 5m X W 3m]

**SHRUBS**



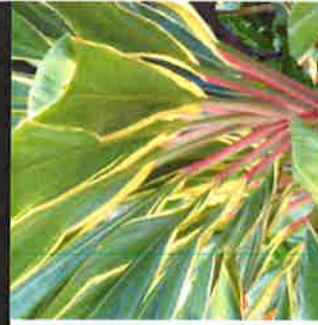
*Alcantarea imperialis* 'Green Form'  
SUN BROMELIAD [max. H 1.5m X W 1.5m]



*Zamia furfuracea*  
CARDBOARD CYCAD [max. H 2m X W 1.5m]



*Rhaps excelsa*  
LADY FINGER PALM [max. H 3m X W 2m]



*Cordyline fruticosa* 'Pink Diamond'  
CORDYLINE [max. H 3m X W 1m]

**GROUNDCOVERS [max height <500mm]**



*Myoporum ellipticum*  
BROAD LEAF MYOPORUM



*Liriope muscari*  
LILY TURF



*Clivia miniata*  
CLIVIA



*Aspidistra elatior*  
CAST IRON PLANT



*Neoregelia compacta*  
BROMELIAD



*Casuarina glauca* 'Cousin It'  
COUSIN IT

**VINES AND CLIMBERS**



*Cissus alata* 'Ellen Danica'  
ELLEN DANICA



*Philodendron scandens*  
HEARTLEAF PHILODENDRON



*Tecomanthe sp.* 'Roaring Meg'  
ROARING MEG



*Rhipsalis sp.*  
MISTLETOE CACTI



*Neomarica gracilis*  
WALKING IRIS



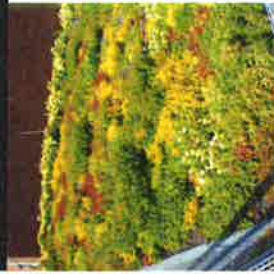
*Plectranthus australis*  
SWEDISH IVY

**PAVING TREATMENT**



Character image of paving treatment with random split-faced porphyry inserts

**GREEN ROOF**



Character image of extensive green roof



Character image of green roof with tall grasses

**LEVEL 02 RECREATION AND PLAY AREA**



Character image of timber decking



Character image of sand as soft-fall in play area



Character image of multi-functional deck space



Character image of raised planters for trees

**CLIMBING TRELLIS / GREEN WALLS**



Character image of climbing structure on balcony



Character image of climbing trellis structure



Character image of green wall

**LEVEL 22 ROOFTOP RECREATION AREA**



Character image of raised turf areas



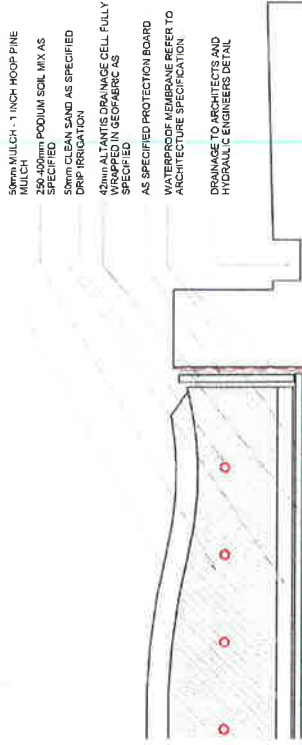
Character image of lawn and green walls



Character image of vine trellis



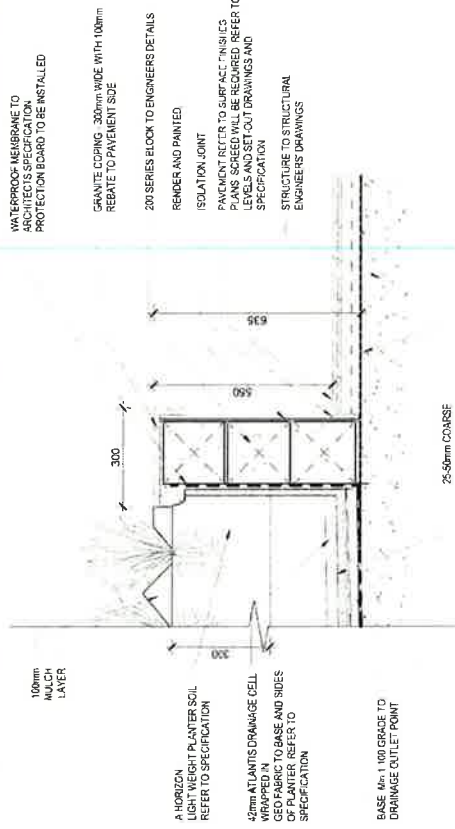
Character image of outdoor recreation



- 50mm MULCH - 1 INCH HOOP PINE MULCH
- 250-400mm PODIUM SOIL MIX AS SPECIFIED
- 50mm CLEAN SAND AS SPECIFIED DRIP IRRIGATION
- 42mm ATLANTIS DRAINAGE CELL FULLY WRAPPED IN GEOTEXTILE AS SPECIFIED
- AS SPECIFIED PROTECTION BOARD
- WATERPROOF MEMBRANE REFER TO ARCHITECTURE SPECIFICATION
- DRAINAGE TO ARCHITECTS AND HYDRAULIC ENGINEERS DETAIL

CONCRETE STRUCTURE TO ARCHITECTS AND STRUCTURAL ENGINEERS DRAWINGS

**GREEN ROOF - TYPICAL DETAIL**



- 100mm MULCH LAYER
- A HORIZON LIGHT WEIGHT PLANTER SOIL REFER TO SPECIFICATION
- 42mm ATLANTIS DRAINAGE CELL WRAPPED IN GEO FABRIC AND SIDES OF PLANTER REFER TO SPECIFICATION
- BASE Min 1:100 GRADE TO DRAINAGE OUTLET POINT
- 25-50mm COARSE SAND LAYER 100mm DEEP
- WATERPROOF MEMBRANE TO ARCHITECTS SPECIFICATION
- WATERPROOF MEMBRANE TO ARCHITECTS SPECIFICATION PROTECTION BOARD TO BE INSTALLED
- GRANITE COPING 300mm WIDE WITH 100mm REBATE TO PAVEMENT SIDE
- 200-SERIES BLOCK TO ENGINEERS DETAILS
- RENDER AND PAINTED
- ISOLATION JOINT
- PAVEMENT REFER TO SURFACE FINISHES PLANS SCREENED WILL BE REQUIRED REFER TO LEVELS AND SET OUT DRAWINGS AND SPECIFICATION
- STRUCTURE TO STRUCTURAL ENGINEERS DRAWINGS

**PODIUM PLANTING - TYPICAL DETAIL**

## Assessment against planning controls

### 1 Environmental Planning and Assessment Act 1979

#### a. Section 79C 'Heads of Consideration'

The development satisfies the matters for consideration under Section 79C of the Act as detailed below.

Heads of Consideration 79C	Comment	Complies
<p>a. The provisions of :</p> <ul style="list-style-type: none"> <li>(i) Any environmental planning instrument (EPI)</li> <li>(iii) Any development control plan (DCP)</li> <li>(iv) The regulations</li> </ul>	<p>The proposal is considered to be consistent with the relevant EPIs, including SREP No. 20 – Hawkesbury-Nepean River, SEPP (State and Regional Development) 2011, SEPP (Infrastructure) 2007, SEPP BASIX 2004, SEPP No. 55 – Remediation of Land, SEPP No. 65 – Design Quality of Residential Apartment Development and the 9 'design quality principles' of SEPP 65, BLEP 2015 and the Central City District Plan 2018.</p> <p>The proposal is consistent with the ADG, with the exception of building separation and natural ventilation.</p> <p>The proposed development comprises permissible land uses within the B4 Mixed Use zone and satisfies the zone objectives outlined under BLEP 2015. The applicant has submitted a request to vary the height control development standard pursuant to clause 4.6 of BLEP 2015. The height control is varied by up to 4 metres.</p> <p>The Blacktown DCP applies to the site. The proposed development is compliant with the numerical controls established under the DCP, where an ADG control does not apply, with the exception of side setbacks and the width of the site.</p> <p>As pipeline infrastructure is located underneath Second Avenue, a Safety Management Study is to be carried out in consultation with Caltex and must be conducted to comply with AS 2885 'Pipelines – Gas and Liquid Petroleum' and the Pipelines Regulation. The proposal is considered capable of satisfying this regulation.</p>	<p>No, the proposal seeks departures from these controls with regard to height of buildings, building separation, natural ventilation, side setbacks and width of the site. Refer to the Assessment Report for further discussion.</p> <p>The proposed departures from these matters for consideration are supported in this instance.</p>
<p>b. The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality</p>	<p>It is considered that the likely impacts of the development, including traffic, parking and access, design, bulk and scale, overshadowing, noise, privacy, waste management and stormwater and flooding management have been satisfactorily addressed, subject to conditions.</p> <p>A site analysis was undertaken to ensure that the proposed development will have minimal impacts on surrounding properties.</p>	<p>Yes</p>

Heads of Consideration 79C	Comment	Complies
	<p>Any potential impact on the pipeline infrastructure located underneath Second Avenue will be considered through the preparation of the Safety Management Study, with any recommendations incorporated into the design of this development prior to the issue of any Construction Certificate, as required by the owner and operator of the pipeline, Caltex.</p> <p>In view of the above it is believed that the proposed development will not have any adverse social, economic or environmental impacts.</p>	
c. The suitability of the site for the development	<p>The subject site is zoned B4 Mixed Use with a 72 metres building height limit under BLEP 2015. Shop top housing and commercial premises are permissible on the site with development consent.</p> <p>The site has an area and configuration that is suited to this form of podium and tower development. The design solution is based on sound site analysis and responds positively to the constraints of this narrow site and different types of land uses adjoining the site. The site is located within close proximity to the Blacktown railway station, Blacktown bus interchange and Blacktown CBD. The site is also located near services, facilities and a major arterial road network, making it suitable for higher residential densities.</p>	Yes
d. Any submissions made in accordance with this Act, or the regulations	<p>One submission was received as a result of the notification of this DA. This submission was received from the adjoining property owner to the west, whose site is currently under construction for a 24 storey mixed use development. The submission objected to the reduced setbacks and building separation and resulting impacts on the future residents at 28 Second Avenue with regard to amenity, ventilation and solar access, inadequacy of the DA submission material, failure to satisfy clause 7.7 Design Excellence of BLEP 2015, construction methods for the nil setback portion of the proposal, non-compliance with the site width requirement of BDCP 2015 and cross ventilation.</p> <p>The Applicant provided a response to these issues, which is assessed at attachment 9.</p> <p>These issues are considered to be suitably addressed and, subject to conditions of consent, do not warrant the refusal of this application.</p>	Yes
e. The public interest	<p>It is considered that no adverse matters relating to the public interest arise from the proposal.</p> <p>The proposal provides high quality housing stock and provides for a wider range of housing diversity within the Blacktown City area.</p>	Yes

## 2 State Environmental Planning Policy (State and Regional Development) 2011

The Sydney Planning Panel (SPP) is the consent authority for all development lodged but not yet determined prior to 1 March 2018 with a capital investment value (CIV) of over \$20 million. As the DA has a CIV of \$23.6 million, Council is responsible for the assessment of the DA and determination of the application is to be made by the SPP.

## 3 State Environmental Planning Policy (Infrastructure) 2007

This SEPP ensures that Roads and Maritime Services (RMS) is given the opportunity to comment on development nominated as 'traffic generating development' under Schedule 3 of the SEPP. The development does not trigger a referral to the RMS. The application is satisfactory with regard to the requirements of SEPP (Infrastructure) 2007.

## 4 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 aims to "provide a State wide planning approach to the remediation of contaminated land." Clause 7 requires a consent authority to consider whether the land is contaminated and if it is suitable or can be remediated to be made suitable for the proposed development, prior to the granting of a development consent.

The application is accompanied by a Stage 2 Environmental Site Assessment prepared by Environmental Investigation Services and dated March 2017. The assessment includes a contamination assessment of the development site against the National Environment Protection Measure (NEPM) 2013 guidelines and included soil samples due to fill material being identified on the site including asbestos. The assessment concludes that the site can be made suitable for the proposed development subject to the preparation of an Asbestos Management Plan for the site prior to excavation. The assessment also recommends that, following removal of the fill material, additional tests of the underlying natural soil / bedrock occur to confirm that this is classified as virgin excavated natural material.

The Asbestos Management Plan is to be implemented and further testing undertaken and validated prior to the construction of this development. These requirements ensure that the site is remediated and made suitable for the proposed development to the strict residential standard under the NEPM 2013 guidelines.

## 5 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 (SEPP 65) – *Design Quality of Residential Apartment Development* applies to the assessment of Development Applications for residential flat buildings 3 or more storeys in height and containing at least 4 dwellings.

### *i. Clause 28 Determination of development applications*

Clause 28 of SEPP 65 requires a consent authority to take into consideration:

- (a) the advice (if any) obtained from the design review panel
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

Blacktown City Council does not have a design review panel. However, Council's assessing officer's comments in relation to the 9 design quality principles and assessment against the relevant design concepts of the ADG is provided below. The development is considered to comply with the 9 design principles and the ADG, with the exception of building separation and natural ventilation.

### Principle 1: Context and Neighbourhood Character

Control	Town Planning Comment
<p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p>	<p>The design responds to the context of the site within the Blacktown CBD. The development is generally compliant with the height limit established by Blacktown Local Environmental Plan 2015. The development meets the objectives of the B4 Mixed Use zone and contributes to the social and economic diversity of the Blacktown local area through the provision of retail, commercial and residential apartments. The building responds to the streetscape, providing an active street frontage and building setbacks consistent with those envisaged for the CBD.</p>

### Principle 2: Built Form and Scale

Control	Town Planning Comment
<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The design responds to the surrounding context, providing a development generally compliant with the building height and compliant with the floor space requirements established by Blacktown Local Environmental Plan 2015. The shop top housing and commercial premises development responds to the site's location within the CBD. The podium at ground level, which gradually tapers back to the tower form above, is consistent with Council's controls and the creation of a suitable streetscape.</p>

### Principle 3: Density

Control	Town Planning Comment
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The development complies with the maximum FSR established for the site under BLEP 2015. The scale of the development being 22 storeys is consistent with the height limit for the area and is consistent with the desired density of the area. In addition, the site is located within 400 m of Blacktown railway station and is located within the Blacktown CBD. It is therefore considered a suitable density that can be sustained with existing infrastructure.</p> <p>Council is now proposing to remove the FSR from its CBD controls.</p>

### Principle 4: Sustainability

Control	Town Planning Comment
<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The design of the development ensures that the development exceeds the minimum design criteria for solar access and natural cross ventilation.</p> <p>The proposal provides for a mix of dwellings, contributing to the housing diversity within the locality.</p> <p>The proposal is supported by a BASIX Certificate. The commitments are incorporated into the design of the building. The proposal demonstrates satisfactory levels of sustainability, waste management and efficient use of energy and water resources.</p>

### Principle 5: Landscape

Control	Town Planning Comment
<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p>	<p>A Landscape Plan has been submitted with the proposal, which incorporates a variety of planting that contributes to the amenity of the development. The proposal includes a deep soil zone at the rear of the site which is commendable, in particular given deep soil zones have not been provided for other similar development in the CBD.</p> <p>The landscape design provides for suitable screening to adjoining properties, creates usable spaces for future residents and improves the overall quality of the development.</p>

<p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	
<p><b>Principle 6: Amenity</b></p>	
<p><b>Control</b></p>	<p><b>Town Planning Comment</b></p>
<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The design of the proposal is considered to provide a high level of amenity through a carefully considered spatial arrangement and layout.</p> <p>The proposal achieves a suitable level of internal amenity through providing appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas.</p>
<p><b>Principle 7: Safety</b></p>	
<p><b>Control</b></p>	<p><b>Town Planning Comment</b></p>
<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The proposal is considered to be satisfactory in terms of future residential occupants. Communal areas are provided which are open whilst also maintaining visual privacy within the development and to adjoining properties. Public and private spaces are clearly defined and suitable safety measures are integrated into the development.</p> <p>The proposal provides suitable casual surveillance of the public domain.</p>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p>	
<p><b>Control</b></p>	<p><b>Town Planning Comment</b></p>
<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p>	<p>The proposal consists of a mix of dwellings which are responsive to anticipated market and demographic demands. The provision of multi-use indoor and outdoor recreation spaces at Level 1 provides the opportunity for social interaction among residents.</p> <p>The proposal provides additional housing choice which is in close proximity to public transport and is located within the Blacktown CBD.</p>

<p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>		
<b>Principle 9: Aesthetics</b>		
<b>Control</b>	<b>Town Planning Comment</b>	
<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials, finishes and colours and reflect the use, internal design and structure of the resultant building.</p> <p>This distinct and contemporary design assists in setting a high quality standard for the transitioning character of this locality and creates a desirable streetscape.</p>	
<b>ADG Requirement</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Siting the Development</b>		
<b><u>3A Site Analysis</u></b>		
Satisfy the site analysis guidelines-App 1.	Site analysis submitted and satisfactory.	Yes
<b><u>3B Orientation</u></b>		
Where an adjoining property does not currently receive 2 hours of sunlight in midwinter, solar access should not be further reduced by more than 20%.	N/A	N/A
4 hours of solar access should be retained to solar collectors on neighbouring buildings.	Adjoining properties do not contain solar collectors	N/A
<b><u>3C Public Domain Interface</u></b>		
Ground level courtyards to have direct access, if appropriate.	N/A. No ground level units.	N/A
Ground level courtyards to be above street level for visual privacy.	N/A. No ground level units.	N/A
Balconies and windows to overlook the public domain.	Balconies and windows provide casual surveillance of the public domain.	Yes
Front fences to be visually permeable with max 1m height, and limited length.	N/A. No front fences proposed.	N/A
Entries to be legible.	Residential entry is appropriately located.	Yes

ADG Requirement	Proposal	Compliance
Raised terraces to be softened by landscaping.	Raised areas are suitably landscaped.	Yes
Mail boxes to be located in lobbies, perpendicular to the street or within the front fence.	Mailboxes are located within the lobby.	Yes
Basement carpark vents not to be visually prominent.	Satisfactory	Yes
Substations, pump rooms, garbage storage rooms and other service rooms should be located in the basement carparks or out of view.	Substation integrated into design. Service rooms adequately located.	Yes
Ramping for accessibility to be minimised.	Ramping is suitable.	Yes
Durable, graffiti resistant and easily cleanable materials should be used.	Suitable and durable materials are proposed.	Yes
On sloping sites, protrusion of car parking should be minimised.	Car parking is suitably designed and within the basement of the site.	Yes
<b><u>3D Communal and Public Open Space</u></b>		
COS >25% of the site.	Site area: 992.7 sqm Required 25% = 248.2 sqm Provided: 764 sqm (77%). Complies.	Yes
Direct sunlight to >50% of COS for 2 hours between 9 am and 3 pm.	Direct sunlight is achieved.	Yes
Minimum dimension of 3 m.	Minimum dimension of 3 m achieved.	Yes
Direct and equitable access.	Direct and accessible COS is achieved.	Yes
If COS cannot be located on Ground Level, provide on the podium or roof. If COS cannot be achieved, provide on rooftop of a common room, provide larger balconies, or demonstrate proximity to public open space and facilities.	COS is provided at Level 1 and the rooftop. Satisfactory.	Yes
Range of activities (e.g. seating, BBQ, play area, gym or common room).	COS embellished with seating, play areas, a multi-use room, terraces and covered outdoor areas.	Yes
Visual impacts minimised from ventilation, substations and detention tanks.	The COS is clear of services.	Yes
Maximise safety.	The COS demonstrates a safe design.	Yes
Public Open Space, where provided, is to be well connected and adjacent to street.	N/A	N/A

ADG Requirement	Proposal	Compliance												
<p><b><u>3E Deep Soil Zones</u></b></p> <p>Minimum area = 7% of site area. Preferred area = 15%. If the site is between 650 to 1,500 sqm then minimum dimensions of 3 m. If over 1,500 sqm then min dimensions of 6 m.</p> <p>Achieving deep soil may not be possible on some sites including where the location and building typology have limited or no space for deep soil at ground level (e.g. CBD, constrained sites, high density areas, or in centres), and where there are non-residential uses at ground floor level.</p>	<p>The proposal includes a deep soil zone at the rear of the site which is commendable, in particular given deep soil zones have not been provided for other similar developments in the CBD. Only 3.5% of the total site area is provided as deep soil area. However, design guidance allows for location within the Central Business District, and building typology as a shop top housing development, to not meet deep soil zone design criteria.</p>	<p>Yes.</p>												
<p><b><u>2F Building Separation</u></b></p> <p>Separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="199 1014 651 1232"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12 m (4 storeys)</td> <td>6 m</td> <td>3 m</td> </tr> <tr> <td>Up to 25 m (5-8 storeys)</td> <td>9 m</td> <td>4.5 m</td> </tr> <tr> <td>Over 25 m (9+ storeys)</td> <td>12 m</td> <td>6 m</td> </tr> </tbody> </table> <p>Increased separation distance of 3 m when adjacent to a different zone that permits lower density</p> <p>Direct lines of sight should be avoided for windows and balconies across corners</p> <p>No building separation is necessary where building types incorporate black party walls. Typically this occurs along a main street or at podium level within centres</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12 m (4 storeys)	6 m	3 m	Up to 25 m (5-8 storeys)	9 m	4.5 m	Over 25 m (9+ storeys)	12 m	6 m	<p>Development is 22 storeys in height and provides varied setbacks to each boundary, being a departure from this guideline.</p> <p>N/A</p> <p>This is achieved to the adjoining site to the west. However, this is not applicable to the adjoining sites to the east and south as development of a similar scale has not yet occurred on these sites.</p> <p>The Applicant has designed the floor plan layout to locate the services core of the building along the western façade of the building. This portion of the western façade is a blank wall and has a nil setback to that boundary of the site. This nil setback is satisfactory given the context of the site within the Blacktown CBD and the narrow width of the site.</p>	<p>No. Refer to further discussion at <b>Section 7</b> of the Assessment Report.</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12 m (4 storeys)	6 m	3 m												
Up to 25 m (5-8 storeys)	9 m	4.5 m												
Over 25 m (9+ storeys)	12 m	6 m												

ADG Requirement	Proposal	Compliance
<b><u>3G Pedestrian Access and Entries</u></b>		
<p>Connect to and activate the public domain.</p> <p>Easy to identify access.</p> <p>Internal pedestrian links to be direct.</p>	<p>Pedestrian access is direct to the street frontage and easily identifiable.</p>	<p>Yes</p>
<b><u>3H Vehicle Access</u></b>		
<p>Access points are safe and create quality streetscapes.</p>	<p>Car parking and driveway location is suitable.</p>	<p>Yes</p>
<b><u>3J Bicycle and Car Parking</u></b>		
<p>Sites within 800 m of a railway station comply with Guide to Traffic Generating Developments.</p>	<p>The site is within 400 m of Blacktown Railway Station.</p> <p>The proposal is for:</p> <p>90 apartment units (30 x 1 bed and 60 x 2 bed), 55 sqm retail tenancy and 98 sqm commercial tenancy.</p>	<p>Yes</p>
<p><b>&gt;20 units (ADG)</b></p> <p>Metropolitan Regional Centres (CBD):</p> <p>0.4 spaces per 1 bedroom unit. 0.7 spaces per 2 bedroom unit. 1.2 spaces per 3 bedroom unit. 1 space per 7 units (visitor parking)</p>	<p>12 42 - 13 67 required 99 provided (comprising 86 residential and 13 visitor spaces)</p>	<p>Yes</p>
<p>Retail (BDCP) 1 space per 300 sqm</p>	<p>55 sqm requires 2 spaces. 2 provided</p>	<p>Yes</p>
<p>Commercial (BDCP) 1 space per 30 sqm</p>	<p>98 sqm requires 3.3 spaces (3). 2 provided</p> <p>Total required 71 spaces. 103 provided</p>	<p>No, only 2 spaces are allocated for commercial use where 3 are required. This allocation will be managed via a condition of consent.</p>
<p>At least 1 loading dock.</p>	<p>1 loading dock is provided.</p>	
<p>Conveniently located and sufficient numbers of bicycle and motorbike spaces.</p>	<p>Visitor and resident bicycle parking is provided.</p> <p>A condition is recommended to be imposed providing 2 motorbike parking spaces.</p>	
<b>Designing the Building</b>		
<b><u>4A Solar and Daylight Access</u></b>		
<p>Living rooms and POS receive minimum 2 hours direct sunlight between 9 am – 3 pm in midwinter &gt; 70% of units.</p>	<p>All units (100%)</p>	<p>Yes</p>

ADG Requirement	Proposal	Compliance
Maximum number with no sunlight access < 15%.	None	Yes
Suitable design features are available for shading and glare control.	Appropriate sun shading is provided for the balconies to enable shading from the summer sun and sun penetration in winter. North facing windows are narrow to permit shading from the sun.	Yes
<b><u>4B Natural Ventilation</u></b>		
All habitable rooms naturally ventilated.	All habitable rooms are ventilated.	Yes
Number of naturally cross ventilated units > 60% for the first 9 storeys.	50% of units within the first 9 storeys of the development are cross ventilated. This is a shortfall of 3 apartments.	No, variation sought. Refer to <b>Section 7</b> of the Assessment Report.
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.	Above the first 9 storeys, 50% of the apartments are cross-through (corner) apartments which do not exceed a depth of 18 m, 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.	Yes
Depth of cross over apartments < 18 m.	N/A	N/A
The area of unobstructed window openings should be equal to at least 5% of the floor area served.	The window areas are satisfactory.	Yes
<b><u>4C Ceiling Heights</u></b>		
2.7 m for habitable 2.4 m for non-habitable Service bulkheads are not to intrude into habitable spaces.	Satisfactory	Yes
<b><u>4D Apartment Size and Layout</u></b>		
Studio > 35 sqm 1 bed > 50 sqm 2 bed > 70 sqm 3 bed > 90sqm	- 50 sqm 75-85 sqm -	Yes
+ 5 sqm for each unit with more than 1 bathroom.	Where second bathrooms are provided, unit size exceeds the minimum size by 5 sqm.	Yes
Habitable Room Depths: limited to 2.5 m x Ceiling Height (6.75 m with 2.7 m ceiling heights)	Satisfactory room depths.	Yes

<b>ADG Requirement</b>	<b>Proposal</b>	<b>Compliance</b>
Open plan layouts that include a living, dining room and kitchen – maximum 8 m to a window.	Open plan layouts are provided. Kitchens are less than 8 m to a window.	Yes
Bedroom sizes (excluding wardrobe space): Master – 10 sqm Other – 9 sqm Minimum dimensions – 3 m	Master bedrooms meet the minimum bedroom sizes excluding wardrobe space.	Yes
Living rooms/dining areas have a minimum width of: 3.6 m - Studio/1 bedroom 4 m – 2 bedroom/3 bedroom	Minimum living/dining room areas are achieved.	Yes
Cross-over/cross-through: 4m wide	N/A	N/A
<b><u>4E Private Open Space and Balconies</u></b>		
Studio > 4 sqm 1 bed > 8 sqm and 2 m depth 2 bed > 10 sqm and 2 m depth 3 bed > 12 sqm and 2.4 m depth	- 15 sqm 22 sqm - 36 sqm -	Yes
Ground level/ podium apartments > 15 sqm and 3m depth	Min 15 sqm and 3 m	Yes
Extension of the living space.	POS is an extension of the living space	Yes
A/C units should be located on roofs, in basements, or fully integrated into the building design.	A/C units located on balconies	Yes
<b><u>4F Common Circulation and Spaces</u></b>		
Maximum number of apartments off a circulation core on a single level – 8 to 12.	4 or 5 per level	Yes
Buildings over 10 storeys - maximum of 40 units sharing a single lift.	2 lifts provided	Yes
Daylight and natural ventilation to all common circulation areas above ground level.	Achieved	Yes
Corridors greater than 12 m from the lift core to be articulated by more foyers, or wider areas / higher ceiling heights at apartment entry doors.	N/A	N/A
Maximise dual aspect apartments and cross over apartments.	Dual aspect apartments are provided.	Yes
Primary living room and bedroom windows are not to open directly onto common circulation spaces.	Windows do not open onto COS areas.	Yes

ADG Requirement	Proposal	Compliance
Direct and legible access.	Achieved	Yes
Tight corners and spaces to be avoided.	Achieved	Yes
Well lit at night.	Achieved	Yes
For larger development – community rooms for owners meetings of resident use should be provided.	A Common Recreation Space is provided at Level 1.	Yes
<p><b><u>4G Storage</u></b></p> <p>Studio &gt; 4 m<sup>3</sup>            1 bed &gt; 6 m<sup>3</sup>            2 bed &gt; 8 m<sup>3</sup>            3 bed &gt; 10 m<sup>3</sup>            Min 50% within the apartment.</p>	Minimum storage areas provided, with a minimum 50% provided in apartment. Storage spaces also provided within basement.	Yes
<p><b><u>4H Acoustic Privacy</u></b></p> <p>Window and door openings orientated away from noise sources.</p> <p>Noise sources from garage doors, driveways, services, COS and circulation areas to be 3m from bedrooms.</p> <p>Separate noisy and quiet spaces.</p> <p>Provide double/acoustic glazing, acoustic seals, materials with low noise penetration.</p>	<p>Achieved.</p> <p>Achieved.</p> <p>Achieved.</p> <p>Suitable acoustic measures to be installed.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><b><u>4J Noise and Pollution</u></b></p> <p>In noisy or hostile environments, the impacts of external noise and pollution are to be minimised through the careful siting and layout of buildings.</p> <p>To mitigate noise transmission:</p> <p>Limit the number and size of openings facing the noise sources.</p> <p>Use double or acoustic glazing, acoustic louvres or enclosed balconies (winter gardens).</p> <p>Use materials with mass and/or sound insulation (e.g. solid balcony balustrades, external screens or soffits).</p>	The layout of the development considers potential noise and pollution impacts, and is satisfactory.	Yes

ADG Requirement	Proposal	Compliance
<b>Configuration</b>		
<b><u>4K Apartment Mix</u></b>		
Provide a variety of apartment types.	90 apartments (30 x 1 bed and 60 x 2 bed).	Yes
Flexible apartment mix.	A suitable and responsive apartment mix is provided.	Yes
<b><u>4L Ground Floor Apartments</u></b>		
Maximise street frontage activity.	N/A - No ground floor apartments proposed.	N/A
Direct street access to ground floor apartments.		
Ground floor apartments to deliver amenity and safety for residents.		
<b><u>4M Facades</u></b>		
Front building facades are to provide visual interest whilst respecting the character of the local area.	The front façade is architecturally treated to create visual interest and contributes to the desired future character of this area.	Yes
Building services are to be integrated into the overall façade.	Plant and equipment is catered for within the basement levels, within the building and the rooftop of the building.	
Provide design solutions which consider scale and proportion to the streetscape and human scale.		
<b><u>4N Roof Design</u></b>		
Roof treatments are to be integrated into the building design and positively respond to the street.	The proposal comprises rooftop plant and equipment and a communal open space area which is designed to be recessive and not visible from the public domain.	Yes
<b><u>4O Landscape Design Site Area</u></b>		
< 850 sqm - 1 medium tree per 50 sqm of deep soil zone.	The site area is 922.7 sqm. 35 sqm of deep soil is provided at the rear of the site, being 3.5 % of the site area.	Acceptable as site is within the CBD context.
850 sqm to 1,500 sqm - 1 large tree or 2 medium trees per 90 sqm of DSZ.		
>1,500 sqm - 1 large tree or 2 medium trees per 80 sqm of DSZ.		

ADG Requirement	Proposal	Compliance
<p><b><u>4P Planting on Structures</u></b></p> <p>Refer to Table 5 for minimum soil standards.</p> <p>Provide suitable plant selection.</p> <p>Provide suitable irrigation and drainage systems and maintenance.</p> <p>Enhance the quality and amenity of COS with green walls, green roof and planter boxes, etc.</p>	<p>Planting is provided throughout the lower levels of the development and the roof top. The proposal comprises suitable plant selection which is considered to enhance the quality and amenity of the COS.</p>	<p>Yes</p>
<p><b><u>4Q Universal Design</u></b></p> <p>10% adaptable housing.</p> <p>Flexible design solutions to accommodate the changing needs of occupants.</p>	<p>9 adaptable units are provided (10%). The layout of the units comprises flexible design solutions.</p>	<p>Yes</p>
<p><b><u>4R Adaptive Reuse</u></b></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<p>N/A</p>	<p>N/A</p>
<p><b><u>4S Mixed Use</u></b></p> <p>Provide active street frontages and encourage pedestrian movement.</p> <p>Residential entries separate and clearly defined.</p> <p>Landscaped COS to be at podium or roof level.</p>	<p>An active street frontage is achieved by providing a retail tenancy which opens directly to the footpath and providing an open and inviting forecourt area for access to the commercial tenancy on Level 1 and the residential apartments.</p> <p>The entries are clearly defined.</p> <p>Landscaping provided on podium and roof.</p>	<p>Yes</p>
<p><b><u>4T Awnings and Signage</u></b></p> <p>Awnings to be continuous and complement the existing street character.</p> <p>Provide protection from sun and rain, wrapped around the secondary frontage.</p> <p>Gutters and down pipes to be integrated and concealed.</p> <p>Lighting under awnings is to be provided.</p> <p>Signage is to be integrated and in scale with the building.</p> <p>Legible and discrete way finding is to be provided.</p>	<p>An extended awning is proposed over the entry to the ground level retail tenancy. This is considered to complement the presentation of the site as well as the existing and future street character. Conditions of consent are recommended to be imposed to ensure that this awning is in accordance with Council's design requirements.</p>	<p>Yes</p>

ADG Requirement	Proposal	Compliance
<b>Performance</b>		
<p><b><u>4U Energy Efficiency</u></b></p> <p>The development is to incorporate passive solar design.</p> <p>Heating and cooling infrastructure are to be centrally located (e.g. basement).</p>	<p>The development allows for the optimisation / management of heat storage in winter and heat transfer in summer.</p> <p>No details of services, however plant rooms provided within basement, within the building and on the rooftop.</p>	Yes
<p><b><u>4V Water Management and Conservation</u></b></p> <p>Rainwater collection and reuse.</p> <p>Drought tolerant plants.</p> <p>WSUD measures.</p> <p>Detention tanks should be located under paved areas, driveways or in basement carparks.</p>	<p>Provided within the basement levels.</p> <p>Suitable plants are proposed.</p> <p>WSUD measures are proposed.</p> <p>Detention tanks are located within the basement levels and are suitably placed.</p>	Yes
<p><b><u>4W Waste Management</u></b></p> <p>Waste storage should be discreetly located away from the front of the development or in the basement.</p> <p>Waste cupboard within each dwelling.</p> <p>Waste and recycling rooms are to be in convenient and accessible locations related to each vertical core.</p>	<p>Waste storage within the building at ground level.</p> <p>Each dwelling has sufficient storage.</p> <p>Waste chutes are centrally located on each floor.</p>	Yes
<p><b><u>4X Building Maintenance</u></b></p> <p>The design is to provide protection from weathering.</p> <p>Enable ease of maintenance.</p> <p>The materials are to reduce ongoing maintenance costs.</p>	<p>The proposal demonstrates ease of maintenance.</p>	Yes

## 6 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been lodged as part of the DA, as well as a NatHERS (Nationwide House Energy Rating Scheme) Assessor Certificate. The BASIX Certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores. A suitable condition will be imposed requiring compliance with the submitted BASIX Certificate.

## 7 Central City District Plan 2018

Whilst the *Environmental Planning and Assessment Act 1979* does not require consideration of District Plans in the assessment of development applications, an assessment of the Draft Central City District Plan has been undertaken. Outlined below is where the development

application is consistent with the overarching priorities outlined in the Central City District Plan 2018:

### Productivity

- Driving the growth of the Central City
- Delivering job targets in strategic and district centres
- Growing Central City District's economy with smart jobs
- Improving access to a greater number of jobs and centres within 30 minutes.

### Liveability

- Improving housing choice
- Improving housing diversity and affordability
- Creating great places.

## 8 Blacktown Local Environmental Plan 2015

The Blacktown Local Environmental Plan 2015 (BLEP 2015) applies to the site. The table below provides a summary assessment of the development standards established within the BLEP 2015 and the proposal's compliance with these standards. The development complies with the development standards contained within BLEP 2015.

Blacktown Local Environmental Plan 2015 – came into effect on 29 July 2015			
Development Standard	Requirement	Proposal	Compliant
<b>2.6 Subdivision – consent requirements</b>	Land may be subdivided with development consent.	N/A	N/A
<b>2.7 Demolition requires development consent</b>	The demolition of a building may only be carried out with development consent.	N/A	N/A
<b>Zoning B4 Mixed Use</b>  Objectives:	To provide a mixture of compatible land uses.  To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public	The proposed retail tenancy, commercial tenancy and residential apartments are compatible with the existing and future land uses, site and surrounds envisaged within the Blacktown CBD.  The site benefits from being a site in an accessible location and will assist with maximising public transport patronage.	Satisfactory  Satisfactory

**Blacktown Local Environmental Plan 2015 – came into effect on 29 July 2015**

Development Standard	Requirement	Proposal	Compliant
	transport patronage and encourage walking and cycling.		
Permissible Uses:	Commercial premises and shop top housing	The proposed land uses are permissible in the zone with consent.	Satisfactory

**PRINCIPAL DEVELOPMENT STANDARDS**

4.3 Height of buildings	Maximum building height is 72 m.	The proposal complies with the building height with the exception of the lift overrun (to provide access to the rooftop communal open space area) which exceeds the height limit by up to 4 m, being 5.6%.	Variation sought. Refer to <b>Section 7</b> of the Assessment Report.
4.4 Floor space ratio	Maximum FSR is 8.5:1 or 8,437 sqm	Site area: 992.7 sqm Proposed GFA: 7,932 sqm Proposed FSR: 7.99:1.	Yes
4.6 Exceptions to development standards	The applicant must submit a written request to justify the contravention of the development standard.	The applicant has submitted a clause 4.6 request in support of a variation to height which is provided at <b>Attachment 7</b> .  Council's consideration of the clause 4.6 request is provided at <b>Section 7</b> of the Assessment Report and at <b>Attachment 8</b> .	The clause 4.6 request is satisfactory in this instance and supported.

**MISCELLANEOUS PROVISIONS**

5.9 Preservation of trees or vegetation	The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.	There are no trees or vegetation on the site.	N/A
5.10 Heritage Conservation	The objective of this clause is to conserve the environmental heritage in Blacktown.	The site is not in the vicinity of a heritage item.	N/A

Blacktown Local Environmental Plan 2015 – came into effect on 29 July 2015				
Development Standard	Requirement	Proposal	Compliant	
<b>ADDITIONAL LOCAL PROVISIONS</b>				
7.1	Flood planning	Minimise the flood risk to life and property.	The site is not identified as subject to flood risk.	N/A
7.2	Terrestrial biodiversity	Protect native fauna and flora.	N/A	N/A
7.3	Riparian land and watercourses	Protect and maintain water quality within watercourses.	The site is not in the vicinity of a watercourse.	N/A
7.4	Active street frontages	N/A	N/A	N/A
7.5	Essential services	Adequate arrangements for the supply of water, supply of electricity, management and disposal of sewerage, stormwater drainage or conservation, and suitable road access.	The applicant has demonstrated these items are currently in place and are capable of being replaced/augmented.	Yes
7.7	Design Excellence	The development is to demonstrate a high level of architectural and urban design.	See comments below:	Yes
		<p>The development demonstrates a high standard of architectural design, with a suitable and interesting mix of materials and detailing.</p> <p>The external appearance will enhance the public domain.</p> <p>This is an area undergoing significant transition and there are distant views of the general locality, however the proposed building does not detrimentally impact on view corridors.</p> <p>The development is designed to address the streetscape and constraints of the site.</p> <p>The relationship of this development to other existing or proposed developments is appropriate in terms of separation, setbacks, amenity and urban form, given the constraints of this site and design / orientation of surrounding buildings. Refer to further discussion at <b>Sections 7 and 10</b> of the report.</p> <p>The bulk, massing and modulation of the building is suitably broken up given the context of the site and locality.</p> <p>The street frontage height is appropriate in the context of its location in the Blacktown CBD.</p> <p>The development demonstrates a sustainable design.</p> <p>The proposal results in overshadowing of existing and future developments, however this is not excessive.</p> <p>The development is satisfactory with regard to potential wind and reflectivity</p>		

Blacktown Local Environmental Plan 2015 – came into effect on 29 July 2015			
Development Standard	Requirement	Proposal	Compliant
	<p>impacts.</p> <p>The development is capable of achieving the principles of ecologically sustainable development.</p> <p>The development demonstrates appropriate circulation with respect to pedestrian, cycle, vehicular and services access movements.</p>		
			The proposal provides an aesthetically pleasing presentation as viewed from the public domain, and provides footpath improvements and street tree planting.
7.10 Minimum site requirements for development on certain land	Development on land identified as 'clause 7.10' on the Key Sites Map that requires each lot to have a minimum width of 50 metres and minimum depth of 65 metres.	N/A	N/A
7.12 Development in Zone B4	Development consent must not be granted to the erection of a building, or to the change of use of a building on land in zone B4 Mixed Use unless the consent authority is satisfied that the ground floor and first floor of the building will be used for a purpose other than residential accommodation.	The ground and first floors do not contain residential accommodation.	Yes

## 9 Blacktown Development Control Plan 2015

The provisions of Blacktown Development Control Plan 2015 (BDCP), including Part A - Introduction and Design Guidelines, Part D – Development in the Business Zones (2006), Part G – Site Waste Management and Minimisation and Part J - Water Sensitive Urban Design and Integrated Water Cycle Management are relevant to the proposal. The following table outlines that the application is generally compliant with the relevant provisions of BDCP, with the exception of the side setbacks and the width of the site.

Blacktown Development Control Plan 2015 – Part A Introduction and General Guidelines			
Development Standard	Requirement	Proposal	Compliant
6 - Parking Requirements	RFB – refer to ADG above. Commercial/Retail Premises: 1 space per 30 sqm GFA Plus 1 space per services vehicles.	Refer to ADG requirements and discussion above.	Yes

<b>Blacktown Development Control Plan 2006 – Part D Development in Business Zones</b>			
<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliant</b>
4.1 - Building Design and Construction	DAs are to be accompanied by details of construction and external facades.	Provided and satisfactory.	Yes
	New buildings are to be harmonious in form and style with existing or intended development.	The character of the building is compatible with the desired future character.	Yes
	Suitable access is required.	The development is accessible and capable of satisfying the Australian Standards.	Yes
	All weather protection (awnings) are required.	Provided and satisfactory.	Yes
	Reflectivity of external glass is to be a maximum of 20%.	Recommended to be conditioned.	To be conditioned.
4.2 - Height of Buildings	To maintain human scale and prevent overshadowing, particularly in areas adjacent to residential zones, buildings in local centres should not exceed 2 storeys in height above finished ground level.	This control is relevant for small local shopping centres which are zoned B1 and B2 only. This control is not applicable to the subject site.	N/A
4.3 - Building Setbacks	In assessing any application for business development Council will take into consideration whether a building setback is required for aesthetic purposes or streetscape design (e.g. the reduction of bulk and scale of buildings by incorporating boundary setbacks and terracing of storeys) or to enable adequate sight distances for traffic using adjacent roads. In some cases a zero building setback may be acceptable.	The proposal consists of a suitable building setback which reinforces the street edge and responds to the constraints of this site.	Satisfactory
4.4 - Landscaping	Landscaping is to make improvements the streetscape by creating a public plaza, widening of footpaths, paving and tree planting and planter boxes on levels above ground.	The proposal includes new street tree planting and landscaping throughout the lower levels of the development and the roof top.	Satisfactory

<b>Blacktown Development Control Plan 2006 – Part D Development in Business Zones</b>			
<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliant</b>
4.5 - Pedestrian Access, Public Spaces and Open Space	Consider solar access, protection from wind and rain, and 24 hour public access.	The proposal provides a covered pedestrian entry point.	Satisfactory
4.6 - Vehicular Access and Circulation	Provision for loading and unloading of service vehicles. Avoid conflict and congestion with pedestrians. Ingress and egress should be located where there is the least interference with public road. On-street queuing should be eliminated.	The proposal includes a suitable vehicular access point and dedicated turntable for service vehicles.  The proposal was considered by Council's Access and Transport Management Section and no objection was raised.	Satisfactory
4.8 - Car Parking	Headroom clearance of 2.2 m.  Headroom clearance for service vehicles of 4.6 m.  Parking areas are to be signposted to indicate the entry and exit points for car parking to ensure visibility from the street.	Achieved  Achieved  Achieved	Satisfactory
4.9 - Signs	Signs require approval.	This proposal does not include any signage.	N/A
4.10 - Solar Access	Development is to minimise overshadowing and maximise solar access to adjoining public spaces and residential land.	The proposal results in overshadowing of existing and future developments. The extent of overshadowing is not considered to be excessive.	Satisfactory
4.11 - Community Facilities	The incorporation of community facilities are encouraged for larger retail centres, including public plaza areas and public transport shelters and seating.	The development includes internal and outdoor communal open space areas for the use of residents. Further community facilities are not considered necessary.  Contribution Plan No.19 Blacktown Growth Precinct also includes a new local park including playground and landscaping on the western side of Boys Avenue, which assist with providing opportunities for recreational activities for the future occupants of this development.	N/A

<b>Blacktown Development Control Plan 2006 – Part D Development in Business Zones</b>			
<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliant</b>
4.12 - Residential Development	Residential uses are desirable as they add diversity and enliven centres outside of normal business hours.	The proposal includes compatible residential units.	Satisfactory
	<p>This is to be no more than 2 storeys.</p> <p>In larger centres, particularly the Blacktown CBD, the opportunity exists to incorporate residential units in retail/commercial development.</p> <p>The relevant parts of Part C (Development in Residential zones) are to be considered.</p>	The development exceeds 2 storeys, however this control is only relevant for small local shopping centres. This control is not applicable to the subject site.	N/A
4.13 - Drainage	Adequate provision for the collection and disposal of surface and roofwater run-off.	The proposal provides suitable collection, re-use and disposal of stormwater.	Satisfactory

The Blacktown CBD is identified in the DCP as a sub-regional centre. In sub-regional centres, buildings should relate to the human scale and should be attractively designed. Some continuity of style should be maintained within the centre.

<b>Part 5 – Sub-regional Centres</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comply</b>
5.1 - Description	A sub-regional centre is one which has major office, retail and community facilities and is situated on highly accessible transport routes.	<p>Blacktown CBD has been identified by the State Government as a Strategic Centre.</p> <p>A diversity of uses is encouraged in these centres, including the integration of residential accommodation and retail / commercial uses. The proposed mixed use development is consistent with these provisions.</p>	Yes
5.2 - Car Parking	Refer to discussion above.	Refer to discussion above.	Yes

Part 5 – Sub-regional Centres			
Control	Requirement	Proposal	Comply
5.3.1 -Residential/ Mixed Use Development – Specific Controls	<p>(1) Provide a pleasant living and working environment for the residents of the building.</p> <p>(2) Ensure that development sites have sufficient frontage to achieve a good relationship to adjoining sites.</p> <p>(3) Ensure that the siting of buildings provides for adequate separation between buildings for the amenity of the development and adjoining properties to provide equitable access for sunlight and to minimise the overshadowing of adjoining properties.</p> <p>(4) Ensure developments promote a positive relationship and 'human scale' with the public domain and maintain solar access to public places and footpaths.</p> <p>(5) Maintain the amenity of any adjoining residential land in terms of building bulk and solar access.</p> <p>(6) Provide attractive, usable and accessible landscaped areas of open space for the residents of the development.</p> <p>(7) Minimise the overlooking of living spaces in dwellings and private open space.</p> <p>(8) Ensure the adequate provision of service facilities in the development and that such facilities are integrated with the design of the development and are conveniently located for use by residents.</p>	<p>The proposed development is consistent with these objectives and provides opportunities for good quality living and working environments for residents and workers.</p> <p>The proposal has demonstrated that the site has sufficient frontage to accommodate vehicular and pedestrian access to the site, and the Applicant confirms that adequate provision for services is provided.</p> <p>The siting of the building has taken into consideration the existing and future privacy and solar access to surrounding properties.</p> <p>The development is consistent with the desired future character of the Blacktown Strategic Centre which complements the surrounding residential and retail/ commercial land uses.</p>	Yes

Part 5 – Sub-regional Centres			
Control	Requirement	Proposal	Comply
5.3.1 - Residential/ mixed use development - Setbacks	<p><b>Front Setbacks:</b> A zero setback to the front boundary is permissible for the ground floor and the 1 - 2 levels above, i.e. the podium.</p> <p><b>Side and rear setbacks:</b> A zero setback to the side and rear boundaries is permitted for the ground floor and the 1 - 2 levels above, i.e. the podium.</p> <p>For the levels of the building above the podium, each development site shall be examined on its individual merits with the absolute minimum setback being 6 metres.</p> <p>However, in order to ensure a quality environment, especially in regard to solar access and privacy for the future residents of the CBD, setbacks greater than 6 metres are highly desirable and are advocated by Council.</p> <p>Balcony encroachments into any building setback area which is not to a street frontage will not necessarily be accepted but will be assessed on their merits. In this respect, Council will have regard to matters such as privacy, overlooking and articulation of the façade.</p>	<p>The ground level is generally a zero setback to the front (north) boundary. The Level 1 front setback ranges from 6.5 m to 9.5 m. Levels 2 to 21, have a 1.5 m front setback.</p> <p>These setbacks create a comfortable street scale and are in keeping with the desired future character of this CBD precinct. The setbacks and external steel structures provide articulation and an interesting appearance.</p> <p>To the western (side) boundary, the ground level has a zero setback, and the core of the building for Levels 1 to 21, and also the roof level has a zero setback. The northern and southern wings of these Levels 1 to 21 have a 3 m setback to the corridor, and a 4.7 m setback to the blank walls of the apartments.</p> <p>To the eastern (side) setback, the ground level has a zero setback with a 300 mm to 500 mm setback for landscaping and the façade's external column structures. Level 1 has a 2 m setback. The setback to Levels 2 to 21 gradually increase, and is 2.88 m for Level 2, 3.6 m for Level 3 and 4.5 m for Levels 4 to 21.</p> <p>To the south (rear) the ground level setback is at least 300 mm, and for Levels 1 to 21 the setback is 6 m.</p> <p>Overall, the proposed setbacks are satisfactory in the context of this Strategic centre.</p>	<p>Yes.</p> <p>No, variation sought. Refer to further discussion regarding DCP setbacks and ADG building separation at Section 7 of the Assessment report.</p>

Part 5 – Sub-regional Centres			
Control	Requirement	Proposal	Comply
5.3.1 - Minimum allotment size or width of sites	30 m 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.	18.29 m along the northern frontage to Second Avenue. The redevelopment of this site does not constrain the redevelopment of any surrounding sites.	No - variation sought. Refer to <b>Section 7</b> of the Assessment Report.
5.3.1 - Common Open Space	A minimum rate of 42% of the sum of the following: 40 sqm 1 bedroom unit 50 sqm 2 bedroom unit 70 sqm 3 bedroom unit  No more than 30% of the above-ground open space (balconies or terrace areas) may be included in total.	N/A. This control is overridden by the ADG.	N/A

Blacktown Development Control Plan 2015 – Part G Site Waste Management and Minimisation			
Development Standard	Requirement	Proposal	Compliant
Waste management and minimisation	The proposal is to be accompanied by a satisfactory waste management plan in relation to the demolition, construction and ongoing use stages.	The WMP has been reviewed by Council's waste management officer and is considered satisfactory.	Satisfactory.
Garbage pickup	The collection room and point is to be conveniently placed, turning circles and height requirements must be met.	The site will be serviced by Council's waste trucks.  The waste storage and loading dock are conveniently placed. The manoeuvrability and height clearances for the path of travel satisfies the relevant AS for heavy rigid vehicles.  The proposal has been reviewed by Council's waste management officer and is considered satisfactory.	Satisfactory.

**Blacktown Development Control Plan 2015 – Part G Site Waste Management and Minimisation**

<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliant</b>
Garbage/recycling room requirements	The room is to be conveniently located to all units, relate to other loading areas, provide adequate weather protection, be secure and lockable, be well ventilated and drain to the sewer, complement the design of the development, provide sufficient space between bins for servicing, and roof drainage is to be directed to the stormwater system.	The WMP has been reviewed by Council's waste management officer and is considered satisfactory.	Satisfactory.

**Blacktown Development Control Plan 2015 – Part J WSUD Integrated Water Cycle Management**

<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliant</b>
Water management	The development is to demonstrate water conservation, management of stormwater quality and quantity, stormwater erosion, sediment and pollution control, and management of ground water.	Council's Engineers have undertaken an assessment of the proposal in accordance with the requirements of BDCP Part J, and no objection is raised subject to conditions of consent.	Satisfactory.

**Attachment 7 - Applicant's clause 4.6 request**

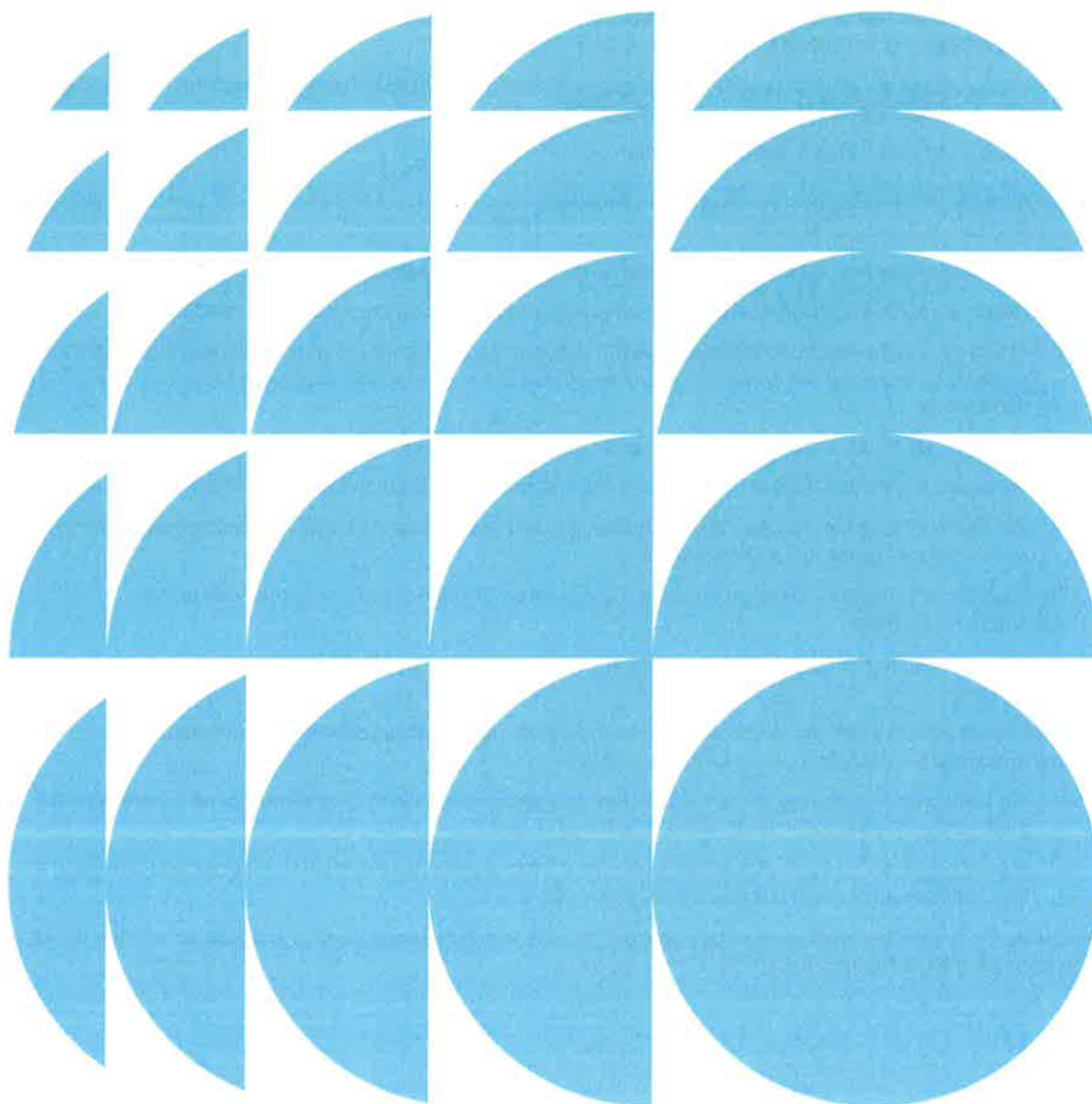
**ETHOS  
URBAN**

**Clause 4.6 Variation Request  
Height of Buildings Development  
Standard**

26 Second Avenue, Blacktown  
Shop Top Housing and Commercial Premises

Submitted to Blacktown City Council  
On behalf of Merhis Blacktown Pty Ltd

23 February 2018 | 218071



## 1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Merhis Blacktown Pty Ltd. It is submitted to Blacktown City Council (Council) in support of a development application (DA) for a shop top housing and commercial premises development (the 'proposal') at 26 Second Avenue, Blacktown (the 'site').

Clause 4.6 of *Blacktown Local Environmental Plan 2015* (BLEP 2015) enables Council to grant consent for even though a proposed development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That the proposal will be in the public interest because it is consistent with the objectives of the development standard and the zone in which it is proposed to be carried out.

This clause 4.6 variation request demonstrates that:

- Compliance with the Height of Building development standard in clause 4.3 of BLEP 2015 is unreasonable and unnecessary in the circumstances of the case;
  - given the objectives of the standard are achieved notwithstanding non-compliance with it;
- That there are sufficient environmental planning grounds to justify contravention of the standard, as:
  - The breach of the height control facilitates the delivery of a significant environmental planning benefit for the proposal by providing additional and improved access to the communal open space located on the roof of the building;
  - the proposal is compatible with the scale and character of the area;
  - the extent of variation is minor and at worst only departing 6.9% from the standard of the overall height; and
  - the extent of footprint occupied by the lift overruns and rooftop plant is minor when compared to the overall size of the roof space upon which they sit.
- The variation is in the public interest because it is consistent with the objectives of the zone and the development standard;
- The non-compliance with the development standard does not raise any matters of State and regional planning significance;
- There is no public benefit in maintaining the Height of Buildings development standard adopted by the environmental planning instrument for this site given:
  - the appropriate positioning of the rooftop plant and lift overruns and their presentation as viewed from the public domain will result in no adverse visual impact; and
  - the impact on the site and communal open space if this element was deleted or reduced would result in a less optimum outcome in terms of amenity provision o.

Therefore, the DA for this proposal may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of BLEP 2015.

## 2.0 Request to Vary a Development Standard

Clause 4.6 of BLEP 2015 allows Council to grant consent for development even though the proposal contravenes a development standard imposed by this planning instrument. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

### 2.1 Development Standard Sought to be Varied

This clause 4.6 variation request seeks to justify contravention of the Height of Buildings development standard set out in clause 4.3 of BLEP 2015. Under BLEP 2015, the site is provided with a maximum building height of 72 metres.

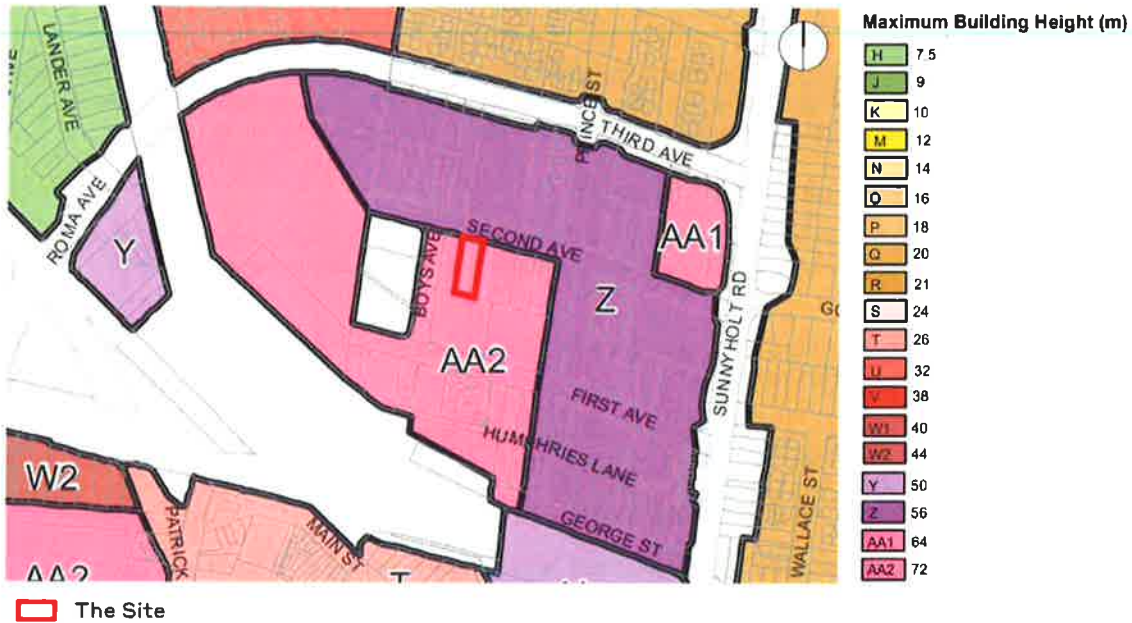
Clause 4.3 of BLEP 2015 is reproduced below in its entirety, and an extract of the Height of Buildings Map, to which this clause applies, is reproduced in **Figure 1**.

#### **4.3 Height of buildings**

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

- (a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings,*
- (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown,*
- (c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities,*
- (d) to ensure that sufficient space is available for development for retail, commercial and residential uses,*
- (e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.*

*(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.*



**Figure 1 - Height of Buildings map**  
 Source: Blacktown Local Environmental Plan 2015 (Sheet HOB\_013)

**2.2 Variation Sought**

As detailed in the architectural drawings prepared by Conrad Gargett and provided at **Appendix A** of the Statement of Environmental Effects (SEE), a variation to the Height of Building development standard is requested. The proposal generates a maximum RL of 129.3m, being 77 metres above existing ground level.

Specifically, the variations to the Height of Building Development standard relate to:

- The roof top communal open space and associated balustrades;
- Lift overruns; and
- Rooftop plant.

The detailed extent of each variation is provided in **Table 1** below and illustrated in **Figure 2**. It is noted that the lift overruns generate the greatest departure from the Height of Building development standard, resulting in a 5m variation (6.9%).

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Recent decisions in respect of *Micaul Holdings P/L V Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskovich V Waverley Council* (65% exceedance of FSR) support this.

**Table 1 - Extent of variation**

Component	RL	Maximum Height (m) (above existing ground level)	Variation
Communal open space	124.400	72m	0m
Balustrades	126.2	73.8m	1.8m (2.5%)
Rooftop plant	127.900	75.6	3.6m (5%)
Lift overruns	129.300	77	5m (6.9%)

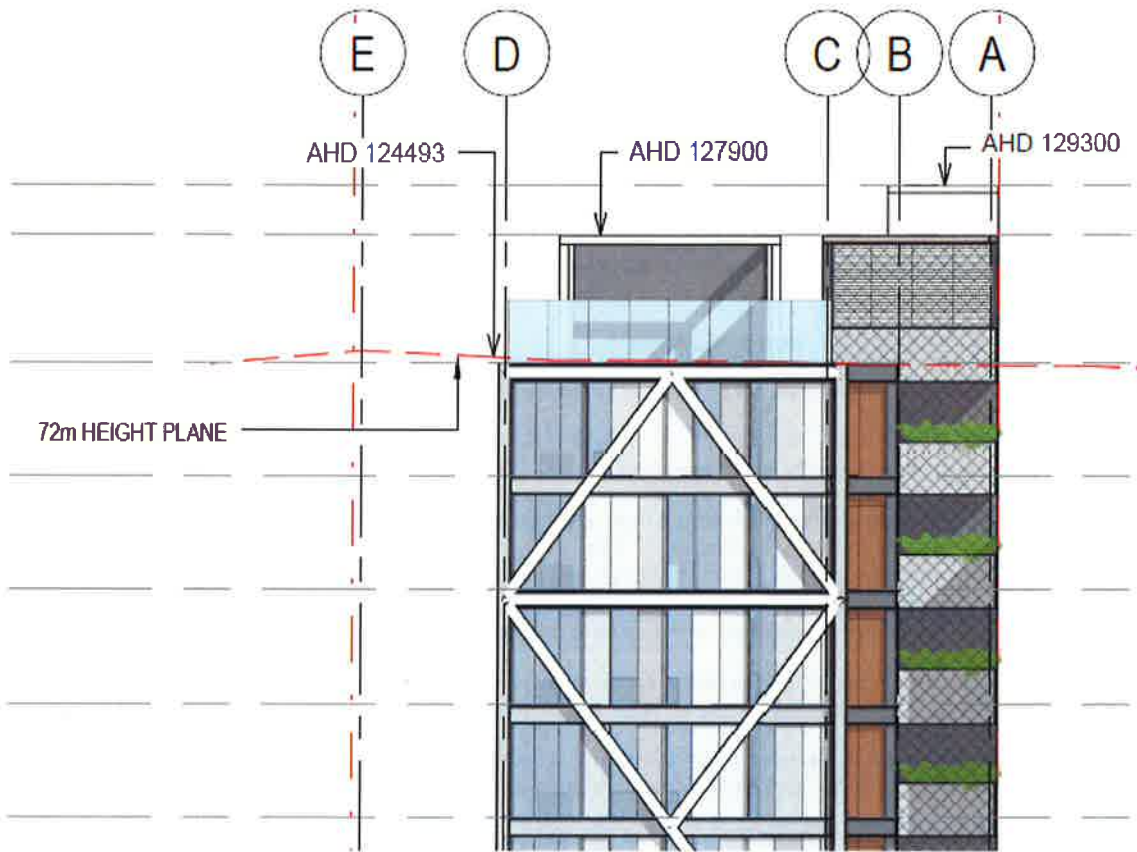


Figure 2 - Extent of variation (north elevation)  
Source: Conrad Gargett

### 2.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 4(1) of the *Environmental Planning and Assessment Act 1979* as follows:

*"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work..."*

The Height of Buildings control prescribed under Clause 4.3 of BLEP 2015 is clearly and unambiguously a development standard and has continually been applied in this manner by the consent authority.

### 3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of BLEP 2015 provides that:

#### 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.*

Further, clause 4.6(4)(a) of BLEP 2015 provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe); and*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five).*

The relevant matters contained in clause 4.6 of BLEP 2015, with respect to the Height of Buildings development standard, are each addressed below, including with regard to these decisions.

#### 3.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of BLEP 2015 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

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 or 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

This clause 4.6 variation request establishes that compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of the proposal and accordingly justifies the variation proposed pursuant to method 1 outlined in *Wehbe*.

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (*our emphasis*) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

The sections below address the matters in clause 4.6(3)(a), in particular how the objectives of the maximum height development standard are achieved notwithstanding the non-compliance with the numerical control.

### **3.1.1 The underlying objectives or purposes of the development standard**

The objectives of the Height of Buildings development standard contained in clause 4.3 of BLEP 2015 are as follows:

- (a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings.*
- (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown.*
- (c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities.*
- (d) to ensure that sufficient space is available for development for retail, commercial and residential uses.*
- (e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.*

### **3.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard**

**Objective (a): *To minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings.***

The site directly adjoins a 23-storey mixed use development currently under construction at 1 Boys Avenue. As detailed in the shadow diagrams prepared by Conrad Gargett (**Appendix A**), the proposal does generate overshadowing to the adjoining property from 9:00am during the winter solstice. The immediate proximity of each development and built form similarities makes this unavoidable.

It is noted however that the adjoining development is devoid of any overshadowing from 12 noon and is not impacted upon by the proposal the remainder of the day during the winter solstice. The proposal does not therefore inhibit its ability to achieve a minimum two hours of direct sunlight from 9:00am to 3:00pm during the winter solstice as specified by the *Apartment Design Guide* (ADG).

Similarly, the adjoining development is not inhibited by the proposal in its ability to achieve a minimum of three hours of direct sunlight in the winter solstice. Equally, the proposal does not overshadow the existing building directly east of the site to a point in which it cannot receive a minimum of three hours direct solar access. This is consistent with the *Blacktown Development Control Plan 2015* (BDGP 2015).

Other areas which are subject to overshadowing are across streets and the rail corridor. These are predominately transitional spaces and not areas of congregation where private land owners or the public expect to enjoy sunlight access.

With respect to the matters of privacy and visual impacts, the circulation core of the proposal is along the western façade. This will ensure the adjoining development at 1 Boys Avenue has a predominately non-habitable interface with the proposal thus minimising visual privacy impacts between the two developments.

Again, it is noted that the proposal's proximity to the adjoining development makes it susceptible to some view loss. However, any additional setback will not effectively improve these views. This is attributed to the constrained narrow nature of both the site and the adjoining property at 1 Boys Avenue.

The narrow nature of the site and the land adjoining at 1 Boys Avenue have generated long and narrow development footprints. The constraint also creates difficulty in providing a feasible development whilst strictly adhering to strict numerical compliance with development standards in planning instruments and guidelines in the ADG. For example, strict compliance with the such controls and guidelines with respect to building setbacks and separation to facilitate a further reduction in privacy and visual impacts on 1 Boys Avenue would render essentially no development envisaged for the B4 zone possible.

No significant open space or public domain areas surround the site which would be adversely impacted by overshadowing, privacy and or visual amenity.

Given the above and despite rooftop building elements exceeding the Height of Buildings development standard, it is submitted that these variations will:

- Not significantly inhibit the opportunity of surrounding development in achieving sufficient solar access.
- Not generate any additional adverse visual impacts to surrounding development as the variations relate only to the upper portions of the building.
- Not increase adverse privacy impacts upon surrounding development given the breach concerned relates to elements on the roof or the proposal.

**Objective (b): To ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown.**

The proposal will have a height, bulk and scale compatible with its location within the Blacktown city centre. The site is not located in close proximity of any low density residential localities, which contain a significantly different character, height, bulk and scale to the proposal.

The proposal utilises controls available to the site, contributing to a built form outcome envisioned for the city centre under BLEP 2015. The communal open space, lift overruns and plant, which exceed the Height of Buildings development standard are isolated to the upper, central portion of the building. Although these elements increase the building height of the proposal, they do not generate a development that would be inconsistent with the height, bulk and scale of development proposed, and being constructed within the city centre, including:

- A 23-storey mixed use development is currently being constructed directly west of the site at 1 Boys Avenue.
- A 24-storey mixed use development approved at 28 Second Avenue.
- An 18-storey mixed use development is currently being constructed north east of the site at 12 Second Avenue.

- An 18-storey mixed use development approved for 2-10 First Avenue.
- An 18-storey mixed use development proposed for 9-17 Second Avenue.
- An 18-storey mixed use development proposed for 10-14 Third Avenue, Blacktown.

**Objective (c): To define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities.**

The site is located within 350m of Blacktown Railway Station and Westpoint Shopping Centre, hence providing access to transport, retail and commercial activities within walking distance. The locality of the site, being the northern portion of the city centre, is defined as a focal point for high density development commensurate of its land use zoning and potential available under the controls.

The communal open space, lift overruns and plant, which exceed the Height of Buildings development standard do not alter the proposed development in its ability to provide a density appropriate to the city centre. The rooftop elements will not inhibit the suitability of the density proposed and/or future residents' ability to be well serviced by the surrounding transport, retail and or commercial uses within the city centre.

**Objective (d): To ensure that sufficient space is available for development for retail, commercial and residential uses.**

The proposal accommodates commercial and/or retail uses. All floors within the proposal sit below the maximum permissible height for this site.

The communal open space area, which although exceeds the Height of Buildings development standard, supports the residential component of the development through the provision of improved amenity. The communal open space utilises a generally redundant space. The utilisation of the space is therefore provides a positive benefit, which off sets the breach of the Height of Buildings standard.

Rooftop building elements including lift overruns and plant, occupy a relatively small floor space in relation to the rooftop floorplate. These elements provide a functional service to the building.

**Objective (e): To establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.**

The Height of Buildings development standard enables a gradual height transition of development from the city centre down towards low density residential development, ensuring an appropriate built form interface. The site however, is not within a peripheral location of the city centre whereby its built form and design needs to consider an interface with low density residential development or public spaces.

The maximum height of the proposal, albeit exceeding 72 metres, conforms to the built form and the height transitions envisioned for development under the Height of Buildings development standard. The proposal will remain in context in terms of its position within the transition desired by Council for development as it moves away from the core of the city centre.

### **3.1.3 Other reasons why compliance is unreasonable or unnecessary**

Compliance with the Height of Buildings development standard is also unnecessary in these circumstances because a better planning outcome for the site as a can be achieved because of the non-compliance. The development is an integrated proposal that will deliver residential accommodation, commercial and retail floor space consistent with the desired future character of the area. The proposed variation to the height will facilitate the provision of communal open space and thus providing high quality amenity for residents.

The extent of built form comprising the rooftop plant, transparent balustrading and lift overruns contained above the height limit will be small in terms of their footprint when compared to the total roof area. Subsequently, these elements will only be perceived from a limited number of locations within the public domain and thereby having minimal visual impact. Moreover, these elements do not inhibit floor space better suited to residential, commercial and or retail uses.

On balance, maintaining the development standard would result in a poorer amenity outcome for future residents and visitors to the site. Given the proposal is consistent with the envisaged built form of the locality and will contribute to a higher standard of amenity for future residents, the proposal has sufficient planning grounds to justify contravening of the Height of Buildings development standard.

### **3.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard**

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Building development standard as it applies to the site.

In *Four2Five* the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. With regards to this application, there are particular elements that contribute to the proposed development's variation to the Building Height standard and these are detailed below.

#### **Provision of Communal Open Space and Improved Access**

The proposal incorporates a rooftop communal open space for the building, which will significantly enhance residential amenity and help improve the developments overall environmental performance. The type and quality of communal open space proposed is a significant benefit to residents given the limited availability of high quality communal open spaces within the city centre locations.

To maintain equitable access to this rooftop communal open space, and contribute to its amenity, the lift overruns and rooftop balustrades will protrude the 72-metre maximum Height of Buildings development standard. This will not impact on any significant scenic views to or from the site and will not generate any additional adverse overshadowing on the surrounding locality.

Full adherence to the development standard would require the lift overruns and balustrades to be either reduced and or removed. This would result in:

- Unequitable access to the rooftop open space for residents. A reduction to the lift overruns can only be achieved by removing lift access and retaining only the stair to the rooftop communal open space. This will not ensure equitable access to this space particularly for those in wheelchairs and or with prams and would generate a building design unable to meet BCA requirements.
- A reduced amount, type and diversity of communal open space available to the site. If the lift overruns were to be removed, the rooftop communal open space would not be possible in the indicative development scheme.

Maintaining the Height of Buildings development standard would therefore result in a poorer amenity outcome for residents. It would reduce the diversity and type of communal open space available to the site.

It is noted that although the proposed development achieves the minimum communal open spaces requirements under the ADG on level 1, the roof top terrace provides a superior communal area with greater amenity given its unobstructed solar access and outlook. This perspective, which demonstrates the provision of access to something

which is over and above the circumstances required under the ADG, was supported by Commissioner Dixon *MGT 6 Pty Ltd v The Council of the City of Sydney* [2017] NSWLEC 121.

The environmental planning grounds, being the provision of accessible, high amenity communal open space are particular to the site and the proposal and will significantly benefit to its future occupants. Thus, the benefits of providing lift access and their associated overruns, which breach the Height of Buildings standard, far outweigh a fully numerical compliant development, in the circumstances of this case.

#### **No Adverse Visual Impact from the Public Domain**

The rooftop elements which exceed the 72-metre height limit will not result in any adverse visual impacts when viewed from the street front and or from public domain areas surrounding the site. Rooftop elements have heights generally consistent with the upper storey building elements of the adjoining development at 1 Boys Avenue and, therefore, will not generate any additional adverse visual impacts.

In light of the above, there are no environmental planning grounds that warrant maintaining and/or enforcing the numerical building height standard in this instance. Rather, there are clear and justifiable environmental planning merits which justify the flexible application of the height control allowed by clause 4.6.

The Statement of Environmental Effects demonstrates that the proposed development will not give rise to any significant adverse environmental effects which cannot be managed or mitigated.

### **3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard**

#### **3.3.1 Consistency with objectives of the development standard**

The proposal is consistent with the objectives of the Height of Buildings development standard, for the reasons discussed in section 3.1.2 of this report.

#### **3.3.2 Consistency with objectives of the zone**

The proposal exceeds the Height of Buildings development standard on land in B4 Mixed use zone. As such, the objectives of this zone are required to be considered in determining whether the variation to exceed the applicable height standards is supportable.

##### **B4 Mixed Use Zone**

The objectives of the B4 Mixed use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal in its entirety satisfies the B4 Mixed Use zone objectives as it:

- provides a mixture of compatible land uses, including residential apartments, commercial and retail;
- integrates residential, commercial and retail uses in a highly accessible location that is close to major public transport in the form of Blacktown Railway Station and Blacktown Transit Way, which also accommodates suitable cycling infrastructure.

Despite the proposed variation to maximum Height of Buildings development standard, it has been demonstrated that the height proposed will remain consistent with the objectives of the B4 Mixed Use zone in BLEP 2015.

Accordingly, the consent authority can reasonably be satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that the proposal would be in the public interest as it is:

- consistent with the objectives of the particular development standard; and
- the objectives for development within the zone in which the proposal is to be carried out.

### **3.4 Other Matters for Consideration**

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (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.*

These matters are addressed in detail below.

#### **3.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The variation of the Height of Buildings development standard does not raise any matter of significance for State or regional planning. It is noted, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, *A Plan for Growing Sydney* in that it:

- provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- allows for the use of the site to continue to provide local employment opportunities;
- is well located for public transport connections; and
- includes the redevelopment of an urban renewal site in proximity to public transport.

#### **3.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard**

There is no public benefit in maintaining the numerical Height of Buildings development standard in this instance. In fact, strictly adhering to the maximum height development standard would result in an inferior outcome for future residents.

Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this underutilised site, and would unnecessarily encumber the various benefits this development brings, including:

- a new development that is compatible with the desired future character of the locality;
- a new development offering high quality design and improvements to the streetscape; and
- the provision of construction jobs and ongoing employment opportunities through the retail uses proposed.

#### **3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.**

In addition to the matters already mentioned, it is worth noting that the proposed variation to the Height of Buildings development standard will not set an undesirable precedent in the area. The height variation sought applies only to the rooftop, similar to the variation granted for the adjoining development currently under construction and adjoining the site at 1 Boys Avenue. The height variation will not generate additional adverse amenity impacts for future residents at 1 Boys Avenue or future occupants of the site. Further, the variation generated by the lift overruns is unique to the proposal as it facilitates equitable access to a rooftop communal open space.

## 4.0 Conclusion

Compliance with the Height of Buildings development standard contained in clause 4.3 of BLEP 2015 is unreasonable and unnecessary in the circumstances of the case, and the justification is well founded. It has been established that the variation allows for a better planning outcome for the site by providing equitable access to all levels of the development and additional, superior communal open space.

This clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the Height of Buildings development standard, that:

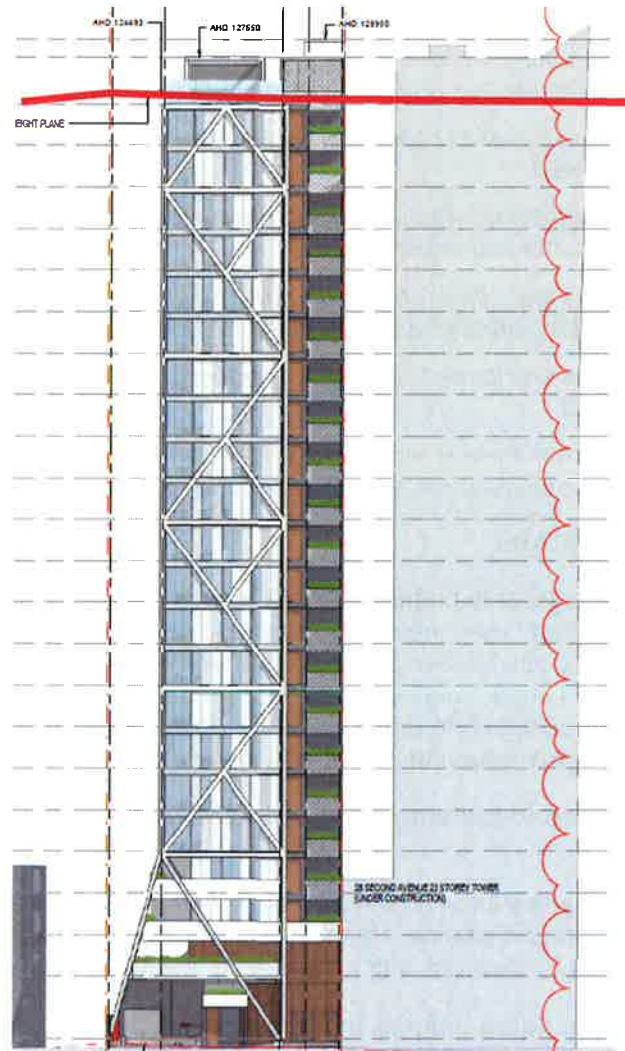
- The objectives of the Height of Buildings development standard are achieved notwithstanding the variation to the numerical control;
- The proposed flexible application of controls accomplishes better planning outcomes than would be achievable by strict adherence to the controls across the development site in relation to the proposed communal open space and lift overruns.
- The extent of variation is minor in both proportion of the overall height and in the extent of space occupied by the lift overruns and rooftop plant as part of the overall and much larger roof space;
- The rooftop building elements which exceed the maximum height do not create any additional direct adverse overshadowing, visual and or privacy impacts;
- The breach of the height control facilitates the delivery of a significant environmental planning benefit for the development by providing a high quality communal open space located on the roof of the building with equitable access.
- The proposal is compatible with the scale and character of the Blacktown city centre.
- The non-compliance with the development standard does not raise any matters of State and regional planning significance; and
- There is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site given:
  - the appropriate positioning of the rooftop plant and lift overruns that will result in no adverse visual impacts upon the streetscape and/or public domain;
  - the reduction in the amenity that will be provided on the site via the rooftop communal open space are, if this element was deleted or reduced to strictly comply

This clause 4.6 request demonstrates that the proposal will deliver a holistically better outcome for Council and future residents of the development and maintains a built form in line with the character envisaged for Blacktown city centre. For the reasons set out in this written request the development should be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of BLEP 2015.

## Council assessment of Clause 4.6 request

### 1 Visual representation of height offset

The following figure identifies the portion of the development that exceeds the height of buildings limit. The proposed development is shown on the left. The development currently under construction on the adjoining site to the west (28 Second Avenue) is shown on the right.



### 2 5-part test assessment of Clause 4.6 variation request

The Land and Environment Court has established the following 5-part test for a consent authority to take into consideration when deciding whether to grant concurrence to a variation to a development standard:

- i. **The objectives of the standard are achieved notwithstanding non-compliance with the standard**

## Height

The objectives of clause 4.3 Height of buildings are as follows:

- (a) *To establish maximum height controls for buildings as a means of controlling the density and scale of buildings*
- (b) *To nominate heights that will provide a transition in built form and land use intensity*
- (c) *To define focal points by way of nominating greater building heights in certain locations*
- (d) *To provide sufficient space for development for the purposes of retail premises, commercial premises and residential accommodation*
- (e) *To allow sun access to the public domain and ensure that specific areas are not overshadowed*
- (f) *To ensure that buildings and public areas continue to receive satisfactory exposure to the sky and sunlight*
- (g) *To minimise any visual impact on, or loss of solar access to, land in the vicinity of proposed development as a result of that development*
- (h) *To minimise any loss of privacy to residential land as a result of proposed development*
- (i) *To ensure that there is an appropriate interface between commercial centres and land in any adjoining residential zone or in any adjoining public land.*

- **Maximum height**

The maximum height limit on the site is 72 metres. Although the development exceeds the permissible height by 4 metres for plant and equipment elements only, the development does not achieve an additional residential level. The increase in height therefore does not impact on the density/floor area of the development. The increased height also has no impact on the scale of the development, as the point encroachments of plant and equipment are integrated into the overall design of the building.

- **Solar access to buildings and open space of adjoining development and land**

The additional shadow impacts are negligible. The majority of the overshadowing caused by the non-compliance is due to the lift overrun and rooftop plant and equipment, which is captured within the roof space itself.

- **Range of building heights in appropriate locations**

The site is considered suitable for the development given its very close proximity to the Blacktown railway station and the Blacktown Central Business District (CBD). The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys, being 22 in total, is consistent with other shop top housing developments proposed in the 72 metres height limit area, including the adjoining site to the west which is currently under construction at 28 Second Avenue.

- **Privacy impacts**

The building height variation does not result in any additional privacy impacts on adjoining properties as the rooftop communal open space area is designed to centrally focus activity within the rooftop, as opposed to directing views towards surrounding properties.

- ii. **The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

The purpose of the standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered unreasonable.

- iii. **The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

The purpose of the development standard would not be defeated if compliance was required. However, 100% compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standard will still be achieved despite the variation.

- iv. **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**

Variations to the height of buildings' development standard have been previously supported in the CBD. Council officers have also consistently allowed the lift overruns and rooftop area to encroach above the permissible height limit.

Developments of a similar scale to this DA (i.e. 22 storeys only) have been approved within the northern precinct of the CBD with variations to height of buildings, including the development at 28 Second Avenue (JRPP-14-02593) and the development at 2-10 First Avenue at 18 storeys (JRPP-15-02087).

- v. **The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone**

The development site is currently vacant. Full compliance with the development control can therefore be achieved. The variation, however, does not increase residential density. Given the site's context within the Blacktown CBD and the limited site area, a variation in order to create usable space for the benefit of future residents and a better designed building is considered acceptable.

Based on the above assessment, the requested variation under clause 4.6 is considered reasonable, well founded and is recommended for support.

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

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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.

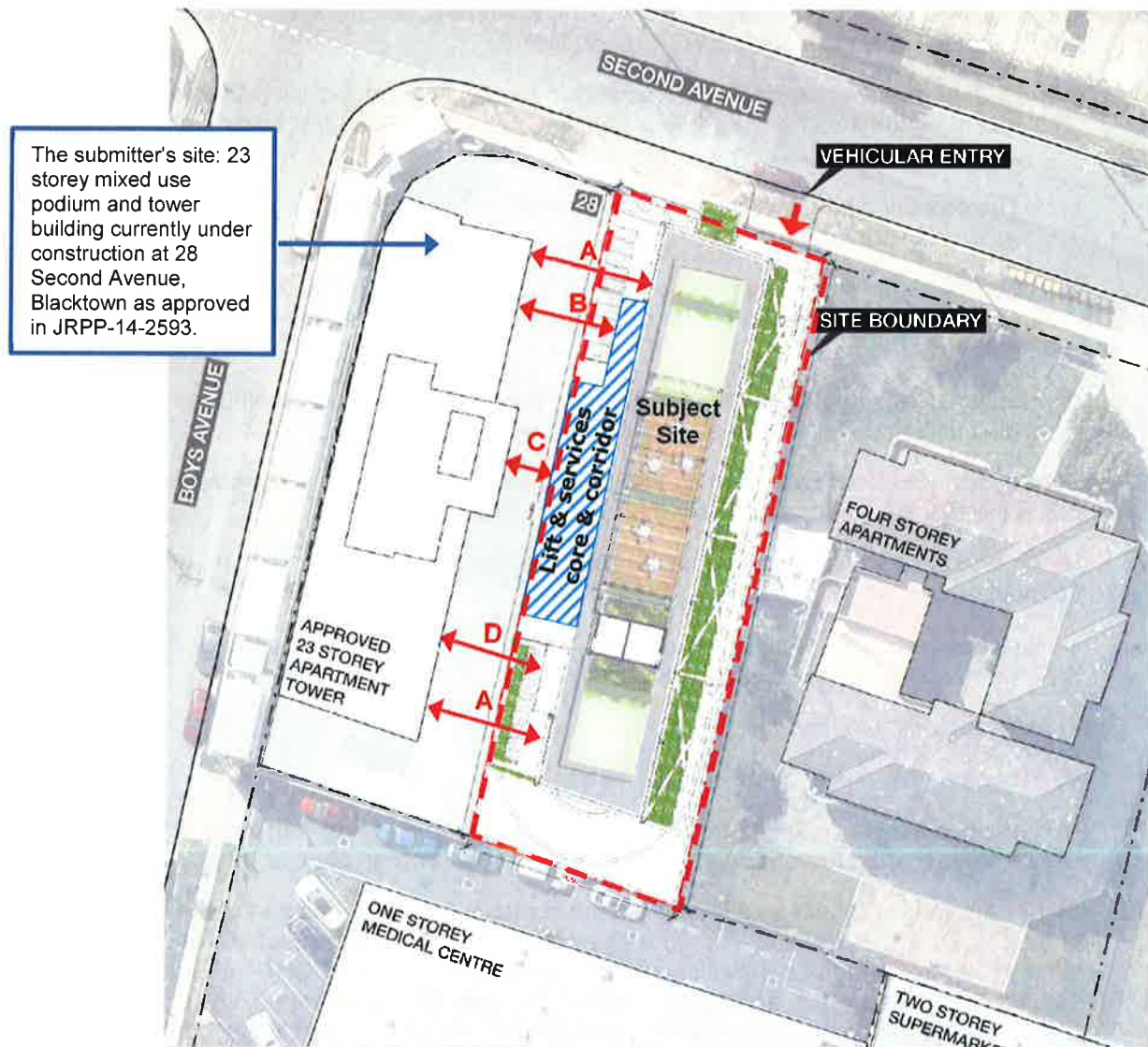
Following this, our response to the issues raised is provided at Part D.

### **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.

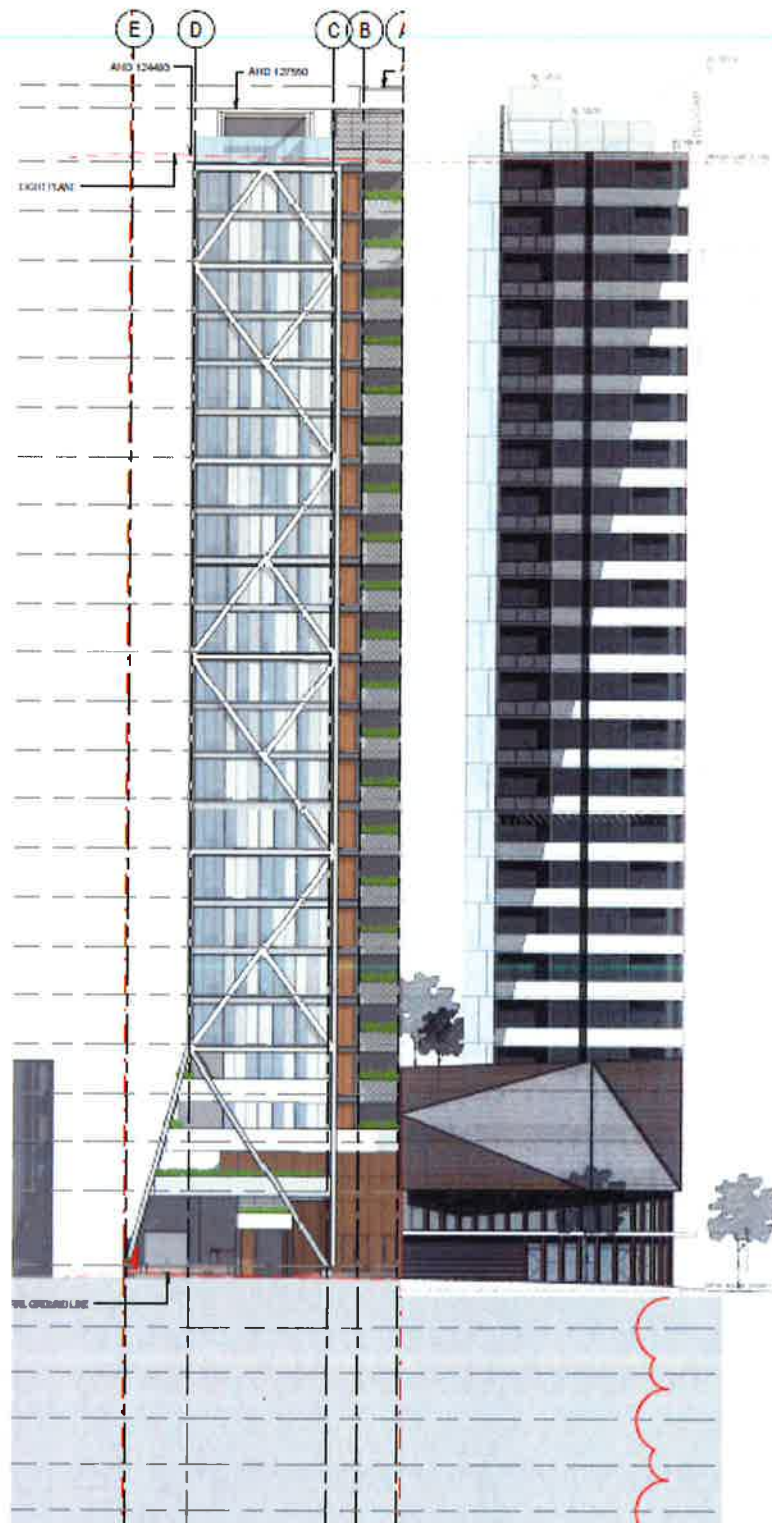
**Part B – Material demonstrating the relationship between the submitter’s development currently under construction on their site and this proposal**



**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:

<b>Marker</b>	<b>Submitter's development at 28 Second Avenue</b>	<b>Proposed development at 26 Second Avenue</b>	<b>Distance between these buildings</b>
<b>A</b>	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>B</b>	Bedrooms with window openings – 6 metres from the boundary	Access corridor (includes unopenable windows) - 3 metres from the boundary	9 metres
<b>C</b>	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
<b>D</b>	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 workshopping 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.

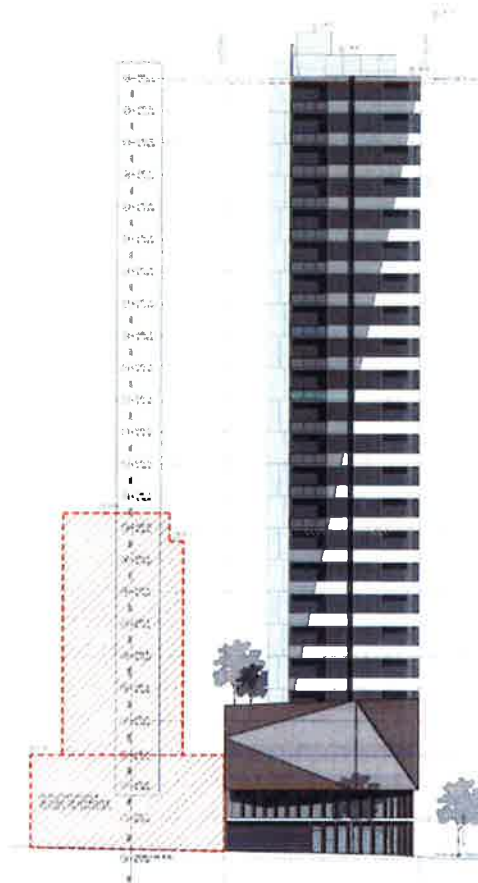
## Part D – Council officers’ response to the issues raised in the submission

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).



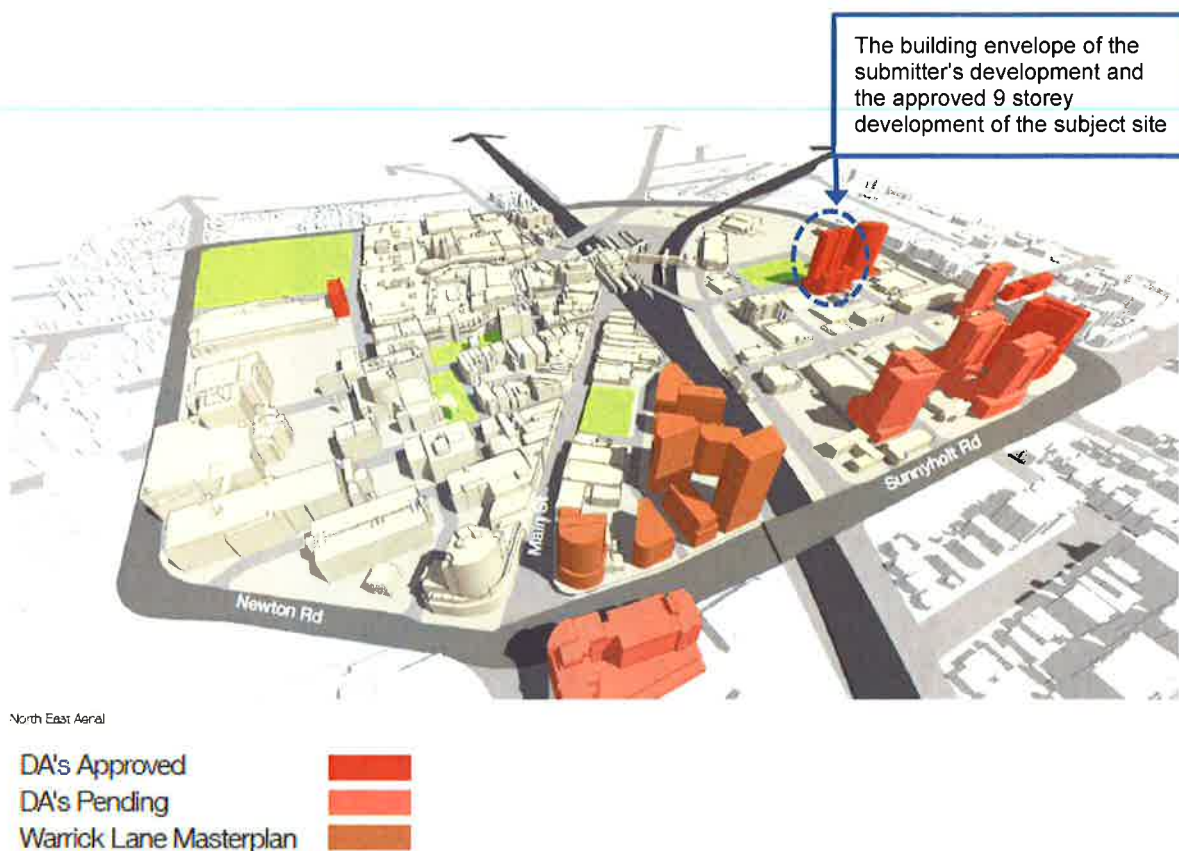
**Figure 4:** Extract of photomontage of the approved development currently under construction at 28 Second Avenue (right). The previously approved building envelope for 26 Second Avenue is shown on the left (Source: Tony Owen Partners, March 2015).

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.