

<b>ITEM</b>	642-644 Canterbury Road, 1-3 Platts Avenue and 2A, 2B, 2C and 2D Liberty Street, Belmore.  Demolition of existing structures and construction a mixed-use development comprising a residential flat building with 149 residential apartments and commercial premises over three (3) levels of basement car parking.
<b>FILE</b>	DA-591/2015 150/642D
<b>ZONING</b>	R3 Medium Density Residential and B6 Enterprise Corridor under the Canterbury Local Environmental Plan 2012
<b>DATE OF LODGEMENT</b>	3 December 2015
<b>APPLICANT</b>	Holt Point Pty Ltd C/- Statewide Planning Pty Ltd
<b>OWNERS</b>	Current: Holt Point Pty Ltd At Lodgement: Max Dippert, Phillip Dippert, Lynette Bruderlin, M.F Dippert Pty Ltd, Prakash Gulabdas, Indira Gulabdas.
<b>ESTIMATED COST</b>	\$40,425,185.00
<b>CIV</b>	\$36,750,168.00
<b>AUTHOR</b>	Shona Porter - Senior Planner
<b>RECOMMENDATION</b>	Refusal

### **SUMMARY REPORT**

The subject application is reported to the Sydney South Planning Panel in accordance with the provisions of *State Environmental Planning Policy (State and Regional Development) 2011*. The proposed development has an estimated Capital Investment Value (CIV) of \$36,750,168 and is therefore considered 'regionally significant' development under Schedule 7 of the State Environmental Planning Policy (state and Regional Development) 2011, and is referred to the Sydney South Planning Panel for determination.

Development Application DA-591/2015 seeks approval for the demolition of existing structures and construction of a mixed-use development comprising a residential flat building with 149 residential apartments and commercial tenancies over three (3) levels of basement car parking.

Currently development for the purposes of a 'residential flat building' and 'commercial premises' are prohibited in the R3 Medium Density zone and B6 Enterprise Corridor zone. The application was lodged pursuant to Division 3.5, Sections 3.38, 3.39 and 3.40 (former Sections 72I, 72J and 72K) of the *Environmental Planning and Assessment Act 1979*, which allows prohibited forms of development to be lodged with Council when a planning proposal / draft environmental planning instrument is being considered that would render the proposal permissible.

The planning proposal to rezone the subject sites to B5 Business Development, in addition to 650-658 Canterbury Road, Belmore, was given an initial Gateway approval and exhibited by Council in August 2016.

On 26 July 2016, Council resolved to commence a strategic review of the Canterbury Road Corridor in response to previous approved and active development applications along the Corridor.

The Canterbury Road Review included the establishment of an interagency steering committee with representatives from the Department of Planning and Environment, Greater Sydney Commission, Transport for NSW, RMS and Council. The output of the steering committee was the 'Canterbury Road Review' report, which details findings for the future redevelopment of the Canterbury Road Corridor on the basis of planning, urban design, traffic and feasibility studies.

On 22 May 2018, Canterbury Bankstown Council resolved to support, in-principle, the findings of the Canterbury Road Review.

Consistent with the findings of the Canterbury Road Review, Council officers submitted a report to the Canterbury Bankstown Local Planning Panel recommending that this planning proposal not proceed (among others). At the 13 June 2018 Panel meeting, the recommendation was endorsed.

On 26 June 2018, Canterbury Bankstown Council also resolved not to proceed with the planning proposal. On this basis, Council wrote to the Department of Planning and Environment on 12 July 2018 requesting that the planning proposal not proceed.

On 21 August 2018, the planning proposal was determined not to proceed by the Department of Planning and Environment, as the delegate of the Greater Sydney Commission. Accordingly, the application is recommended for refusal.

### **POLICY IMPACT**

This matter has no direct policy implications.

### **FINANCIAL IMPACT**

This matter has no direct financial implications.

### **RECOMMENDATION**

It is recommended that the subject application be refused as the development is prohibited in the zones applicable to the subject sites.

## **DA-591/2015 SECTION 4.15 ASSESSMENT REPORT**

### **BACKGROUND**

#### **Canterbury Road Review**

At the 14 August 2018 briefing of the application, the Sydney South Planning Panel requested a history of the Canterbury Road Review.

The Canterbury Road Review ("Review") involved a strategic level analysis of the existing planning framework and built form outcomes for the 8km Corridor. The Review made fifteen (15) recommendations for a future planning framework to shape development along the Corridor.

The Review was initiated by Canterbury Bankstown Council, where it was resolved to undertake a strategic review of the Canterbury Road Corridor on the basis that:

*'...it is apparent that a number of decisions have eroded the integrity of that policy. In particular, the former Canterbury Council has approved development well in excess of the height and scale recommended by the strategy. The result has been inconsistent and disorderly development outcomes along the corridor...*

*...In this light I have decided that Council will commence a review of the existing policy framework for the Canterbury Road Corridor with a report to be brought back to Council recommending changes and improvements which set a clear long term framework for development...'*

The Review sought to analyse the impacts from approved and active planning proposals and development applications along Canterbury Road; which were inconsistent with the scale set by the original Residential Development Strategy and associated planning controls. Amongst others, the primary resultant impacts from these developments included higher, dense, street wall development. Further density issues were raised by the RMS due to the unknown cumulative traffic impacts on the transport capacity of Canterbury Road from the increased yield approved beyond the set planning and transport parameters.

As part of the Review, on 22 November 2016, Council also resolved that all planning proposals along Canterbury Road would be deferred, pending a clear policy direction regarding redevelopment in the Canterbury Road Corridor.

A multi-agency steering committee was established to guide the Review and identify key considerations for the Corridor, with representatives from the Department of Planning and Environment, Greater Sydney Commission, Council, RMS and Transport for NSW.

Managed and administered by Council and subject to oversight of the steering committee, the Review was developed through the commissioning of three consultant studies:

- Transport and Traffic Study – GHD Engineering
- Urban Design Study - Hill Thalys Architecture + Urban Projects Pty Ltd

- Economic Analysis – SGS Economics and Planning

On the basis of these three studies and an overarching findings report, the Canterbury Road Review recommended the following be undertaken by Council (not sequentially):

1. Concentrate residential development into seven (7) 'Junctions' formed around intersection streets.
2. Allow eleven (11) residential 'Localities' between the Junctions along the northern side of Canterbury Road.
3. Exclude multi-storey development (meaning high density residential development including residential flat buildings, shop top housing and the like) from land outside of the identified Junctions and Localities.
4. Investigate potential for bulky goods retail and light industry on the ground floor of mixed use residential development.
5. Concentrate commercial office development within the Canterbury Town Centre.
6. Improve the delivery of medium density housing within the Greater Canterbury Corridor area and south of Canterbury Road.
7. Apply an FSR control and related design controls to all residential accommodation (included mixed use with a residential component).
8. Ensure a consistent minimum setback along Canterbury Road for streetscape enhancement.
9. Apply a car parking rate aimed at public and shared transport.
10. Establish appropriate planning controls to ensure a continuous network of rear lanes parallel to Canterbury Road.
11. Investigate funding mechanisms for streetscape enhancement works.
12. Investigate road management measures aimed at rebalancing the priority of the arterial road function relative to the liveability qualities of the Corridor.
13. Prepare a public domain plan for new plans and streetscape enhancements.
14. Investigate the critical shortage of open space, urban amenity and street connectivity.
15. Review Planning Proposals for consistency with the Review.

With particular regard to recommendations 1, 2, 3 and 15, the subject site is located outside of any nominated Junction and Locality.

At its ordinary meeting on 22 May 2018, Council resolved to support the in-principle findings and recommendations of the Review.

In line with the above recommendations, at its 5 June 2018 and 13 June 2018 meetings, the Canterbury Bankstown Local Planning Panel recommended that the nine active planning proposals along Canterbury Road not proceed.

Consistent with the recommendations of the Review and Canterbury Bankstown Local Planning Panel, on 26 June 2018 Council resolved to not proceed with the nine planning proposals, one of which the subject DA is reliant upon. On 12 July 2018, Council wrote to the Department of Planning and Environment in relation to the planning proposal, seeking that the Gateway determine that the planning proposal matter not proceed.

On 21 August 2018 the planning proposal was determined not to proceed at Gateway by the Department of Planning and Environment, as delegate of the Greater Sydney Commission.

Council is aware that the Department undertook an administrative review of the planning proposal and Gateway decision *not to proceed* with the planning proposal. Council has been advised that the outcome of this administrative review found that the decision undertaken by the Gateway was appropriate and the Gateway's most recent decision in relation to this Planning proposal will not be altered. The applicant's legal representative was notified of this decision on 18 October 2018.

The applicant has since advised Council that an appeal would be lodged against the Gateway determination *not to proceed* with the Planning Proposal. This appeal, if submitted, would be considered by the Independent Planning Commission. At the time of writing this report, Council had no record that an appeal had been formally submitted to the Commission. It is understood that the window to appeal the decision of the Gateway closes on 9 November 2018.

#### Development Application Background

- On 16 October 2015, The Department of Planning and Environment issued a Gateway Determination on a planning proposal covering the subject sites. The Gateway sought, inter alia, to rezone the land from B6 Enterprise Corridor and R3 Medium Density Residential to B5 Business Development. The planning proposal also sought to increase the height controls on the application site from 8.5m/12m to various heights at a maximum of 25m, identify the subject site as a Key Site A and remove the FSR development standard.
- On 7 December 2015, Council received Development Application 591/2015 for the demolition of existing structures and construction of a mixed use development comprising a residential flat building with 149 residential apartments, ground floor commercial tenancy, three levels of basement carparking and associated works.
- On 20 September 2016, Council wrote to the applicant identifying significant deficiencies with the development application. It was recommended that the DA be withdrawn within fourteen (14) days from the date of that letter. The applicant did not withdraw the DA.
- On 30 April 2018, Council wrote to the applicant for a second time advising them to withdraw the application with fourteen (14) days of the date of this letter. If a withdrawal was not received in this timeframe, the development application would be prepared for determination by the Sydney South Planning Panel in its current form.
- On 15 May 2018 the Applicant/Project Manager's solicitor advised that the DA would not be withdrawn.
- On 5 June 2018, the planning proposal was referred to the Canterbury Bankstown Local Planning Panel. The Panel made a recommendation that the planning

proposal concerning the subject DA would be deferred, as the Applicant made a submission that they had received late notice of the meeting and would respond in writing to the report.

- The subject development application was advertised on 10 July 2018 – 8 August 2018 for 28 days. Four submissions and three petitions were received raising concerns including density, traffic/transport, health, safety and impacts on light industries.
- On 26 July 2018 Council received a letter from the applicant's/project manager's solicitor demanding that the notification and exhibition process be terminated immediately. Notification and exhibition continued, and Council advised that the DA would be determined on the basis that the relied upon planning proposal would not proceed.

### **SITE ANALYSIS**

The site is located at 642-644 Canterbury Road, 1-3 Platts Avenue and 2A, 2B, 2C and 2D Liberty Street, Belmore and is legally described as:

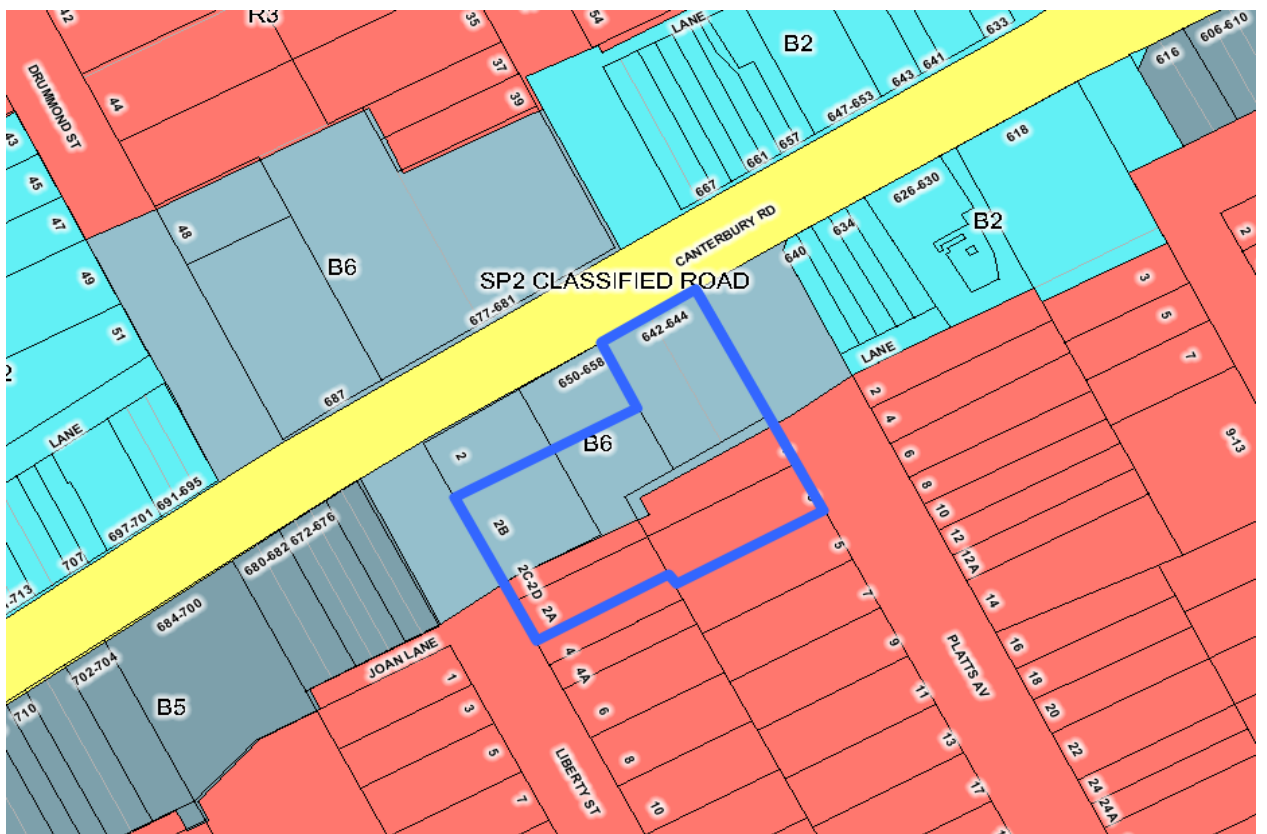
- Lots 1, 2, 4 and 5 in DP5208;
- Lot B in DP383957;
- Lot 2 in DP514813;
- Lot 1 in DP125537;
- Lot 1 in DP6062.

The consolidated lots have a primary frontage of 29.3m along Canterbury Road (north) and secondary frontages of 67.71m along Platts Avenue (east) and 63.06m Liberty Street (west). The site is irregular shaped and has a total site area of 4,522.5m<sup>2</sup> and falls to the south (rear) by approximately 4m-5m from Canterbury Road.

The sites are currently occupied by a mix of warehouse / light industrial buildings and detached dwellings.



**Figure 1 |** Aerial Photograph



**Figure 2 |** Zoning of the site under the Canterbury Local Environmental Plan 2012

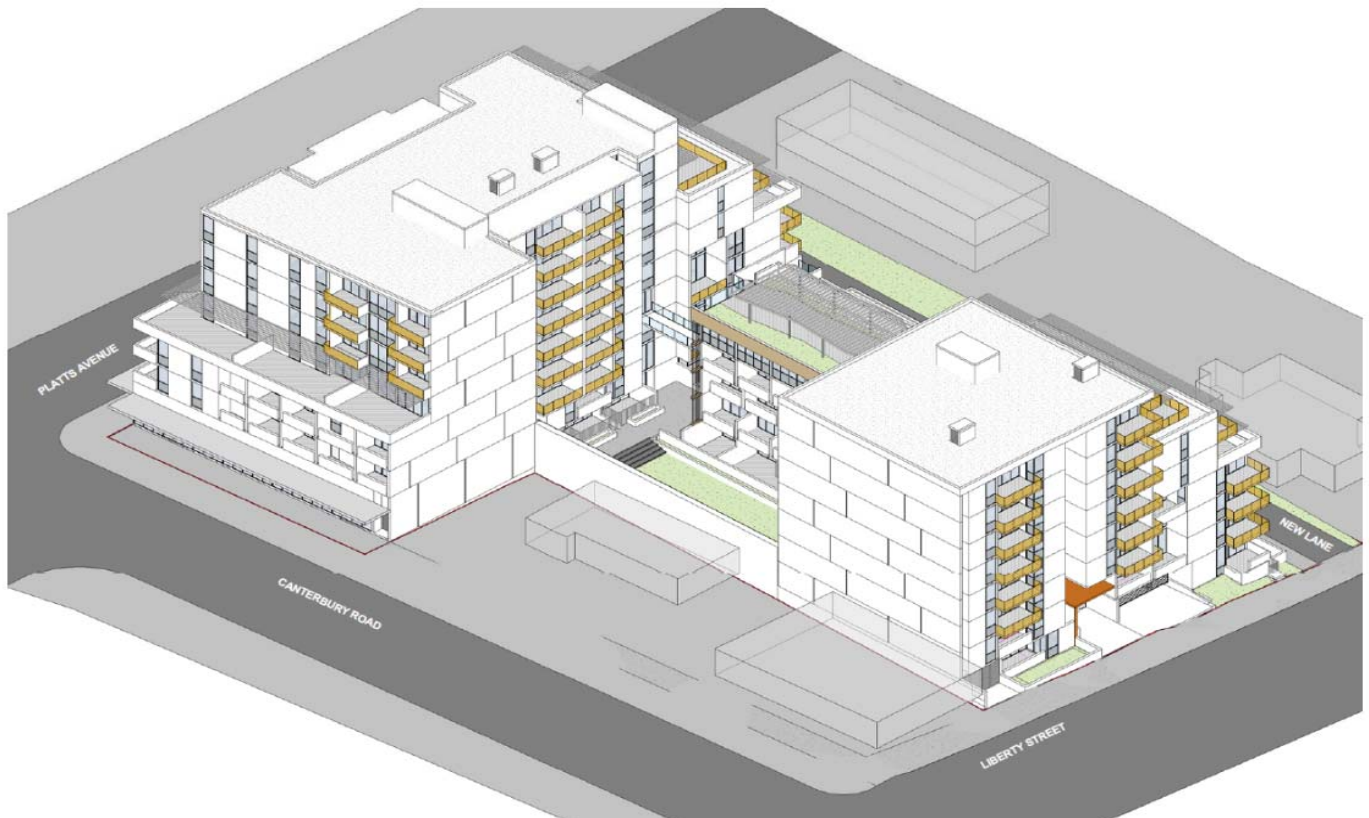


## **PROPOSED DEVELOPMENT**

The proposed works generally include:

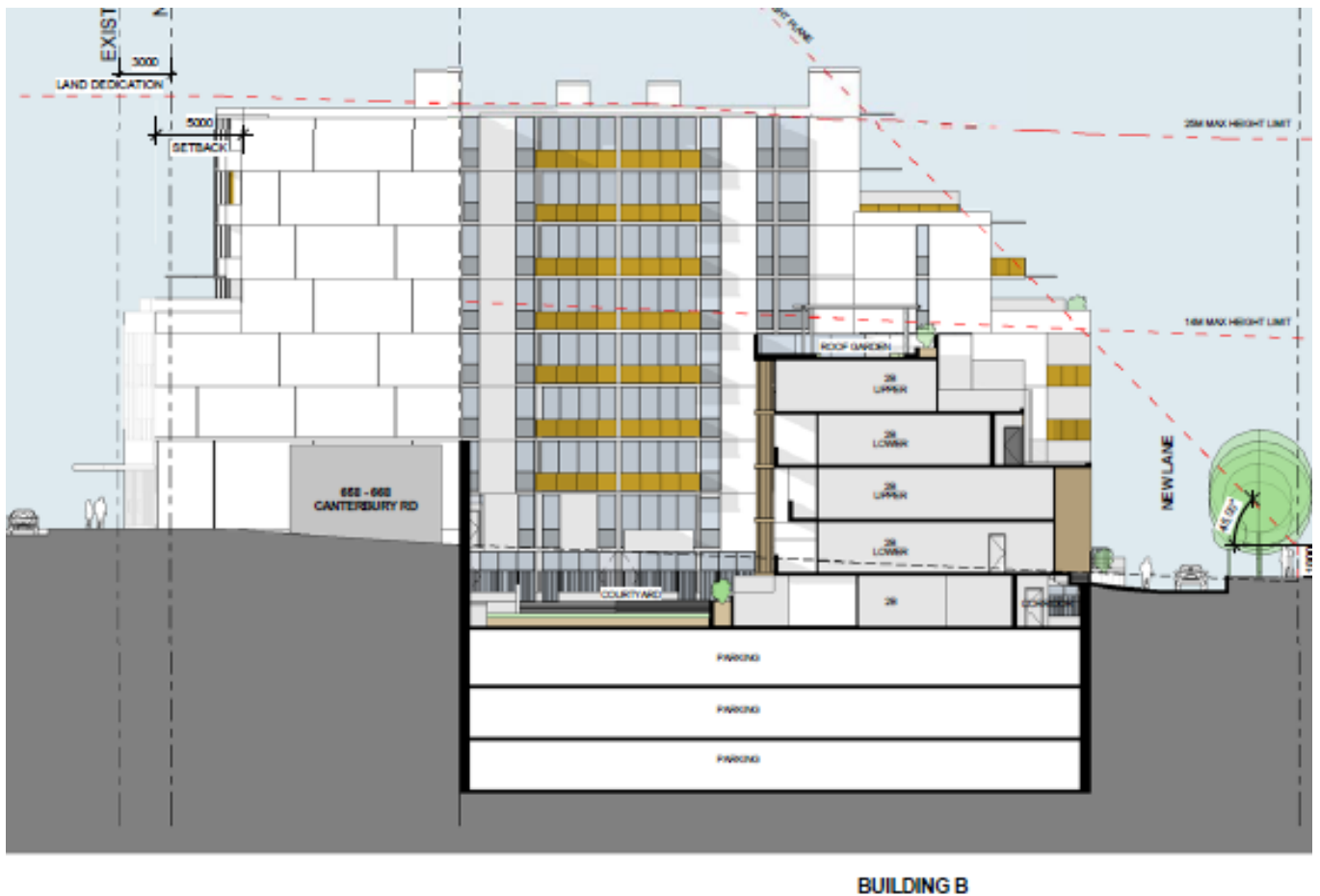
- Demolition of the existing structures;
- Excavation for basement car parking;
- Laneway works and construction of three (3) levels of basement parking accommodating 215 car parking spaces with ingress/egress point via Liberty Street;
- Construction of an eight (8) storey 'mixed use' development comprising:
  - Commercial tenancy on the ground floor with a frontage onto Canterbury Road;
  - 28 x one bedroom units;
  - 120 x two bedroom units; and
  - 1 x three bedroom units.
- Approximately 1,218m<sup>2</sup> of communal open space in the central court yard, level 5 and level 7;
- Associated landscaping and drainage works.

The proposed development is shown in the following figures –



**Figure 3 | Subject Development**





**BUILDING B**

**Figure 4** | Section Plan also showing a future building section for the Canterbury Road site that would be isolated by the proposal



**Figure 5** | Canterbury Road - North Elevation



**Figure 6 | Ground Floor Plan**

### **STATUTORY CONSIDERATIONS / SECTION 4.15 ASSESSMENT**

The proposed development application for a mixed use development seeks approval for a 'residential flat building' and 'commercial premises'. Residential flat buildings are prohibited in the B6 Enterprise Corridor zone and R3 Medium Density Residential zone.

The application for a prohibited development was accepted pursuant to Division 3.5, Sections 3.38, 3.39 and 3.40 (former Sections 72I, 72J and 72K) of the *Environmental Planning and Assessment Act 1979* (EPA Act), which allows development applications for prohibited forms of development to be lodged with Council when a planning proposal / draft environmental planning instrument is under consideration that would render the proposal permissible.

However the draft environmental planning instrument (planning proposal) relied on by this application has now been determined to not proceed at Gateway by the Department of Planning and Environment (as the delegate of the Greater Sydney Commission).

On this basis, a merits assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979* is not applicable. The operation of Section 4.15 only allows a merit assessment for development that may be carried out with development

consent. Pursuant to Section 4.9 of the EPA Act, a prohibited development is not a form of development that can obtain development consent.

Accordingly, an assessment of a prohibited form of development on its merits is irrelevant and cannot lead to the grant of a development consent.

This approach is consistent with the NSW Land and Environment Court for Class 1 appeals, where the permissibility of a development is often determined in a separate preliminary hearing prior to allowing a hearing on the merit issues.

Whilst Sections 3.38, 3.39 and 3.40 of the EPA Act facilitated lodgement of the application, in the absence of a draft environmental planning instrument, a merits assessment pursuant to section 4.15 of the EPA Act cannot occur as the proposed development remains prohibited in the two applicable zones.

### **CONCLUSION**

The planning proposal encompassing the subject site was determined to not proceed at Gateway by the Department of Planning and Environment on 21 August 2018. The refusal of the Gateway renders the proposed residential development as prohibited in the zone and is accordingly recommended for refusal.

### **RECOMMENDATION**

That Development Application 591/2015 be **REFUSED** for the following reason:

1. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is a prohibited development within the B6 Enterprise Corridor zone and R3 Medium Density zone under the Canterbury Local Environmental Plan 2012.