

SYDNEY SOUTH PLANNING PANEL - ASSESSMENT REPORT

Panel Reference	2019SSH009
DA Number	440/2018
LGA	Canterbury Bankstown Council
Proposed Development	Demolition of existing structures and construction of a four storey in-fill affordable housing development over a basement car park pursuant to the Affordable Rental Housing SEPP 2009
Street Address	71-83 Graham Road & 35-37 Karne Street South Narwee
Applicant/Owner	<u>Applicant:</u> Pavlakos Capital Pty Ltd (Mr. Constantine Pavlakos) <u>Owner/s:</u> Pavlakos Capital Pty Ltd, Evriklia and Constantine Pavlakos, Evangelo Pavlakos and George Pavlakos.
Date of DA lodgement	10 October 2018
Number of Submissions	Five (5) Submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Part 4, Clause 20(1) of the SEPP (State and Regional Development) 2011 the application is declared as regionally significant development. Schedule 7 includes 'Private infrastructure and community facilities over \$5 million. The proposal has a capital investment value of \$10,685,425.00 and provides affordable housing and therefore falls within this category.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy 55 – Remediation of Land (SEPP 55). • State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). • State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65). • State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX). • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. • Canterbury Local Environmental Plan 2012 • Canterbury Development Control Plan 2012 • Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural plans • SEE including Clause 4.6 to vary building height • Landscape Plan • Traffic Impact Statement; • Stage 1 Contamination Assessment • Arborist report.
Clause 4.6 requests	<ul style="list-style-type: none"> • Canterbury Local Environmental Plan 2012 (CLEP 2012); • The Clause 4.6 relates to Clause 4.3 Height of Buildings of the CLEP 2012 • The subject site is in an R4 High Density Residential Zone
Summary of key	<ul style="list-style-type: none"> • Four storey building not in keeping and in character with the

submissions	<p>adjacent buildings/street, Proposal should be three-storeys.</p> <ul style="list-style-type: none"> • Loss of privacy to western side of Graham Road. • Traffic congestion to the number of apartments. • Car parking on site is not enough. • Access to M5 is difficult. • Access to mow the park will be difficult as there will be more cars parked in the street. • Area is too small for a four-storey block of units. The site is located in a cul-de-sac and not appropriate for high density dwellings.
Report prepared by	Haroula Michael – Acting Executive Planner
Report date	28 October 2020

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 summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **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 (S7.24)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY REPORT

This matter is reported to the Sydney South Planning Panel as the development application proposes affordable housing that exceeds a capital investment value of \$5 million in accordance with Schedule 7(5)(b) of State Environmental Planning Policy (State and Regional Development) 2011.

Development Application No. DA-440/2018 includes the following:

- Demolition of existing structures;
- Construction of a 4-storey residential flat building pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) comprising a total of 46 apartments with 23 apartments nominated as affordable housing;
- Construction of a car parking level accommodating 41 car spaces including 4 accessible spaces, 14 bicycles spaces, 3 motorcycle spaces, resident storage rooms, two lifts and mechanical/pump room;
- The proposal involves a variation to the building height standard in CLEP 2012. The Applicant has provided a Clause 4.6 Variation Request in this regard; and

The application been assessed against the relevant provisions of State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy 65 Design Quality of Residential Apartment Development, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX), Canterbury LEP 2012 and Canterbury DCP 2012.

The key issues that need to be considered by the Sydney South Planning Panel (Panel) are:

- Outstanding Development Application (DA) Fees. DA fees not paid in accordance with the requirements of Clause 50 of the Environmental Planning and Assessment Regulation 2000.
 - Applicant advised of Council's final position on the outstanding fees but has not responded to Council's email dated 13 May 2020.
- The Australian Securities and Investment Commission (ASIC) review date expired on the 22/4/2019, a new ASIC is required to ensure company is registered with ASIC and ensure no change to company directors.
- Building Height non-compliance, a variation at its highest of 2.01metres (17.5%).
- The Clause 4.6 lodged with the application has failed to adequately address Clause 4.6(4)(a) of the CLEP 2012 in that the Clause 4.6 has not satisfied why compliance with development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

- The development is not compatible with the existing and desired future character of the local area and therefore does not meet the character assessment under Clause 16A of the SEPP ARH 2009.

The application was advertised from 21 November 2018 to 13 December 2018 consistent with the provisions contained in the Canterbury Development Control Plan 2012. This notification attracted four (4) submissions.

The amended plans received on 9 of May 2019 were re-advertised from 12 June 2019 to 10 July 2019. This notification attracted one (1) submission. The submissions are discussed in detail further within the assessment report.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended the Sydney South Planning Panel refuse Development Application No. DA 440/2018 for the demolition of existing structures and construction of a four-storey residential flat building pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 with basement carparking at 71-83 Graham Road and 35-37 Karne Street South, Narwee being the subject lots legally described as Lot 2, Lot 3, Lot and Lot 8 in DP 23841 and Lots A and B in DP 387057 pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979.

SITE & LOCALITY DESCRIPTION

The subject site is located on the northern side of the intersection of Graham Road and Karne Street South, Narwee. The subject sites consisting of 71-83 Graham Road and 35-37 Karne Street South, Narwee. The subject lots are legally described as Lot 2, Lot 3, Lot and Lot 8 in DP 23841 and Lots A and B in DP 387057. The site has a total site area of 2460m² (by title) and a combined frontage of 35.96m to Graham Road, a secondary street frontage of 40.535m to Karne Street South and a corner truncation length of 6.475m. The site is regular and rectangular in shape and falls slightly towards the north (rear) of the site. The subject site currently comprises of:

- A single storey dwelling with a tile roof, attached carport and tiled outbuilding (73 Graham Road); and,
- Three single storey shops (No. 75-79 Graham Road); and,
- A single storey dwelling with a tile roof (35 Karne Street South); and,
- A single storey dwelling with a tile roof (37 Karne Street South).

This portion of Graham Road is zoned R4 - High Density Residential and therefore comprises a mix of residential accommodation including detached dwellings, multi-dwelling developments as well as 3-4 storey residential flat buildings. The land to the north is zoned RE1 – Public Recreation and is accessible from Karne Street South and Windarra Street, it is a landscaped open space that abuts the M5 Motorway

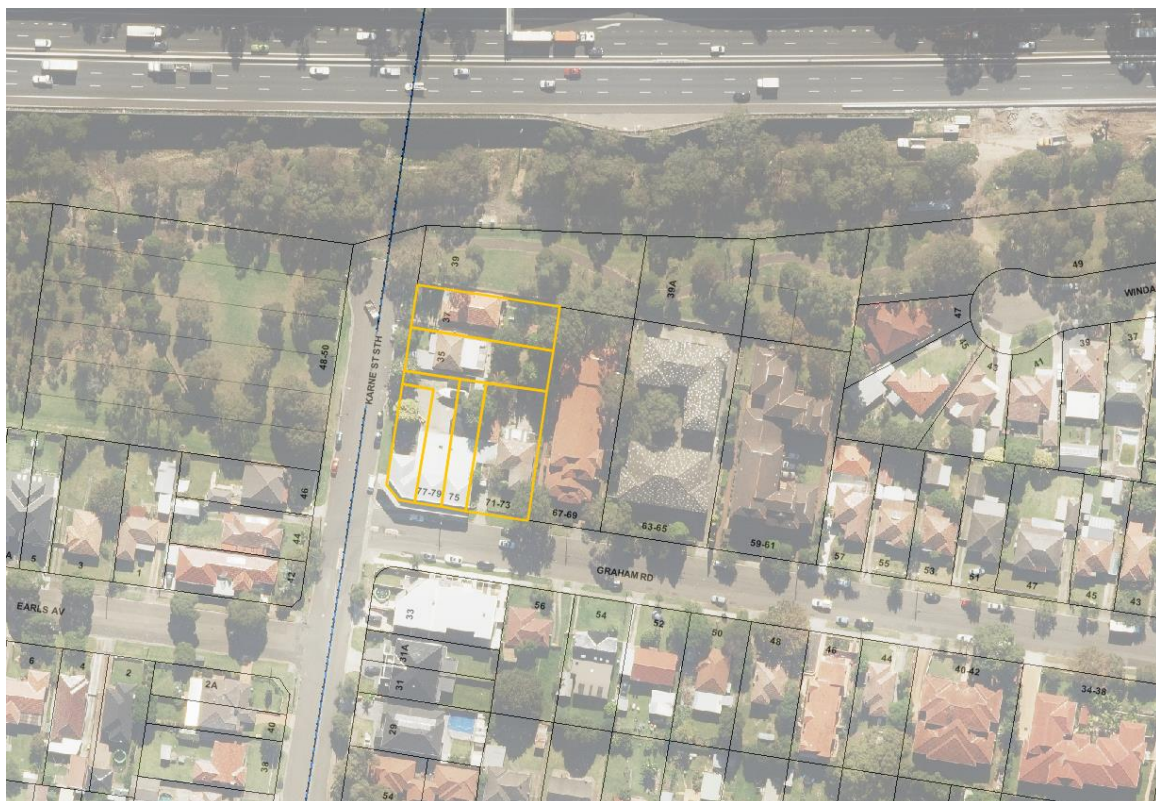


Figure 1: Aerial view of the subject sites (shown in yellow)



Figure 2: Oblique view of the subject site looking north east.

PROPOSED DEVELOPMENT

The Development Application proposes demolition of existing structures and construction of a four-storey residential flat building pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 with basement carparking.

A breakdown of the proposed works is outlined below:

Floor	Description
Basement Level 1	<ul style="list-style-type: none">• 41 x off street parking spaces including,<ul style="list-style-type: none">○ 4 accessible spaces○ 1 small car bay• 14 bicycle spaces• 3 motorcycle spaces• Switch room• Pump room• Two (2) lifts• 46 x storage areas
Ground Floor	<ul style="list-style-type: none">• 1 x 1-bedroom dwellings• 4 x 2-bedroom dwellings• 4 x 3 bedroom dwellings (1 of which is adaptable)• Basement Parking (entry via Karne Street South)• Communal Open Space• Bin storage area• Tree removal
Level 01	<ul style="list-style-type: none">• 6 x 1-bedroom dwellings• 7 x 2-bedroom dwellings (1 of which is adaptable)• Communal Open Space
Level 02	<ul style="list-style-type: none">• 6 x 1-bedroom dwellings• 7 x 2-bedroom dwellings (1 of which is adaptable)
Level 03	<ul style="list-style-type: none">• 5 x 1-bedroom dwellings (1 of which is adaptable)• 6 x 2-bedroom dwellings (1 of which is adaptable)

BACKGROUND

On the 14 February 2019 a request for information (RFI) letter was sent to the Applicant outlining

On the 11 March 2019, Council staff met with the applicant to discuss the issues raised in Council's letter.

On the 9 May 2019, amended plans submitted to Council in response to Council's RFI letter dated 14 February 2019.

On the 19 June 2019, a further RFI letter was sent to the applicant with a number of outstanding items, including the outstanding application fee of \$8,324.35.

4 October 2019 Concept Plans lodged emailed to Council for discussion. 9 October 2019, further concept plans provided.

11 October 2019 email from Council to applicant advising that the units nominated as affordable housing were not provided, solar access remains an issue.

9 January 2020 meeting with Council to discuss application and provide a preliminary update and discuss outstanding development application fees.

22 January 2020 After meeting with the applicant on the 9th of January, an email was sent to the applicant on the 22 January 2020 clarify the outstanding application fees and is provided below (in italics):

"At the meeting held on the 9th of January, Council reiterated that there are outstanding application fees.

The original application fees were calculated on the Estimated Cost of Development of \$5,876,984 (as marked on the Development Application form – in Section E).

The Quantity Surveyors (QS) report submitted with you application provided a total construction cost of \$11,753,968 (including GST). On page 1 of the QS report the development was then broken down to stipulate that 50% of the proposal was for "Affordable Housing".

In the meeting held on the 9th of January, you indicated that as the development was to provide 50% "Affordable Housing", this portion (of development costs) was exempt from the calculation of the application fees.

I wish to advise that Council's fees and charges does not make reference to exemption of development application fees for "Affordable Housing". Therefore, based on Council's fees and charges, the application fees for the subject application are based on the total construction cost of \$11,753,968. As outlined in Council's letter dated 19 June 2019, the outstanding fee of \$8324.35 is to be paid to Council within 14 days of this email".

27 February 2020 applicant provided additional information and plans to address Council's RFI of 19 June 2019. These plans were not accepted for the purposes of clause 55 of the Environmental Planning and Assessment Regulation 2000, the Applicant was advised of this on the 13 May 2020.

On the 13 May 2020, Council advised the applicant on final position regarding the outstanding fees and that no further assessment will be undertaken until the outstanding fees are paid.

The applicant was also advised in the of 13 May 2020, for the purposes of clause 55 of the Environmental Planning and Assessment Regulation 2000, Council does not agree to the plans lodged on the 27 February 2020. Therefore, the assessment and this report is based on the plans and documentation lodged with Council on 9 May 2019.

Council has not received any further correspondence by the Applicant in regard to Council's email of 13 May 2020.

Statutory Considerations

When determining this application, the relevant matters listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55).
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65).
- State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX).
- Canterbury Local Environmental Plan 2012 (CLEP 2012).
- Canterbury Development Control Plan 2012 (CDCP 2012).
- Canterbury Development Contributions Plan 2013.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

Environmental planning instruments [section 4.15(1)(a)(i)]

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The site is located within land identified as being affected by Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, being a deemed SEPP under Clause 120 of Schedule 6 of the EP&A Act, 1979. The GMREP 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP 2.

State Environmental Planning Policy (State and Regional Development) 2011

According to SEPP (State and Regional Development) a regional panel may exercise the consent authority functions of Council for the determination of

applications included in Schedule 7 for 'Private infrastructure and community facilities' over \$5 million. The proposal has a capital investment value of \$10,685,425.00 and provides affordable housing and therefore falls within this category. Accordingly, the application is reported to the Sydney South Planning Panel for determination. An Electronic Panel Briefing was held on 18 September 2020. The Panels record of briefing noted the following below.

- *Panel has recommended to Council that the assessment be finalised based on the materials before then and the assessment report provided to the Panel for determination.*

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

Clause 7 of SEPP 55 – Remediation of Land requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, we must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, we must be satisfied that the land will be remediated before the land is used for that purpose.

A stage 1 contamination assessment prepared by Ground Technologies Pty Ltd was submitted with the application which states that "the sites at 71 Graham Road and 35-37 Karne Street South has historically and currently being used for residential purposes and therefore it is unlikely that the land is contaminated.

The property at 75-79 Graham Road was used as a butcher's shop since 1967 and it ceased operations in 1984. However, it resumed as a meat processing facility from 1986 till the early 90's. From the early 90's the premises continued to be used for commercial purposes including retail and offices.

The property at 83 Graham Road comprised lockup shops and was used as a wholesale hardware store from 1975. From 1978 onwards, the property was used as a Dog Clipping Salon and is used for the same till date. A search of the NSW EPA Contaminated Land Management record of notices revealed that there were no notices issued to the subject site. No history of dangerous manufacturing utilizing heavy chemicals or metals was documented. Council records did not show a history of industrial usage". •

Based on the Applicant's stage 1 contamination report, it is expected that the sites are suitable for the proposed residential use.

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

In accordance with BASIX SEPP, a BASIX Certificate No. 832635M_03 dated 7 August 2018 accompanies this application. The Certificate makes a number of energy/resource commitments relating to water, energy and thermal comfort. The relevant commitments indicated on the BASIX Certificate have been shown on the plans in order to satisfy objectives of the SEPP.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The proposed development seeks approval for the removal of trees. Council's tree officer has reviewed the application and raised no objection to the removal of the trees and in the event the application is approved, conditions have been provided by Council's tree officer.

State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)

This application is for an in-fill affordable housing development lodged pursuant to the provisions of the ARH SEPP. The ARH SEPP aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, the policy provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and minimum development standards. The proposed development compares to the relevant provisions of the ARH SEPP as follows:

Part 2, Division 1 – In-fill Affordable Housing

10 Development to which Division applies

- (1) *This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if—*
- (a) *the development concerned is permitted with consent under another environmental planning instrument, and*
 - (b) *the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the [Heritage Act 1977](#).*

A residential flat building is a permissible land use in the R4 High Density Residential zone under the Canterbury Local Environmental Plan 2012 and the proposal is not located on land containing a heritage item.

- (2) *Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.*

Clause 10(2) of the SEPP also requires that in-fill affordable housing developments in the Sydney Region be located within an 'accessible area' which is an area in proximity of certain transport nodes, including being within 800m walking distance to the entrance of a railway station or within 400m walking distance to a bus stop used by a regular bus service as defined by the SEPP ARH.

The site is located within 800m walking distance to Narwee train station (refer to figure 4 below) and therefore meets the definition of "accessible area" under clause 4

of the ARH SEPP. The application therefore satisfies the requirements of this Clause.

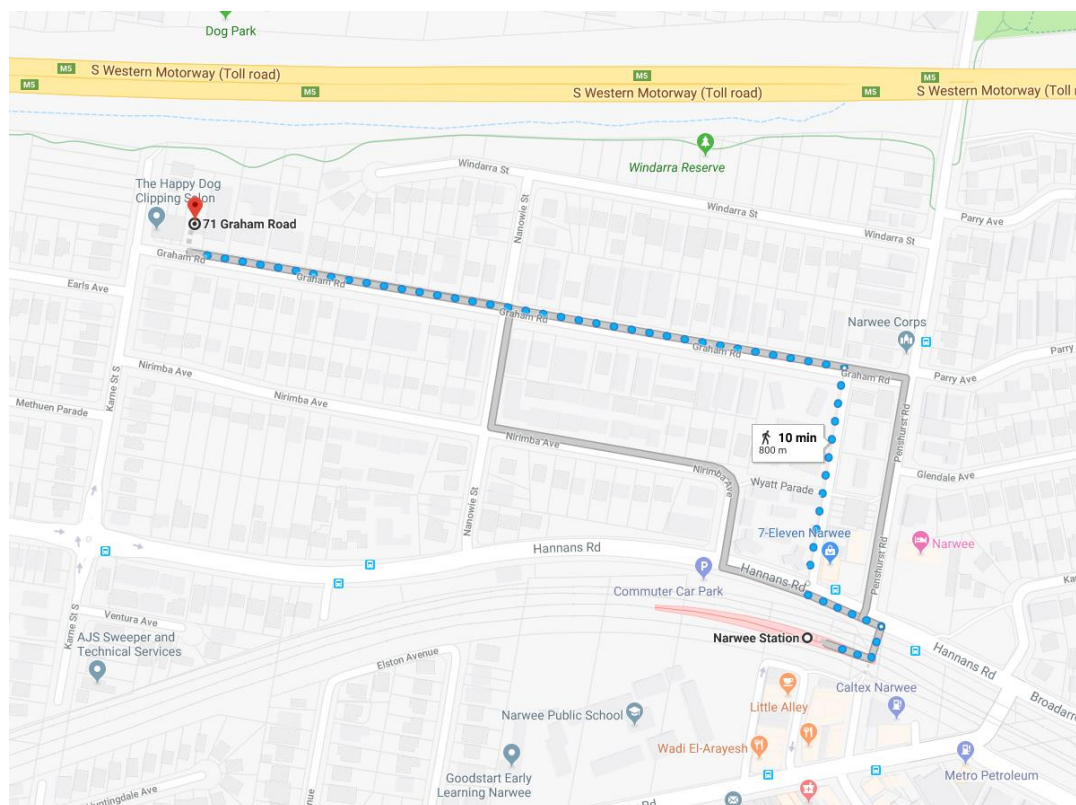


Figure 3: Location of site to Narwee Railway Station

13 Floor space ratios

- (1) *This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*
- (2) *The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus—*
 - (a) *if the existing maximum floor space ratio is 2.5:1 or less—*
 - (i) *0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or*
 - (ii) *Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,*
where—

AH is the percentage of the gross floor area of the development that is used for affordable housing.

$$Y = AH \div 100$$

Floor space ratio is defined as the maximum floor space allowable for the subject site (i.e. 0.9:1 as per Clause 4.4(2) of the CLEP 2012) plus a floor space bonus based on the amount of floor space to be dedicated to affordable rental housing. Given the maximum allowable floor space ratio in the subject zone is 0.9:1, however increases to 1.4:1 with the added bonus of 0.5:1.

The development provides a total gross floor area (GFA) of 3456.2m² representing an FSR of 1.405:1.

This application proposes to dedicate 1650m² of the total GFA as affordable housing, it therefore benefits from an FSR bonus. See break down below:

CLEP FSR: 0.9:1

ARHSEPP (Additional FSR): 0.4774:1

Total FSR – 1.3774:1

Proposed FSR – 1.405:1

The applicant's dedication of affordable housing is 1650m² of the total GFA of the proposal. It is also unclear as to the actual dedication of GFA of affordable housing. Therefore, the proposed FSR of 1.404:1 is not compliant and is more than the maximum allowable FSR allowable, and therefore does not satisfy this clause.

14 Standards that cannot be used to refuse consent

Clause 14 prescribes minimum standards which cannot be used by Council to refuse consent. The following table is an assessment of the proposal against these standards:

Control	Requirement	Proposal	Complies
Cl.14 (1)(b) Site Area	Min 450m ²	2460m ²	Yes
Cl.14(1)(c)(i) Landscaped Area	Min 30% of the site area	745.7m ² (30.3%)	Yes
Cl. 14(1)(d) Deep Soil Zones	15% of the site area. Deep soil zone has a minimum dimension of 3m. If practical, at least two-thirds of the deep soil zone is to be located at the rear of the site.	440m ² (17.8% of the site) is deep soil landscaped area. The deep soil zones included in this calculation have a minimum dimension of 3m. More than half of the deep soil zone is located towards the rear of the site behind the main building line.	Yes
Cl.14(1)(e) Solar Access	Living rooms and private open space area for a min 70% of the dwellings are	The proposal states that the development provides 2 hours of	No

	to receive minimum of three hours sunlight between 9am and 3pm in mid-winter	<p>solar access between 9am and 3pm as per the ADG.</p> <p>Insufficient information has been provided to ensure compliance that the living rooms and private open spaces would receive the required solar access.</p>	
CI14(2)(a)(ii) Car Parking	<p>The rates are as follows: At least;</p> <p><i>0.5 spaces / 1-bedroom dwelling</i></p> <p><i>1 space/ 2-bedroom dwellings</i></p> <p><i>1.5 spaces / 3+ bedroom dwellings</i></p> <p>Total required: 39 spaces (38.5 spaces)</p>	<p><u>Proposed:</u> 41 x off street parking spaces, including:</p> <ul style="list-style-type: none"> ▪ 4 accessible spaces ▪ 1 small car bay 	Yes
CI.14(2)(b) Dwelling Size	<p>Min Gross Floor Area:</p> <p><i>1-bedroom = 50m²</i></p> <p><i>2-bedroom = 70m²</i></p> <p><i>3-bedroom = 95m²</i></p>	<p>The proposal has a number of units that do not meet the minimum dwelling size.</p> <p>For example, the following units fail to provide the minimum gross floor area:</p> <p>B02, B04, A12, A22, A33, A36.</p>	No

Clause 14(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).

15 Design Requirements

- (1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the*

Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.

- (2) *This clause does not apply to development to which clause 4 of [State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development](#) applies.*

Given this application is for a Residential Flat Building this clause does not apply.

16 Continued application of SEPP 65

Nothing in this Policy affects the application of [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development](#) to any development to which this Division applies.

An assessment of SEPP 65 has been carried out and is outlined further in this report.

16A Character of the Local Area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

Clause 16(A) of the ARH SEPP requires that a consent authority take into consideration whether the design of the development is compatible with the character of the local area.

The current planning controls applicable to the subject site and its surrounds allow for a range of development types, including residential flat buildings.

The predominant development type along Karne Street South and Graham Road are low density residential dwellings which consist of mainly single and two storey development. Graham Road also has a number of three and four storey residential flat buildings. Refer to figures 4 and 5 below provided by the Applicant.

Figure 4 Streetscape Analysis

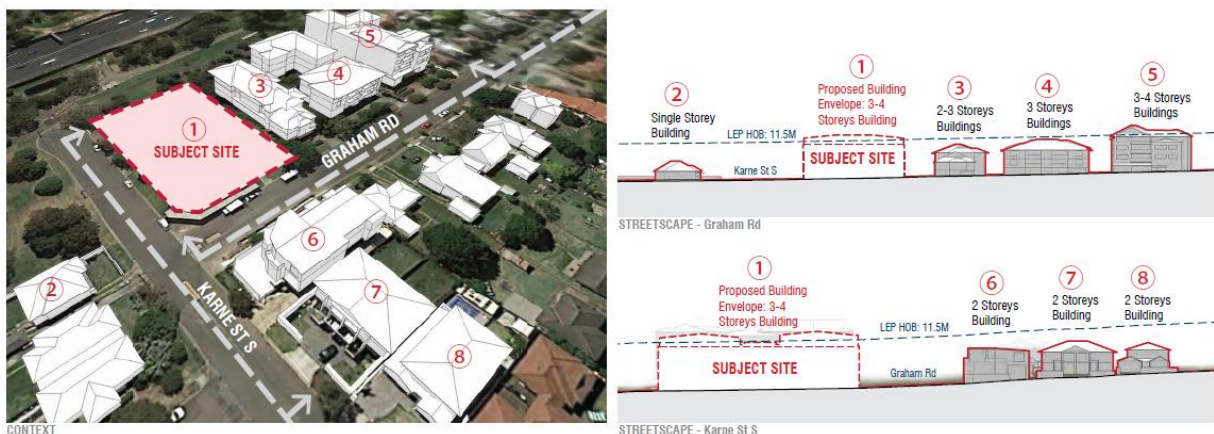


Figure 5 Streetscape Analysis



Source: *Vanovactuon Architects*

It should be noted that 59-61 Graham Road and 25-27 Graham Road are four-storey residential flat buildings only by virtue of ground level garages and were developments approved prior to 2012 under different planning controls which did not have building height controls. The development at 19-23 Graham Road (marked as 10 in the figure 5 above) was approved by the NSW Government as part of the NSW Nation Building and Jobs Plan Taskforce in 2009.

Consideration should also be given to the context of the area and the desired future character, that are set by the objectives and controls of the Canterbury Local Environmental Plan 2012 (CLEP 2012) and Part C4 Residential Flat Buildings of the Canterbury Development Control Plan 2012 (CDCP 12012).

The proposal is inconsistent with the future character of the area, as sought by the CLEP 2012 and CDCP 2012. The 11.5m building height set out by the CLEP 2012 seeks for a three storey built form. The proposed four storey building with a wall height greater than 10metres and breach in building height would be inconsistent with the desirable future character for the area and would set an undesirable precedent.

In addition to the above, part C4.2.3.2 also requires the roof pitches to be compatible and sympathetic to nearby buildings. The proposed 4-degree roof pitch is not compatible and sympathetic to the nearby buildings which are predominantly hip and gable roof forms.

The proposed development has been considered under the ARH SEPP and in this respect, does not respond appropriately to the intent of the Policy and has not satisfied the requirements of Clause 16A. The proposed development is not considered to be compatible with the existing and future character of the local area and is therefore not supported.

Clause 17 of the ARH SEPP states that the affordable housing dwellings within the development will be used for affordable housing for a period of ten years, managed by a registered community housing provider. Relevant conditions can be imposed

should the application be supported to ensure that the proposed development satisfies this clause.

Clause 18 of the ARH SEPP states that such development may be subdivided with development consent. The subject application does not seek subdivision as part of this development application.

State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65)

This policy applies to residential flat buildings of three or more storeys and contains at least four or more dwellings and is required to be considered when assessing this application. SEPP 65 aims to provide consistency of policy and mechanisms across NSW and provide a framework for local and regional planning to achieve identified outcomes for specific places. Clause 50(1AB) of the Environment Planning and Assessment Regulation 2000 requires the submission of a design verification statement from a qualified designer at lodgement of the DA. This documentation has been submitted.

In addition, SEPP 65 requires the assessment of any development application for residential flat development against the nine principles contained in Schedule 1 of SEPP 65 and Council is required to consider the matters contained in the Apartment Design Guide (ADG). An assessment against the nine principles is provided below.

Principle 1: Context and Neighbourhood Character

The site is located within the R4 High Density Residential zone, and within close proximity to Narwee Town Centre. Graham Road is characterised by a mixture of residential development, ranging from detached dwellings to residential flat buildings.

As outlined in this report, the proposal seeks a four-storey residential building with a proposed building height of 13.51metres (at the top of the ridge – highest breach), representing a breach of 2.01m to the allowable building height under the Canterbury Local Environmental Plan 2012.

The proposed development is therefore inconsistent with the desired future and predominant character of the area, by virtue of its proposed building height, number of storeys, setbacks and deep soil and landscaped areas.

Principle 2: Built Form and Scale

The breach in the building height control will result in a built form and scale that does not align with the desired future character of the locality. The proposal does not appropriately contribute to the character of the streetscape and the desired future character.

Principle 3: Density

The density is not considered acceptable with respect to the bulk and scale of the development, the proposed development exceeds the height of building development standard, and also exceeds the development standard for floor space

ratio permitted in accordance with the ARH SEPP. Therefore, the application of is an over-development of the site.

Principle 4: Sustainability

A BASIX Certificate has been submitted to Council with this development application, which details the resource, energy and water efficiency measures that will be incorporated into this proposal.

Principle 5: Landscape

The development comprises sufficient deep soil landscaping, however does not provide 25% communal open space as required by the ADG.

The proposal fails to contribute to the landscape character of the predominate streetscape given the number of services, driveway entry and pathways located within the front setback of the site. Overall, the proposal does not provide a good balance of built and unbuilt site area.

Principle 6: Amenity

The proposed development has failed to demonstrate that the proposal is able to provide solar access to at least 70% of the units. The size and room dimensions do not meet the minimum standards within the SEPP ARH 2009 and Apartment Design Guide. Furthermore, the proposal has failed to demonstrate that a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June will be achieved.

Therefore, it has not been demonstrated that the proposal achieves good internal amenity within the units and within the communal open spaces.

Principle 7: Safety

The proposed development has been reviewed in accordance with Part B7 of the CDCP 2012, and it is consistent with these principles.

Principle 8: Housing Diversity and Social Interaction

The proposed design incorporates various dwelling sizes and includes adaptable units promoting diversity, affordability and access to housing choice. However, some of the dwellings do not meet the minimum floor area and therefore will result in poor amenity for the occupants.

Principle 9: Aesthetics

The proposal seeks to use a range of finishes and colours that would be visually compatible and responds to the existing and local context of the area.

The proposal also seeks a 4-degree roof pitch which would be inconsistent with the desirable elements and repetitions of the streetscape, the predominant roof type within the street is made up of hip and gabled roof forms of about 30-degree pitch.

Apartment Design Guide (ADG)

Further to the design quality principles discussed above, the proposal also requires assessment against the various provisions of the Apartment Design Guide (ADG) in accordance with Clause 28 (2) (c) of SEPP 65. However, given that the appropriate application fees have not been paid in accordance with the requirements of Clause 50 of the Environmental Planning and Assessment Regulation 2000, an assessment was not undertaken against the ADG.

Canterbury Local Environmental Plan 2012

This site is zoned R4 High Density Residential under CLEP 2012. The controls applicable to this application are discussed below.

Clause 1.2 Aims of Plan

The proposed development is consistent with the relevant aims of the CLEP 2012:

- (a) to provide for a range of development that promotes housing, employment and recreation opportunities for the existing and future residents of Canterbury,
- (b) to promote a variety of housing types to meet population demand,
- (c) to ensure that development is of a design and type that supports the amenity and character of an area and enhances the quality of life of the community,

Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R4 High Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development meets the objectives of the R4 zone as it provides for residential housing within a residential flat building. The design comprises a mix of residential types through incorporating one, two and three bedroom apartments, the development also provides affordable rental housing and therefore contributes to the needs of the community.

Provision/ Standard	Requirement	Proposal	Complies
Part 2 Permitted or Prohibited Development			

Provision/ Standard	Requirement	Proposal	Complies
2.1-2.3 Zoning	R4 High Density Residential	Demolition of existing structures and construction of a Residential Flat Building with basement car parking	Permissible. Refer to SEPP ARH for further discussion permissibility with Division 1 of the SEPP ARH.
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Demolition of existing structures	Yes
Part 4 Principal Development Standards			
4.3 Height of Buildings	11.5m	The proposed building breaches the building height. The largest breaches are outlined below: 13.51m (top of the lift overrun) 13.23m (top of ridge)	No. Detailed discussion below
4.4 Floor Space Ratio	0.9:1	CLEP FSR: 0.9:1 + ARHSEPP (Additional FSR bonus (max 0.5:1) <u>Maximum allowable FSR with bonus is 1.4:1</u> Proposed FSR – 1.405:1	No. The Applicant's calculation of the Gross Floor Area (GFA) has not included the enclosed bulky storage room located on the ground floor.
4.6 Exception to development standards	The applicant has submitted a CI 4.6 request to vary the development standard relating to the building height. Refer to detailed discussion below.		
Part 5 Miscellaneous Provisions			
5.10 Heritage Conservation	The subject sites are not identified as heritage items or within the vicinity of a heritage item or heritage conversation area.		
Part 6 Local Provisions			

Provision/ Standard	Requirement	Proposal	Complies
6.1 Acid Sulfate Soils	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	Not affected by acid sulfate soils	Not applicable
6.2 Earthworks	<p>Before granting consent to development including earthworks, the following must be considered:</p> <ul style="list-style-type: none"> (a) drainage patterns and soil stability (b) the likely future use or redevelopment of the land, (c) quality of the fill or the soil to be excavated, or both, (d) effect of development on existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. 	<p>The proposed earthworks are considered acceptable. The proposal is not likely to detrimentally impact the environmental functions of the site or surrounding area and will unlikely disturb any relics.</p> <p>The proposal is accompanied by a Stage 1 Contamination Assessment Report prepared by Geotechnical Testing Services dated 12 April 2018.</p>	Yes

Provision/ Standard	Requirement	Proposal	Complies
6.3 Flood Planning	<p>This clause applies to land at or below the flood planning level.</p> <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <ul style="list-style-type: none"> (a) is compatible with the flood hazard of the land, and (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and (c) incorporates appropriate measures to manage risk to life from flood, and (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. 	The subject site has not been identified within a flood prone land.	Not applicable

Provision/ Standard	Requirement	Proposal	Complies
6.4 Stormwater Management	Consent must not be granted unless: (a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration. (b) Includes on-site detention if practical as an alternative means of water supply. (c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.	The application was referred to Council's Development Engineer who has not raised any objections with the proposed stormwater plans	Yes
6.6 Essential Services	Essential services must be available or adequate arrangements have been made to make them available, including: - the supply of water; - the supply of electricity (substation) ; - the disposal and - management of sewage; - stormwater drainage or on-site conservation; - suitable vehicular access.	The proposal provides a substation	Yes. However, the location of the substation is inconsistent with Council's controls.

The proposal is generally consistent with the relevant provisions contained in CLEP 2012. Further discussion is provided below with respect to the contravention to the height of buildings development standard contained in Clause 4.3. The application is accompanied by a Clause 4.6 Request to Vary a Development Standard relating to the height of buildings.

Clause 4.3 – Height of Buildings

The proposal complies with the development standards contained in CLEP 2012, with the exception of Clause 4.3 (2), which reads as follows:

(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](#).

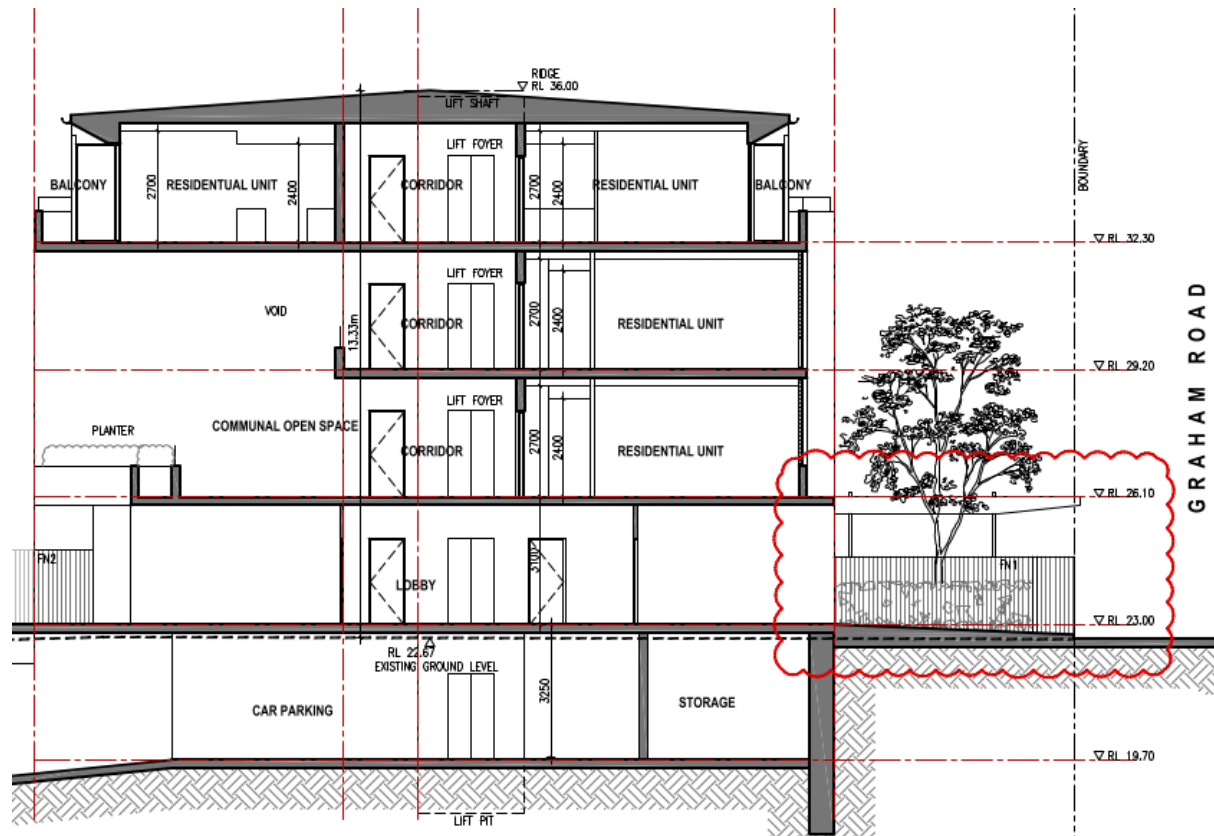
The subject sites have a maximum building height of 11.5m.

The proposed variation

The application proposes to contravene the building height standard of clause 4.3(2) of the CLEP 2012.

The variation to the building height closet to Graham Road is: 1.83m, 15.9% degree of variation.

The height control is shown in the section view below.

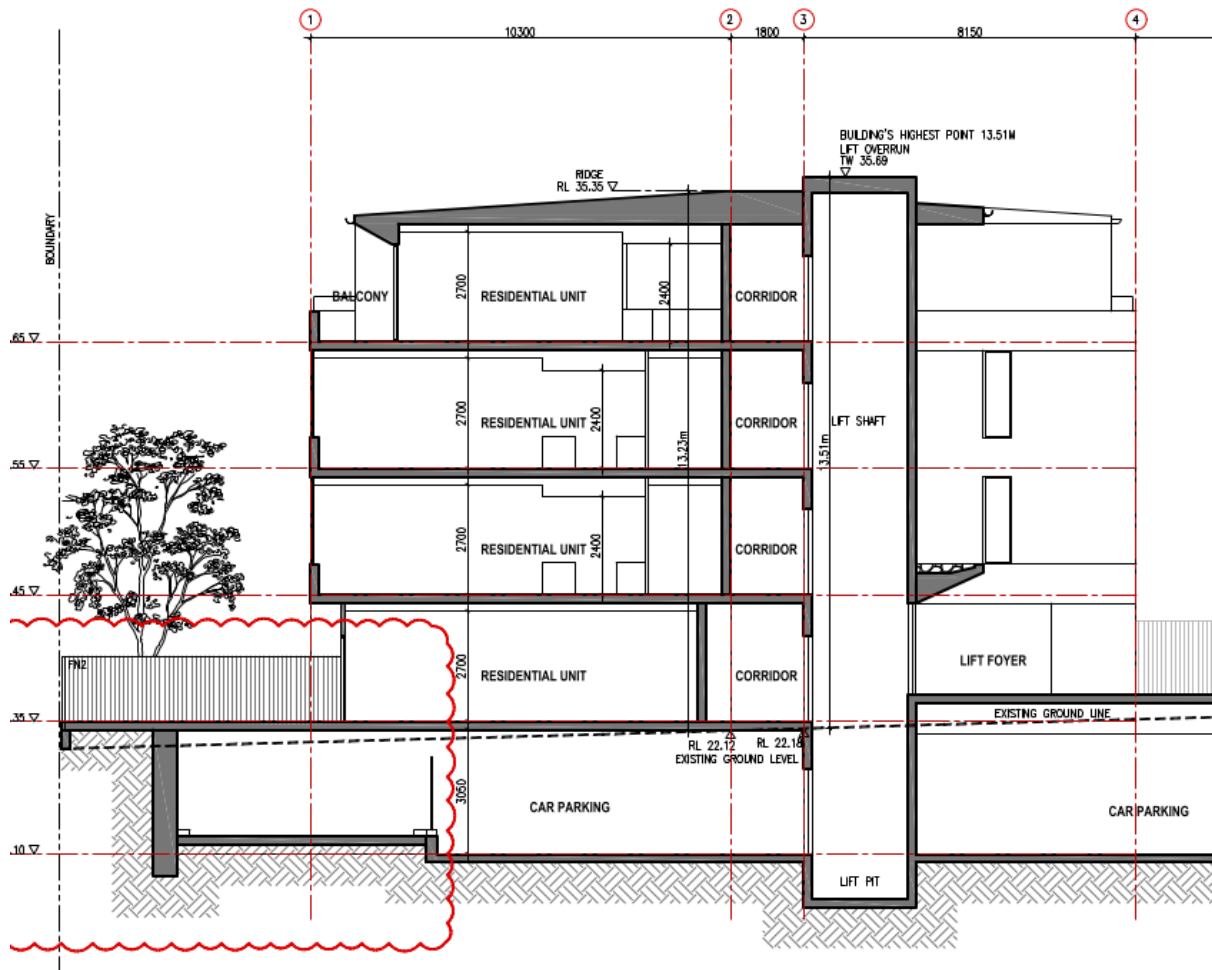


Source: *Vanovactuon Architects*

The variation to the portion of building to the north of the site (closest to the park) ranges from 1.73m -2.01m.

15.04%-17.5% degree of variation.

The height is shown in the section view below.



Source: Vanovactuon Architects

(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

An extract from the applicant's submission with respect to this point is provided below, in part:

The objectives of the building standard are set out in clause 4.3:

To establish and maintain the desirable attributes and character of an area: Not applicable.

Minimise overshadowing and ensure there is a desired level of solar access and public open space: This objective is not well written. It is understood that the objective means to minimise overshadowing and to ensure there is a desired level of solar access to public open space rather than ensuring a desired level of public open space because building height has no relevance with respect providing a desired level of open space.

The architect has prepared shadow diagrams for the proposal. The site is located on the north-east corner of Graham Road and Karne Street. It is also located on the southern side Robert Gardner Reserve. Subsequently, the proposal cannot result in any unreasonable shading of the north side public open space. The majority of shadow cast from the proposal is cast over Graham Road and Karne Street in the morning and then in the afternoon and therefore shading of public open space.

Alternatively, should the objective relate to providing solar access to the dwellings within the development, the architect has demonstrated that the proposal exceeds the 70% solar access requirement to dwellings within the development.

To support building design that contributes positively to the streetscape and visual amenity of an area: Although the proposal exceeds the standard by approximately 1 storey, the storey that does not comply has been setback from the front wall of the building i.e. the top floor has a greater setback from the boundaries than the floors immediately below. Although not complying it is a visually recessive floor and will not result in any unreasonable visual scale and bulk.

The floor that exceeds the standard is considered to provide a superior design outcome than providing this floor space at ground level which would result in a building with greater site coverage, reduced boundary setbacks and thereby significantly reducing the opportunity to provide landscaped area and deep soil for the site and detrimentally affecting the residential amenity of the dwellings within the development. A building of this form could be regarded to be excessive in terms of visual scale and bulk because it has effectively a larger footprint.

A building exceeding the height standard is a better planning outcome than building not complying with the setbacks to boundaries, site coverage and landscaped area requirements in order to achieve compliance with the FSR allowed through the SEPP. The proposal in this form provides a high standard of residential amenity for the future occupants in a landscape setting with no unreasonable impacts on adjoining properties and as a result provides a building that will provided a positive contribution to the streetscape and the visual amenity of the area.

Response:

The objectives to the Height of Buildings under Clause 4.3(1) of the CLEP 2012 are:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
 - (a) *to establish and maintain the desirable attributes and character of an area,*
 - (b) *to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
 - (c) *to support building design that contributes positively to the streetscape and visual amenity of an area,*
 - (d) *to reinforce important road frontages in specific localities.*

The bonus FSR obtained under the ARH SEPP for affordable housing can result in variations to Council's control, which generally relate to setback controls and not necessarily to the building height. Supporting a variation to the building height of 2.01m (17.5%) at its highest would result in a development that would be out of character with the area and fails to meet the objectives to the height of building clause in the CLEP 2012.

Insufficient information has been provided to ensure compliance with the solar access to the apartments and communal open space. Furthermore, the impacts of the additional shadow cast by the height breach have not been fully addressed by the applicant, it is noted that some of the properties to the south and south west of the site are zoned R3-medium density residential and the highest residential accommodation within this zone is multi-dwelling house.

The applicant's Clause 4.6 has not adequately addressed the objectives of Clause 4.3 of the CLEP 2012 and in respect to objective a relating *to establishing and maintaining desirable attributes and character of an area* has not been considered at all.

It should be noted that the building height breach involves considerable area that includes gross floor area and not just service areas, this breach will be visually prominent when viewed from Graham Road, Karne Street South and the park to the rear of the site.

Therefore, given the impacts the proposed building height breach will create, it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

An extract from the applicant's submission with respect to this point is provided below (in italics):

The cases referred to above have established that the environmental planning grounds must be particular to the circumstances of the proposed development on its site. The following environmental planning grounds are relevant:

- *The proposal provides significant and valuable low rental affordable rental housing in accordance with the SEPP.*
- *The proposal exceeds the standard by approximately 1 storey, however, the storey that does not comply has been setback from the front wall of the building i.e. the top floor has a greater setback from the boundaries than the floors immediately below. Although not complying it is visually recessive and will not result in any unreasonable visual scale and bulk. The floor that exceeds the height standard is considered to provide a superior design outcome than providing this floor space at ground level which would result in a building with greater site coverage, reduced boundary setbacks and thereby significantly reducing the opportunity to provide landscaped area and deep soil for*

the site and detrimentally affecting the residential amenity of the dwellings within the development. A building in this form could be regarded to be excessive in terms of visual scale and bulk because it has effectively a larger footprint.

- *The proposed building although exceeding the height standard is a better planning outcome than a building not complying with the setbacks to boundaries, site coverage and landscaped area requirements in order to achieve compliance with the FSR allowed through the SEPP. The proposal in this form provides a high standard of residential amenity for the future occupants in a landscape setting with no unreasonable impacts on adjoining properties and as a result provides a building that will provided a positive contribution to the streetscape and the visual amenity of the area*
- *The proposal does not result in any unreasonable amenity impacts on adjoining and nearby residential property*

Response:

As stated earlier in this report, the predominant development within the vicinity of the subject site are low density residential development, and some three and four-storey residential flat buildings. Therefore, the proposed development does not reflect a built form that is consistent with the current controls and development sought for the area.

The Applicant's Clause 4.6 states that in order "*to achieve compliance with the FSR allowed through the SEPP*", in their opinion the better planning outcome would be to exceed the building height, in lieu of breaching site coverage, setbacks and landscape areas. The bonus under the SEPP ARH is a maximum and does not necessarily result in the development obtaining the maximum bonus. It is recognised that the proposal is providing affordable housing, this could still be achieved without compromising Council's development standard relating to building height and floor space ratio. It is also noted and as stated above, there is insufficient information provided to determine compliance with the solar access to the subject site and any impacts to the surrounding development.

Objective 4.3(1)(a) of the CLEP 2012 states that the height of building is "*to establish and maintain the desirable attributes and character of an area*".

The context and the future character of the area is guided as set out by the objectives on the CLEP 2012 and Part C4 Residential Flat Buildings of the CDCP 2012.

As addressed under Clause 16A of the ARH SEPP, the proposal is inconsistent with the future character of the area, as sought by the CLEP 2012 and CDCP 2012 as a four storey building, with a breach to the building height and a wall height greater than 10 metres would be inconsistent with the desirable future character for the area and would set an undesirable precedent.

On this basis, there are insufficient environmental planning grounds to justify the contravention of the development standard, relating to the building height.

(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

With regard to the above, it is considered that the applicant's written submission under Clause 4.6 of CLEP 2012 to vary the building height is not well-founded and it has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The submission has not provided sufficient environmental planning grounds to justify the contravention to the building height.

The written submission has not adequately addressed the matters required by sub-clause (3).

(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

Objective	Discussion
<i>(a) to establish and maintain the desirable attributes and character of an area,</i>	As outlined under Clause 16A of the ARH SEPP and as addressed throughout the discussion relating the Clause 4.6 submission, the proposal will not maintain the desirable attributes and character of the area.
<i>(b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,</i>	As stated above, there is insufficient information to determine compliance of the solar access to the apartments and communal open space. Furthermore, the impacts of the additional shadow cast by the height breach have not been fully addressed by the applicant, it is noted that some of the properties to the south and south west of the site are zoned medium density residential. Therefore, the proposal in its current form is not considered to minimise overshadowing and therefore fails to meet this objective.
<i>(c) to support building design that contributes positively to the streetscape and visual amenity of an area,</i>	The proposed building design will not contribute positively to the streetscape. The breach to the building height, the number of storeys, breach to the wall height and exceedance of the FSR would result in a dominant building which would result in a poor planning outcome.
<i>(d) to reinforce important road frontages in specific localities.</i>	Not applicable to this application

Therefore, the proposal is not in the public interest, as the objectives of the of the Height of Building have not been met and a building with a compliant height would still meet the objectives of the R4 High Density Residential Zone, in providing a variety of housing types within a high-density residential environment.

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

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 17-006.

Conclusion

Based on the above, the requested contravention of the standard is not well founded and is not supported for the following reasons:

- I. an appropriate degree of flexibility has not been applied and better outcomes are not achieved by the contravention of the building height.
- II. the circumstances of the proposal do not warrant contravention of the standard,
- III. there are not sufficient environmental planning grounds to warrant contravention,
- IV. the proposal is not in the public interest, as the development is not consistent with relevant objectives of the standard and the zone, and
- V. there is a public benefit in maintaining the standard, in the circumstances of the subject application.

Proposed Environmental Planning Instruments [section 4.15(1)(a)(ii)]

Draft Canterbury Bankstown Consolidated Local Environmental Plan (Draft CBLEP)

On 30 June 2020 the Canterbury Bankstown Local Planning Panel endorsed the Planning Proposal (PP_2019_CBANK_005) to proceed to the Department of Planning, Industry and Environment for finalisation and making. The Planning Proposal seeks to produce a single set of planning rules and align the Bankstown LEP 2015 and Canterbury LEP 2012 into a consolidated Local Environmental Plan. The Planning Proposal however does not propose any change to the planning or development provisions relating to this site. As the Planning Proposal has been exhibited it must be considered under Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act, 1979. The Draft CBLEP also seeks to insert a saving provision “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies, and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced”.

Council is seeking the addition of a Design Quality Clause within the Draft CBLEP. Given, the assessment made throughout this report, the proposal would not be in line with the envisaged design quality and would be inconsistent with the Draft CBLEP and draft Design Quality Clause.

Development control plans [section 4.15(1)(a)(iii)]

The following provides a summary of the development application against the controls contained in Part B1, B2, B3, B4, B5, B7, B9 and C4 of the Canterbury

Development Control Plan 2012. As the application was lodged on the 10 October 2018, the application was assessed against Amendment 3 of the CDCP 2012.

Canterbury Development Control Plan 2012 (CDCP 2012)

The proposed development has been compared to the requirements of CDCP 2012 as follows:

Part B1 – Transport and Parking

An assessment of the proposal against the car and bicycle parking rates in Part B1 of CDCP 2012 is provided below:

Standard	Requirement	Proposal	Complies
B1.3.1 General Parking Rates	<ul style="list-style-type: none"> - Studio or 1 bedroom: 1 space per dwelling - 2 bedroom: 1.2 space per dwelling (the 0.2 space to remain as common property) - 3 bedroom or more: 2 spaces per dwelling - Visitor Parking: 1 space per 5 dwellings - Car wash bay: 1 car wash bay. 	The parking requirements outlined within the ARH SEPP override the parking calculations within the CDCP 2012 in this instance.	Yes
		A car wash bay has not been provided.	No
Bicycle Parking	<ul style="list-style-type: none"> • Residents: 1 space per 5 dwellings 9.2 (10 spaces required) • Visitors: 1 space per 10 dwellings 4.6 (5 spaces required) Total: 15 spaces required.	Residents: 10 spaces Visitors: 5 spaces Total: 15 spaces required. 14 spaces proposed	No

Part B2 – Landscaping and Part B3 – Tree Preservation

The application was referred to Council's Landscape Architect who raised the following:

- *Substation in south east corner encroaches on the Tree Protection Zone (TPZ) of the tree no. 9 in the arborist report. Substation is to be relocated.*
- *Pedestrian access on Karne Street and the entry to unit B02 also encroach on the TPZ of the Tree no. 3 in the arborist report. A redesign to both entries is required.*
- *Both communal areas in ground floor and first floor require amenity (e.g. BBQ) and shading, preferably natural shading; please provide planters to accommodate trees that will soften the hardness of the building and space and to encourage tenants and residents to use the outdoor space.*
- *The ramp leading to the communal area at the ground floor is to be minimum 1:14 gradient; also, if the ramp is between 1:14 and 1:20 a hand rail is required on both ramp sides.*

No other objections raised to the proposal in respect to the landscaping details once the above is resolved.

Part B4 – Accessible and Adaptable Design

No Access Report has been submitted as part of this Development Application. A statement has been provided by the Architect denoting that the proposed design of the development is capable of compliance with the BCA and NCC. A statement by a qualified access consultant has not been provided for consideration.

Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no objection with the current design, subject to conditions of consent.

Part B7 – Crime Prevention and Safety

An assessment of the proposed design against the relevant provisions of Part B7 is provided in the table below:

Standard	Requirement	Proposal	Complies
Crime Prevention through Environmental Design	Avoid blind corners	The proposed development has been designed to reduce and avoid blind corners within the site.	Yes
	Provide natural surveillance for communal and public areas.	The residential units on the ground floor will provide natural surveillance for the residential entries into the building and to the street.	Yes
	Provide clearly visible entries.	The proposed residential entries to the building are identifiable within the built form. As visual cues are provided within the first floor awnings and the use of materials to identify the entries.	Yes
	Design the fence to maximise natural surveillance from the street to the building.	The proposed fencing is of a visually permeable nature and will provide territorial definition, whilst not obscuring the passive surveillance of the street.	Yes
	Avoid landscaping that obstructs natural surveillance.	The proposed street trees and landscaping on the site are adequately spaced to provide shade once mature without	Yes

Standard	Requirement	Proposal	Complies
		obscuring the natural surveillance of the street.	
	Ensure buildings are clearly identified by street numbers.	Street numbering has been proposed on the building along both street frontages.	Yes
	Use materials that reduce the opportunity for vandalism.	The degree of hard surfaces along the street frontages are minimal. Therefore, reducing opportunities for vandalism.	Yes
	Provide an appropriate level of security for individual dwellings and communal areas through use of intercoms, self-closing doors and signage.	The development proposes appropriate security measures for individual dwellings and communal areas.	Yes

Part B9 - Waste

The application was referred to Council's Project Officer – Resource Recovery who raised no objection with the current design, subject to conditions of consent.

C4 – Residential Flat Building

An assessment of the proposal against the relevant provisions contained in Part C4.2 SEPP 65 Applications of CDCP 2012 is provided below:

Control	Requirement	Proposed	Complies
4.2.1 SITE PLANNING			
C 4.2.1.1 Minimum Lot Sizes and Frontage	C1 Residential flat buildings must have a street frontage	The proposed development has two street frontages.	Yes
	C2 The minimum primary street frontage width for attached dwellings, multi dwelling housing and residential flat buildings up to 3 storeys is: (a) 27m for development along major roads; or (b) 20m for development along any local road	The site has a frontage of 35.96m to Graham Road, a secondary street frontage of 40.535m to Karne Street South and a corner splay length of 6.475m	Yes
	C3 The minimum primary street frontage width for residential flat buildings 4 storeys or greater is 30m	The site has a 35.96m to Graham Road	Yes
C 4.2.1.2 Isolated Sites	C1 Neighbouring properties are not to be isolated so that the property will be unable to reasonably accommodate redevelopment.	The proposed development does not seek to isolate the neighbouring properties.	Yes

Control	Requirement	Proposed	Complies
C 4.2.1.3 Open Space - Balconies	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and developments to which the SEPP relates. The ADG therefore sets the objectives and controls for balconies in the LGA for residential flat buildings to which SEPP 65 relates.		
C 4.2.1.3 Open Space - Communal Open Space	C1 Residential flat buildings must provide communal open space areas equivalent to at least 15% of the open space on a site that is created by the required setbacks and building separations.	The design comprises 487.2m ² of communal open space (19.8% of the total site).	Yes
	C2 Communal open space may be provided on podiums, terraces, or in any deep-soil setback or separation between buildings in residential flat buildings.	The majority of the proposed communal open space is provided on the ground floor area and there is a smaller communal area on the first floor.	Yes
	C3 At least one side must have a minimum 6m length for each area of communal open space.	The proposed communal space area on the ground floor area and first floor have at least one dimension of 6m.	Yes
	C4 Consolidate communal open space into recognisable areas with reasonable area, facilities and landscape for the uses it will accommodate, and design to generate a variety of visible pedestrian activity.	The proposed communal open space areas are reasonable in size to accommodate facilities, however these facilities have not been provided.	No
	C6 Provide communal open space in locations that are sunny, and are adjacent to, as well as visible from, the main building lobby.	The predominant communal ground floor area is located and visible from both residential entry points within the site.	Yes
	C7 Provide windows that overlook communal open space and approaches to the building to generate a variety of visible pedestrian activity in the main building lobby.	The development provides balconies and windows that overlook the pedestrian entries.	Yes
	C8 Screen walls surrounding any communal area are no higher than 1.2m, although screens with 50% transparency may be up to 1.8m high.	The proposed development is proposing 1.8m fencing around the communal area on the ground floor. If the application was to be recommended for approval, a condition would be placed to ensure that 50%	Yes, as a condition of consent.

Control	Requirement	Proposed	Complies
		transparency.	
C 4.2.1.4 Layout and Orientation	C1 Orientate development to maximise solar access and natural lighting, without unduly increasing the building's heat load.	The proposed development is orientated to maximise solar access and natural lighting	Yes
	C2 Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	The development is sited to avoid casting undue shadows onto the adjoining residential development.	Yes
	C3 Coordinate design for natural ventilation with passive solar design techniques.	The proposed design incorporates movable privacy screens within the balcony of each unit to maintain the heat loading of each unit. The design	Yes
	C4 Site new development and private open space to avoid existing shadows cast from nearby buildings.	The development is sited to avoid shadows cast by the adjoining residential property.	Yes
	C5 Site a building to take maximum benefit from cross-breezes and prevailing winds.	The proposed development allows for adequate cross-breezes.	Yes
	C6 Do not compromise the creation of casual surveillance of the street, communal space and parking areas, through the required orientation.	The proposed development does not compromise the creation of casual surveillance of the street, communal space and parking areas, through the required orientation.	Yes
4.2.2 BUILDING ENVELOPE			
C4.2.2.1 Floor Space Ratio	<p>FSR is expressed as a ratio of the permissible gross floor area to the site area, as defined under LEP.</p> <p>The maximum permissible FSR for any development is prescribed in the LEP.</p>		
C4.2.2.2 Height	C1 Development for the purposes of residential flat buildings must not exceed the following numerical requirements:	The proposed development exceeds the 11.5m building height limit, 3 storey requirement and external wall height of 10m.	No, see above within the report.

Control	Requirement	Proposed	Complies
	<p>(a) Maximum of two storeys and 7m maximum external wall height, where the height of buildings under the LEP is 8.5m.</p> <p>(b) Maximum three storeys and 10m maximum external wall height, where the height of buildings under the LEP is 11.5m.</p>	A clause 4.6 request accompanies this application for the breach to the building height.	
Basement and Sub-floor Projection	C2 Any part of a basement or sub-floor area that projects greater than 1m above ground level comprises a storey.	No part of the proposed basement projects greater than 1m above natural ground level.	Yes
Attics and Roof Terraces	<p>C3 Attics and mezzanine floors do not comprise a storey.</p> <p>C4 Roof top terraces are not acceptable on any building or outbuilding in any residential zone.</p>	No attic or mezzanine floors are proposed.	N/A
Basement and Sub-floor	C5 Basement parking may be suitable for residential flat buildings provided that compliance with Chapter B1 Transport and Parking of this DCP can be demonstrated.	As assessed above within Part B1 – Transport and Parking, the proposed development is superseded by the ARHSEPP 2009.	N/A
C4.2.2.3 Setbacks	<u>Front, Side and Rear</u> C1 Development, including basement and sub-floor areas, fronting a major road must have a minimum front setback of 9m.	The proposed development does not front a major road.	N/A
	<p>C2 Development must comply with the minimum setbacks as follows:</p> <p>(a) A minimum setback of 6m from the front and rear boundary.</p> <p>(a) (b) A minimum setback of 4m from the side boundaries.</p>	<p>Front: 6m (Graham Road) The proposed substation encroaches within the required setback and needs to be integrated into the development. Additionally, the proposed awning needs to be reduced in size to conform with this control.</p> <p>Rear: 6m (POS). in storage area ad basement entry</p>	<p>No</p> <p>No</p>

Control	Requirement	Proposed	Complies
		encroach rear setback Side: East – 6m (building wall) West – 6m (building wall)	Yes
	C3 A minimum width of deep soil alongside boundaries of 2m and minimum of 5m wide along front/rear boundaries.	The proposed deep soil areas within the development. Front: 6.9m Rear: 2.3m Side: East – 3.2m West – 0m	Yes No No
	<u>Exceptions and Other Requirement</u> C4 External walls that enclose rooms, storage areas and/or garages are not to encroach beyond the specified setbacks.	The proposed development proposes a storage room within the required setbacks.	No
C4.2.2.4 Building Depth	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to natural ventilation (building depth) and developments to which the SEPP relates. The ADG therefore sets the objectives and controls for building depth in the LGA for residential flat buildings to which SEPP 65 relates. Refer to 4B Natural Ventilation of the ADG for objectives, design criteria and design guidance		
C4.2.2.5 Building Separation	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to visual privacy (building separation) to which the SEPP relates. The ADG therefore sets the objectives and controls for building separation in the LGA for residential flat buildings to which SEPP 65 relates. Refer to 3F Visual Privacy of the ADG for objectives, design criteria and design guidance.		
C4.2.2.6 Floor To Ceiling Heights	Refer to 4C Ceiling Heights of the ADG made under SEPP 65 for objectives, design criteria and design guidance in relation to minimum ceiling heights.		
C4.2.3 BUILDING DESIGN			
C4.2.3.1 General Design-Contemporary Built Form	C1 Contemporary architectural designs may be acceptable if: (a) A heritage listing does not apply to the existing dwelling or to its immediate neighbours. (b) The proposed addition is not visually prominent from the street or from a	The proposed design is deemed to be acceptable.	Yes

Control	Requirement	Proposed	Complies
	public space. (c) Extensive remodelling of existing facades is proposed in accordance with controls of this DCP.		
	C2 New building forms and design features shall not mimic traditional features, but should reflect these in a contemporary design.	The proposed design incorporates elements from the surrounding development but does not seek to mimic the traditional features.	Yes
	C3 Access to upper storeys must not be via external stairs	No external stairs proposed	N/A
	C4 All dwellings must contain one kitchen and laundry facility.	All of the proposed units contain a kitchen and sufficient space for a laundry.	Yes
	C5 Retain and extend prominent elements of the existing roof (such as gables, hips or longitudinal ridges that run parallel to a street boundary).	Achieved	Yes
	C6 Contemporary roof forms may be acceptable on additions at ground floor level if concealed substantially behind the existing dwelling, and not visible from the street or other public space.	The proposal also seeks a 4-degree roof pitch which would be inconsistent with the desirable elements and repetitions of the streetscape, the predominant roof type within the street is made up of hip and gabled roof forms.	No
C4.2.3.1 General Design- Building Entries	C7 Entries to residential buildings must be clearly identifiable.	The proposed residential entries are clearly identifiable. However, the proposed size and colour of the awnings to not relate to the existing character of the area or the materials proposed for this development.	No
	C8 Provide the main common entry and separate private ground floor apartment entries where it is desirable to activate the street edge or reinforce a rhythm along the street.	One main pedestrian entry is proposed for each street frontage. The units facing onto Karne Street South are provided with separate private entrances, creating a	Yes

Control	Requirement	Proposed	Complies
		rhythm along the street façade.	
	C9 A minimum of one habitable room per dwelling must be oriented towards the street to promote positive social interaction and community safety.	The primary living area of the units facing onto the street frontages are orientated to overlook the street.	Yes
	C10 Sight lines to the street from habitable rooms or entrances must not be obscured by ancillary structures.	The proposed substation and awnings for the pedestrian entrances obscure the sight lines.	No
	C11 Ground level private terraces located within the front setback must be setback at least 1m from the street boundary to accommodate a landscape strip which should remain in communal ownership.	The proposed private open spaces along Karne Street South, provide a 2.5m planter box landscape strip.	Yes
	C12 Private open spaces accessed from the street must be clearly articulated.	Access to the private open spaces from the street is articulated through the different materials along the street frontage and breaks in the low masonry wall.	Yes
C4.2.3.1 General Design- Façade Treatment	C13 Development on corner lots must address both street frontages through façade treatment and articulation of elevations.	The proposed development addresses both street frontages.	Yes
	C14 Facade design should reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows.	The proposed design reflects the orientation of the site through the proposed awnings and built form.	Yes
	C15 Facades visible from the street should be designed as a series of articulating panels.	The proposed façade design along both street frontages consists of articulated panels.	Yes
	C16 Width of articulating panels should be consistent with the scale and rhythm characteristic of bungalows.	The proposed panels are consistent with the scale and rhythm characteristics.	Yes
	C17 The width of articulating panels shall be in accordance with the numerical requirements below:		Yes

Control	Requirement	Proposed	Complies									
	<table><tr><th>Development Type</th><th>Street Elevation Facades</th><th>Side Elevation Facades</th></tr><tr><td>Residential Flat Buildings up to three (3) storeys</td><td>4m to 6m</td><td>10m to 15m</td></tr><tr><td>Residential Flat Buildings four (4) storeys or greater</td><td>6m to 8m</td><td>10m to 15m</td></tr></table> <p>Table C4.1: Articulating panels numerical requirements</p>	Development Type	Street Elevation Facades	Side Elevation Facades	Residential Flat Buildings up to three (3) storeys	4m to 6m	10m to 15m	Residential Flat Buildings four (4) storeys or greater	6m to 8m	10m to 15m		
	Development Type	Street Elevation Facades	Side Elevation Facades									
	Residential Flat Buildings up to three (3) storeys	4m to 6m	10m to 15m									
	Residential Flat Buildings four (4) storeys or greater	6m to 8m	10m to 15m									
	C18 Avoid long flat walls along street frontages - stagger the wall alignment with a step (not a fin wall of other protruding feature) of at least 0.5m for residential buildings.	The proposed façade design along both street frontages consists of articulated panels.	Yes									
C19 Vary the height of modules so they are not read as a continuous line on any one street between 2 - 4 storeys, step-back to the middle component and again at the top.	The proposal will result in a continuous building façade with minimal layering and stepping to the façade.	No										
C20 Incorporate contrasting elements in the facade - use a harmonious range of high quality materials, finishes and detailing.	The proposed design incorporates a range of materials and finishes. These include: <ul style="list-style-type: none">- Metal cladding- 2 types face brick- Aluminium Louvres- Aluminium balustrade and glass	Yes										
C22 For residential flat buildings, layer and step facades in order to avoid building forms that are bland, bulky or over scaled by: <ul style="list-style-type: none">(a) Complying with base and upper element setback controls; and(b) Incorporating balconies, staggered alignments for exterior walls and through contrasting design elements.	The proposed design does not provide sufficient steps the façade along each street frontage	No										
C4.2.3.1 General Design - Pavilions	C24 Facades that exceed 25m in length shall be indented to create the appearance of multiple pavilion elements.	The proposed façade along Karne Street South is indented 1.76m from the front building line to create 2 pavilions (each under 25m in length). The façade along Graham street is recessed 0.58m	No									

Control	Requirement	Proposed	Complies
		from the building line and does not provide adequate indentation and articulation to create the appearance of multiple pavilions.	
C4.2.3.1 General Design - Windows	C29 Large windows should be located at the corners of a building and may be designed as projecting bay-windows.	Noted	N/A
	C30 Large windows should be screened with blinds, louvres, awnings or pergolas.	Large windows within the development are located behind the ceiling above.	Yes
	C31 Windows must be rectangular.	Achieved	Yes
	C33 Vertical proportioned window openings can include multi-panel windows or multi-panel doors.	Noted	Yes
	C34 Windows and openings shall be appropriately located and shaded to reduce summer heat load and maximise sunlight in winter.	The proposed windows are appropriately located to reduce summer heat loading. Movable louvres have been provided within the balcony/private open space of each unit.	Yes
	C35 Dormer windows on buildings in the residential zone do not appear as additional storey must comply with the following design requirements: Individual dormers are no wider than (a) 1.5m in width; (b) Provide a minimum 2.5m separation between dormers; and (c) Dormers do not extend encroach above the ridgeline of the building.	Not Applicable	N/A
C4.2.3.2 Roof Design and Features – 4 Storeys or more	C11 Roofs must not exceed a pitch of 10 degrees.	4° roof pitch	Yes. However, the breach in building height is not supported. The site falls within a 11.5m building height which

Control	Requirement	Proposed	Complies
			represent a three-storey building.
	C12 Emphasize building articulation with the shape and alignment of the roof.	Achieved	Yes
	C13 Emphasise corner apartments or prominent balcony structures with raised roof elements.	The corner apartments would be better empathised with raised roof elements	No
	C14 Relate roof design to the size and scale of the building, the building elevations and three dimensional building forms – including the design of any parapet or terminating elements, and the selection of roof materials.	The proposal does not meet this control	No
	C15 Respond to the orientation of the site, for example, by using eaves and skillion roofs to respond to sun access.	Achieved	Yes
	C16 Integrate service elements into the design of the roof - including lift over-runs, service plant, chimneys, vent stacks, telecommunication infrastructure, gutters, downpipes and signage	The proposed services are not integrated into the overall design of the development	No
C4.2.3.3 Dwelling Layout and Mix	C1 10% of dwellings in any new multiple dwelling development must be accessible or adaptable to suit current or future residents with special needs.	5 accessible units proposed (10.87%) (Unit A04, A15, A25, A31 and B33)	Yes
C4.2.4 Amenity	This section of the DCP contains amenity provisions for solar access and overshadowing and acoustic privacy. Visual privacy and natural ventilation objectives and controls are discussed in section C4.2.2.5 Building Separation in this chapter of the DCP.		
C4.2.4.1 Solar Access and Overshadowing	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to solar and daylight access (solar access and overshadowing in this DCP) and development to which the SEPP relates. The ADG therefore sets the objectives and controls for solar access and overshadowing in the LGA for residential flat buildings to which SEPP 65 relates. Refer to 4A Solar and Daylight Access of the ADG for objectives, design criteria and design guidance.		
	C1 Daylight is to be provided to all common circulation	The proposed lift well A allows for light to access	No

Control	Requirement	Proposed	Complies
	areas (including lift wells) that are above ground.	Level 1 and Level 2 of the development, but not to Level 3. The proposed lift well B have glazed components that allows for light to be provided to the common circulation area.	
C4.2.4.2 Acoustic Privacy	C1 Protect sensitive rooms, such as bedrooms, from likely sources of noise such as major roads and neighbouring' living areas.	Bedrooms are primarily located away from Graham Road and Karne Street South. Adequate separation is provided from the roads for bedrooms that are located near the street frontages.	Yes
	C2 Above ground access to new dwellings must not include communal balconies that would be located immediately next to a bedroom window.	No communal balconies are proposed immediately next to a bedroom window.	Yes
	C3 Bedroom windows in new dwellings that would be located at or close to ground level are be raised above, or screened from, any shared pedestrian pathway.	The windows associated with Unit B05 does not proposed to be adequately screened from the communal open space along the eastern side of the site.	No
	C4 Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp.	The living room of Unit B02 does not proposed to be adequately screened from the	No
	C5 Address all requirements in 'Development Near Rail Corridors and Busy Roads - Interim Guideline (2008)' published by the NSW Department of Planning.	An acoustic report has not been submitted with the application.	No
C4.2.5 Fences and Ancillary Development			
C4.2.5.1 Fences	C1 Provide boundary definition by construction of an open fence or low hedge to the front street boundary.	Boundary fencing is proposed along both street frontages.	Yes
	C2 Front fences within the front boundary setback are to be no higher than 1.2m.	The proposed fencing forward on the front building line along Karne Street South provides fencing	No

Control	Requirement	Proposed	Complies
		<p>above 1.2m</p> <p>The proposed fencing along Graham Road is an open style fence to a height of 1.2m.</p> <p>The height of the fencing along the street frontages can be confirmed with a condition of consent if the application was recommended for approval.</p>	Yes
	C3 Side fences may be 1.8m high to the predominant building line. Forward of the building line, side fences must taper down to the height of the front fence at a height no greater than 1.2m.	The proposed side fencing (east side) forward of the building line is 1.8m high.	No.
	C4 On corner sites where the façade of a building presents to two street frontages, fences are to be no higher than 1.2m.	The proposed fencing forward on the front building line along Karne Street South has fencing above 1.2m	No
	C5 Screen walls around private open spaces shall not be taller than 1.2m, although screens with 50% transparency may be up to 1.8m in height.	In sufficient information to determine compliance	No
C4.2.5.2 Building Services	C2 Design and provide discretely located mailboxes at the front of the property.	Mailboxes shown on the site plan.	Yes
	C3 Integrate systems, services and utility areas with the design of the whole development – coordinate materials with those of the building and integrate with landscaping.	<p>The substation is not integrated into the design of the development.</p> <p>The proposed fire hydrant fails to be adequately integrated.</p> <p>The proposed bin storage area is located adjacent to the northern boundary along the rear and deep soil area.</p>	No
	C4 Facilities should not be visually obtrusive and should not detract from soft-landscaped areas that are located within the required setbacks or building	The proposed substation is located within the front setback of the development along Graham Road and is visually obtrusive and not supported. Furthermore,	No

Control	Requirement	Proposed	Complies
	separations.	details by an appropriate and qualified electrical engineer have not been provided to verify the requirement and placement of the substation. Council's landscape officer also does not support the location of the substation.	
	C8 Coordinate and integrate building services, such as drainage pipes, with overall façade and balcony design.	The proposed drainage pipes and pits are illustrated on the architectural plans. They are proposed to be integrated into the design.	Yes
C4.2.6 Parking and Access	A development must have regard to the objectives, design criteria and design guidance of the Apartment Design Guide (ADG) under <i>State Environmental Planning Policy No. 65 – Quality of Residential Apartment Development</i> (SEPP). Under clause 30 of the SEPP, a development application cannot be refused based on car parking if the development complies with the minimum amount of car parking specified in Part 3J of the ADG.		

Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

The Canterbury Development Contributions Plan 2013 applies to the site and if the application was approved would attract a s.7.11 contribution.

Planning agreements [section 4.15(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

The regulations [section 4.15(1)(a)(iv)]

The proposed development is not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000 (EP&A Regs 2000) as the applicable development application fees have not been fully paid.

For completeness the application was received on the 10 October 2018 the historical version of Clause 50 of the EP&A Regs 2000 (1 September 2018 to 21 October 2018) and relevant to this application reads:

50 How must a development application be made?

(cf clause 46A of EP&A Regulation 1994)

- (1) A development application:
 - (a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1, and
 - (b) if the consent authority so requires, must be in the form approved by that authority, and

- (c) *must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority, and*
- (d) *must be delivered by hand, sent by post or transmitted electronically to the principal office of the consent authority, but may not be sent by facsimile transmission.*

Current version of the EP&A Regs 2000 reads:

50 How must a development application be made?

(cf clause 46A of EP&A Regulation 1994)

- (1) *A development application must—*
 - (a) *be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and*
 - (b) *contain all of the information that is specified in the approved form or required by the Act and this Regulation, and*
 - (c) *be accompanied by the information and documents that are specified in Part 1 of Schedule 1 or required by the Act and this Regulation, and*
 - (d) *be lodged on the NSW planning portal.*

.....

- (9) *A development application is taken not to have been lodged until the fees notified to the applicant by means of the NSW planning portal have been paid.*

Note—

The amount of a fee payable by an applicant for a development application is determined in accordance with Part 15.

The likely impacts of the development [section 4.15(1)(b)]

Having regard to the height breach, character of the area and relationship to adjoining developments, the proposal will result in unacceptable impacts on the subject site and on the locality. The proposal is therefore not supported.

Suitability of the site [section 4.15(1)(c)]

Although, the proposal is a permissible within in the zone. The proposed scale and development is not considered acceptable and would be inconsistent with the desired future character of the area and therefore is not suitable for the site.

Submissions [section 4.15(1)(d)]

The application was neighbour notified and advertised in the newspaper consistent with the provisions contained in the Canterbury Development Control Plan 2012 and subsequently the amended plans were re-notified

The application was initially on exhibition for a period of twenty-eight (28) days from 11 June 2019 to 10 July 2019. A total of two (2) submissions were received. The amended plans were re-notified for a period of twenty-eight (28) days from 29 January 2020 to 25 February 2020, a total of five (5) submissions were received.

- Objection: Objection to the clause 4.6 to vary the building height. Proposed four storey inconsistent with adjacent buildings, proposal should be limited to three storey building. Proposal is out of character.*
- Comment:** A detailed discussion has been made on the Clause 4.6 relating to the height breach under the heading Canterbury Local Environmental Plan 2012 an assessment of Clause 16A "Character of local area" of the SEPP ARH has been made earlier in this report.
- Objection: Loss of privacy to western side of 67-69 Graham Road due to window placement.*
- Comment:** The proposal has maintained a minimum of 6 metre to the side boundary as outlined in the ADG and a greater setback than that stipulated within the CDCP 2012. If the application were to be approved conditions would be imposed requiring balconies be of obscure glazing to provide additional privacy measures.
- Objection: Traffic congestion and lack of car parking on site.*
- Comment:** The application is made pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and is located in an 'accessible area' the car parking rates are reduced. The proposal meets the minimum car parking spaces as required by Clause 14(2)(a)(ii) of the ARH SEPP.
- Objection: Access to M5 will be difficult.*
- Comment:** Access to the M5 is not via Karne Street South and therefore the proposal will not impact or alter access to the M5.
- Objection: Access to park to mow the lawns will be difficult due to car blocking access.*
- Comment:** The refusal of the application on the grounds of potential car blocking access to the park are not a matter under Clause 4.15 of the Environmental Planning and Assessment Act, 1979. If the application was to be approved, any breaches to the road rules should be reported to Council's ranger or Police.
- Objection: Trucks (including garbage trucks) have difficulty accessing the cul-de-sac, this will be made more difficult by the development.*
- Comment:** A Traffic and parking impact report was submitted with the application, however does not reflect the plans submitted on the 9th of May 2019 and would require to be revised.
- Objection: Intersection of Graham Road and Karne St South is a highly frequented thoroughfare, and this development will add to the congestion.*

Comment: A Traffic and parking impact report was submitted with the application, however does not reflect the plans submitted on the 9th of May 2019 and would require to be revised.

Internal Referrals:

Internal Referral	Comments Received
Development Engineer	No objections raised in regard to drainage. Conditions provided and recommendation that the accessible parking spaces be located closer to the lift.
Tree Officer	No objections raise by Council's tree officer. Conditions provided.
Resource Recovery	<p>The following issues remain outstanding:</p> <ul style="list-style-type: none"> • <i>The doorway for the bulky waste room need to be a minimum of 2m</i> • <i>Due to the distance from the bulky waste room to the kerb carting equipment will be required.</i> • <i>Due to the excessive gradient of the ramp (1:5 not 1:8) bin carting equipment will be conditioned. The storage location for this carting equipment should be shown on the plans.</i> • <i>Bin presentation point requires a doorway/gate with a minimum of 2m in width</i> • <i>A layback and a level pathway are required between the presentation point and the roadside.</i>
Landscape Architect	<p><u>Areas of concern:</u></p> <ul style="list-style-type: none"> • Substation in south east corner encroaches on the TPZ of the tree no. 9 in the arborist report. Substation is to be relocated. • Pedestrian access on Karne Street and the entry to unit B02 also encroach on the Tree Protection Zone (TPZ) of the Tree no. 3 in the arborist report. A redesign to both entries is required. • Both communal areas in ground floor and first floor require amenity (e.g. BBQ) and shading, preferably natural shading; please provide planters to accommodate trees that will soften the hardness of the building and space and to encourage tenants and residents to use the outdoor space. • The ramp leading to the communal area at the ground floor is to be minimum 1:14 gradient; also if the ramp is between 1:14 and 1:20 a hand rail is required on both ramp sides. <p>No other objections raised to the proposal in respect to the landscaping details once the above is resolved.</p>
Environmental Health	<p>a) Submit an acoustic assessment which considers (but not limited to):</p> <ol style="list-style-type: none"> Nearest residential receivers (internal and external) and rating background noise level; Proximity of proposed development to the major road corridor (M5) and how the development satisfies the requirements of the Canterbury Development Control Plan 2012 and State Environmental Planning Policy (Infrastructure) 2007; Noise from car park operations such as roller shutter door and vehicles entering/exiting the site;

	<p>iv. Detailed recommendations for mitigating noise and vibration;</p> <p>v. Noise management plan.</p> <p>The acoustic assessment is to be conducted by a suitably qualified Acoustic Consultant recognised by the Australian Association of Acoustical Consultants (AAAC).</p>
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The public interest [section 4.15(1)(e)]

Approval of the proposed development would not be in the public interest in terms of the built form and a compliant building will be a positive result in providing affordable housing. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by ensuring that any adverse impacts on the surrounding area and the environment are avoided. The matters raised in the public submissions, which are also similar to those raised by Council, reinforce that the development will result in unreasonable impacts on the locality and result in an undesirable precedent for future development.

CONCLUSION

The Development Application for the demolition of existing structures and construction of a four-storey residential flat building as assessed against the relevant Environmental Planning Instruments, polices.

The proposal seeks to depart from Clause 4.3 relevant to the 'height of buildings' standard under the CLEP 2012, with the highest breach being 2.01m (17.5%). The applicant's written submission under Clause 4.6 of CLEP 2012 has been assessed and it is considered that the breach to the development standard relating to the building height is not acceptable in this circumstance.

The proposal also presents variations to the provisions of Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009, including Clause 16A 'Character of the Area', a breach to the floor space ratio, variations sought to the Canterbury Development Control Plan 2012 and insufficient information has been provided to allow for a full and proper assesment.

The above variations have been addressed within this report and on the basis, the proposal would result in an uncharacteristic built form and would result in a development that is inconsistent with the desired future character of the area.

It is therefore recommended:

THAT the Sydney South Planning Panel refuse Development Application No. DA 440/2018 for the demolition of existing structures and construction of a four-storey residential flat building pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 with basement carparking at 71-83 Graham Road and 35-37 Karne Street South, Narwee being the subject lots legally described as Lot 2, Lot 3, Lot and Lot 8 in DP 23841 and Lots A and B in DP 387057 pursuant to Section 4.16(1)(b) of

the Environmental Planning and Assessment Act, 1979 for the reasons set out below.

RECOMMENDATION

THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, the Sydney South Planning Panel, for the reasons set out below refuse Development Application No. 440/2018.

1. Pursuant to the provision of Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act, 1979 and Clause 50 of the Environmental Planning and Assessment Regulation 2000 as the application has not been made as the fee prescribed by 'Part 15 Fees and charges' has not been fully paid.
2. Pursuant to the provision of Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act, 1979 and Clause 49(1) of the Environmental Planning and Assessment Regulation 2000, a development application may be made by the owner of the land to which the development application relates to. The Australian Securities and Investments Commission (ASIC) certificate submitted with the development application has expired and therefore the current owner's consent has not been provided.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012 relating to 'Height of buildings' and exceeds the allowable height of building of 11.5m
4. The Clause 4.6 Request to vary Clause 4.3(2) 'Height of buildings' of the Canterbury Local Environmental Plan 2012 is not well founded and it has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives of Clause 4.3(1) contained in the Canterbury LEP 2012 including:
 - (a) to establish and maintain the desirable attributes and character of an area,
 - (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,
 - (c) to support building design that contributes positively to the streetscape and visual amenity of an area.
6. A Clause 4.6 Request to vary the floor space ratio has not been provided to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case.

7. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with State Environmental Planning Policy (Affordable Rental Housing) 2009 with respect to Division 1, Clause 13(2)(a) 'Floor space ratios'.
8. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with State Environmental Planning Policy (Affordable Rental Housing) 2009 with respect to Clause 16A 'Character of the Area'. The proposal will result in an uncharacteristic building and will not be consistent with the existing and desired future character of the area.
9. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is unsatisfactory as it does not comply with the provisions of Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
10. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development, particularly Schedule 1, 'design quality principles'.
11. Pursuant to the provisions of Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is not consistent with the Draft Canterbury Bankstown Consolidated Local Environmental Plan, Clause 6.14 'Design Quality'.
12. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of the Canterbury Development Control Plan 2012.
13. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
14. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
15. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.