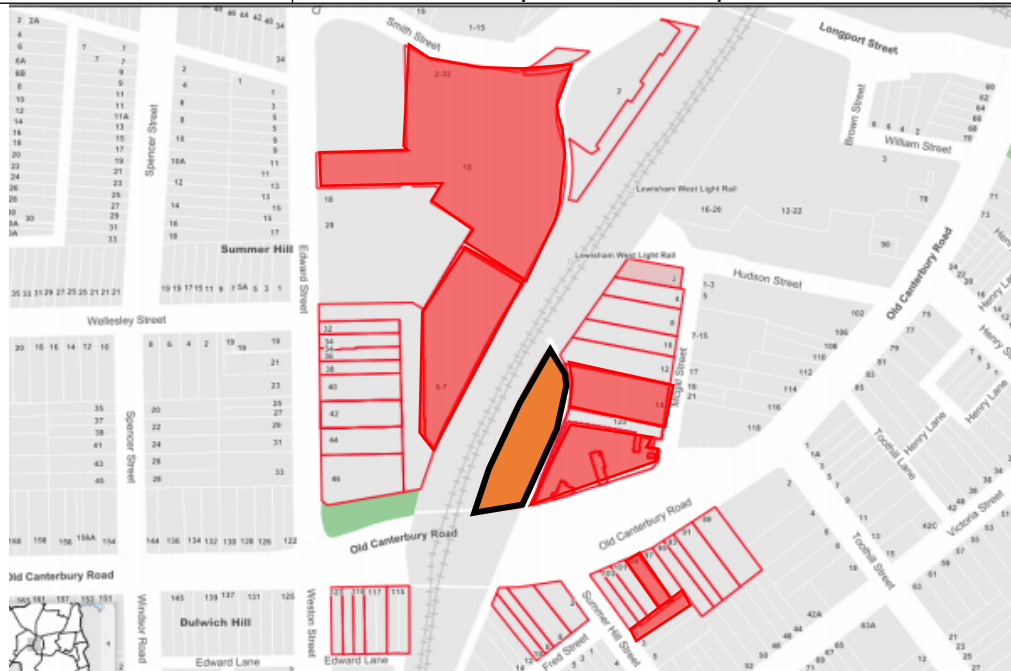







INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	DA/2020/0815
Address	120C Old Canterbury Road SUMMER HILL NSW 2130
Proposal	Construction of an 8-storey mixed-use development comprising ground level retail, 57 residential units, three levels of basement car parking and a pocket park
Date of Lodgement	28 September 2020
Applicant	Mr Conrad GT Johnston
Owner	Mr Tyron P Timperi Mr Rick Timperi
Number of Submissions	Initial: 18
Value of works	\$31,194,000.00
Reason for determination by Planning Panel	General development with a capital investment value over \$30 million
Main Issues	ADG non-compliance, variation to maximum FSR, Flooding, Impacts to greenway/biodiversity, access over Hawthorne Canal
Recommendation	Deferred Commencement consent
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



LOCALITY MAP

Subject Site		Objectors		 N
Notified Area		Supporters		
Note: Due to scale of map, not all objectors could be shown.				

1. Executive Summary

This report is an assessment of the application submitted to council for construction of an 8-storey mixed-use development comprising ground level retail, 57 residential units, three (3) levels of basement car parking and a pocket park at 120C Old Canterbury Road, Summer Hill.

The application was notified to surrounding properties and 18 submissions were received in response to the notification.

The main issues that have arisen from the assessment of the application include:

- Non-compliance with ADG guidelines for visual privacy/ building separation and apartment depth
- Variation to maximum floor space ratio
- Compliance with clause 6.2 – Flood Planning of the ALEP 2013
- Impacts relating to the Greenway/ Biodiversity corridor adjacent the site (within the light rail corridor)
- Issues relating to the proposed access to the site over Hawthorne Canal

The issues and non-compliances are considered acceptable on the balance of the assessment, subject to suitable conditions of consent. The application is recommended for approval, subject to the imposition of Deferred Commencement conditions.

2. Proposal

DA/2020/0815 was lodged by Fox Johnston Architect (the applicant) on the 28th of September 2020, for the redevelopment of the site known as 120C Old Canterbury Road, Summer Hill or Lot 1, DP 817359 and Lot 100, DP 875660. The development is best illustrated through photomontages provided by the applicant and replicated in photomontage I & II below.

The application will be required to be determined by the Sydney Eastern City Planning Panel because the proposed development has a capital investment value over \$30 million.

The development application involves:

- Demolition of the existing bridge providing vehicular and pedestrian access to the site
- Construction of a new vehicular bridge and driveway accessed via McGill Street
- Construction of two x pedestrian bridges providing access to the north of the subject site
- Construction of three levels of basement car parking, comprising:
 - 78 vehicular parking spaces
 - 1 carwash bay
 - 3 Motorcycle parking space
 - 22 Bicycle spaces
- Construction of 57 residential units (of which 5 are to be adaptable units) comprising:
 - 1 x studio
 - 7 x one-bedroom
 - 33 x two-bedroom
 - 14 x three-bedroom

- 2 x four-bedroom

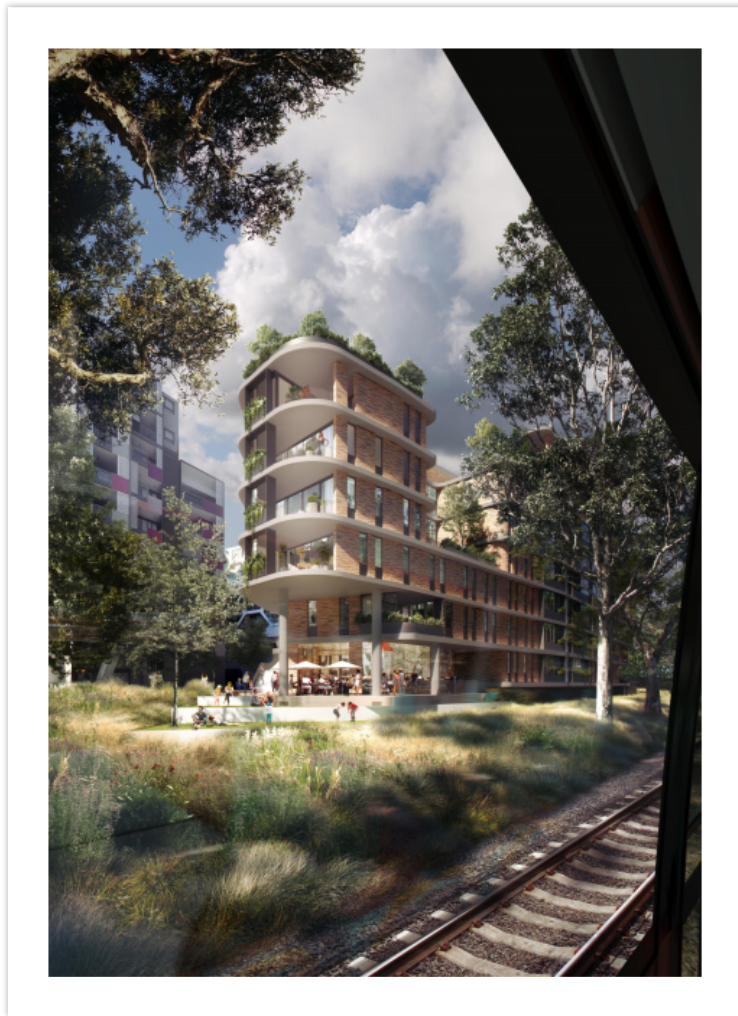
Note: Two (2) proposed 1-bedroom units are required to be dedicated to Council as affordable housing under the requirements of a VPA.

- Construction of ground floor retail space/cafe at the northern end of the built form, comprising an area of roughly 74m².
- Construction of a community room comprising 30m² and community office space comprising 43m² on level 2 of the development.
- Construction of two retail spaces on level 3 at the southern end of the built form fronting Old Canterbury Road, both with an area of roughly 58m².
- Construction of a through site pedestrian link forming the missing link for access to from Old Canterbury Road to the Lewisham West Light Rail Station.
- Construction of a public pocket park at the northern boundary of the site.
- Construction of roof top communal open spaces comprising an area of 457m²

On the 2 December 2020 Council Officers contacted the applicant and outlined a number of matters which were required to be addressed via the submission of amended plans and additional information. The requested amendments were submitted on the 17 December 2020 and 22 February 2021. This assessment report is based off the amended plans and additional documentation submitted.



Photomontage I: Development viewed from Old Canterbury Road



Photomontage II: Development viewed from Light Rail Corridor

3. Site Description

The subject site is known as 120C Old Canterbury Road, Summer Hill and is located on the northern side of Old Canterbury road, close to the intersection of Old Canterbury Road and McGill Street. The subject site comprises of two separate allotments known as Lot 1 in DP 817359 and Lot 100 in DP 875660. The subject site is zoned B4 Mixed Use under the ALEP 2013, as seen within figure 1 below.

The extent of the subject site is detailed within figure 2 below. The proposal has a combined frontage of 17.4m to Old Canterbury Road and a maximum depth of 98m resulting in a total site area of 1957sqm. The subject site is approximately 84m away from the Lewisham West Light Rail Station, 500m away from Lewisham Station, 216m from the Summer Hill Flour Mill Centre and 700m from the Summer Hill Town Centre.

Access to the site is currently granted via a vehicular bridge over Hawthorne Canal and via a right of carriageway (driveway) over land currently also utilised by the developments 14 McGill Street and 120B Old Canterbury Road for vehicular access, as seen in figure 4 below.

The subject site is within the Summer Hill/ Lewisham precinct, a locality undergoing substantial re-development. The locality is largely characterised by mixed use developments.

The site is directly adjacent to the light rail corridor and “Greenway” to the west. As part of the current application the applicant seeks consent to remove several trees located along the western boundary within the light rail corridor (owner’s consent from Transport NSW for the removal of these trees has been provided). The proximity to the Greenway places the site within an important biodiversity link for the remainder of the Inner West LGA. Beyond the light rail corridor and greenway is the Summer Hill Flour Mill centre, a locality which has recently undergone a significant urban renewal and now comprises of mixed-use development. This site is identified as containing heritage items (item 619) under the ALEP 2013.

Located immediately to the east of the subject site is Hawthorne Canal, which runs the length of the site and results in the land becoming essentially an island with regards to vehicular and pedestrian access. The proximity of the site to the canal results in the development being located within a high hazard flood planning area. Located immediately beyond Hawthorne Canal is 14 McGill Street and 120B Old Canterbury Road, both of which contain recently constructed mixed use developments (as seen within figures 5 and 6 below).

Located to the north of the subject site is a series of single and two storey industrial buildings along McGill Street, known as 4 – 12 McGill Street and 2 McGill Street. These sites are currently undeveloped but have recent consents for demolition of existing structures and construction of 6 and 8 storey mixed use developments.

Immediately south of the subject site is Old Canterbury Road, with low density residential dwelling houses situated beyond that (roughly 90m away from the subject site). These properties are identified as being within a Heritage Conservation Area (HCA) under the Marrickville LEP 2011.

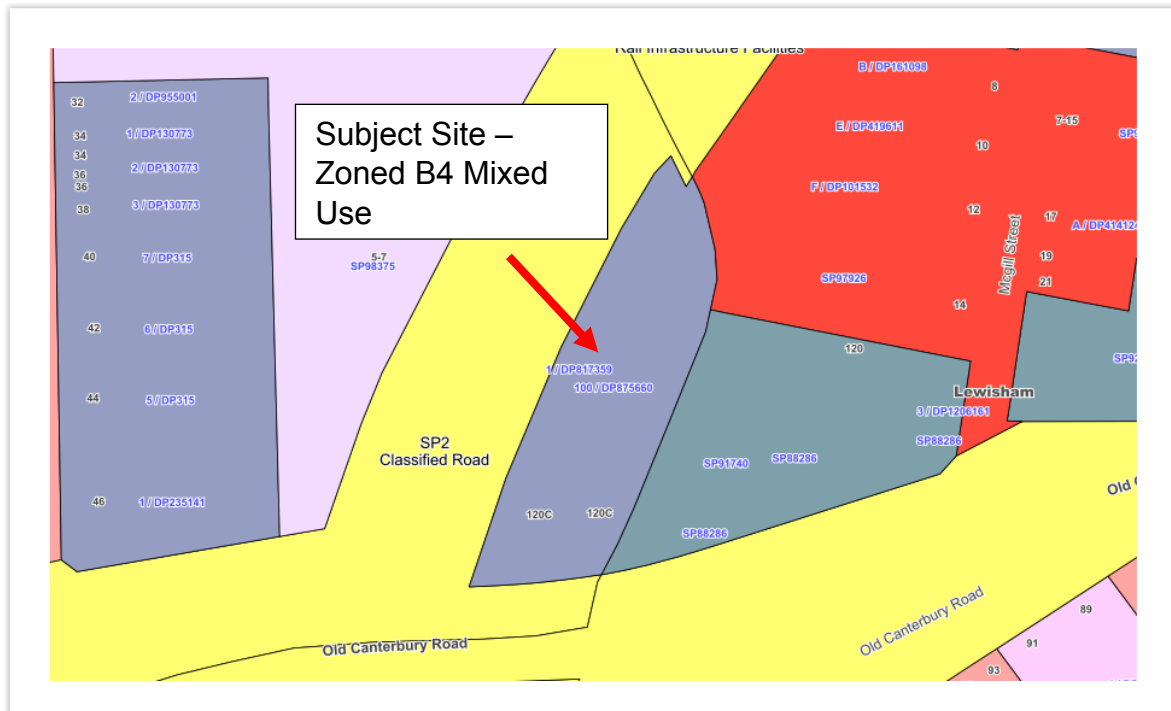


Figure 1: Zoning Map



Figure 2: The subject Site and Surrounds



Figure 3 – Subject site viewed from Old Canterbury Road



Figure 4 – Subject site viewed from right of carriageway to be utilised as a driveway for access

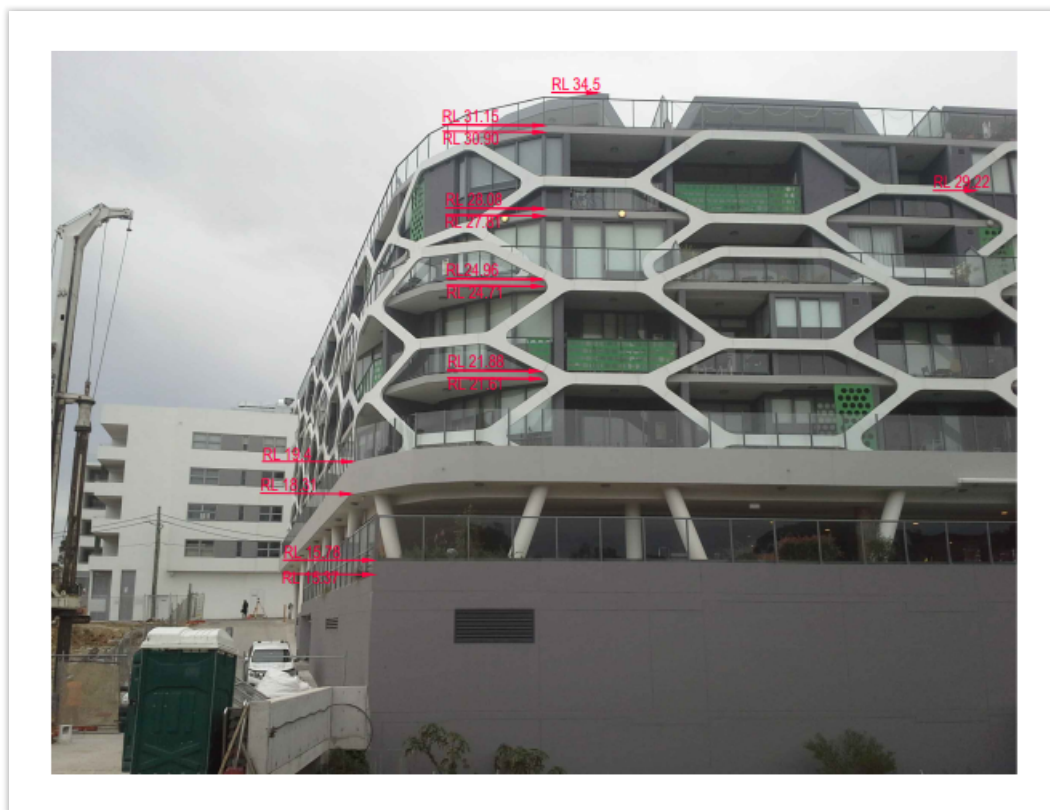


Figure 5 – Western Elevation of 20 McGill Street, as viewed from subject site. Photo provided by applicant's surveyor

Address: 120B Old Canterbury Road

Date	Application No	Application Details	Outcome
19/10/12	DA201200442	Demolish, construct 6 storey mixed use	Approved

Address: 14 McGill Street

Date	Application No	Application Details	Outcome
-	DA201500205	Demolish, construct 8 storey mixed use	Approved

Address: 118 Old Canterbury Road

Date	Application No	Application Details	Outcome
-	DA201300170	Demolish, construct 5 storey mixed use	Approved

Address: 2 McGill Street

Date	Application No	Application Details	Outcome
8/12/17	DA201700611	Demolish, construct 6 storey mixed use	Approved

Address: 4 – 12 McGill Street

Date	Application No	Application Details	Outcome
-	DA201500682	Demolish, construct 6 storey mixed use	Approved

4(b) Voluntary Planning Agreement (VPA)

The subject site is subject to a Voluntary Planning Agreement (VPA) originally dated the 5 August 2019. As part of the VPA the development is required to provide/complete the following:

- Construction of a park of approximately 300m² located within the land and to provide rights of way for the public access through the park to the Greenway corridor and the Lewisham Light Rail Station from Old Canterbury Road and McGill Street.
- Provide two (2) studio units which will be allocated to Affordable Housing units. The ownership of the units will be transferred to Inner West Council at the completion of the project.
- Community Office Space located within retail Ground Floor – 5 Year Rental Agreement \$1 Peppercorn rent per year – 35m² office area.
- Provide Council a payment of \$1,045,000 million to be used for public works in the community and surrounding area.

As part of the current development assessment proposes, the applicant was required to amend/revise the VPA dated 5 August 2019, as it no longer aligned with the current development application scheme currently submitted for approval. The revised draft VPA is dated 19/2/2021 and includes an obligation for the developer to deliver the following:

- Construction of approximate 552.8m² 'Pocket Park', including access pathway to Old Canterbury Road and extension of the Greenway access link with extensive landscaping beds, and community lift in Greenway pedestrian link.
- Transfer of two (2) Affordable Housing Units located on the Site to Council. Total approximately \$1,450,000 (being 2 x 'mid-range' 50m² one bedroom units without car spaces).
- Lease of 35m² of community office space to Council for a period of 7 years for \$1/year for the term of the lease.
- Monetary Contribution to be used by Council for or applied towards a public purpose including but not limited to those purposes described in the Contributions Plan. An amount equivalent to the amount that would be payable under a condition of development consent imposed in accordance with s.7.11 of the Act having regard to the Contributions Plan, such amount to be calculated on the date that the Monetary Contribution is paid.

This VPA is currently in a draft state and is yet to be executed. As such, a Deferred Commencement condition is recommended for the consent. This condition sets out that the development consent will not become operational until such a time that the VPA has been executed and registered on the title of the land.

4(c) Greenway

The subject site is immediately adjacent the Greenway: Cooks to Cove Corridor, which is proposed to run adjacent the development on the western (opposite) side of the Inner West Light Rail Corridor. The Green Way Master Plan was adopted by Council on the 14 August 2018, with the overall project expected to take 10 -15 years to complete, with high priority works anticipated to be completed by 2023. Figure 7 and 8 below provides an overview of the concept design for the greenway development for the locality and this site's context within the overall corridor. As seen within these figures the subject site and proposed pedestrian bridges provides a key (currently missing) pedestrian link for members of the public to access the Lewisham West Light Rail Station via the eastern side of the light rail corridor, which will not be serviced by the Greenway.

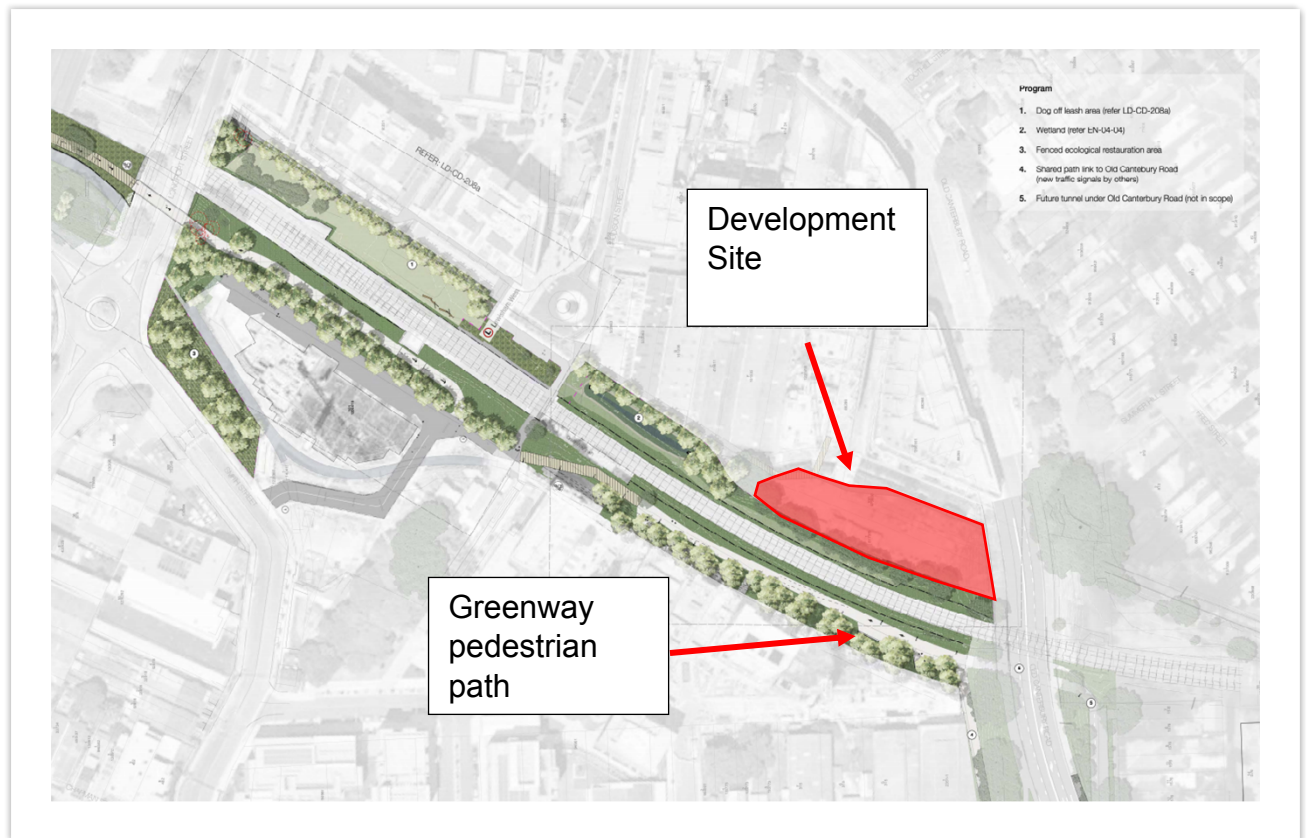


Figure 7 – Concept design of the Greenway Corridor – Subject site identified in red.

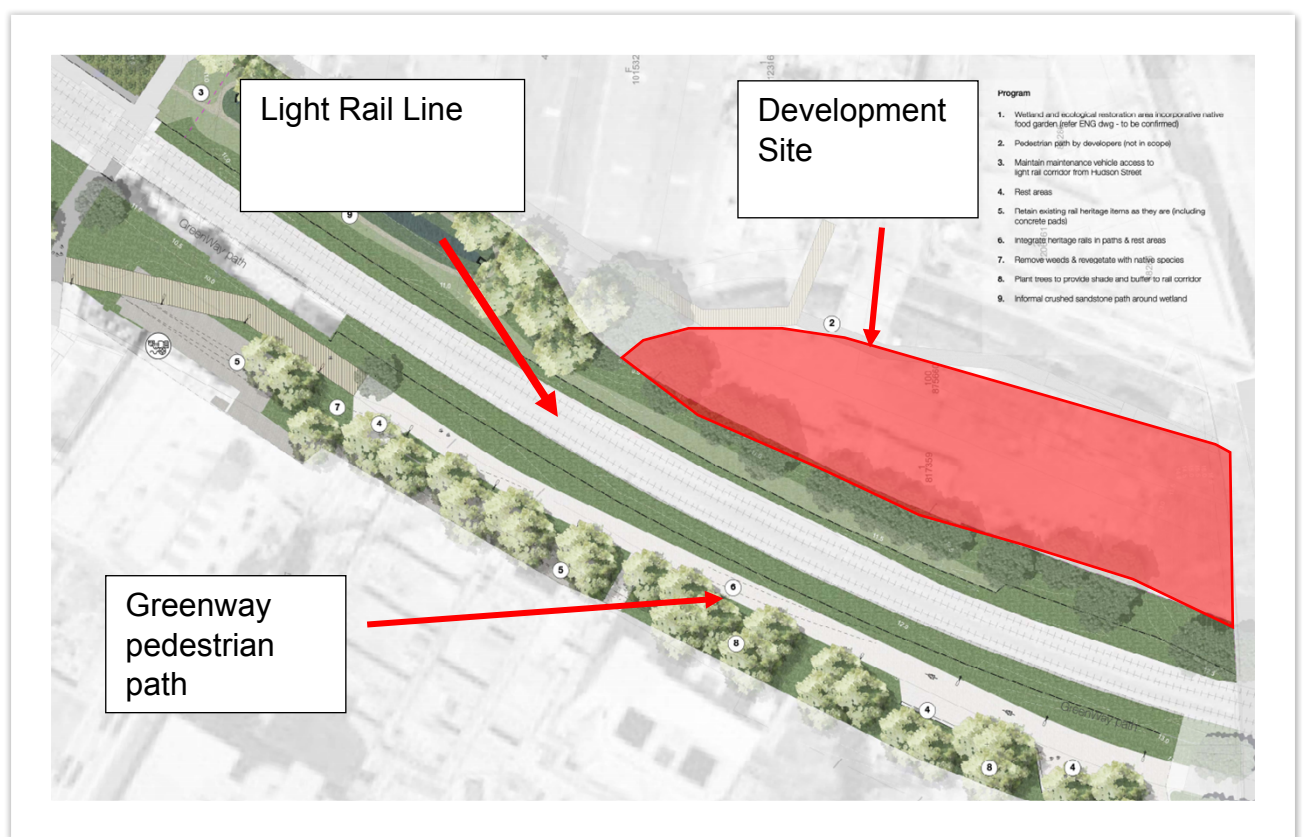


Figure 8 – Focused concept design of the Greenway Corridor – Subject site identified in red.

4(d) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
2 December 2020	<p>Council Officers contacted the applicant and requested the submission of amended plans/additional information addressing the following matters:</p> <ul style="list-style-type: none"> - Submission of a revised/amended VPA to align with the current development application. - Amended plans detailing compliance with flood planning requirements and the creation of an internal refuge above PMF for units located upon level 01 of the development. - Submission of amended landscape plans and urban ecology report outlining how the proposal will not impact on the eastern bent wing bat and provide opportunities to off-set any habitation loss experienced by the re-development of the site. - Submission of a revised detailed site contamination investigation, detailing additional research into any potential contaminated soils on the site. - Submission of revised stormwater plans - Submission of a supplementary traffic impact report addressing concerns raised by Council traffic engineers - Submission of amended plans detailing the inclusion of additional elements to balconies facing the rail corridor to stop residents being able to throw objects on to the rail line - Amended plans detailing revised adaptable unit layouts, which are more readily adaptable and require less plumbing relocation - Revised plans detailing residential waste storage and collection based off 240L bins - Amended plans providing confirmation that the proposed pedestrian bridge over Hawthorne Canal will not interfere with the fire exit of the approved development at 4 – 12 McGill Street - Submission of documentation outlining a legal right to utilise the existing right of carriage way currently utilised by 120 Old Canterbury Road and 14 McGill Street. - Amended plans detailing privacy treatments to the eastern boundary of the development, where a variation to ADG separation is proposed.

17 2020	December	The applicant provided a response letter and amended architectural plans addressing the majority of the points raised above. These plans form the basis of the current assessment.
22 2021	February	The applicant submitted the required revised landscape plans, ecology report and detailed site contamination investigation.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant statutes and Environmental Planning Instruments listed below:

- *Biodiversity Conservation Act 2016*
- *State Environmental Planning Policy No. 55—Remediation of Land*
- *State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The following provides further discussion of the relevant issues:

5(a)(i) *Biodiversity Conservation Act 2016*

The current application has been reviewed by Council's Urban Ecology Team, who noted that the subject site is adjacent to the Bandicoot Protection Area (Marrickville Council LEP and DCP). As part of the current assessment Council officers and the applicant have undertaken an assessment of the proposal against the provisions of Biodiversity Conservation Act 2016 (BC Act). This assessment has confirmed that the site is not mapped as containing biodiversity values and is not subject to the biodiversity threshold.

The current application has been assessed against clause 7.3 of the BC Act. This assessment relied upon documentation provided by the applicant from an ecologist, input from Council ecology specialists and previous Fauna surveys undertaken within the locality. In June 2018 a detailed Fauna Survey was commissioned for the purpose of offset/ bush regeneration calculation for the site identified below within figure 9. This Fauna survey found that previously two dead individual Long-nosed Bandicoots have been found within the Inner West Light Rail Corridor, but at the time of the survey no signs of Long-nosed Bandicoots were identified in the study area and that the locality is unlikely to support any bandicoots due to the presence European Red Foxes and domestic cats. This survey did identify that 25 microbats were recorded over the two nights of survey, all of which were the Eastern Bent wing bat (a threatened species under the act), which were identified as flying north along the rail corridor.

These bats were identified as likely to be members of the Cadigal Reserve colony, with no signs of any new colonies identified within the study area or under the culvert.

Following a review of the findings from this 2018 survey Council's ecology team outlined concerns regarding the developments impact on the flight path of the Eastern Bent Wing Bat along the light rail corridor and requested additional information from the applicant detailing an assessment from a qualified ecologist regarding the potential impact.

On the 15 February 2021 the applicant supplied the requested information, which found:

- *As the development proposal does not impact on any important maternal roosting habitat or any known other structural roost, the test of significance assessment concluded a not significant impact on this species on Large Bent-winged Bat. It is likely that comments relating to the flight path of this species have potentially arisen out of recordings during the initial site ecological surveys. Only a wind farm close to a breeding or high use roost may potentially impact on flight paths for this species. This development is static non-moving structure and consequently Microbats will avoid it through sonar echolocation.*
- *The Landscape Plans also provide a preliminary review of sourced hides for insects to encourage potential microbat prey species habitat as well as an example of microbat and bird roosting/nesting designs incorporated into building structures*
- *A green roof space for 'resting' opportunities for the species is unfounded given that the species does not utilise such habitat for roosting or resting and there is no demonstrated evidence that roosting locations are set proximate to any particular vegetated gardens. This is also particularly given that this species is well known to occupy urbanised and city landscapes and forage along streetlights more than other microbats, particularly threatened species. Such gardens may alternatively provide prey species habitat and thus provide foraging benefits if designed correctly.*
- *It is recommended that a 2m2 vertical microbat apartment housing block is designed to be attached to the face of the building. The material used, whilst being durable, should allow for good internal insulation and protection from varying external temperatures. This bat housing block is to provide various entry types between 15-25mm slits or 30mm hole entries into a range of internal housing dimensions. Vertical faces below and around entries are to be rough surfaces to allow landing on the exposed face, climbing inside as well as into the deeper dark crevices within. The internal dimensions should vary in width between 60-400mm but allow no more than 6mm between internal faces. The concept is to basically permit a range of different options for the bats to select the housings most preferred. These bat apartment blocks are to be replicated for each level of the building along the western aspect so that they are available at various levels. Such an aspect is ideal for obtaining late day heating before the bats emerge at night.*
- *Ground level entry into the sub-floor areas of the building along the western side should permit for available surface shelter habitat for Long-nosed Bandicoot accessed to and*

from the adjacent GreenWay corridor. These should also be variable in dimensions but generally permit small hole and crevice entries of approximately 200mm high and internal shelter areas with internal linings such as waterproof carpet.

This documentation has been reviewed by Council's ecology team who outlined no objection to the application, subject to suitable conditions of consent. The proposal is compliant with the requirements of clause 7.3 of the Biocon Act and will not impact the extent of the ecological community, will not remove habitat, will not fragment habitat, will not impact an area of outstanding biodiversity value and will not increase the impact of a key threatening process. The application is therefore compliant with the requirements of the Biocon Act and is recommended for approval.



Figure 9 – Study Area for Fauna Survey and proximity to development site.

5(a)(ii) State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides planning guidelines for remediation of contaminated land. Council's DCP provides controls and guidelines for remediation works. *SEPP 55* requires the consent authority to be satisfied that "the site is, or can be made, suitable for the proposed use" prior to the granting of consent.

The site has been used in the past for activities which could have potentially contaminated the site. It is considered that the site will require remediation in accordance with *SEPP 55*.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) have been provided to address the management of contaminated groundwater onsite and the treatment and disposal

of any contaminated soils and contamination issues prior to determination. The contamination documents have been reviewed and Council's Environmental Health team are satisfied that the site can be made suitable for the proposed use after the completion of the RAP. To ensure that these works are undertaken, it is recommended that conditions are included in the recommendation in accordance with Clause 7 of *SEPP 55*.

5(a)(iii) *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development*

The development is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). *SEPP 65* prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the ADG have been achieved.

The development is acceptable having regard to the nine design quality principles. The proposal has also been reviewed by Council Architectural Excellence Panel (AEP) who outlined that the proposal was acceptable and worthy of support.

Apartment Design Guide

The Apartment Design Guide (ADG) contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP certain requirements contained within IWCDP 2016 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

The following provides further discussion of the relevant issues:

Visual Privacy/ Building Separation

The ADG prescribes the following minimum required separation distances from buildings to the side and rear boundaries:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6 metres	3 metres
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres
Over 25 metres (9+ storeys)	12 metres	6 metres

Comment:

Western Boundary

The proposed western side boundary setbacks for residential units on levels 1 – 8 incorporates a variation to the ADG required 9m setback to habitable rooms, with units in this locality to incorporate a 1.5m boundary setback. The intention of this control is to ensure adequate building separation distances between sites and to ensure that they are shared equitably in order to provide reasonable external and internal privacy.

The subject site immediately adjoins the Inner West Light Rail Corridor along the western boundary. This rail corridor creates a significant separation distance of roughly 30m between the subject site and opposite residential properties located on the eastern boundary of the light rail line. This is best illustrated through figure 10 below. The 30m separation distance resultant from the rail buffer ensures that the subject development and neighbouring residential sites achieve a separation outcome which is more than the minimum required by the ADG and provides generous opportunities for sites to obtain and maintain reasonable external and internal privacy. A review of the neighbouring Flour Mill development has highlighted that these structures currently enjoy a similar reduced side boundary setback, like that currently proposed by the subject development. In this instance strict compliance with the minimum side boundary setbacks is unlikely to substantially improve visual privacy for residents or further minimise any impacts of bulk and scale, as this is already been achieved through the light rail corridor. It is anticipated that amenity impacts from the 1.5m proposed boundary setbacks will be minimal and in-line with that of a high-density urban environment expected within the locality. As such the proposed variation is acceptable and recommended for support.

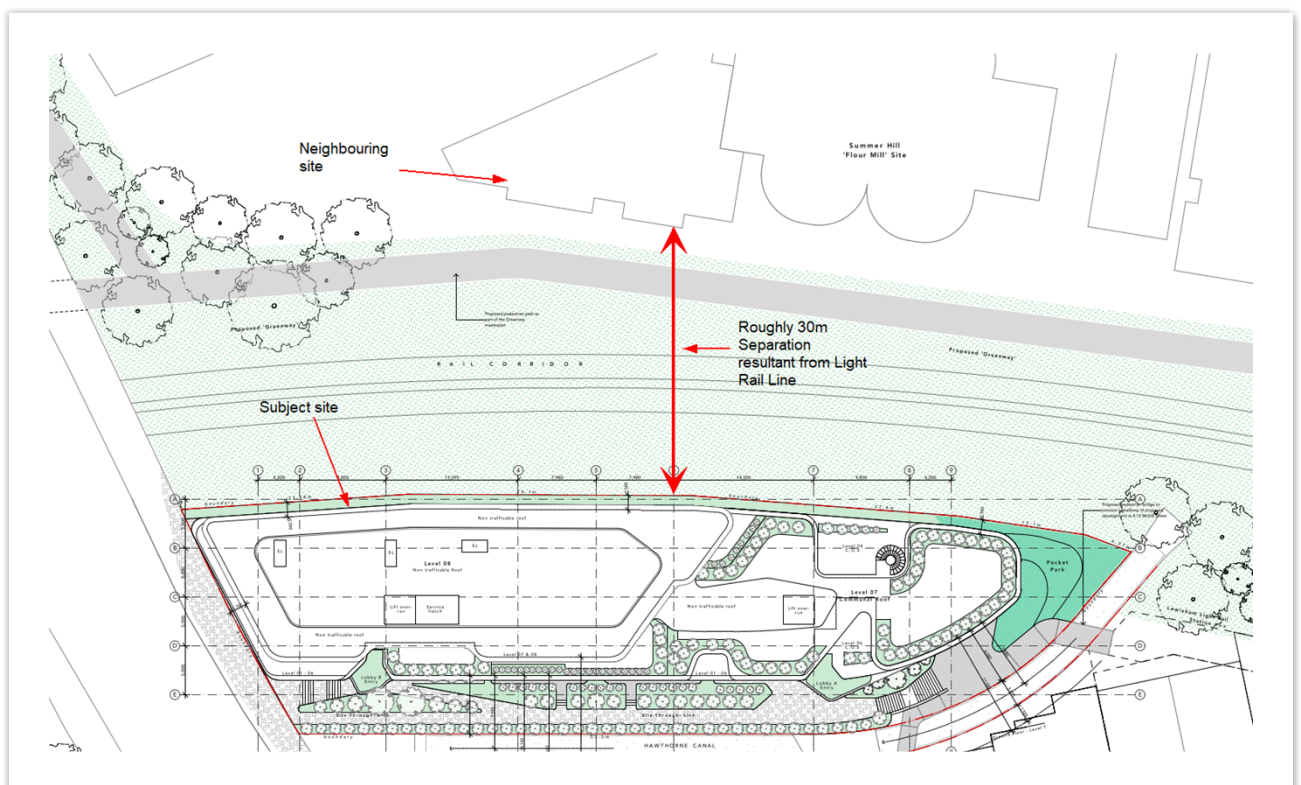


Figure 10 – Separation distance resultant from Light Rail Line.

Eastern Boundary

Analysis of the proposed levels 5 & 6 within eastern boundary of the development has highlighted a variation to the ADG required 9m boundary setback to habitable rooms, with units proposed to incorporate a 7.5m boundary setback. This variation has been analysed in two separate sections, with the north east corner (most impacted) and eastern boundary analysed separately.

1. North East Corner

The proposed north east corner setback variation is compounded by the recently constructed 14 McGill Street which utilises substantially reduced boundary setbacks of 3.4m and results in both developments having a total separation of only 11m (not the 18m intended by the ADG). In this instance the non-compliance with separation is largely resultant from both parties (subject site and 14 McGill Street) not sharing separation requirements.

Due to the location and siting of 14 McGill Street, strict compliance with the prescribed 9m setback for the subject site is unlikely to substantially improve internal or external privacy. As such, enforcement of strict compliance has been deemed unreasonable in this instance. Instead a focus has been applied to occupant amenity and mitigation of any potential impacts. Following discussions with the applicant it has been determined that this means of occupant amenity is best achieved through the installation of privacy treatments to windows to the following units: 301, 401, 501 & 601. These privacy treatments have taken the form of external window hoods, as seen in figures 11 and 11(a) below. The design of these hoods have been reviewed and are considered to be acceptable to ensure amenity and privacy. The design of the hoods on an angle ensures minimal opportunities for direct sightlines into or from the proposed units, while maintaining sufficient opportunities for light and ventilation into the rooms the windows relate to.

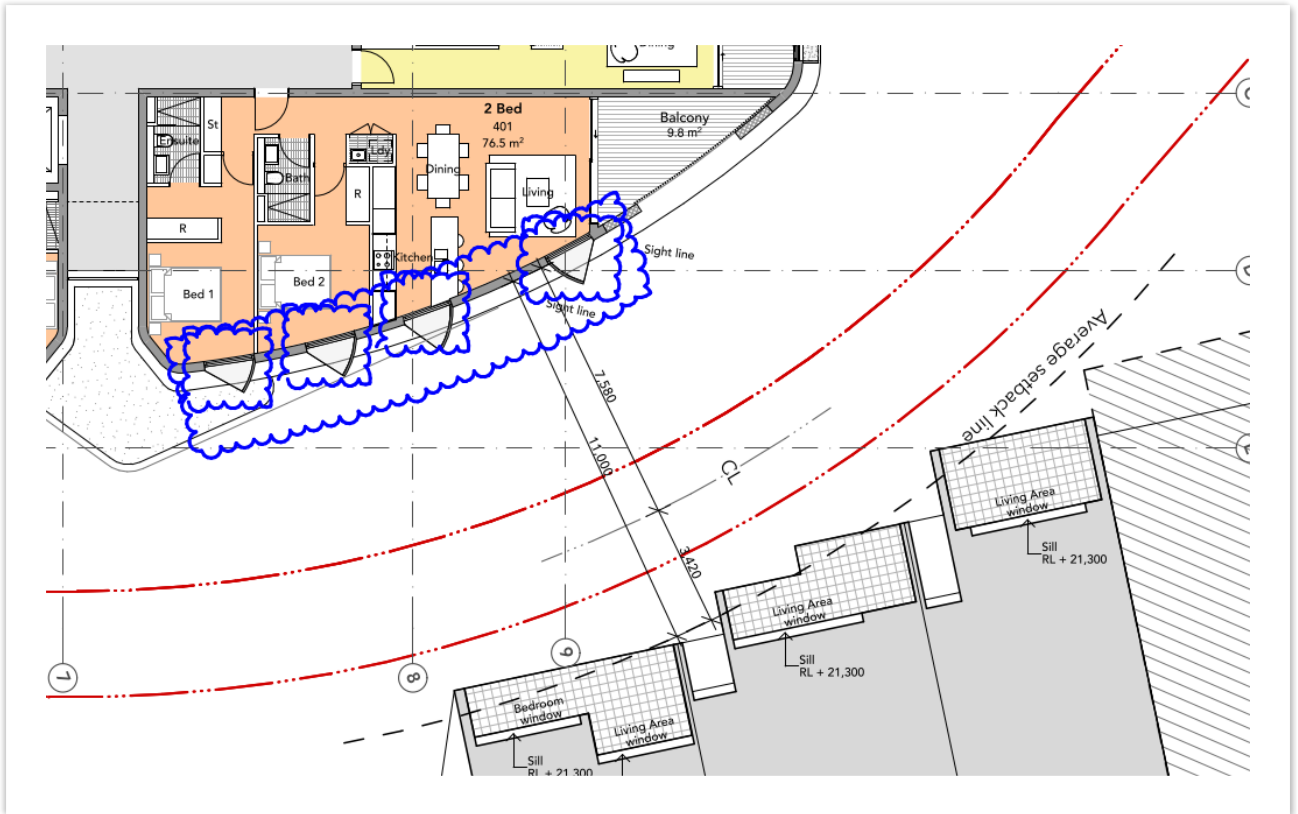


Figure 11 – External privacy hoods to units detailed in blue cloud.



Figure 11(a) – Photomontage of external privacy hoods to units.

2. *Eastern Boundary*

A review of the eastern boundary has highlighted that the neighbouring 120B Old Canterbury Road currently utilises a reduced boundary setback of 8.15m. This, when combined with the subject sites setback of 7.5m, results in a total separation distance of 15.6m (not the 18m intended by the ADG). This 2.4m variation to separation requirements is relatively minor, with strict compliance unlikely to substantially improve amenity for occupants or result in a registerable visual improvement by members of the public utilising the spaces. The location and design of both the proposed development and 120B Old Canterbury Road ensures a high degree of passive surveillance to the proposed through site link located upon level 02 of the development and ensures greater compliance with the principles of CPTED. The proposed separation distances are sufficient to mitigate substantial amenity impacts, with a requirement for privacy treatments to windows not sought due to concerns regarding loss of passive surveillance to the through site link. It is anticipated that amenity impacts from the proposed boundary setbacks will be minimal and in line with that of a high-density urban environment expected within the locality. The proposed variation is recommended for support.

Apartment Layout

The ADG prescribes the following requirements for apartment layout requirements:

- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8 metres from a window.

Comment:

The current proposal results in a variation to the above room depth requirements with units 203, 204, 304, 307, 404, 407, 504, 507, 603, 606 proposed to have a maximum open plan habitable room depth of roughly 9.2m. The intention of this control is to ensure that units achieve a functional, well organised and high standard of amenity. This high standard of amenity is best achieved through the enablement of a unit design which allows for light and ventilation to be received to all primary living areas.

A review of the proposed units which incorporate the proposed variation has highlighted that each have been designed to be cross-through units with dual frontage to the east and west elevations. This dual frontage will provide significant opportunities for cross ventilation regardless of the minor variation to maximum habitable room depth. Analysis of the proposed floor plans has also confirmed that elements of the proposed variation relate to the far edge of the kitchen/pantry with the living and dining areas located well within the 8m maximum, ensuring that the majority of the primary living areas will obtain a high degree of amenity.

Throughout the assessment process, alternative floor plan layouts compliant with the 8m maximum room depth were discussed and reviewed, however it was determined that such alternative arrangements would not ensure a high standard of amenity and would instead result in a layout not as functional or well organised as the one currently sought. For these reasons the proposed variation to habitable room depth is acceptable, with the applicant demonstrating that the units will maintain a high degree of amenity despite the variation.

5(a)(iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was submitted with the application and will be referenced in any consent granted.

5(a)(v) State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure 2007)

Rail Corridors (Clause 85-87)

SEPP Infrastructure provides guidelines for development immediately adjacent to rail corridors including excavation in, above or adjacent to rail corridors. Clause 87 of the *SEPP Infrastructure 2007* relates to the impact of rail noise or vibration on non-rail development, and for a development for the purpose of a building for residential use, requires appropriate measures are incorporated into such developments to ensure that certain noise levels are not exceeded.

An acoustic report accompanied the application and assessed the potential acoustic impacts of rail noise on the proposed development. The report contains recommendations to be incorporated into the proposed development in order to mitigate acoustic impacts and should be referenced as an approved document in condition 1 on any consent granted.

The application was referred to Sydney Trains for concurrence in accordance with Clause 86 of the *SEPP Infrastructure 2007*. Sydney Trains granted concurrence to the development subject to conditions and those conditions have been included in the recommendation of this report.

Development with frontage to classified road (Clause 101)

The site has a frontage to Old Canterbury Road, a classified road. Under Clause 101 (2) of *SEPP Infrastructure 2007*, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

The application was referred to Roads and Maritime Services (RMS) for comment. RMS raised no objections with the application with regard to ingress and egress to the site which remains adequate to support the intended vehicle movements by road. The application is considered acceptable with regard to Clause 101 of the *SEPP Infrastructure 2007*.

5(a)(vi) State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP)

Vegetation SEPP concerns the protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of Council's DCP.

The application seeks the removal of vegetation from within the site and neighbouring land within the light rail corridor. The application was referred to Council's Tree Management Officer who outlined no objection to the proposed tree removal, subject to conditions of consent requiring suitable replacement trees to be planted on-site.

Overall, the proposal is considered acceptable with regard to the *Vegetation SEPP* and DCP subject to the imposition of conditions, which have been included in the recommendation of this report.

5(a)(vii) *Ashfield Local Environment Plan 2013 (ALEP 2013)*

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2011*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.5 - Additional permitted uses for land
- Clause 2.6 – Subdivision
- Clause 2.7 – Demolition
- Clause 4.3 - Height of buildings
- Clause 4.4 - Floor space ratio
- Clause 4.5 - Calculation of floor space ratio and site area
- Clause 4.6 - Exceptions to development standards
- Clause 5.10 - Heritage Conservation
- Clause 6.1 – Earthworks
- Clause 6.2 - Flood Planning
- Clause 6.3 - Development in areas subject to aircraft noise

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned B4 under the *ALEP 2013*. The *ALEP 2013* defines the development as:

mixed use development means a building or place comprising 2 or more different land uses.

The proposal seeks consent to construct a mixed-use development which incorporates the following uses:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale)

The development is permitted with consent within the zone. The development is consistent with the objectives of the B4 zone.

The following table provides an assessment of the application against the development standards:

Standard	Proposal	Non-compliance	Complies
Height of Building Maximum permissible: RL 38	RL 38	N/A	Yes
Floor Space Ratio Maximum permissible: 2.5:1 or 4892m ²	2.8:1 or 5,871m ²	979 sqm or 20%	Yes

Clause 4.3 (2A)

Clause 4.3 (2A) of the ALEP 2013 outlines that buildings located on land Zone B4 – Mixed Use must not include any area that forms part of the gross floor area of the building within 3m of the maximum height limit. Since the gazettal of the ALEP 2013, and the creation of clause 4.3 (2A), the proposed development and site have been subject to a planning proposal (PP_IWEST_105_00), which developed site specific height limits and built form controls. These controls have specifically envisioned a built form currently proposed and actively permitted/ encouraged a 6-storey form to Old Canterbury Road (which is currently proposed).

These site-specific controls have already accounted for and permitted the proposed built form and actively sought not to apply the requirements of clause 4.3 (2A) as seen within an extract from the planning proposal report below:

It considered that the maximum building height to be placed in Height of Buildings Map should equate to six storeys relative to Old Canterbury Road. This building scale is in line with the same number of storeys established at 120 B Old Canterbury Road building, and in line with the objectives of the McGill Street Precinct DCP which requires a medium rise scale along the road. This is also the view of Council's Architectural Excellence Panel. This is also the advice Council officers have been providing to the applicant at pre-lodgement stages and in correspondence in April 2017. Six storeys above Old Canterbury Road equates to a maximum RL of 37.9 m measured to the top of the building's roof. This will need to be translated into a linear height which can be placed in the Maximum Height of Buildings Map in the Ashfield LEP 2013. This would be 28 metres as measured from the lower flatter part of the site which ranges from RL 9.55 to RL 10.0.

As such no objection is raised to the current built form.

Clause 4.6 Exceptions to Development Standards

As outlined in table above, the proposal results in a breach of the following development standard/s:

- Clause 4.4 - Floor space ratio

The applicant seeks a variation to the Floor Space Ratio (FSR) development standard under Clause 4.4 of the ALEP 2013 by 20% (979 sqm). This variation to FSR is directly attributed to the lower two levels of the development, which under the planning proposal were designated to cater for above ground car parking. Since the time of the planning proposal the application has been amended (based on new flooding advice) and now incorporates basement car

parking. The provision of basement car parking has enabled the creation of additional residential accommodation/retails spaces within levels 1 and 2, previously to be solely utilised for above ground parking. This is best illustrated within figures 12 and 13 below.

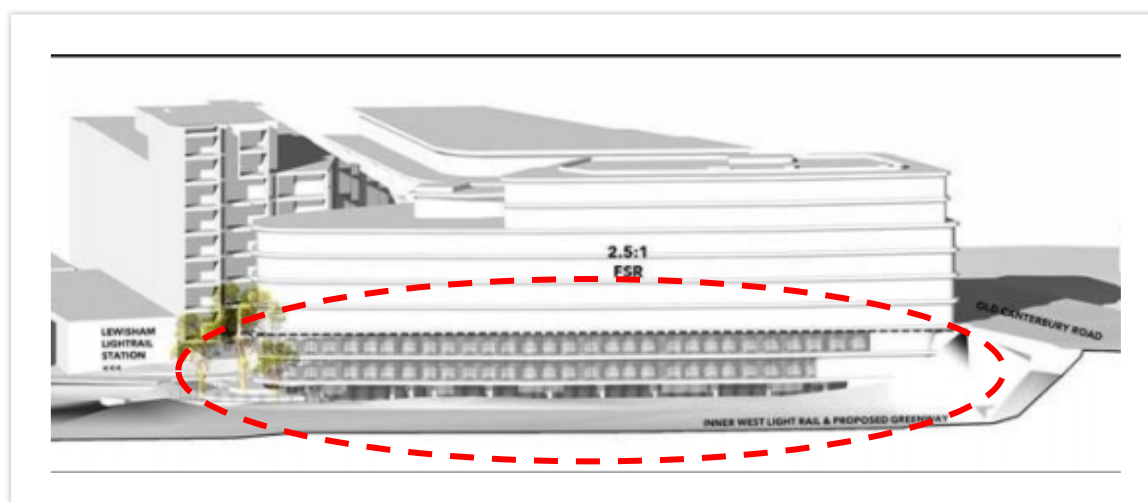


Figure 12 – Model of built form envelope approved under planning proposal PP_IWEST_105_00. Note elements within red circle on lower ground floors were intended to be dedicated for above ground parking.

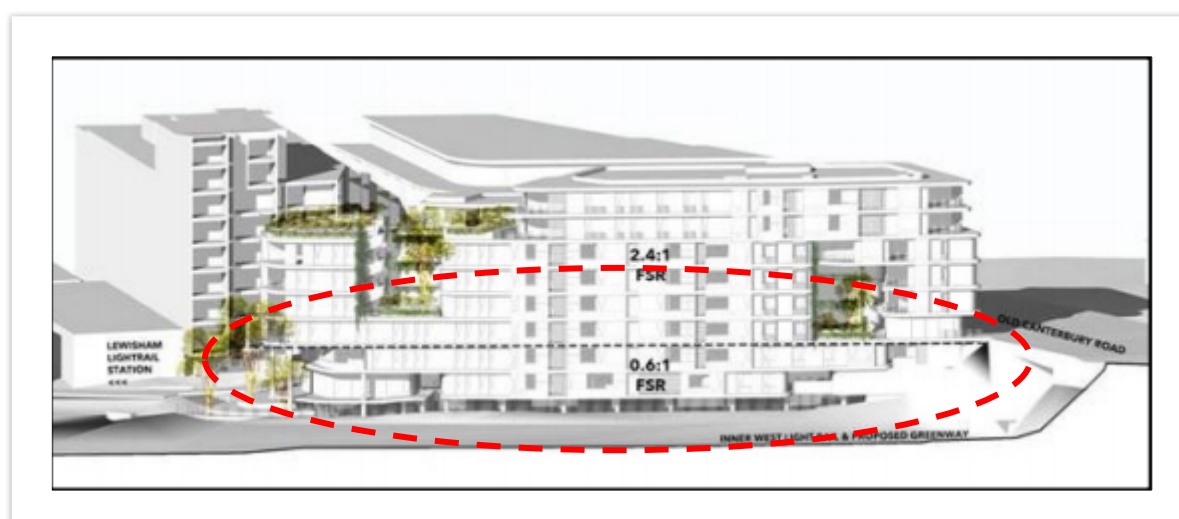


Figure 13 – Model of built form envelope proposed under current development application. Note elements within red circle on lower ground floors are now residential accommodation/ GFA.

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Ashfield LEP below.

A written request has been submitted to Council in accordance with Clause 4.6(3) of the Ashfield LEP justifying the proposed contravention of the development standard which is summarised as follows:

- *The additional FSR is provided within the lower two levels which were designated for car parking. The provision of basement car parking enables the provision of residential*

accommodation within the contemplated building envelope. Such outcome is considered to represent a more sustainable and efficient use of the endorsed building envelope.

- The replacement of car parking on the lower two levels with residential accommodation represents a more desirable visual outcome from an architectural and aesthetic perspective. The proposal is able to provide for garden apartments facing the greenway which is a more desirable outcome than having car parking alongside the greenway.*
- Given the planning proposal and accompanying DCP included parameters for a building envelope along with six-storeys of residential accommodation with two above ground parking levels, it enables consideration of the additional FSR within those allocated parking levels being identifiable and assessed. It is considered that the above rationale demonstrates that there are sufficient environmental grounds to permit the FSR and that the development standard is unreasonable and unnecessary. Consistency with the objectives of the FSR standard and the objectives of the B4 Mixed Use zone also confirms that the proposal is in the public interest, notwithstanding the FSR variation.*
- The proposed height, bulk and scale of the development is not considered to be visually dominant in the streetscape and will preserve the amenity of neighbouring properties, and is considered to be justified given the lack of external impacts to neighbouring properties and the streetscape in relation to significant additional overshadowing, visual and acoustic privacy, visual bulk, whilst no view impacts are identified.*
- Due to the north-south orientation of the site and the proposed site layout, it is inevitable the proposal will cast additional shadow on the dwellings immediately adjoining to the east and west. However, the design of the building provides for stepped floor levels and a reduced height in the northern portion of the building to allow solar access to adjoining neighbours. In this regard, Shadow Diagrams accompanying this application indicate that the overshadowing impact is not significant, with shadows to the south and west generally falling to the light rail track and Old Canterbury Road. Furthermore, Views from the Sun Diagrams provided by Fox Johnston Architects illustrate that the adjoining easterly neighbours existing solar access is less than 2 hours, and that solar access is reasonably retained to the eastern neighbour at 120b Old Canterbury Road and the childcare centre to the east. In this regard, two hours of sunlight is retained between 11am and 1pm during midwinter to the strip of open space adjoining the childcare centre, adjacent to the north west corner of the site.*

The applicant's written rationale adequately demonstrates compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the B4, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield LEP for the following reasons:

- The proposal results in a mixture of compatible land uses at a height and density generally envisioned by current planning controls. The proposed uses support the continued growth and vitality of the Summer Hill centre.
- The proposal has been appropriately designed to ensure a high degree of accessibility for pedestrians and cyclists attending the subject site, greenway, Lewisham West Light Rail Station, Flour Mill Centre and Summer Hill Town Centre. The current design is expected to promote/encourage pedestrian access and public transport patronage over private vehicles and provides a significant opportunity for urban renewal within the Summer Hill town centre, which promotes a pedestrian friendly future for the locality.
- The redevelopment/expansion of the existing site provides a significant opportunity for the enhancement/creation of new retail premises and public spaces providing further opportunities for new employment opportunities within the immediate locality. The addition of residential units above also creates additional opportunities for employment for services dedicated to the day to day operation and management of the residential complex. The overall redevelopment of the site provides a significant opportunity for viability, vitality and amenity to the centre as a primary business, employment and residential locality.
- The proposal results in the consolidation of two (2) existing allotments. The proposed lots to be amalgamated provide an efficient and orderly re-development of land, maintaining sufficient and significant opportunities for the re-development of other adjoining sites within the future.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of the Ashfield LEP for the following reasons:

- As discussed above the variation to the FSR development standard is resultant from the creation of new residential units upon level 1 and 2 of the development, which were initially proposed to cater for above ground carparking. These additional residential units provide a more desirable visual outcome from an architectural and aesthetic perspective, with garden apartments facing the Greenway a more desirable outcome than having car parking alongside the greenway.
- The proposal is consistent with the bulk and scale of development emerging within the Summer Hill town centre, in particular the proposal is of a similar height and built form to developments recently approved/constructed directly opposite the subject site.
- As assessment of the proposal's impact upon the neighbouring heritage items to the north-east of the subject site has been undertaken by Council's Heritage Advisor and

is discussed below. This assessment has determined that the proposal will not impact the heritage significance the neighbouring heritage items and is generally acceptable, subject to suitable conditions of consent.

- The proposal results in a high degree of amenity for neighbouring sites and is acceptable, subject to suitable conditions of consent. An assessment on potential amenity impacts can be found within the assessment section of this report, however the proposal is generally compliant with applicable planning controls and will result in the protection/continued enjoyment of neighbouring properties and the public domain.
- The locality to which the development relates to is undergoing significant urban renewal (with the exception of neighbouring heritage listed sites), and the proposal is in keeping with this change and the desired future character of the area.

The concurrence of the Planning Secretary may be assumed for matters determined by the Planning Panel.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the Ashfield LEP. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the floor space ratio development standard and it is recommended the Clause 4.6 exception be granted.

Heritage Conservation (Clause 5.10)

Located to the west of the site beyond the light rail corridor and Greenway is the Summer Hill Flour Mill Centre, a locality which has recently undergone re-development and now comprising of mixed-use development. The Summer Hill Flour Mill Centre site is identified as containing heritage items (item 619) under the ALEP 2013. In accordance with the requirements of clause 5.10 (4) & (5) of the ALEP 2013 the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.

Due to the distance and separation of the site from the neighbouring heritage items the applicant was not required to prepare and submit a heritage impact statement (HIS). Instead a review of the developments potential impacts was undertaken by Council's Heritage Advisor who outlined, no objection to the proposal and outlined that the proposed development would have minimal impact on heritage significant fabric. The proposal is compliant with the requirements of clause 5.10 of the ALEP 2013 and is recommended for support, subject to suitable conditions of consent which ensure the protection and retention of neighbouring heritage items during construction works.

Earthworks (Clause 6.1)

The proposal involves extensive earthworks to facilitate the basement carparking and remediation of the site. The application has been supported by a Geotechnical Report which has assessed the subsurface conditions and other geotechnical conditions such as groundwater, footing design and earthworks.

Subject to compliance with the recommendations made by the provided geotechnical report, the proposed development will not have detrimental effect on drainage patterns, soil stability, amenity of adjoining properties or adverse impacts on waterways or riparian land.

Flood Planning (Clause 6.2)

Residential Units

The subject site has been identified as being flood affected by the Hawthorne Canal Flood Study and is within an area identified as high hazard flood risk in the 1% Annual Exceedance Probability (AEP) flood event. The applicant has submitted a flooding report to Council, which outlines that the site is protected from flooding during the 1% AEP storm, but during rarer events such as the Probable Maximum Flood (PMF) storm event that residential units on level 1 could flood by up to 1.5m. This PMF event (while rare) could occur at any time and within 60 minutes of a storm occurring, providing very little warning time to evacuate. A review of the subject site and flood report submitted by the applicant has confirmed that the apartments on Level 01 would only have 5 minutes to evacuate from the time water enters their apartments until the time it reaches a depth 1.5m.

Plans currently submitted with the application from the applicant have failed to satisfy Council's Engineer as to compliance with clause 6.2 – Flood Planning within the Ashfield LEP 2013. Concerns are raised that units currently proposed units on level 1 are not compatible with the flood hazard of the land, that there are not sufficient appropriate measures to manage risk to life from flood and that the development will result in unsustainable social and economic costs to the community as a consequence of flooding.

These concerns were expressed to the applicant on 02 December 2020. In response to these concerns the applicant outlined that should such an event occur then residents of level 01 would be required move to level 02 via common internal corridors/stairs and take refuge in the refuge & common room located upon level 02. Within this response the applicant also outlined that the speed of rising flood waters would be slowed by doors and other obstructions and as such would ensure ample time for resident evacuation.

This response has been reviewed by Council Development Engineers and is not supported. As mentioned above Council's engineers have outlined that during the PMF event within a 60 minute duration a high rate of water rise in level 1 units would be experienced and that it will significantly limit the available warning and evacuation time for occupants. In order to address and resolve this concerns regarding units on level 01 Council Development Engineers have recommended a deferred commencement condition of consent which requires that the architectural plans must be amended so as to redesign each of the apartments on Level 01 as 2 level apartments with an internal mezzanine level (refuge) located above the PMF level. The creation of this internal mezzanine refuge provides a clear, fast, safe, and readily available means for occupants to flee any potential rising flood waters, without residents needing to leave their apartment or find their way to a separate shelter during an emergency. The creation of this internal refuge removes the potential for error or confusion associated with unfamiliarity about evacuation routes and creates a lasting solution through unit design.

Access Bridges

The vehicular and pedestrian bridges identified in figure 14 (over Hawthorne Canal) are subject to flooding, with the flood report submitted by the applicant detailing that it:

would become unsafe for small vehicles to drive across the bridge when the depth of floodwaters across the driveway exceed 0.3 m (which would occur before the peak of a 100 yr ARI flood). It is estimated that it would become unsafe for large vehicles to drive across the bridge when the depth of floodwaters across the driveway exceed 0.5 m at around the peak of a 100 yr ARI flood.

This extent of flooding to the proposed pedestrian bridges has been reviewed by Council's Development Engineers who raised no objection to the bridges subject to Sydney Water providing consent for construction and compliance with Sydney Water requirements. In this instance Council's Development Engineer has outlined that, subject to suitable conditions of consent, that the development site will have adequate refuge points from flood waters on-site and that there is no requirement for occupants to cross the bridges during a flood event. Furthermore the final point of access to the site (as seen within figure 15) is directly off Old Canterbury Road, unlike the other two bridges detailed within figure 14 this access point is not located over Hawthorne Canal and is not subject to potential flooding. Therefore, this access point can be used during a flood event regardless of water levels and ensures a permanent and safe exit location from the site during a flood event.

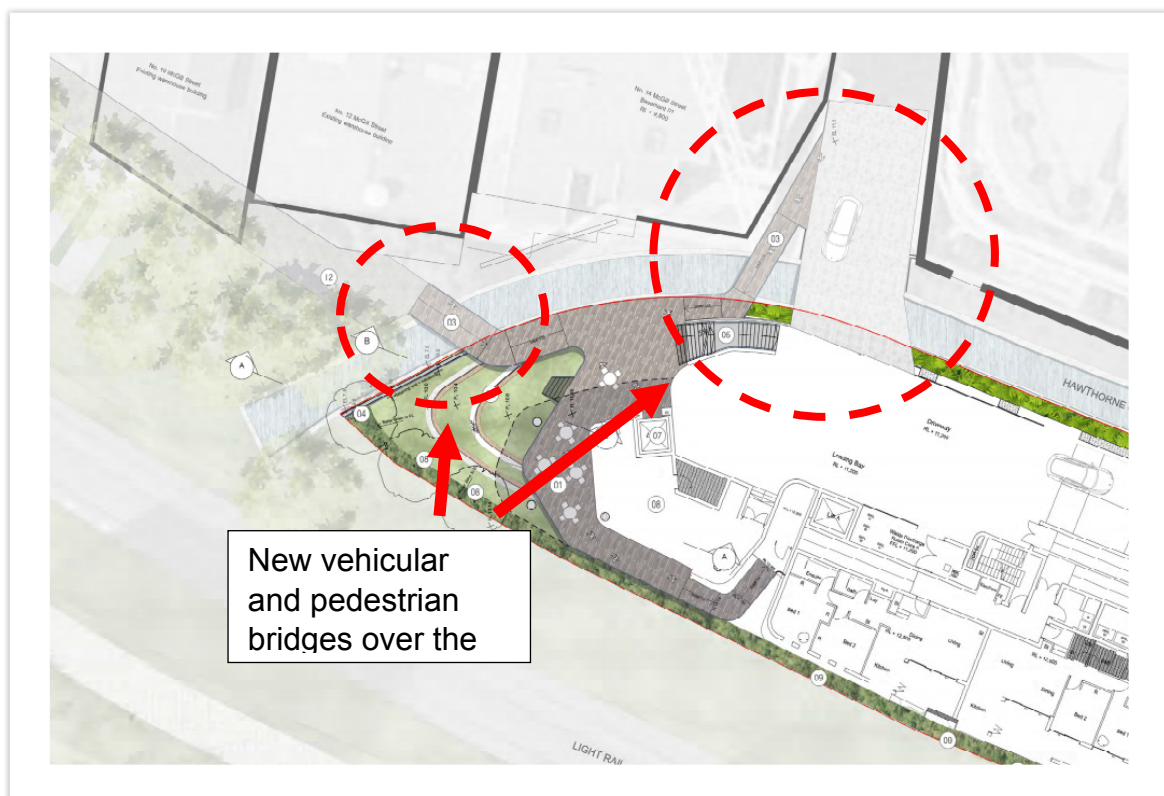


Figure 14 – Location of new vehicular and pedestrian bridges to be constructed over Hawthorne Canal.



Figure 15 – Location of new pedestrian stairs providing access to Old Canterbury Road.

Subject to the imposition of the above Deferred Commencement condition requiring the creation of an internal mezzanine levels to apartments on level 01 of the proposal, the application is considered to be compliant with the requirements of Clause 6.2 of the ALEP 2013 and is recommended for support, with all other matters regarding flooding having been satisfactorily addressed by documentation submitted by the applicant.

5(b) Draft Environmental Planning Instruments

There are no relevant Draft Environmental Planning Instruments.

5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not especially relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

IWCDCP2016	Compliance
Section 1 – Preliminary	
B – Notification and Advertising	Yes
Section 2 – General Guidelines	
A – Miscellaneous	
1 - Site and Context Analysis	Yes
2 - Good Design	Yes
3 - Flood Hazard	Yes – Conditioned
4 - Solar Access and Overshadowing	Yes – See assessment below
5 - Landscaping	Yes
6 - Safety by Design	Yes
7 - Access and Mobility	Yes – See assessment below
8 - Parking	Yes – See assessment below
9 - Subdivision	Yes
13 - Development Near Rail Corridors	Yes
14 - Contaminated Land	Yes
15 - Stormwater Management	Yes
B – Public Domain	
C – Sustainability	
1 – Building Sustainability	Yes
2 – Water Sensitive Urban Design	Yes
3 – Waste and Recycling Design & Management Standards	Yes
4 – Tree Preservation and Management	Yes
5 - GreenWay	Yes
6 – Tree Replacement and New Tree Planting	Yes
D – Precinct Guidelines	
13. 120c Old Canterbury Road	No – See assessment below
F – Development Category Guidelines	
5 – Residential Flat Buildings	Yes

The following provides discussion of the relevant issues:

Solar Access and Overshadowing

The revised plans have been assessed against the provisions of Chapter A – Part 4 Solar Access and Overshadowing. Within this section residential flat buildings are required to:

- maintain existing levels of solar access to adjoining properties

Or

- ensures living rooms and principal private open space of adjoining properties receive a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June.

A review of the provided shadow diagrams and sun diagrams provided by the applicant, has highlighted that the ground floor childcare centre to the east of the subject site at 120B Old Canterbury Road is most impacted by shadows cast from the subject development. An assessment of shadow impacts onto the existing childcare centre has been undertaken as part of this assessment and has determined that the space will continue to receive a minimum 2 hours solar access between 11am and 1pm during the winter solstice. Such a rate of solar access maintains compliance with the controls for overshadowing and as such the proposal is recommended for support. In this instance residential units located at 120B Old Canterbury Road are located upon level 1 and are less impacted by shadows cast from the proposal. These residential units located at 120B old Canterbury Road are anticipated to received solar access from at least 11am to 2pm and receive a compliant rate of solar access.

Due to the site orientation and design other surrounding developments at 14 McGill Street and the Summer Hill 'Flour Mill' will not be impacted by overshadowing during the winter solstice and will generally retain existing levels of sunlight.

Access

Access to the site

As discussed above access to the site is currently granted via a vehicular bridge over Hawthorne Canal and via a right of carriageway (driveway) over land currently also utilised by the developments 14 McGill Street and 120b Old Canterbury Road for vehicular access. This existing bridge access to the site is to be demolished and replaced with a new vehicular and pedestrian bridge and two other new pedestrian access bridges, as detailed within figures 14 and 15 above.

As part of the current application documentation detailing an existing easement for a right of carriageway benefiting the subject site has been submitted. This documentation sufficiently details a legal right for the subject site to utilise the existing right of carriage way for pedestrian and vehicular access to the site. However a review of this right of carriageway has confirmed that it does not extend over Hawthorne Canal (owned by Sydney Water) and as such the applicant is required to enter into discussions/agreements regarding a legal right to utilise each of the proposed pedestrian/vehicular bridges providing access to the site which extend over Hawthorne Canal.

During the current assessment process the application has been referred to Sydney Water for comment. Sydney water initially outlined that there is insufficient information regarding the bridges to determine if they comply with the construction requirements for buildings over/adjacent to a stormwater channel and outlined an objection to the two new pedestrian bridges to be constructed over the canal. Following the submission of these comments, Council staff contacted Sydney Water and discussed the matters further. During this

discussion Council staff highlighted similar recently constructed bridges servicing the development at 6 Smith Street (see figure 16 below) and highlighted the strategic importance of allowing the creation of the new pedestrian bridges. In response Sydney Water outlined their construction requirements for bridges over Hawthorne Canal and stated that they have no objection to the new bridges over the Canal given their strategic importance to the locality, subject to the creation of a suitable legal agreement regarding access, maintenance and use of the structures. To be satisfied that the proposed development is able to be adequately serviced and that a legal agreement for use of the bridges over Hawthorne Canal is in place a Deferred Commencement condition requiring Council to be satisfied that Sydney Water have provided agreement for all bridge structures over Hawthorne Canal including public rights of way or access agreements for use by the public is recommended.

The construction requirements for the proposed bridges over the canal have been passed on to the applicant, who has since provided documentation showing how the bridges can be constructed to generally comply with the requirements and still adequately service the development. Final details of the bridge design are to be completed prior to a construction certificate and in conjunction with Sydney Water. As part of their comments Sydney Water have provided recommended conditions of consent should the proposal be approved, these conditions have been incorporated into the recommended conditions of consent and should form part of any approval.

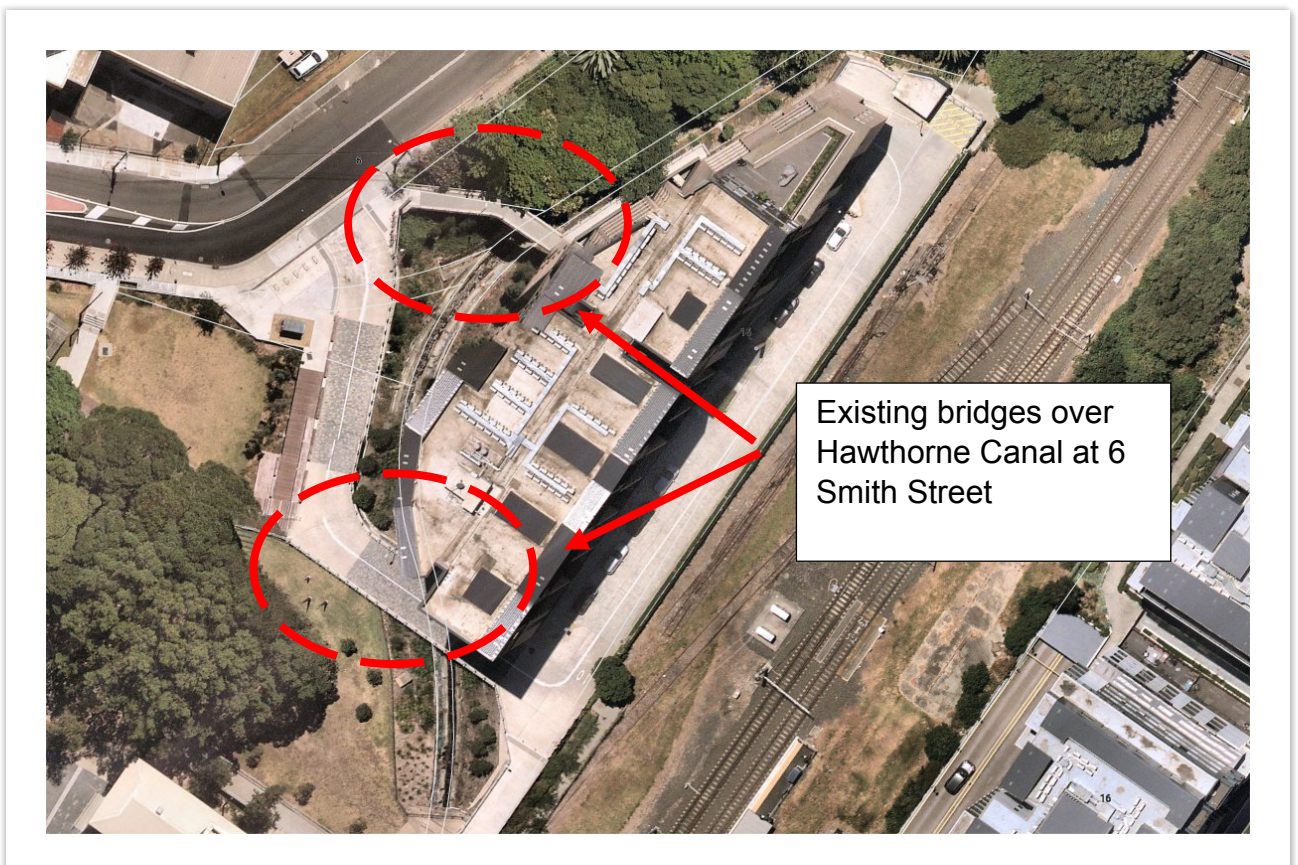


Figure 16 – Location of existing pedestrian and vehicular bridges at 6 Smith Street, Summer Hill.

Resident access

As discussed above, vehicular access to the site is to be obtained via a right of carriageway (driveway) over land currently also utilised by the developments 14 McGill Street and 120b Old Canterbury Road. This vehicular access point results in occupants entering the site on level 01, where they will then travel down into the basement to the designated parking bays, such an arrangement is acceptable and will have minimal impact on the locality.

Pedestrian access is to be obtained from level 02 where the current development has been appropriately designed to incorporate a well-functioning through site link for pedestrians and residents looking to enter the residential units' lobbies or continue traveling to the Lewisham West Light Rail Station. These proposed lobbies have been designed to be highly visible from the through site link and incorporate a width of roughly 3m and glass entry doors, enabling the ability for occupants and members of the public to view the lobby in its entirety and ensuring safety through design. The proposed pedestrian access routes for the development are accessible, compliant with CPTED and recommended for support.

Strategic pedestrian access for the locality

A key feature of the current proposal and key public benefit is the pedestrian connectivity improvements resulting from the construction of the development and completion of currently missing links in the bike and pedestrian corridor within the locality. This missing link completes a connection from Old Canterbury Road to the Lewisham West Light Rail Station along the eastern edge of the light rail corridor opposite the Greenway (which is to be located on the western side of the light rail corridor). This is best illustrated in figures 14, 15 (above), 17 and 18 (below). Figures 14 and 15 detail the proposed bridges to be constructed on the subject site, while figure 17 details the approved pedestrian corridor to be constructed at site 2-12 McGill Street. Finally figure 18 provides an overview of the future corridor, completed by this proposal. Completion of this missing pedestrian link provides a significant improvement to the walkability of the locality which will encourage walking and cycling within the Inner West Community and residents of the development.

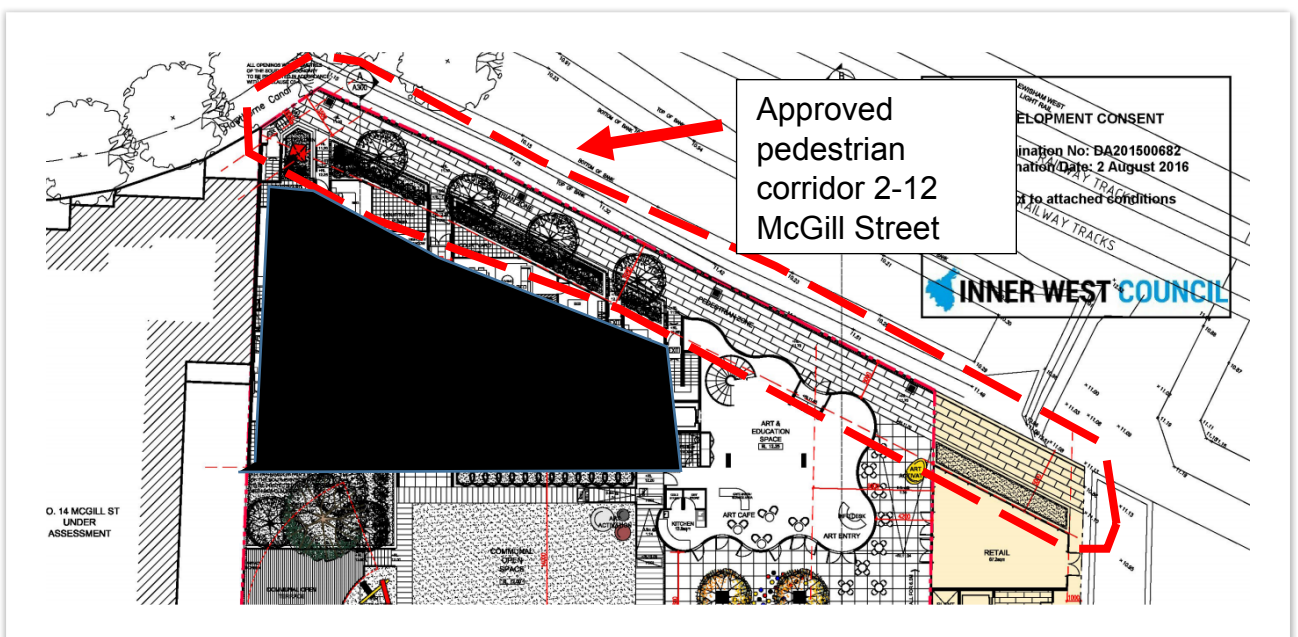


Figure 17 – Approved (DA201500682) pedestrian corridor over 2 – 12 McGill Street, located eastern boundary of light rail line.

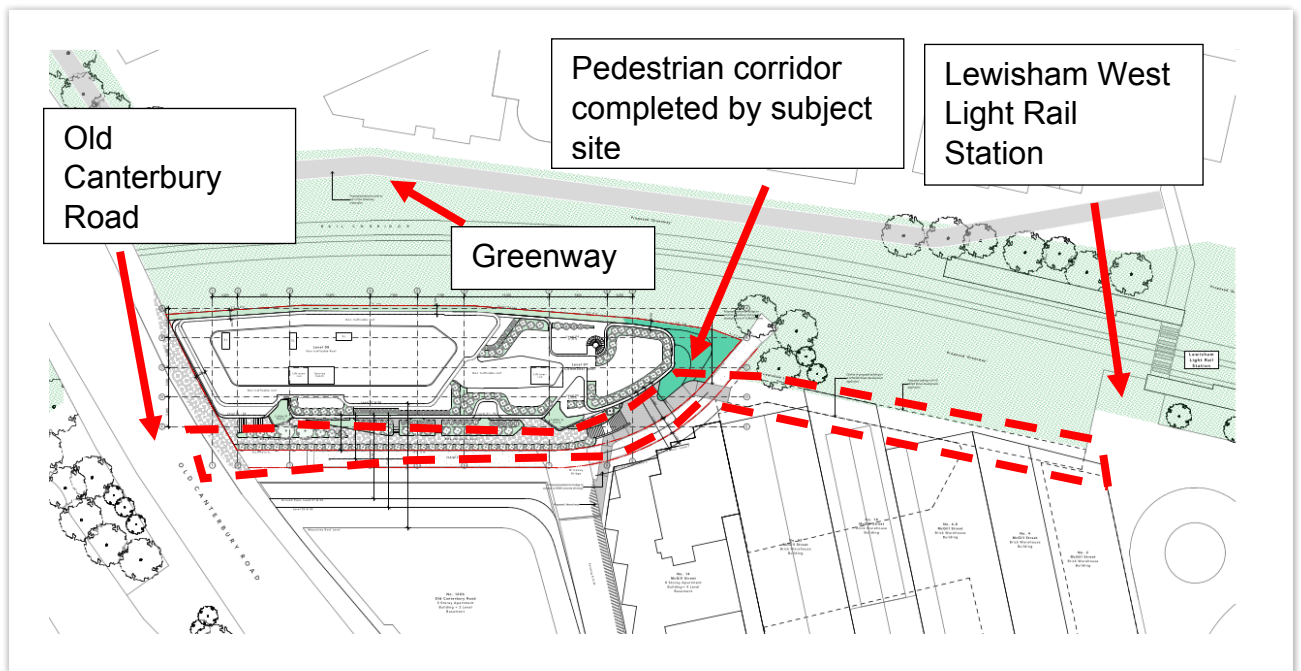


Figure 18 – Overview of the pedestrian corridor to be created through the current proposal

Parking

The RMS Guide to Traffic Generating Development outlines the minimum rate of parking and requires a total of 68 car parking spaces for the residential portion of the development and 7 spaces for the retail section. Currently the development proposes 72 car spaces associated with the apartments (exceeding the minimum required spaces by 4), while the retail portion is to be dedicated 6 spaces. This results in a total on-site parking rate of 78 spaces. The proposal seeks to provide 58 spaces to be dedicated to residential units, 14 for visitor parking and 6 for the commercial/retail tenancies. The proposed rate of parking for the residential portion of the development ensures a sufficient on-site supply of parking for residents and minimises demand for on-street parking spaces within the locality. The proposed rate of residential parking is acceptable and is recommended for support.

With regards to the 1 space deficiency for the retail portion of the development, this is minor and unlikely to have a significant impact on the viability or operation of the development or retail premises. As stated above the subject site is located less than 100m away from the Lewisham West Light Rail Station, 500m away from Lewisham Railway Station, 216m from the Summer Hill Flour Mill Centre and 700m from the Summer Hill Town Centre and adjacent to the Greenway walking and cycling corridor. This high level of accessibility ensures that staff members working and customers attending the proposed retail uses have a variety of options for accessing the site for work or shopping and should not impose a significant increased parking demand on the locality. Likewise, the size and location of the proposed retail tenancies is such that it is anticipated that they will be utilised for local shops and or food and drink premises, attracting local residents or those utilising the greenway and are unlikely to be premises which attract a high percentage of motor vehicle traffic for attendance. The accessibility combined with the probable uses of the spaces ensures that the 1 space deficiency will result in minimal impacts and is acceptable.

Traffic

As part of the current assessment the proposal has been reviewed by Council Traffic Engineers who requested that the provided traffic report be amended to include a study and method to improve traffic flow at the intersection of McGill Street and Old Canterbury Road. This request was passed on to the applicant, who responded that Council had previously agreed (on the 25 July 2017 as part of discussions regarding PP_IWEST_105_00) to write to the NSW RMS and request that an area wide traffic network analysis be prepared for the McGill Street precinct and surrounds to determine local area traffic management opportunities which may be implemented to mitigate and better manage traffic impacts in this locality.

The requested locality traffic improvements first requested by Council's traffic engineers have been noted as being outside the scope of the current application and instead subject to a locality wide study in conjunction with the RMS, which will assess the cumulative impact of all recently approved/constructed development. Such a large study it is outside the opportunity of the current development application and is subject to further consultation between Council and the RMS as agreed to in the Council meeting dated 25 July 2017.

The currently submitted traffic report was subsequently re-reviewed by Council traffic engineers who outlined no objection to the proposal, subject to conditions of consent. The proposed development is not expected to have an unreasonable impact to traffic within the locality and is recommended for approval, subject to suitable conditions of consent.

Waste Collection / Loading

The proposed loading bay is accessed via the same driveway as private vehicles and is located on level 01. The proposed loading bay is to be utilised for residential waste collection, commercial waste collection, commercial deliveries and in the event of an emergency, access for emergency service vehicles. The proposed loading dock has been reviewed by Council's engineers and waste management team and is deemed to be acceptable, subject to suitable conditions of consent. The applicant has adequately demonstrated via swept paths that large vehicles such as Council garbage trucks can enter and exit in a forward direction and achieve waste collection on-site with minimal disruption to the existing road network.

To ensure minimal impact to neighbouring residents' hours of deliveries and waste collection are recommended to be conditioned as to occur outside of peak operation hours and pedestrian movements. These time frames, as well as acoustic impacts on neighbouring residential properties, must be considered and mitigated and as such the following management condition is recommended for the consent:

The collection of waste/ recycling and deliveries to the site must only occur between the following hours:

Monday to Friday - 7:00am to 8:00pm

Saturday to Sunday and public holidays - 9:00am and 5:00pm weekends

Garbage and recycling must not be placed within the temporary holding area for collection more than one (1) hour before the scheduled collection time. Garbage bins and containers are to be removed from the temporary holding area within one (1) hour after collection.

The imposition of such a condition is expected to mitigate impacts to traffic entering and existing the site as well as ensure pedestrian safety for members of the public who might utilise the right of carriage way. The proposed loading dock and waste collection/ delivery method is recommended for support, subject to suitable conditions of consent.

Greenway

The proposal has been appropriately designed as to have minimal impacts upon the Greenway and is expected to promote and continue a high degree of passive surveillance and interest within the locality. The development has been designed to address and respond to the Greenway, by utilising numerous well defined architectural techniques to provide articulation and visual interest to the western elevation, while at the same time ensuring minimal overshadowing or solar access loss to the public corridor.

The development promotes a high degree of pedestrian and bicycle accessibility to the site and surrounds encouraging use of the Greenway. The design of the proposed western elevation and orientation of units provides a high degree of surveillance to the greenway and ensures compliance with the principles of CPTED. Overall, the development is expected to have a positive effect on the locality and Greenway and is recommended for support.

Trees in Light Rail Corridor

The applicant seeks consent to remove several trees located along the western boundary of the site within the light rail corridor (owner's consent from Transport NSW for the removal of these trees has been provided). This tree removal has been reviewed by Council's Urban Ecology and Urban Forests Team who outlined no objection to the proposed tree removal, with the trees to be removed identified as being non-native/acceptable to be removed subject to suitable conditions of consent.

As part of the current assessment Council officers contacted Sydney Trains and enquired about requiring re-placement trees to be planted within the locality that the existing trees are to be removed from. In response Sydney Trains outlined that at this time they did not want replacement trees planted within the light rail corridor due to potential root impacts on underground power lines within the vicinity and impact to the rail line itself. Council is unable to require replacement plantings on neighbouring land without owners consent and as such cannot require replacement plantings in the light rail corridor, as part of this application.

Precinct Guidelines – Part 13. 120C Old Canterbury Road

As a result of the planning proposal PP_IWEST_105_00 the subject site has had site specific DCP controls created under Chapter D – Precinct Guidelines within the IWCDP 2016. These controls are best contextualised through figure 19 below. Since the creation of the site specific DCP control the proposal has undergone numerous revisions and further investigations with regards to flooding and biodiversity. These amendments have resulted in an alternative scheme currently sought by the applicant. An assessment of the proposal's variations to site specific DCP controls is undertaken below:

Western Boundary Setback

A review of clause DA 1.2 within Part 13 of Chapter D has highlighted that the DCP calls for the development to have a 2m wide landscape strip along the boundary shared with the light rail line. The intention of this setback is to be for the provision of vegetation to enable “green walls” to cover the previous envisioned above ground car parking structure (as detailed within figure 12 above). The current application seeks a variation from this control and proposes to only provide a 1.5m setback to the western boundary.

Following the submission of additional flooding advice this above ground carparking has now been converted to basement carparking, with level 01 and 02 now amended to incorporate residential units. The replacement of this above ground car parking with residential units provides an improved urban design and public domain outcome for the greenway/light rail interface and ensures greater visual interest and passive surveillance in the locality. This improved visual interest removes the requirement for screen planting.

Instead, this 1.5m western boundary setback is proposed to be planted out with native grasses, native shrubs and numerous bat boxes and bandicoot shelters to accommodate and cater for ecologically significant communities who may in the future utilise the locality for habitation. This alternative solution to the 2m setback requirement is considered to meet the objectives of the clause through the continuation of vegetation and native wildlife habitats, while also providing an improved urban design outcome for the locality. The proposed variation is therefore considered to be meet the intention of the controls and worthy of support.

Pedestrian Corridor

As seen within figure 19 below the current proposal has relocated the required through site pedestrian link from the western boundary (sought by current DCP controls) to the eastern boundary. This relocation of the through site link results in a more efficient use of space and ensures a high degree of passive surveillance to all areas of public domain within the locality, Greenway included. The proposed location of the through site link provides greater opportunities for the provision of deep soil landscaping and utilisation of space required for separation distances. The proposed through site link relocation is expected to have minimal impact on neighbouring properties amenity and is readily viewed by residential units. The proposed location of the through site link maintains the objectives of the control which is to promote pedestrian access and provide opportunities for landscaping. The proposed variation is acceptable and recommended for support.

Flooding

As discussed above the proposal has been amended since the time of the current DCP controls being written and is now based off new flooding advice which has been submitted by the applicant. This new flooding advice and revised scheme results in a variation to clause 5.2 of the DCP which required all residential floors to be set 6.45 m above the 100 year ARI flood level of RL 11.8, 4.25 m above the PMF flood level of RL 14.0, and the lowest carparking floor level at RL 12.5. The intention of this control is to ensure that relevant building components are above freeboard flood level and that there is safe use of buildings including its residential levels and for lower level carparks storeys as to not be affected by flooding.

The revised flooding advice and plans have been reviewed by Council's Development Engineers and are acceptable subject to the imposition of the deferred commencement condition discussed above. With regards to the proposed basement car park, the driveway to this structure has been appropriately designed as to ramp up before leading down to the basement and ensures minimal opportunities for flood waters to enter within the 1 in 100-year flood event. Further to this upon the request of Council, the proposed driveway crest now also incorporates a flood barrier which will rise to above the PMF flood level, in the event that significant flooding occurs. This ensures minimal opportunities for flooding in the basement meeting the intention of the control. The proposed variations to flooding are therefore considered acceptable and recommended for support, subject to appropriate conditions as discussed earlier in this report.

Separation Distances

The current proposal results in a variation to clause DS 7.2 which requires the development to maintain minimum separation distances as required by the ADG. The proposed separation distance variations have been assessed above under the heading 5(a)(ii) and are recommended for support.

Eastern Boundary Screening

The current proposal results in a variation to clause DS 9.1 which requires the development to provide screening devices along the eastern boundary of the site. During the assessment process options for screening and privacy treatments were reviewed, however due to the minor nature of the proposed separation distances, potential amenity impacts to proposed units and loss of passive surveillance to the though site link to be located on level 02 such treatments were not required. Instead the proposed units have been adequately designed to ensure an acceptable level of privacy impacts, to be anticipated from a high-density urban environment such as the one currently emerging.

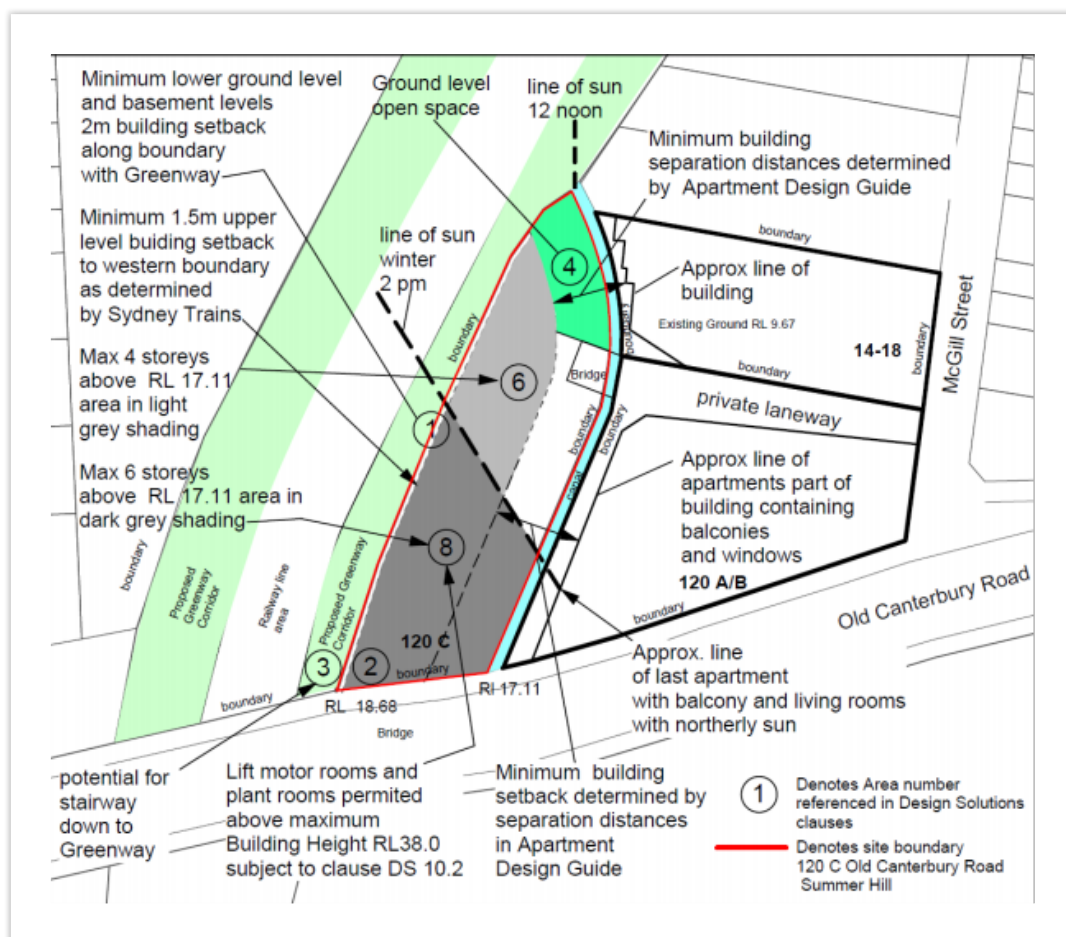


Figure 19 – Site specific DCP control diagram

Retail

A review of the provided SEE and other documentation provided by the applicant has noted that a request for signage or hours of operation with regards to the proposed retail spaces, has not been sought under the current proposal. These spaces will be subject to a separate application under the Environmental Planning and Assessment Act 1979, appropriate conditions requiring the submission of separate applications is recommended for the consent.

Adaptable Housing

The development proposes to create five (5) units (units 206, 409, 509, 601, 609) for the purposes of adaptable housing. As part of the current assessment Council has reviewed the pre and post adaptation plans and notes that minimal alterations are required to create the adaptable layout. The proposed units are considered to meet the requirements for adaptable housing and provide a variety of layouts and unit mixes for persons with disabilities should they be required.

Stormwater

Council's Development Engineers have reviewed the provided stormwater management plan and outlined that the proposed scheme is satisfactory, subject to conditions of consent

requiring compliance with the relevant Australian Standards. These conditions have been recommended for the consent.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal adverse environmental, social, or economic impact in the locality.

5(f) The suitability of the site for the development

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(g) Any submissions

The application was notified in accordance with Council's Policy for a period of 28 days to surrounding properties, as a result 18 submissions were received in response to the notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Decrease in property value

Comment: Property values are not a generally a matter for consideration under the *Environmental Planning and Assessment Act 1979*. However, matters which are commonly understood to impact property values, such as amenity impacts, architectural quality and the traffic impacts of the development have all been assessed in this report and found to be acceptable.

Issue: Impacts to traffic and parking

Comment: As part of the current application the applicant has provided a traffic and parking impact assessment report and traffic modelling data. This information has been reviewed by Council Traffic Engineer and by Roads Maritime Services (RMS). This assessment has determined that the proposals impact on the locality through the increase in traffic and parking is acceptable, subject to suitable conditions of consent. A detailed assessment of parking allocation can be found with the assessment section of this report.

Issue: Loss of Solar Access

Comment: The proposal's solar access impacts and overshadowing have been assessed within the assessment section of this report. The proposal is compliant with

Council's controls for solar access and overshadowing and ensures that neighbouring properties retain a sufficient rate of solar access for amenity.

Issue: Loss of air flow/access to clean air

Comment: The development proposes sufficient separation from neighbouring sites to enable light and ventilation to neighbouring sites. The proposed setbacks are unlikely to impact neighbouring sites ability to achieve air and natural cross ventilation.

Issue: Increased acoustic impacts

Comment: The proposal is accompanied by an acoustic report prepared by a suitably qualified person. This report has been reviewed by Council's Environmental Health Team who outlined no objection to the proposal or potential acoustic impacts, subject to suitable conditions of consent. These conditions include requirements for acoustic treatments, compliance with the recommendations of the acoustic report and other environmental health matters.

Issue: Poor state of the site

Comment: The subject site is to be remediated and re-developed as part of the current application and will ensure that the condition is improved. The current state of the site is noted and comments have been passed onto Council's compliance team to investigate any breaches to public health or safety.

Issue: Non-compliance with scheme agreed to under planning proposal

Comment: An assessment of the proposal and any variations from current planning controls has been undertaken above under the assessment section of this report. The proposed variations are generally acceptable, subject to suitable conditions of consent. The proposal is expected to have a positive impact on the locality and result in a positive urban design outcome.

Issue: Visual Privacy Impacts

Comment: Matters regarding visual privacy have been assessed above under the ADG separation section of the report. The proposed privacy impacts are considered to be acceptable given the density and intensity of the locality and are expected to be in keeping with that of a high-density urban environment.

Issue: Loss of outlook from units at Flour Mill site

Comment: Current residential units located at the Flour Mills site will enjoy a separation distance of roughly 30m from the proposed development, because of the light rail line. This separation distance is sufficient to ensure adequate opportunities for visual outlook and privacy. Existing units of the Flour Mill site will continue to retain uninterrupted views to the greenway corridor and light rail line, where

an extensive amount of vegetation is existing/proposed to be planted. The proposal is expected to have minimal impacts to loss of outlook for these sites and is recommended for support.

Issue: Acoustic impacts from deliveries and waste collection

Comment: An assessment on the proposed hours of waste collection and deliveries has been undertaken above within the assessment section of the report. The propose method of waste collection/deliveries is considered to be acceptable, subject to suitable conditions of consent regarding hours.

Issue: Construction hours and noise from construction

Comment: The application is accompanied by an acoustic report which incorporates an assessment on the acoustic impacts resulting from construction. This has been reviewed by Council's Environmental Health Team and is considered acceptable to manage potential impacts. In conjunction with this report appropriate conditions regarding construction hours construction management plans and noise are all recommended for the consent.

Issue: Separation distances

Comment: An assessment of compliance with SEPP 65 has been undertaken above in the assessment section of the report. The proposed separation distances are acceptable, subject to suitable conditions of consent.

Issue: Inadequate contamination investigation

Comment: Upon the request of Council a revised contamination investigation report has been submitted. This report has provided a revised assessment on the potential contamination on the site and includes means to remediate the site to make it fit for purpose. This has been reviewed by Council's Environmental Health team and is considered acceptable, subject to suitable conditions of consent. These conditions include requirements for certification of remediation and compliance with the contamination investigation.

Issue: Impact on natural surroundings and native wildlife

Comment: The proposal impact on vegetation and existing wildlife has been assessed within the assessment section of this report. The proposal is expected to have minimal impact on endangered communities and provides numerous opportunities for the creation of new habitats and native vegetation planting. The proposal has been reviewed by Council's urban ecology team who outlined no objection to the proposal, subject to suitable conditions of consent.

Issue: Overpopulation and unsustainable demand on public transport services

Comment: The proposed density and intensity is generally in line with that envisioned by the approved planning proposal and reflects that which is currently approved/ existing within the locality. The proposal is within close proximity to a number of public transport options and is well connected with pedestrian and cycle ways such as the greenway. The subject site is a key location for the proposed density and intensity and is not considered to be an overdevelopment. The proposal is recommended for support.

Issue: Acoustic Impacts from new sliding entry door

Comment: The proposal is accompanied by an acoustic report prepared by a suitably qualified person. This report has been reviewed by Council's Environmental Health Team who outlined no objection to the proposal or potential acoustic impacts, subject to suitable conditions of consent. To ensure minimal acoustic impacts from the proposed sliding gate a condition of consent requiring the acoustic report to be updated to include an acoustic assessment and recommendations to minimise noise generation from the sliding gate is recommended.

5(h) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

Approval of the proposal is not considered contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Architectural Excellence Panel (AEP) – The proposal has also been reviewed by Council Architectural Excellence Panel (AEP) who outlined that the proposal was acceptable and worthy of support.
- Environmental Health – Council's Environmental Health Team have undertaken a review of the development with regards to SEPP 55 contamination, acoustics and other matters. Council's Environmental Health Team have outlined no objection to the proposal, subject to suitable conditions of consent regarding contamination management and remediation, acoustic compliance and compliance with relevant Australian Standards for food and kitchen facilities.
- Development Engineering - Council's Development Assessment Engineering Team has reviewed the proposed basement parking, stormwater, geotechnical report,

flooding report and traffic impact assessment and outlined generally no objection to the amended proposal, subject to suitable conditions of consent, including a Deferred Commencement condition regarding units on level 01. These conditions relate to security damage bonds, stormwater management and construction methods. Conditions provided by Council's Development Engineering Team have been incorporated into the recommended conditions of consent.

- Heritage Advisor – The proposal has been reviewed by Council's Heritage Advisor and has been determined to be satisfactory subject to suitable conditions of consent. These conditions are recommended for the consent and should form part of any final approval.
- Urban Forests – The proposal has been reviewed by Council's Urban Forests Team who outlined no objection to the proposed tree removal and proposed landscape/planting plans. Appropriate conditions of consent regarding tree replacement and protection of neighbouring trees are recommended for the consent.
- Urban Ecology – Council's ecology team have reviewed the amended landscape plans and outlined no objection to the application, subject to suitable conditions of consent.
- Traffic Services – The submitted traffic report was reviewed by Council traffic engineers who outlined no objection to the proposal, subject to conditions of consent. The proposed development is not expected to have an unreasonable impact to traffic within the locality and is recommended for approval, subject to suitable conditions of consent.
- Resource Recovery (Commercial) – The proposed commercial waste collection and disposal methods have been reviewed and are acceptable, subject to suitable conditions of consent. No objection is raised to the proposed commercial waste management scheme.
- Resource Recovery (Residential) – The proposed residential waste collection and disposal methods have been reviewed and are acceptable, subject to suitable conditions of consent. No objection is raised to the proposed residential waste management scheme, with Council garbage trucks able to collect residential waste on-site, ensuring no need for waste bins to be present to the kerb while awaiting collection.

6(b) External

The application was referred to the following external bodies and issues raised in those referrals have been discussed in section 5 above.

- Roads Maritime Services (RMS) - The proposal has been referred to RMS for review and comment. In response RMS have outlined no objection to the proposal, subject to suitable conditions of consent. These conditions are included in the recommended consent.

- Sydney Trains – The proposal was referred to Sydney Trains for review and comment. In response Sydney Trains have outlined no objection to the proposal, subject to suitable conditions of consent. These conditions are included in the recommended consent.
- Sydney Water Corporation - The proposal has been referred to Sydney Water for review and comment. In response Sydney Water have outlined no objection to the proposal, subject to suitable conditions of consent. These conditions are included in the recommended consent.
- Ausgrid – The proposal has been referred to Ausgrid for review and comment. In response Ausgrid have outlined no objection to the proposal, subject to suitable conditions of consent. These conditions are included in the recommended consent.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions are payable for the proposal. The carrying out of the development would result in an increased demand for public amenities and public services within the area. However as discussed above the applicant has agreed to enter into a voluntary planning agreement (VPA) with Council. This VPA offsets the requirements for section 7.11 contributions to be levied, with public benefit and improvement to be obtained from the carrying out of the terms listed in the VPA agreement. A condition requiring that terms and conditions of the VPA be complied with is included in the recommendation.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in SEPP 65, *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant adverse impacts on the amenity of the adjoining properties or the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. The applicant has made a written request pursuant to Clause 4.6 to vary Clause 4.4 *Floor Space Ratio* of the *Ashfield Local Environmental Plan 2013*. After considering the request, and assuming the concurrence of the Secretary, the Panel is satisfied that compliance with the standard is unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to support the variation. The proposed development will be in the public interest because the proposal is consistent with the objectives of the standard and of the zone in which the development is to be carried out.

- B. That the Sydney Eastern City Planning Panel as the consent authority, pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2020/0815 for Construction of an 8-storey mixed-use development comprising ground level retail, 57 residential units, three levels of basement car parking and a pocket park at 120C Old Canterbury Road SUMMER HILL NSW 2130 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

Attachment B – Plans of proposed development

Attachment C- Clause 4.6 Exception to Development Standards