

## **SUMMARY**

This report concerns the amended plans and additional information submitted to Council on 22 April 2021 and 27 May 2021 for an application to construct an 8-storey mixed-use development comprising ground level retail, 57 residential units, three levels of basement car parking and a pocket park. The amended plans and additional information were submitted in response to the resolution of the Sydney Eastern City Planning Panel (SECPP) at its meeting on 1 April 2021.

The revised application is now referred to the SECPP for determination.

### **1. Background**

A report on an application to 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, was considered by the SECPP at its meeting on 1 April 2021.

The Panel resolved unanimously to defer the determination of the application to allow the provision of the following:

- 1. Obtain properly documented owner's consent from Sydney Water.*
- 2. Deletion of any residential floor space that is subject to the Probable Maximum Flood level (PMF).*
- 3. Increase the setback to the Eastern boundary to the center of Hawthorn Canal from 7.5m to 9m*
- 4. Delete external privacy blades and replace with alternative design privacy measures.*
- 5. Provide a new clause 4.6 written request for the reduced floor space given the design changes to accommodate the increased setback and PMF requirements above.*

### **2. Amended Plans**

On 22 April 2021 the applicant submitted amended plans and additional information that responded to the above resolution of the SECPP. The amended plans are reproduced below:



Figure 1: Revised Level 01 & Level 02 Plan. Level 01 has been amended to delete three (3) previously proposed residential units, and now incorporates residential storage areas.



Figure 2: Revised Level 03 & Level 04 Plan. Level 03 & 04 has been amended to incorporate revised external privacy measures.



Figure 3: Revised Level 05 & Level 06 Plan. Level 05 has been amended to incorporate revised external privacy measures and unit 601 on level 06 has been amended to have a setback of 9m when measured from the center boundary of Hawthorne Canal.

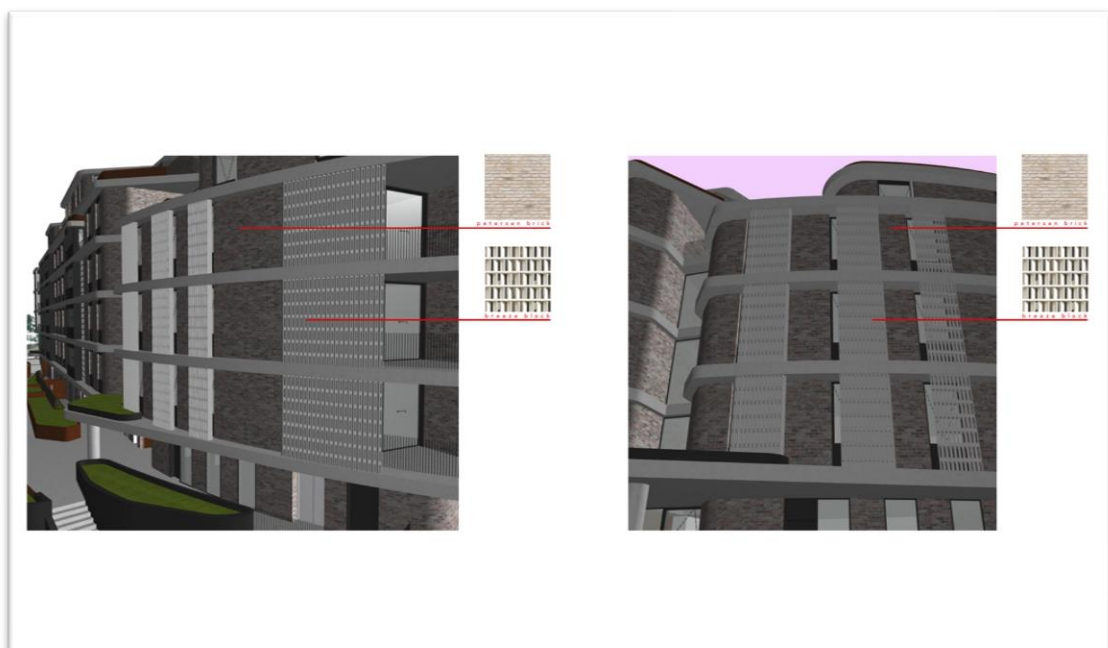


Figure 4: Revised perspectives of privacy treatments to levels 03 – 05.

### 3. Planning Assessment

Below is an assessment of the amended plans and additional information submitted by the applicant in response to the resolution of the SECPP:

1. *Obtain properly documented owner's consent from Sydney Water.*

Comment:

Throughout the course of obtaining owner's consent for works over Hawthorne Canal it has been determined that Sydney Water are the relevant landowner and not the Crown Lands Authority. As such, owner's consent from Sydney Water has been obtained. The applicant has supplied signed owners consent documentation from the Sydney Water, which outlines that they provide consent for the construction of the proposed pedestrian and vehicular bridges over Hawthorne Canal. As part of the additional information package the applicant has also provided emails from Sydney Water which outline no objection to the proposed pedestrian and vehicular bridges.

2. *Deletion of any residential floor space that is subject to the Probable Maximum Flood level (PMF).*

Comment:

The applicant has provided an amended Level 01 plan (as seen within figure 1 above) detailing the deletion of the three (3), two-bedroom units previously proposed. Instead the amended plans detail this space being used for the provision of residential storage. This amendment has been reviewed by Council's Development Engineers who outlined no objection to the change from residential units to residential storage, with the storage units located above the Flood Planning Level for non-residential uses. The space on level 01 no longer poses a significant risk to human life in the event of a PMF flood event. Council raises no objection to the amended proposal, with the application now considered to be compliant with the objectives and controls of clause 6.2 – Flood Planning contained within the ALEP 2013.

3. *Increase the setback to the Eastern boundary to the center of Hawthorn Canal from 7.5m to 9m*

Comment:

Amended plans provided by the applicant now detail unit 601 within the north east corner of the site set back 9m from the center of Hawthorne Canal and 12.45m from the neighbouring 14 McGill Street. The increased setback from the previously proposed 7.5m to 9m, has resulted in unit 601 being altered from a 3-bedroom unit (floor space of 112.9sqm) to a 2-bedroom unit (floor space of 91.7sqm). This revised setback of 9m is now compliant with ADG separation requirements.

As set out in the original assessment report, 14 McGill Street utilises a substantially reduced boundary setback of 3.4m. It is this 3.4m setback which results in both developments having a total separation of only 12.45m (previously 11m) and not the 18m intended by the ADG. The

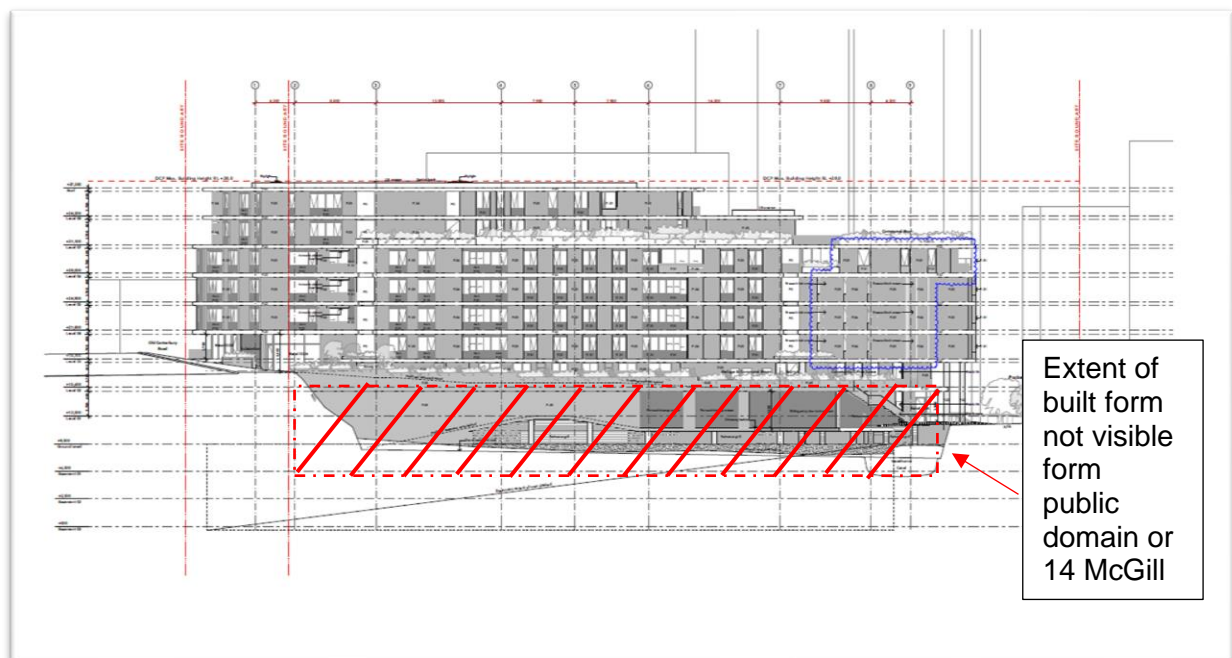


revised design now meets its requirements for ADG separation and adequately shares the responsibility for separation and privacy. The amended plans submitted by the applicant now detail a revised design which is compliant with ADG separation distances and is recommended for support.

The Panel will note that Council's previous assessment report outlined that levels 05 and 06 were non-compliant with the minimum separation distance of 9m. As part of the additional information package provided by the applicant a justification for the reduced setback to level 05 has been provided. This justification argues satisfactorily that due to the slope of the site and design of neighbouring development that level 05 will be perceived as level 04 from the public domain (through-site link) and the neighboring 14 McGill Street.

In this instance, the areas below the through-site link (basement entry) are not readily registerable and as such do not substantially contribute to the bulk and scale of the development. This is best illustrated in figures 5, 6 and 7 below. It is therefore unnecessary to require level 05 to be setback an additional 1.5m, as it will only be viewed as level 04 from all neighboring vantage points. It is therefore recommended that level 05 be assessed on a site-specific basis and in this instance be treated as a level 04, which would only require a 6m setback from the center of Hawthorne Canal.

It is considered that the applicant's revised privacy treatments to levels 01 – 05, combined with the 7.5m setback from the centre of Hawthorne Canal, will ensure a high degree of privacy and amenity for the subject site and neighboring residential units at 14 McGill Street.



*Figure 5: East Elevation – Extent of built form hidden from public domain or neighboring perspectives outlined by red dashed box.*

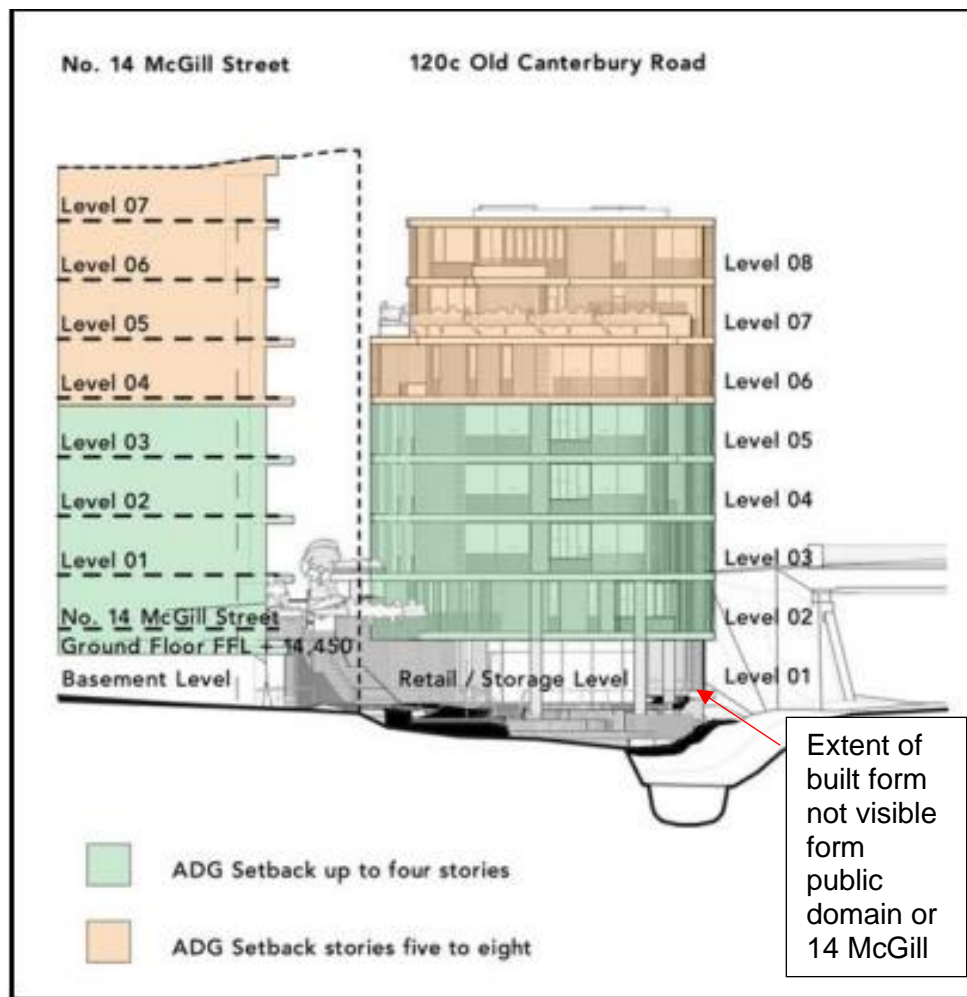


Figure 6: Height Blanket – Looking from the Lewisham Light Rail station towards the site

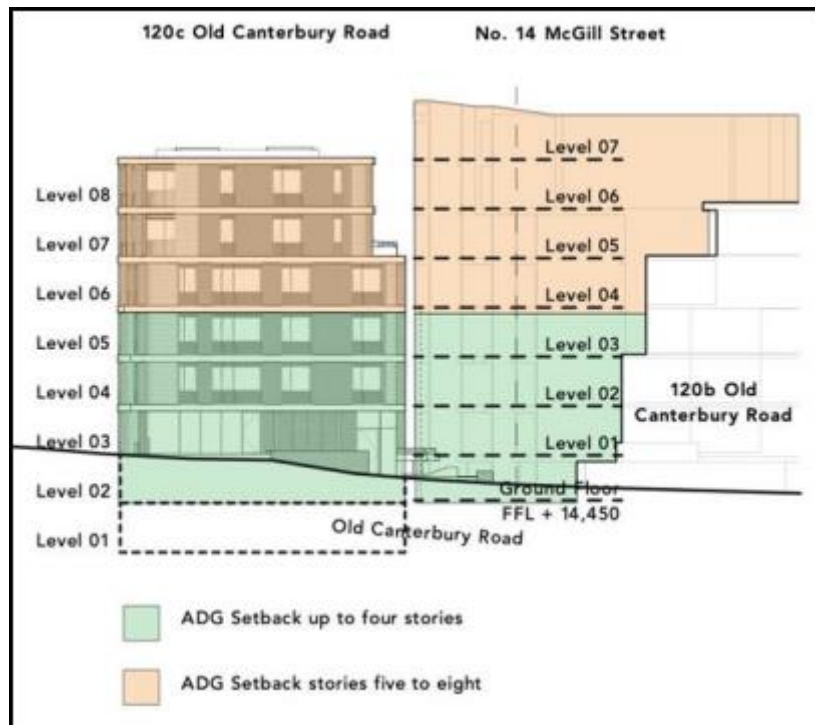


Figure 7: Height Blanket – Looking from the Old Canterbury Road towards the site

4. *Delete external privacy blades and replace with alternative design privacy measures.*

Comment:

As seen within figure 4 above the applicant has provided a revised privacy screen design for units located upon level 01 to 05 within the north east corner of the site. This revised privacy screen design extends over proposed windows and a portion of the proposed balconies which have the greatest potential privacy impacts for the residents of 14 McGill Street. This revised privacy treatment design ensures opportunities for light and ventilation into the proposed units, while also minimising opportunities for direct sightlines between neighbors. The screens have been designed to blend and contribute to the façade of the development and will not form a detracting element in the final public presentation of the building. The proposed revised privacy treatments are acceptable and recommended for support.

5. *Provide a new clause 4.6 written request for the reduced floor space given the design changes to accommodate the increased setback and PMF requirements above.*

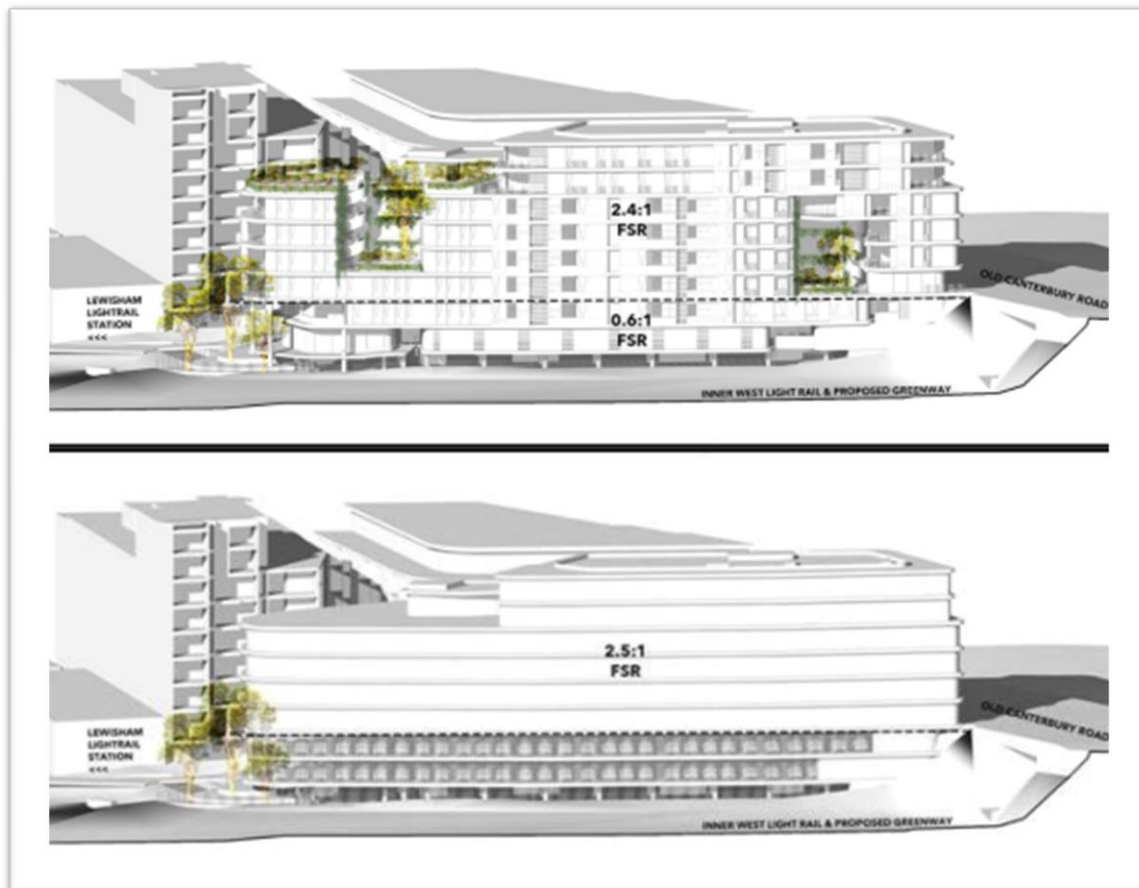
Comment:

The proposal results in a breach of the following development standard:

- 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/retail spaces within levels 1 and 2, previously to be solely utilised for above-ground parking. The application has been amended since the Panel's 1 April 2021 meeting, with Level 01 plan (as seen within figure 1 above) now outlining the deletion of the three (3), two-bedroom units previously proposed. Instead, the amended plans detail this space being used for the provision of residential storage. This residential storage is not located within a basement and therefore continues to count towards overall FSR. The applicant has provided a revised clause 4.6 based on the amended plans. An assessment of this revised 4.6 is outlined below.



*Figure 8: – Model of built form envelope approved under planning proposal (bottom image) & – Model of built form envelope proposed under current development application (top image)*

Clause 4.6 allows the consent authority 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 or 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 and storage 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 proposal complies with the objectives of the development standard and the B4 Mixed Use zone. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for the development within the zone.*
- *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.*

- *Visual and acoustic privacy impacts to adjoining neighbours to the east has also been carefully considered, with living rooms of apartments predominately positioned to the western elevation being substantially separated from western neighbours by the light rail line. The proposal is provided with highlight windows to bedrooms, plus POS is provided as deep-set balconies with glazing, which along with compliant building separation distances providing good separation between adjoining neighbours to the east, ensures visual and acoustic privacy is maintained in a reasonable manner.*
- *The proposal will result in improved amenity from the currently vacant site to neighbouring development and the streetscape with regards to improved visual impact from the highquality contemporary mixed-use development, with good articulation including deep set balconies and fenestration, in an extensively landscaped setting including new pocket park, perimeter plantings, and landscaped common open space areas on Levels 1, 3, 4, 6, plus Level 7 green roof*

The applicant's written rationale adequately demonstrates that 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 Summer Hill.
- 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 and encourage pedestrian access and public transport patronage over private vehicles and provides a significant opportunity for urban renewal within the Summer Hill centre, which promotes a pedestrian friendly future for the locality.
- The redevelopment of the existing site provides a significant opportunity for the creation of new retail premises and public spaces providing further opportunities for new employment opportunities within the immediate locality. Through an increase in residents living within the area, the development will create additional demand for services. The overall redevelopment of the site provides a significant opportunity to improve the ongoing viability, vitality and amenity of 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 redevelopment of land, maintaining sufficient and significant opportunities for the redevelopment 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 2 of the development and residential storage upon level 1. The overall scale of the building will not increase upon that approved at the Planning proposal stage. These levels were initially proposed to cater for above ground carparking. These additional residential unit and storage provides a more desirable visual outcome from an architectural and aesthetic perspective, with 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. 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.

#### **4. Changes to recommended conditions of consent**

The additional information provided as part of the amended documentation package has resulted in amendments to the recommended conditions of consent. It is recommended that the following conditions be amended as follows:

Delete Deferred Commencement Condition B:

**~~B. Deferred Commencement – Flood protection design change~~**

~~Prior to the issue of an Operational Consent Council shall be satisfied that the architectural plans have been amended so as to delete the apartments on Level 01 or alternatively the units may be redesigned as 2 level apartments with refuge and access above the PMF level.~~

Amended Condition 1 to read:

**1. Documents related to the consent**

The development must be carried out in accordance with plans and documents listed below:

<b>Plan, Revision and Issue No.</b>	<b>Plan Name</b>	<b>Date Issued</b>	<b>Prepared by</b>
<b>A-100-002 Rev 4</b>	<b>Site Plan</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
A-100-01-003 Rev 01	Tree Plan	15/9/2020	Fox Johnston
<b>A-200-001 Rev 4</b>	<b>Basement 2 &amp; 3</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-200-1-002 Rev 4</b>	<b>Basement 1 &amp; Ground Level</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-200-1-003 Rev 4</b>	<b>Level 01 &amp; Level 02</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-200-1-004 Rev 4</b>	<b>Level 03 &amp; Level 04</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-200-1-005 Rev 4</b>	<b>Level 05 &amp; 06</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-200-1-006 Rev 4</b>	<b>Level 07 &amp; Level 08</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-200-007 Rev 4</b>	<b>Roof level</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-300-1-001 Rev 4</b>	<b>East Elevation</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-300-1-002 Rev 4</b>	<b>West Elevation</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-300-1-003 Rev 4</b>	<b>South &amp; North Elevations</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
<b>A-300-1-004 Rev 4</b>	<b>Section A</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
A-300-005	Sections B & C - Ramp & Driveway Levels	18/9/2020	Fox Johnston
A-500-1-006 Rev 1	Adaptable Apartments	16/12/2020	Fox Johnston
A-500-1-007 Rev 1	Adaptable Apartments	16/12/2020	Fox Johnston

A-700-1-001 Rev 1	Additional Detail	16/12/2020	Fox Johnston
<b>A-500-001 Rev 4</b>	<b>Schedules. Legend &amp; Finishes</b>	<b>21/4/2021</b>	<b>Fox Johnston</b>
LD-SK-01 Issue F	Pocket Park (L0+L1)	12/2/2021	McGregor Coxall
LD-SK-02 Issue F	Site through-link (L2)	12/2/2021	McGregor Coxall
LD-SK-03 Issue F	Communal Spaces (L3+L4+L6)	12/2/2021	McGregor Coxall
LD-SK-04 Issue F	Roof Garden (L7)	12/2/2021	McGregor Coxall
LD-SK-05 Issue A	Ecological design principles	12/2/2021	McGregor Coxall
LD-SK-06 Issue F	Plant Schedule	12/2/2021	McGregor Coxall
LD-SK-07 Issue F	Planting Plan L0	12/2/2021	McGregor Coxall
LD-SK-08 Issue F	Planting Plan L2	12/2/2021	McGregor Coxall
LD-SK-09 Issue F	Planting Plan L3, L4, L6	12/2/2021	McGregor Coxall
LD-SK-10 Issue F	Planting Plan L7	12/2/2021	McGregor Coxall
LD-SK-13 Issue F	Sections	12/2/2021	McGregor Coxall
LD-SK-14 Issue F	Sections	12/2/2021	McGregor Coxall
LD-SK-15 Issue F	Sections	12/2/2021	McGregor Coxall
- Rev B	Operational Waste Management Plan	25/5/2020	Elephants Foot
219112	Statement of Compliance Access for people with a disability	17/8/2020	Accessible Building Solutions
20191213.1 Rev 2	DA Acoustic Assessment	13/5/2020	Acoustic Logic
RCT-7420	Arboricultural Impact Assessment Report	22/9/2020	RainTree Consulting
J200035	BCA Compliance Capability Report	5/6/2020	Vic Lilli & Partners Consulting
59918139	Flood Risk Assessment	3/7/2020	Cardno
33019SFprt	Geotechnical Assessment	20/3/2020	JK Geotechnics
19064	Traffic and Parking Assessment Report	255/2020	Terraffic Pty Ltd
20ABC02	Fauna Ecologist Review on habitat creation measures Large Bent-winged Bat at 120C Old	11/2/2021	Travers Bushfire & Ecology



	Canterbury Road, Summer Hill		
20BC02BAR	Biodiversity Assessment Report	19/2/2021	Travers Bushfire & Ecology
10791EV.P.117- R02	Stage 2 Detailed Site Investigation	18/2/2021	Construction Sciences
20191213.1 Rev 2	DA Acoustic Assessment	13/05/2020	Acoustic Logic

As amended by the conditions of consent.

## 5. Conclusions

*Regarding resolution (1) Concerning obtaining owners consent from Sydney Water for the construction of the proposed vehicular and pedestrian bridges.*

Council is of the opinion that this resolution has been satisfied.

*Regarding resolution (2) Concerning the deletion of any residential floor space that is subject to the probable maximum flood level (PMF).*

Council is of the opinion that this resolution has been satisfied.

*Regarding resolution (3) Concerning the increased setback to the eastern boundary to the center of Hawthorne Canal from 7.5m to 9m.*

Council is of the opinion that this resolution has been satisfied.

*Regarding resolution (4) Concerning deletion of the external privacy blades and replacement with an alternative design privacy measure.*

Council is of the opinion that this resolution has been satisfied.

*Regarding resolution (5) Concerning the submission of a new clause 4.6 written request for the reduced floor space given the design changes to accommodate the increased setback and PMF.*

Council is of the opinion that this resolution has been satisfied.

## 6. Recommendation

It is recommended that the application be approved, as previous concerns regarding flooding and safety have now been resolved. It is considered that the amended design largely ensures that future occupants of the development will be protected in any flooding event. The proposal is therefore considered to satisfy the requirements of clause 6.2 – Flood Planning and has demonstrated that it is suitable for the site. Council raises no objection to the development's approval, subject to imposition of the conditions set out below.