

**ITEM** 1-13 Close Street and 242-258 Canterbury Road,  
Canterbury

**Reconfiguration of built form, adjusted and improved public domain works, a revised unit mix, and internal layout changes. Increased height (additional 2-storeys/6m) and GFA (additional 2368sqm).**

<b>SSPP Ref No.</b>	<b>PPSSSH-106</b>
<b>FILE</b>	<b>DA-503/2013/B</b>
<b>ZONING</b>	<b>Part B2 – Local Centre and Part R4 – High Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>21 December 2021</b>
<b>APPLICANT</b>	<b>Realize Architecture Pty Ltd</b>
<b>OWNERS</b>	<b>Metro Storage Pty Ltd</b>
<b>ESTIMATED VALUE</b>	<b>\$114 337 456</b>
<b>AUTHOR</b>	<b>ABC Planning P/L</b>

### **SUMMARY REPORT**

Modification Application No. DA-503/2013/B proposes a reconfiguration of built form, adjusted and improved public domain works, a revised unit mix, and internal layout changes. Increased height (additional 2-storeys/6m) and GFA (additional 2368sqm) are proposed as part of the modifications.

The application has been assessed, amongst other things, against SEPP (Resilience and Hazards) 2021, SEPP (Transport and Infrastructure) 2021, SEPP BASIX, SEPP 65/ADG, Canterbury Local Environmental Plan 2012 (CLEP 2012), Draft Canterbury Bankstown Local Environmental Plan 2020 and Canterbury Development Control Plan 2012 (CDCP 2012).

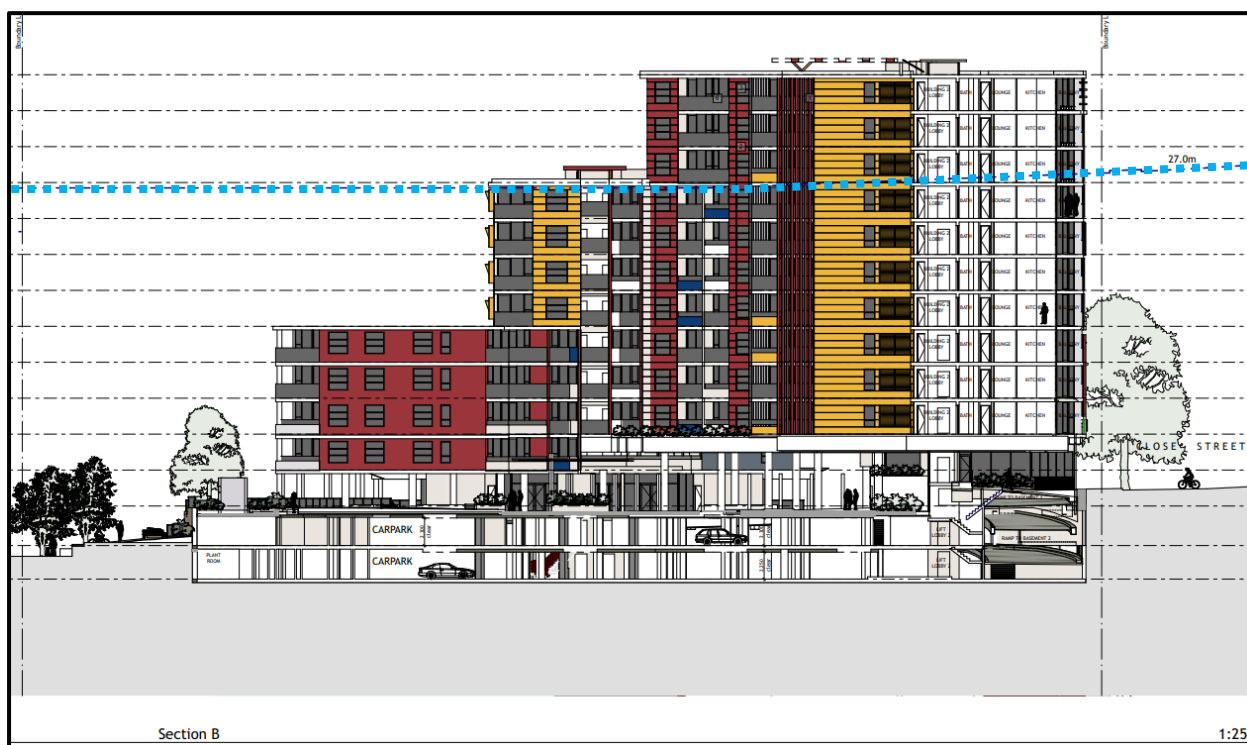
A quantitative and qualitative assessment determines that the proposed development as modified is not substantially the same development as that approved.

In brief, the proposed modifications, which seek to add an additional 2-storeys/6m and an additional 2368sqm of GFA, result in a development that breaches the height limit

and which generates a development that is not consistent with the desired future character.

The assessment report associated with the original approval stated that the approved development was 564sqm above the permitted GFA. The proposal represented a variation of 2.4%, which was accepted utilising Clause 4.6. The additional GFA sought by this modification application is 2368sqm (4 times greater than approved). This would result in a total variation of 2932sqm. The FSR increase is from 3.08:1 (as approved) to 3.38:1. The visual bulk of the additional GFA is substantial, as it will be readily evident from numerous, highly utilised public vantage points. Such vantage points include from both sides of the river walks, Canterbury Rd footpaths and from Canterbury Station, Lesley Muir Park, Mary Mackillop Reserve, and surrounds.

The LEP height standards and accompanying DCP storey requirements envisage heights of 6-9 storeys on this site. The proposed development now seeks a height of 11-storeys which is considered to be inconsistent with the desired future character. The greatest height limit on the site is mapped to have an overall height of 27m. The approved height already breaches the 27m height limit. A proposed maximum height of 36.85m is now sought, which increases the height variation from 3.85m to 9.85m.



**Image 1: Section excerpt showing the proposed height will be 3-storeys greater than the 27m height limit shown dotted in blue, noting that the approved development was already 1-storey greater than the height limit**

The additional storeys and GFA also generate greater overshadowing to the approved communal open space area and surrounding public domain areas, including riverfront walk and parkland. The modifications also generate a poor level of amenity as it is considered that the modified apartment layouts and additional units do not achieve key amenity criteria within the Apartment Design Guide, including:

- Solar access to communal area due to the additional overshadowing of the additional height and GFA
- Excessive number of south-facing apartments and units which do not receive sunlight (i.e., greater than 15%)
- Inadequate floor to floor heights
- Inadequate solar access
- Inadequate cross ventilation
- Poorly planned and non-compliant apartment layouts (including undersized living room dimensions)
- Inadequate separation between window openings in different apartments and poor outlook due to reliance on highlight windows

- Adverse acoustic impacts due to inadequate separation between window openings in different apartments

For these and other reasons, the modification application is recommended for refusal as outlined below.

### **POLICY IMPACT**

There are no direct policy impacts as a result of the subject Modification Application.

### **FINANCIAL IMPACT**

There are no direct financial impacts as a result of the subject Modification Application.

### **LAND AND ENVIRONMENT COURT PROCEEDINGS**

The applicant has filed a deemed refusal appeal to the Land and Environment Court of NSW. A Section 34 Conference is set down for August 2 2022.

### **RECOMMENDATION**

That the Panel refuse the Modification Application for reasons of refusal outlined below.

### **ATTACHMENTS**

- A. Section 4.15 Assessment Report
- B. Locality Plan

## **ATTACHMENT A: SECTION 4.15 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site comprises eleven (11) sites (to be consolidated) which are identified as Lot 1, 2 and 3 DP 1259941, Lot 1 DP 963864, Lot C DP 110214, Lot B DP159980, Lot X and Lot Y DP160390, Lot 101 and Lot 102 DP 791054 and Lot 21 DP 595332 known as 1-13 Close Street and 242-258 Canterbury Road, Canterbury.

The site is located at the south-eastern corner of the intersection of Close Street and Canterbury Road. The site is irregular in shape and has a combined site area of approximately 7838.5m<sup>2</sup> and 7,598.6m<sup>2</sup>, following the dedication of land on the corner of Canterbury Road and Close Street. Before the dedication, the site had a total frontage to Canterbury Road of 74.8 m and a frontage to Close Street of 120.39m.

The site generally slopes from the north-eastern side (along Close Street) to the south-western (toward Cooks River). The fall is approximately 3.5m over a distance of 75 metres, representing a fall of 1 in 21. The subject site is located at the southern edge of the Canterbury Town Centre.

The subject site is zoned Part B2 - Local Centre and Part R4 – High-Density Residential under *Canterbury Local Environmental Plan 2012*. The existing development on the sites includes a variety of industrial and warehouse buildings, including the Metro Storage building on the western corner of the site facing Canterbury Road with four single-storey buildings also along the Canterbury Road frontage of the site. The lots facing Close Street comprise two and three-storey industrial buildings with associated car parking and loading/unloading areas.

An aerial photograph of the subject site is provided below:



Image 2: Aerial photograph of 1-13 Close Street and 242-258 Canterbury Road, Canterbury (Nearmap, May 17, 2022)



Image 3: Subject site as viewed from the north-western side of Canterbury Rd looking south-east





**Image 4: Subject site as viewed from Canterbury Rd adjacent to Cooks River**



**Image 5: Subject site as viewed from Close Street looking south-west**



**Image 6: View of the interface of the south-eastern part of the site as viewed from Lesley Muir Reserve**



**Image 7: Relationship of the subject site (on the right) with pathway and Cooks River on left**





**Image 8: Relationship of the subject site (on the right) with pathway and Cooks River on left**



**Image 9: North-western interface of the site with Canterbury Rd**



**Image 10: Interface of existing development on the north-western side of Canterbury Rd with the subject site on the south-eastern side of Canterbury Rd**

Immediately east of the subject site is a four-storey brick residential flat on the opposite corner of Canterbury Road and Close Street. An electricity substation building, two industrial buildings and a vacant bowling green site are also located to the east on the opposite side of Close Street.

The Cooks River and foreshore areas with bike track are to the immediate south and south-west of the site.

To the immediate north and north-west is the remainder of the Canterbury Town Centre on the opposite side of Canterbury Road earmarked for commercial and residential development, currently containing mainly industrial and warehouse-type uses.





**Image 11: Established development to the north-west along Cooks River**



**Image 12: Established development to the north-west on the corner of Charles St and Canterbury Rd (9-storeys)**



**Image 13: Under-developed properties along the north-eastern side of Close Street**

## PROPOSED DEVELOPMENT

Modification Application No. DA-503/2013/B, which seeks to modify Development Consent No. DA-503/2013, as previously modified, included a reconfiguration of built form, adjusted and improved public domain works, a revised unit mix, and internal layout changes at 1-13 Close Street and 242-258 Canterbury Road, Canterbury.

The application, as amended and as outlined in the Applicant's SEE, seeks consent to:

- Reconfiguration of the ground floor plan
- Reduction in the building form and footprint adjacent to the Cooks River and the parkland to the east of the site.
- Provision of 480 car parking spaces (including one car wash bay).
- Enhancement of the public domain through a redesigned landscape and public art concept.
- Adjustment to approved apartment mix.
- Increase in gross floor area.



- Increase in building height to accommodate two additional floors on Building 2 and two additional floors on Building 3.
- Amendment to the design to address construction and consent compliance matters, including additional access requirements and alteration to adaptable apartment layout.
- Amended storage layout.
- Reduced garbage rooms

The proposed S4.55 modified development comprises an 11-storey building containing two ground retail tenancies, 439 dwellings (88 studios; 208 x 1-bedroom units; 131 x 2-bedroom units; 12 x 3-bedroom units), with 480 car parking spaces.

The proposed modifications seek to add a further 2368sqm to the approved development and additional 6m to the approved height.

## DEVELOPMENT HISTORY

Development Application DA-503/2013 ('**the original DA**') was approved by the Joint Regional Planning Panel (Sydney East Region) on July 10 2014. This consent approved *a 9-storey building containing two ground retail tenancies, 397 dwellings (95 studios; 161 x 1-bedroom units; 136 x 2-bedroom units; 5 x 3-bedroom units), with 432 parking spaces.*

On June 28 2017, consent was granted to modify DA-503/2013 under Section 96 of the *EPA Act 1979* (referenced as DA-503/2013/A) following consideration of the application at a Sydney South Planning Panel meeting on June 14 2017.

DA-5013/2013/A endorsed an amendment to *provide a nine-storey building containing two ground floor tenancies and 439 dwellings and changes to the layout and design of the development, including adjustments to the internal and external layout on all floors of all buildings and adjustments in size and shape to Council dedicated land at the Canterbury Road and Close Street intersection.*

## **Statutory Considerations**

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

- Section 4.55(2) of EPA Act - Modification of Development;
- Section 4.46 of EPA Act - 'Integrated Development'
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the associated Apartment Design Guide
- Substantially the Same Development Test: Quantitative and Qualitative Comparison/Threshold of Proposed Modification and Associated Impacts
- Canterbury Local Environmental Plan 2012
- Draft Canterbury-Bankstown Local Environmental Plan 2020
- Canterbury Development Control Plan 2012

## **SECTION 4.15 ASSESSMENT**

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

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

#### **State Environmental Planning Policy (Planning Systems) 2021**

Given the Capital Investment Value is greater than \$20 million, being \$114 337 456, referral to the Sydney South Planning Panel is required.

### State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. Chapter 4 of SEPP (Resilience and Hazards) requires the consent authority to consider whether the land is contaminated prior to granting consent to carrying out any development on that land and if the land is contaminated, it is satisfied that the land is suitable in its current state or will be suitable after remediation for the purpose for which the development is proposed to be carried out:

Given that the proposed modifications do not alter the approved depth of excavation or basement levels, no additional consideration is required.

### State Environmental Planning Policy (Transport and Infrastructure) 2021

No additional car spaces are required or proposed. On this basis, no referral is required. The modified proposal continues to provide parking (27 spaces) in excess of that required.

### SEPP- BASIX

An updated BASIX certificate is provided (No. 490740M\_07), prepared by JS Solutions, dated 31/7/21.

### State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the associated Apartment Design Guide

The modifications generate a poor level of amenity as it is considered that the modified apartment layouts and additional units do not achieve key amenity criteria within the Apartment Design Guide, including:

- Solar access to communal area due to the additional overshadowing of the additional height and GFA
- Excessive number of south-facing apartments and units which do not receive sunlight (i.e., greater than 15%)
- Inadequate floor to floor heights
- Inadequate solar access
- Inadequate cross ventilation
- Poorly planned and non-compliant apartment layouts (including undersized living room dimensions)
- The inadequate separation between window openings in different apartments and poor outlook due to reliance on highlight windows
- Adverse acoustic impacts due to inadequate separation between window openings in different apartments

The modified proposal includes a radical transformation of the approved versus modified unit mix and associated floor plan layouts. This triggers a fresh assessment of the ADG in relation to solar access and cross-ventilation across the development.

A review of the modified plans is considered to determine that the modified proposal will provide for a substandard level of amenity for the following reasons:

- The number of cross-ventilated apartments has been overstated as it is considered that many of the apartments shown to be cross-ventilated would not qualify and that the percentage would be well below 60%
- A significant percentage of apartments (in particular living areas) received less than 2-hours of solar access between 9am and 3pm on June 21. It is considered that the impact of surrounding buildings has not been accounted for, whilst the 2D solar diagrams do not show that sunlight will penetrate the living areas due to the depth of the balconies.
- The number of apartments that receive no sunlight is considered to be substantially greater than stated and more than 15%. A considerable number of the approved apartments face south to the courtyard and will be



overshadowed to a greater degree due to the siting of the proposed additional 2-storeys.

- A significant number of new apartments on the new upper levels are single-oriented and have deep floor plates. The combination of these features is likely to result in units with poor access to sunlight, daylight and cross-ventilation. The proposal is also considered to be overly reliant on skylights to compensate for the lack of sunlight in the living areas of the apartments.

On this basis, the modified proposal is considered to result in a poor level of performance when assessed against the relevant provisions of SEPP 65/ADG.

Section 4.55(2) of the EP & A Act, 1979- Substantially the Same Development Test: Quantitative and Qualitative Comparison/Threshold of Proposed Modification and Associated Impacts

After undertaking a qualitative and quantitative assessment of the modified development versus the originally approved development, it is considered that the modified development is not substantially the same development for the following reasons:

- a) The quantum of the additional GFA sought is substantial, being **2368sqm**. Such GFA represents a significant increase of GFA, and when combined with the addition of 2-storeys beyond that approved, generates a material modification to the originally approved development.
- b) The revised apartment mix (when compared with the original DA approval) includes:

Unit type	Originally approved	Latest modification	Change +/-
Studio	95	88	-7
1-Bedroom	161	208	+47
2-bedroom	136	131	-5

<b>3-bedroom</b>	<b>5</b>	<b>12</b>	<b>+7</b>
<b>Total</b>	<b>397</b>	<b>439</b>	<b>+42 units</b>

- c) It is apparent from this quantitative assessment that there will be a significant increase in the number of apartments, being an increase of **42 apartments** with an increase of **51 bedrooms**. Such an additional bedroom increase could accommodate 51-102 additional persons occupying the site, utilising facilities, etc.
- d) The SEE includes a table comparison of the approved unit mix versus that proposed to be modified. Still, it includes the unit numbers from the modified consent rather than the originally approved development consent.
- e) The SEE includes a table comparison of approved height versus that proposed but does not include the height of lift overruns etc., which are to be included in the height calculation under the definition of height. The comparison table should include the originally approved height versus that proposed, along with the LEP height standards within the site. This will enable a proper assessment of the height increase and the extent of height variation beyond the LEP height standards. Nevertheless, it is understood from the Applicant's SEE that the modified proposal seeks an increase in the height of 6m- from that approved (9.85m above the height control), which is a substantial increase in height.
- f) An increase of 2-storeys/6-metres is not considered substantially the same development as approved, particularly in circumstances where the originally approved development breached the controls.
- g) The location of the building where the height increase is sought is prominent, being on the corner of Canterbury Rd and Close Street and along a substantial portion of the building along Close Street. The above photographs highlight the prominence of such a corner and that the 11-storey element will be perceived from numerous vantage points (public and private areas, including surrounding parks). The approval and height standard variation will thereby be readily identifiable and materially different from that approved. The combination of an 18%/2-storey height increase, along with the additional GFA of 2368sqm, 42 additional apartments is considered to represent a radical transformation when

compared with the approved building on the site. The height increases are not limited to minor portions of the buildings and are not recessed. On the contrary, the elevations demonstrate that the increased height is associated with large expanses of the built form and are sheer height increases from the approved, built form below.

- h) The amenity outcomes associated with the modified proposal will be materially different. In this regard, shadowing from the additional 2-storeys in height will significantly add to the length of shadows cast by the development over the open space areas within and external to the site. The communal open space area and pathway lie directly south of the portion of the building where the additional height is proposed. On this basis, the increased height will generate greater and undesirable shadow impacts. The Applicant's SEE acknowledges that the approved communal area will not receive the requisite amount of solar access in mid-winter. The increased height and FSR will only generate a greater degree of non-compliance throughout the year.
- i) The increased height will be readily perceptible from numerous and highly utilised vantage points. The increase of 2-storeys across a significant portion of the site will be readily visible from highly utilised walkways, parkland, Canterbury Station/surrounds and Canterbury Rd and Close Street. The change will thereby be readily apparent and represents a distinct change from that approved.

The combination of visual and amenity impacts and the significant additional quantum of GFA/units and height confirm that the development as modified is not substantially the same as approved.

#### Canterbury Local Environmental Plan 2012

The table below provides an assessment of the development against the principal development standards contained in the Canterbury Local Environmental Plan 2012;

Canterbury Local Environmental Plan 2012			
Clause	Requirement	Comment	Compliance
Cl.1.2 Aims of Plan	This Plan aims to make local environmental planning provisions for land in Canterbury in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.	The proposal is inconsistent with the Aims of the Plan with regard to objective (c), which seeks to <i>ensure that development is of a design and type that supports the amenity and character of an area and enhances the quality of life of the community</i>	N
Zoning	B2 Local Centre and R4 High Density Residential	The modified development remains permissible in the zones	Y
Cl.4.3 Height of Buildings	27m height limit on north-eastern and central portions of the site 14m height limit on north-western portion of the land adjacent to Cooks River and 11m on the south-western corner of the land adjacent to Cooks River	<p>The modified development seeks to add 6-metres which results in an overall breach of 9.85m to the approved height, which results in a maximum height of 36.85m. The additional 2-storeys/6-metres are considered to generate inconsistency with the objectives of the height standard, namely objectives (a), (b) and (c):</p> <ul style="list-style-type: none"> <li>(a) <i>To establish and maintain the desirable attributes and character of an area</i></li> <li>(b) <i>To minimise overshadowing and ensure there is a desired level of solar access and public open space</i></li> <li>(c) <i>To support building design that contributes positively to the streetscape and visual amenity of an area</i></li> </ul> <p>The proposed height generates an inconsistency with the desired future character being a total of 9.85m above that permitted and 3-storeys beyond that anticipated by the controls.</p> <p>The proposed height increase/non-compliance also generates adverse shadow impacts on the communal area and adjacent public domain areas.</p>	N



Canterbury Local Environmental Plan 2012			
Clause	Requirement	Comment	Compliance
		The height, bulk and scale associated with the modification are excessive when viewed from public domain areas, including surrounding streets and other highly utilised public areas, including the riverfront walkway	
Cl. 4.4 Floor space ratio - Floor Space Ratio Map	An FSR standard of 3:1 applies to the north-western allotments of the subject site which are zoned B2 Local Centre. An FSR standard of 2.75:1 is permitted on the south-eastern allotments which are zoned R4 High Density Residential.	<p>The modified proposal results in a non-compliant FSR, which is generated by an additional GFA of 2368sqm, thereby resulting in an FSR of 3.38:1</p> <p><i>Note</i> This figure does not include 27 surplus carparking spaces.</p> <p>The proposed GFA increase results in an excessive built form outcome, particularly having regard to the quantum of the additional GFA (being for an additional 2368sqm).</p> <p>The height, bulk and scale associated with the additional GFA generate adverse streetscape, visual bulk and amenity impacts and are inconsistent with the desired future character. The proposed FSR also does not satisfy the objectives of the standard being:</p> <ul style="list-style-type: none"> <li>(a) <i>To provide effective control over the bulk of future development,</i></li> <li>(b) <i>To protect the environmental amenity and desired future character of an area,</i></li> <li>(c) <i>To minimise adverse environmental impacts on adjoining properties and the public domain,</i></li> <li>(d) <i>To optimise development density within easy walk of the railway stations and commercial centres.</i></li> </ul>	N
Cl. 4.6 Exceptions to development standards	To provide an appropriate degree of flexibility in applying certain	Clause 4.6 does not apply to modification applications under S4.55(2) of the EP & A Act, 1979.	N/A

Canterbury Local Environmental Plan 2012			
Clause	Requirement	Comment	Compliance
	development standards to particular development		

**Draft environmental planning instruments [section 4.15(1)(a)(ii)]**

**Draft Canterbury Bankstown Local Environmental Plan 2020**

The Draft Canterbury Bankstown Local Environmental Plan 2020 (CBLEP 2020) applies to the subject site. The Draft CBLEP 2020 was publicly exhibited and adopted by the Canterbury Bankstown Local Planning Panel on June 30 2020. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft CBLEP 2020 provides for an administrative conversion of both the BLEP 2015 and CLEP 2012 into a combined document under the Standard Instrument LEP template.

Given there is no change to the development standards in the Draft Instrument, the same assessment as that provided to the current controls applies. In this regard, the modified proposal remains unsatisfactory.

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

The following section provides assessment and compliance tables against the applicable controls contained within Canterbury Development Control Plan 2012 - Part D Business Centres - General, Part D2– Canterbury Town Centre and Part B1 – Transport and Parking.

Canterbury Development Control Plan 2012			
Clause	Requirement / Provision	Comment	Compliance
D1 Business Centres - General			
1.2.1 Minimum frontage	18m	Greater than 18m	Y
1.3 Building Envelope 1.3.1 FSR	O1 To guide the form and shape of new buildings.  O2 To ensure the appearance and performance of development is considered throughout the design process.	The proposed modifications will inappropriately increase the height, bulk and scale of the approved development as it will provide for a form and shape which is inconsistent with the desired future character.  The poor performance of the building when assessed against the key amenity criteria under SEPP65/ADG further demonstrates that the performance of the development has not been suitably considered throughout the design process.	N
1.3.2 Height		The increased height of 6m generates adverse visual bulk, streetscape and amenity impacts.	N
1.3.3 Floor to Ceiling Height	O1 To ensure floor to ceiling height is adequate for the operation of the intended and potential use.	The floor-to-floor heights are considered to be inadequate to achieve a 2.7m ceiling height for the proposed residential levels.	N
1.3.4 Setbacks	O1 To establish the desired spatial proportions of the street and define the street edge. O2 To minimise building size and bulk by setting back upper storeys. O3 To minimise amenity impacts on adjoining properties. O4 To encourage increased setbacks along Canterbury Road to provide for	The modified proposal adopts the same setbacks as the levels below, which exacerbates the streetscape and visual impacts of the additional height and GFA sought by the modifications.	N

Canterbury Development Control Plan 2012			
Clause	Requirement / Provision	Comment	Compliance
	possible future implementation of street parking and assist in reducing traffic noise impacts. O5 To allow for flexible design and building articulation by permitting minor encroachments.		
1.3.5 Building depth	O1 To ensure that natural daylight is available in all parts of the building so that artificial light is not necessary during daylight hours O2 To ensure an appropriate level of depth is available to create viable building spaces for retail and commercial use.	The building depth is considered to be excessive, as demonstrated by the poor level of amenity afforded to single aspect apartments and reliance on narrow slots for ventilation and daylight.	N
1.4 Building Design	O1 To encourage a more sustainable urban environment where energy efficiency is incorporated into the design, construction and use of buildings. O2 To reduce consumption of energy from non-renewable sources, and reduced greenhouse gas emissions. C1 Design and orient development to maximise solar access and natural light, without unduly increasing the building's heat load. C2 Design and site development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells. C3 Coordinate design for natural ventilation with passive solar design techniques.	The modified building design is considered to be contrary to the objectives and controls due to the adverse and undesirable streetscape, visual bulk and amenity impacts. The design also results in poor internal amenity and unacceptable additional shadowing impacts on the communal area and public domain.	N
<b>D2 Canterbury Town Centre</b>			
2.1 General Objectives	O1 To achieve the full development potential of land and best use of services in the centre; O2 To encourage the redevelopment of the riverfront district into an attractive vital and vibrant mixed-use environment via a network of publicly accessible spaces and places; O3 To create an attractive waterfront along the Cooks River through the provision of pedestrian and cycle ways, landscaped open spaces and opportunities for outdoor activities; and	The modified development detracts from the public domain due to the excessive height, bulk and scale and inconsistency with the desired future character.	N

Canterbury Development Control Plan 2012			
Clause	Requirement / Provision	Comment	Compliance
	O4 To reinstate the role of the town centre on Canterbury Road.		
2.2 General Controls	<p>C1 Redevelopment in the Canterbury Town Centre requires a minimum lot size of 1500m<sup>2</sup>.</p> <p>See Figure D2.2 below for specific heights in storeys within the Canterbury Town Centre.</p>	The proposed increase in GFA and height generates further inconsistency with the scale of development anticipated by the DCP and would detract from the general amenity of the area, including public domain areas adjacent to Cooks River. The modification seeks heights of 11-storeys which would be 3-storeys above the storey controls as shown in Figure D2.2.	N
<b>Part B1 Transport and Parking</b>			
Part B1 Transport and Parking	See Table 1 below for Council Parking Rates and Provisions from the traffic impact statement.	The application includes a Traffic Impact Statement by TRAFFIX, demonstrating that the modified proposal will comply with the requirements of the DCP. Excess parking (27 spaces) remains.	Y



Figure D2.2: Canterbury Town Centre Specific Heights in Storeys



**Table 1: Council Parking Rates and Provisions**

Table 1: Council Parking Rates and Provision				
Type	Number / Area	Minimum Parking Rate	Minimum Required <sup>1</sup>	Parking Provided
Residential (Shop Top Housing) – B2 Zone <sup>2</sup>				480
Studio	64	0.25 spaces per unit	16	
1 Bedroom	107	0.8 spaces per unit	86	
2 Bedroom	48	1 space per unit	48	
3 Bedroom	4		4	
Visitor	223	Not Required	0	
Retail – B2 Zone <sup>2</sup>	363m <sup>2</sup>	1 space per 33m <sup>2</sup>	11	
Commercial – B2 Zone	120m <sup>2</sup>	1 space per 50m <sup>2</sup>	2	
Residential (Flat Building) – R4 Zone <sup>2</sup>				
Studio / 1 Bedroom	121	1 space per unit	121	
2 Bedroom	87	1.2 spaces per unit	105	
3 Bedroom	8	2 spaces per unit	16	
Visitor	216	1 space per 5 units	44	
Total			453	480

<sup>1</sup> Parking spaces rounded to the nearest whole number in accordance with DCP.

<sup>2</sup> Parking rates adopted as per approved DA.

Based on the above, the proposed development is considered to unsatisfactorily address the relevant provisions of the CDCP 2012.

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

As part of the approved development, the planning agreement continues to apply to the modified development.

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

The development is consistent with the provisions contained within the Environmental Planning and Assessment Regulation 2000.

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

The proposed modifications generate adverse amenity impacts to both units within the site, the public domain, and communal areas. Adverse impacts include unsatisfactory apartment layouts and amenity and increased overshadowing of the communal area and nearby public domain areas. The visual bulk and streetscape impacts of the additional GFA and height also generate inconsistency with the desired future character.

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

The site is not considered to be suitable for the development given the adverse streetscape, visual bulk and amenity impacts that arise from the modifications.

### **Submissions [section 4.15(1)(d)]**

Twelve (12) submissions have been received by Council with regard to the subject modification application.

The objections raised the following issues:

- An increase in height will have a highly detrimental effect on the light in the area. Long shadows will block sunlight onto the existing mature trees in reserve.
- Significant risk of wind tunnel which has the potential to damage trees in the reserve and causes noise disturbance to residents in Close Street
- Loss of airflow
- The detrimental effect of traffic in the area
- Increased parking impacts and increased risk of traffic incidents
- Increase of residents with no additional car parking
- Adverse shadow impacts users of Lesley Muir Reserve and Close Street dog park
- Excessive height and lack of architectural merit
- Inconsistency with the character of Canterbury

- Inconsistency with SEPP 65 and the design quality principles
- Insufficient setbacks and separation to minimise visual dominance when viewed from both the public domain and adjoining properties
- The bulk, scale and length of the Close St and Cooks River elevations/façade are excessive in terms of impact on the street and surrounding properties
- Inappropriate transition in bulk and scale from the R4 zoned land to RE2 zoned land
- Non-compliant setbacks
- Excess FSR
- Failure to achieve cross-ventilation
- Adverse acoustic privacy impacts due to the proximity of windows positioned across each other

Most of the issues raised in the objections are considered to have merit and form part of the reasons for refusal.

### **The public interest [section 4.15(1)(e)]**

Refusal of the modification application would be consistent with the wider public interest.

## **CONCLUSION**

The Section 4.55(2) modification has been assessed in accordance with the matters for consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act 1979*, which required, amongst other things, an assessment against the provisions contained within State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Associated Apartment Design Guide, Canterbury Local Environmental Plan 2012, Draft Canterbury Local Environmental Plan 2020, and Canterbury Development Control Plan 2012.

It is noted that this assessment report focuses on the assessment of the key elements that are sought to be modified. Given the assessment determines that the modified application is not substantially the same development and that the modification provides for unsatisfactory built form and amenity outcome, specific assessment of some of the minor modifications (e.g., amended storage layout and reduced garbage room etc.) is not warranted.

For the reasons outlined above, it is recommended that the modification application be refused.

## **RECOMMENDATION**

It is recommended that the application be refused for the following reasons:

1. The modified development is not considered to be substantially the same development as that originally approved. A qualitative and quantitative assessment, under *Section 4.55(2) of EPA Act* determines that the modified proposal is not substantially the same development of that approved.
2. The proposed additional height (an additional 2-storeys/6-metres) generates a form of development that significantly breaches the LEP height standard by up to 9.85m under Clause 4.3 of Canterbury LEP 2012. Such height generates a form of development inconsistent with the desired future character and generates adverse and unreasonable shadow impacts to the approved communal area and on public domain areas, including riverside walks and parkland. The proposed height is also inconsistent with the objectives of the height standard under Clause 4.3 of Canterbury LEP 2012.
3. The proposed additional GFA (an additional 2368sqm) generates a form of development that significantly breaches the LEP FSR standard under Clause 4.4 of Canterbury LEP 2012. Such FSR generates a form of development that is inconsistent with the desired future character and which generates adverse and unreasonable shadow impacts to the approved communal area and to public domain areas, including riverside walk and parkland. The proposed FSR

is also inconsistent with the objectives of the FSR standard under Clause 4.4 of Canterbury LEP 2012.

4. The increase of 51 bedrooms and 42 apartments unreasonably increases the intensity of the development and demand for facilities on the site, including the communal area.
5. The proposed modifications generate a development with unsatisfactory internal amenity for the revised and increased apartments in terms of solar access (Part 4A) and cross-ventilation (Part 4B) when assessed against key amenity criteria of the Apartment Design Guide. The inadequate separation between windows of adjoining apartments will also generate adverse visual and acoustic privacy impacts (Part 3F).
6. The floor-to-floor heights of the approved and modified levels are inadequate as they are inconsistent with the Apartment Design Guide (Part 4C).
7. The internal layouts of numerous apartments are poorly planned and are non-compliant with the apartment layout requirements of the ADG (Part 4D-3).
8. The modified development is not in the public interest given the extent of the adverse impact to private and public areas, whilst the matters raised by the objectors also confirm that the modified development is not in the public interest.