

COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSSH – 153 |
| DA Number | DA-1196/2023 |
| LGA | Canterbury – Bankstown |
| Proposed Development | Demolition of existing structures, including partial demolition of existing pub with continued operation during construction process, construction of a 3-storey building containing a 56-room hotel and the relocated pub, a 5-storey mixed use building containing 37 residential apartments and 1459sqm of commercial floor space on the ground floor level, and construction of three 3-storey residential flat buildings containing a total of 55 apartments, and basement car parking for 323 vehicles, with works to be completed across three demolition/construction stages |
| Street Address | 167 Hume Highway, Greenacre (Lot 402 of DP631754) |
| Applicant/Owner | The Trustee for Palms Hotel (Chullora) / Palms (Chullora) Pty Limited |
| Date of DA lodgement | 11 October 2023 |
| Total number of Submissions Number of Unique Objections | <ul style="list-style-type: none"> • One • One |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011 | Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as: General Development over \$30 million |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Biodiversity and Conservation) 2021; • State Environmental Planning Policy (Planning Systems) 2021; • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Industry and Employment) 2021; • State Environmental Planning Policy (Transport and Infrastructure) 2021; • State Environmental Planning Policy (Housing) 2021; • State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development • Canterbury Bankstown Local Environmental Plan 2023 • Canterbury Bankstown Development Control Plan 2023 |
| List all documents submitted with this report for the Panel's consideration | <ul style="list-style-type: none"> • Access Report • Acoustic and Vibration Assessment • Air Quality Assessment • BASIX Certificate • BCA Performance Compliance Statement • Clause 4.6 Variation Request • Detailed Site Investigation • Cost Estimate report • Fire Safety upgrade report • Flood risk management report • Geotechnical Report • Landscape Plan • Services Infrastructure Report • Public Art Strategy • Road Design Plan • SEPP 65 Design Statement • Statement of Environmental Effects |

| | |
|-----------------------------------|---|
| | <ul style="list-style-type: none"> • Stormwater Management Plan • Survey Plan • Traffic Impact Assessment • Waste Management Plan • Architectural Plans |
| Clause 4.6 requests | The Clause 4.6 relates to Clause 4.3 – Height of Buildings, contained within the Canterbury Bankstown Local Environmental Plan 2023. The zone the Clause 4.6 relates to is the B6 Enterprise Corridor Zone. |
| Summary of key submissions | <ul style="list-style-type: none"> • Construction noise and dust • Visual Privacy |
| Report prepared by | Michael Bonnici |
| Report date | 26 February 2024 |

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

No

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No

ASSESSMENT REPORT

SITE DETAILS

The subject site comprises of one single allotment, being legally described as:

- Lot 402 in Deposited Plan 631754 with a street address of 167 Hume Highway, Greenacre NSW 2190.

The site is located within both the B6 Enterprise Corridor and RE1 Public Recreation zone under the Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023). The site is located on the south eastern side of the Hume Highway, immediately adjacent the highway's intersection with Muir Road. The site is of an irregular shape with an area of 11,749.7m². The site has an extensive frontage to the Hume Highway measuring 171.345 metres. The site does not enjoy any other street frontage.

The site is currently occupied by a two-storey hotel known as 'The Palms' which contains a sports bar, VIP lounge, bistro, function centre, short term accommodation and a large at-grade car park. The site also contains a restaurant and warehouse shed. Currently four (4) vehicular crossings provide access to and from the site off the Hume Highway. The site is dominated by the existing at grade parking arrangements and contains minimal vegetation cover. Adjoining the site, immediately to the south west (along the Hume Highway), is No 185 Hume Highway which is occupied by a free-standing single storey dwelling. Vehicular access to this property is from the Hume Highway. This property is similarly zoned B6 Enterprise Corridor.

Further to the south are residential properties fronting both Hillcrest Avenue and Cardigan Road. Properties along the northern side of Cardigan Road are zoned R2 Low Density Residential under the CBLEP 2023. These properties adjoin the sites southern boundary. To the east of the site comprise the rear portion of an existing multi-dwelling housing development that currently occupies No 81 Cardigan Road, a free-standing single storey dwelling at No 27 Peter Crescent and a small public reserve referred to as Peter Reserve. Further to the east are the remaining properties in Peter Crescent which are all zoned R2 Low Density Residential under the CBLEP 2023.

To the north east of the site (on the corner of the Hume Highway and Tennyson Road), is a commercial building occupied by a granite and marble supplier. Adjacent to the property in Tennyson Road is a free-standing single storey structure which appears to be used in association with the granite and marble supplier. Each of these properties are zoned B6 Enterprise Corridor. To the north west, on the opposite side of the Hume Highway, is land zoned IN1 General Industrial under the CBLEP 2023.

PROPOSED DEVELOPMENT

Development Application No. DA-1196/2023 seeks consent for the demolition of existing structures, including partial demolition of the existing pub with continued operation during the construction process, construction of a 3-storey building containing a 56-room hotel and the relocated pub, a 5-storey mixed use building containing 37 residential apartments and

1459sqm of commercial floor space on the ground floor level, and construction of three 3-storey residential flat buildings containing a total of 55 apartments, and basement car parking for 323 vehicles, with works to be completed across three demolition/construction stages.

A summary of the development proposal is provided below:

| Floor | Building A | Building B | Building C | Building D | Building E |
|------------------|--|---|---|---|--|
| Basement Level 2 | 142 commercial parking spaces (4 electric vehicle, 3 accessible) | | N/A | | |
| Basement Level 1 | 37 commercial parking spaces (of which 4 are accessible spaces) | 60 parking spaces (52 residential / 8 visitor spaces) 4 bicycle spaces Of the 8 visitor spaces, 2 provide electric vehicle charging | 84 parking spaces (72 residential, 12 visitor) Of the 12 visitor spaces, 3 provide electric vehicle charging | | |
| Ground Floor | Pub | Commercial space | 6 x 2 bedroom units 1 x 3 bedroom unit | 2 x 2 bedroom units 1 x 3 bedroom unit | 5 x 2 bedroom units 2 x 3 bedroom units |
| Mezzanine | Function space associated with the pub | | | | |
| Level 01 | 21 hotel rooms (20 x 1 bedroom and 1 x 2 bedroom) | 6 x 2 bedroom units 4 x 3 bedroom units | 7 x 2 bedroom units 1 x 3 bedroom unit | 4 x 2 bedroom units | 5 x 2 bedroom units 2 x 3 bedroom units |
| Level 02 | 22 hotel rooms (all one bedroom) | 6 x 2 bedroom units 4 x 3 bedroom units | 7 x 2 bedroom units 1 x 3 bedroom unit | 3 x 2 bedroom units 1 x 3 bedroom unit | 5 x 2 bedroom units 2 x 3 bedroom units |
| Level 03 | 13 hotel rooms (all one bedroom) | 6 x 2 bedroom units 4 x 3 bedroom units | | | |
| Level 04 | | 2 x 2 bedroom units 5 x 3 bedroom units | | | |

Further details are provided below with respect the dwelling mix.

| Bedroom Type | Number |
|--------------|--------|
| 2 Bedroom | 64 |
| 3 Bedrooms | 28 |
| Hotel Rooms | 56 |

This application is subject to a Voluntary Planning Agreement (VPA).

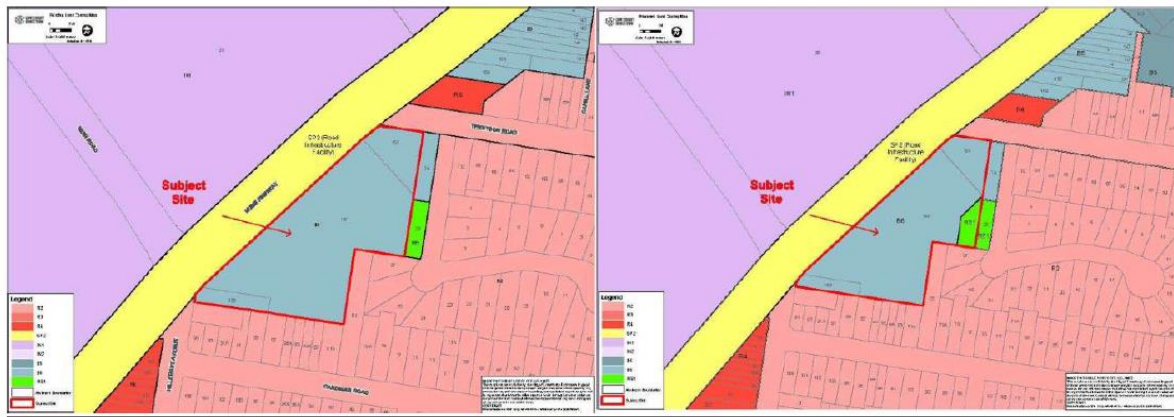
SITE HISTORY

The existing development at the site comprises the 'Palms Hotel' which comprises a hotel, restaurants and storage. The planning proposal (PP-2021-5181) amended the Canterbury Bankstown LEP (formerly the Bankstown Local Environmental Plan 2015) to facilitate a mixed-use development at 165-185 Hume Highway, Greenacre by rezoning part of the site, increasing the maximum heights of buildings and floor space ratios (FSR) and introducing a non-residential floor space requirement. The Planning Proposal was determined on 10 September 2021 and published on 26 July 2023. Further information regarding the Planning Proposal can be found at <https://www.planningportal.nsw.gov.au/ppr/lep-decision/165-185-hume-highway-greenacre-amendments-fsr-building-heights-and-rezoning-land>.

Details relating to the Planning Proposal are as follows:

| Control | Current | Proposed |
|---|------------------------|--|
| Zone | B6 Enterprise Corridor | Part B6 Enterprise Corridor and part RE1 Public Recreation |
| Maximum height of the building | Part 11m and part 14m | Part 11m, part 14, part 17m and part 20m |
| Floor space ratio (FSR) | 1:1 | Part 1.3:1 and part 1:1 |
| Minimum non-residential FSR requirement | N/A | 0.3:1 (to apply to the 1.3:1 FSR portion of the site) |
| Number of dwellings | 0 | 127 |
| Number of jobs | Not specified | Approximately 79 full-time equivalent additional jobs |

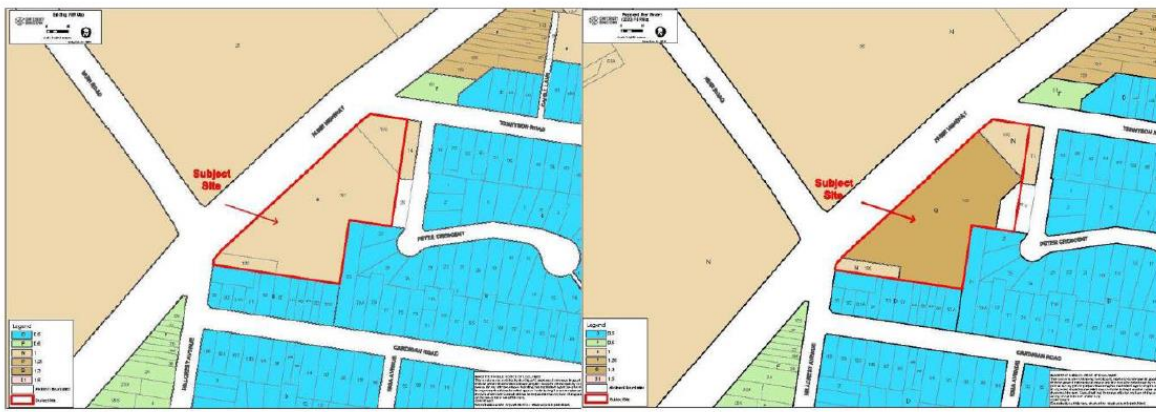
Zoning change



Height of Buildings change



FSR change



The planning proposal was supported by an Urban Design Report prepared by Squillace in September 2021. It is also noted that subsequent work was undertaken through a Council commissioned peer review undertaken by Architectus which has informed revisions to setbacks and the structure plan contained in the site-specific DCP. The concept scheme envisaged that the development at the site may comprise four buildings to be constructed at 167 Hume Highway including:

- 2 x 3 storey buildings at the rear of the site;
- A 5 storey building fronting Hume Highway in the south eastern corner of the site; and
- A 6 storey building fronting Hume Highway in the north eastern corner of the site.

LAND AND ENVIRONMENT COURT

The applicant has lodged an appeal with the Land and Environment Court on 12 December 2023, under the deemed refusal provisions, in accordance with Section 8.11 of the *Environmental Planning and Assessment Act, 1979*. A Statement of Facts and Contentions was filed with the Land and Environment Court on 6 February 2024.

STATUTORY CONSIDERATIONS

SECTION 4.15 ASSESSMENT

When determining this application, the relevant matters listed in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* must be considered. In this regard, the following environmental planning instruments, draft environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

- (a) State Environmental Planning Policy (Planning Systems) 2021
- (b) State Environmental Planning Policy (Sustainable Buildings) 2022
- (c) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- (d) State Environmental Planning Policy (Resilience and Hazards) 2021;
- (e) State Environmental Planning Policy (Industry and Employment) 2021;
- (f) State Environmental Planning Policy (Transport and Infrastructure) 2021;
- (g) State Environmental Planning Policy (Housing) 2021;
- (h) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development;
- (i) Canterbury Bankstown Local Environmental Plan 2023;
- (j) Canterbury Bankstown Development Control Plan 2023.

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

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

Clause 2.19(1) of Part 2.4 of SEPP (Planning Systems) 2021 reads as follows;

Development specified in Schedule 6 is declared to be regionally significant development for the purposes of the Act.

Schedule 6 of SEPP (Planning Systems) 2021, in part, reads;

2 General development over \$30 million

Development that has a capital investment value of more than \$30 million.

In the event that the CIV of Stage 1 of the development exceeds \$30 million, the development is defined as being a 'regionally significant development' hence the Sydney South Planning Panel are the determining authority. The application is accordingly referred to the Panel for determination.

Council Briefing with the Sydney South Planning Panel

Council attended an Assessment Briefing Meeting with the Sydney South Planning Panel on 19 December 2023 in relation to this development. The Key Issues discussed at the Briefing were recorded as follows;

- *The planning proposal included other adjoining land. However, these are not included in the site specific DCP controls or the DA.*
- *The DA appears to depart from the Site Specific DCP's Indicative Structure Plan and other controls. In particular, the area identified for communal open space/one storey commercial is largely occupied by residential built form and the clear pedestrian connection between Hume Highway, through the site, to Peter Reserve is obstructed by the sunken driveway and Building D.*
- *Urban Design Review Panel (DRP) does not support the Proposal in its current form. Its concerns are articulated in its Minutes and summarized in Council's Briefing Note. The applicant indicated that it had not yet considered its response to the DRPs comments but did not agree with or propose any amendments at this stage. In particular, the Panel notes:*
 - *no sense of address/identity to access the residential buildings for pedestrians or visiting vehicles.*
 - *dominance of vehicle ramps which obstruct easy pedestrian access through the site and to the residential buildings. The basement ramps are open, which the applicant indicated was required due to the clearance for trucks, especially waste vehicles. Covering the ramps should be investigated to provide more open space and connection.*
 - *the circulation in the basement carparks for both pedestrians, cars and trucks is confusing and appears to result in conflicts.*
 - *the ground floor commercial in Building B could be split to provide a central residential lobby to improve pedestrian access. The applicant indicated Building B was designed to maximise retail opportunities.*
 - *Compliance with the ADG, particularly demonstrating building separation, solar access and ventilation.*
 - *The relationship of built form to adjoining properties and the Reserve.*
- *The development ranges from 3 to 5 stories and is to be staged with the existing pub retained and all other buildings demolished. The pub will then be demolished after building A is constructed. Council require further information to demonstrate how the operation will be managed during construction.*
- *Council does not support the height variation and questions the FSR calculations.*
- *Due to the appeal, Council does will not issue an RFI. The SOFAC is required to be filed in late January, which will address the contentions and any further information required.*
- *As the appeal is a deemed refusal, the Panel will determine the DA based on the current information.*

The architectural plans (and the supporting documentation) the subject of this assessment report, remain the same as those plans and documents that were lodged with the development application and subsequently presented to the Panel on 20 November 2023 (at the Kick-Off Briefing) and 19 December 2023 (at the Council Briefing).

- ***State Environmental Planning Policy (Sustainable Buildings) 2022***

In accordance with SEPP (Sustainable Buildings) 2022, a BASIX Certificate accompanied the development application. The Certificate makes a number of energy / resource commitments relating to water, energy and thermal comfort. The submitted certificate references / details incorrect roof area, common area lawn and common area garden.

The submitted Statement of Environmental Effects refers to State Environmental Planning Policy (BASIX) 2004 and therefore is outdated given the timing of the lodgement of this application and will require a new BASIX certificate given the BASIX standards have increased with the new SEPP.

Given the above, the proposal is not accompanied by an accurate BASIX certificate which considers the development proposal.

- ***State Environmental Planning Policy (Resilience and Hazards) 2021***

Clause 4.6(1) of Chapter 4 of SEPP (Resilience and Hazards) 2021 requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

Accompanying the development application was a Detailed Site Investigation prepared by Aargus Pty Ltd (Mark Kelly – Environmental Manager), Document No. ES8338, Revision No. 0, Dated 9 September 2021. Council's Environmental Health Officer has reviewed this document and concluded that the land is suitable for the proposed development subject to conditions.

- ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

Division 5 Electricity transmission or distribution - Subdivision 2 Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

The development was referred to Ausgrid having regard to the provisions contained in Clause 2.48 of SEPP (Transport and Infrastructure) 2021.

Council is in receipt of correspondence from Ausgrid confirming that they have no objection to the development proceeding subject to the imposition of a number of conditions of consent.

Division 17 Roads and Traffic - Subdivision 2 Development in or adjacent to road corridors and road reservations

Clause 2.119 Development with frontage to classified road

The development qualifies as 'development with frontage to classified road' given it's frontage to Hume Highway, hence the application was referred to Transport for NSW (TfNSW) for comment / concurrence.

Clause 2.122 Traffic-generating development

The development qualifies as 'traffic generating development' having regard to Clause 2.122 and Schedule 3 of the SEPP, hence the application was referred to Transport for NSW (TfNSW) for comment / concurrence.

TfNSW have advised;

Reference is made to Council's correspondence, concerning the abovementioned development application which was referred to Transport for NSW (TfNSW) for concurrence under section 138 of the Roads Act 1993 and clause 2.119 and 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. TfNSW has reviewed the additional information provided and would provide concurrence to the proposed vehicular crossings and associated civil works on Hume Highway under section 138 of the Roads Act 1993, subject to Council's approval and the following requirements (conditions of consent) being included in the development consent.

- **State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development / State Environmental Planning Policy (Housing) 2021**

SEPP 65 aims to improve the design quality of residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building. The development must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least 3 or more storeys and contain at least 4 or more dwellings.

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing 'good design'. Part 3, Division 1, Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses the design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the ADG have been achieved.

As required by the Regulation, a Design Verification Statement, prepared by a registered architect, accompanied the development application.

The proposal has been considered against the various provisions of the Apartment Design Guide in accordance with Clause 28(2)(c) of SEPP 65, with the following non-compliances identified:

1. The proposal is inconsistent with *Design Quality Principle 1: Context and neighbourhood character* because it does not appropriately respond and contribute to the context and desired future character of the area, as expressed in the relevant provisions of the CBLEP 2023 and the CBDPC 2023.
2. The proposal is inconsistent with *Design Quality Principle 2: Built form and scale* as it does not achieve a scale and form appropriate to the existing or desired future character of the street or the surrounding buildings.
3. The proposal is inconsistent with *Design Quality Principle 5: Landscaping*, as it does not provide a functional, practical and user friendly communal open space, consistent with the Objectives and Design Criteria within 3D-1 of the ADG.
4. The proposal is inconsistent with *Design Quality Principle 6: Amenity*, because the development does not achieve an adequate level of amenity for the future residents as referenced by the numerous departures to the provisions with the ADG.
5. The proposal is inconsistent with *Design Quality Principle 8: Housing Diversity and Social Interaction*, because the proposal does not provide 'good design' that includes sufficient types of communal spaces for a broad range of people and opportunities for social interaction among residents.
6. The proposal is inconsistent with *Design Quality Principle 9: Aesthetics*, because the building fails to provide a built form of good proportions and balanced composition of elements and is of a bulk, scale and appearance that is inconsistent with the desired future streetscape character.
7. The proposal fails to satisfy Objective 3B-1 of the ADG as the proposal does not provide building types and building layouts that appropriately respond to the site while optimising solar access within the development. The proposal, in accordance with the design advice provided by the Canterbury Bankstown Urban Design Review Panel, results in numerous non-compliances and poor amenity outcomes as a direct result of the building types and layouts chosen, which are inconsistent with the indicative structure plan, envisaged as part of the Planning Proposal and Canterbury Bankstown site specific development control plan. The proposed five building layout doesn't maximise communal open space, and the provided communal open space does not achieve sufficient solar access (within the development) as required by the ADG therefore resulting in poor amenity for future residents.
8. The proposal fails to satisfy Objective 3B-2 of the ADG as the proposal does not minimise overshadowing to neighbouring properties during mid-winter. The submitted shadow diagrams lack detail in terms of clearly identifying and quantifying exact hours of direct sunlight achieved to each individual adjoining dwelling. The shadow diagrams also do not identify areas of private open space and specific living areas.
9. The proposal does not provide an appropriate transition between the private and public domain in accordance with Objective 3C-1 of the ADG. Building C, facing Peter Reserve (as proposed), is elevated above the reserve which creates a distinct blank wall that inhibits permeability between the public and private domain and is therefore inconsistent with the design guidance.

10. The proposal fails to enhance the amenity of the public domain in accordance with Objective 3C-2 of the ADG. The submitted plans show:

- i. Substations above ground and not within basement car parks.
- ii. The design does not positively address the interface with the adjoining Peter Reserve with the use of blank walls.
- iii. Areas of deep soil area are encompassed by a stormwater easement and basement parking / servicing.
- iv. The basement parking is, in part, partially above ground level.

11. The proposal fails to satisfy the Objective and Design Criteria of 3D-1 of the ADG as less than 25% of the site area is provided as communal open space. The apartment design guide states (amongst other things):

The function of open space is to provide amenity in the form of:

- *landscape character and design*
- *opportunities for group and individual recreation and activities*
- *opportunities for social interaction*
- *environmental and water cycle management*
- *opportunities to modify microclimate*
- *amenity and outlook for residents.*

The areas shown as communal open space function predominantly as thoroughfares which discourage residents from staying in that space for group and individual recreation and activities as well as social interactions. In addition, the spaces are predominantly in shadow, creating a dark space which provides a poor amenity for residents.

The design guidance for Objective 3D-1 of the ADG also states that communal open space should be *consolidated into a well designed, easily identified and usable area, should have a minimum dimension of 3m and larger developments should consider greater dimensions and should be co-located with deep soil areas.* The proposed communal open space is not consolidated into an easily identified usable area given it is a fragmented design and functions predominantly as a throughfare / accessway for rear buildings. The communal open space does not provide the minimum 3m dimension and is largely not co-located with the provided deep soil areas. Overall, the communal open space does not function as intended by the ADG and results in poor amenity for residents.

12. The proposal fails to provide communal open space that is designed for a range of activities in accordance with Objective and Design Criteria 3D-2 of the ADG.

13. The proposal fails to provide communal open space that is designed to maximise safety given the space will be in shadow (therefore not well lit) and is not a space that is safe for children and young people given its disproportionate and fragmented layout which inhibits supervision in accordance with Objective and Design Criteria 3D-3 of the ADG.

14. The proposal fails to meet the Objective and Design Criteria of 3E-1 of the ADG as the required deep soil zones have not been provided. The ADG refers to the following:

Deep soil zones are areas of soil not covered by buildings or structures within a development. They exclude basement car parks, services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas.

Areas included in the deep soil area calculation include services such as the stormwater easement, trenching, air supply vents for the basement and impervious surfaces.

15. The proposal fails to comply with the minimum separation distances to neighbouring sites in accordance with Objective 3F-1 of the ADG. The proposal fails to provide the minimum separation distances to the side and rear boundaries.

16. The proposed building entries and pedestrian access are considered a poor design outcome as they don't provide direct access, force pedestrians to travel a longer distance and are not clearly identifiable given their 'tunnel' function, hence fail to satisfy Objective and Design Criteria 3G-1 and 3G-2 of the ADG.

17. The proposal fails to comply with the requirements of Objective 3H-1 of the ADG. The proposal incorporates large scale open driveways which fragment the site and create a 'canyon' effect.

18. The proposal fails to accommodate arrangements for other modes of transport such as motorbike or sufficient bicycle parking in accordance with Objective 3J-2 of the ADG.

19. The proposal fails to provide supporting facilities within the car parks such as specific storage areas for all apartments and car wash bays in accordance with Objective 3J-3 of the ADG. In addition, the car park is not safe in that it doesn't provide designated walking areas for pedestrians that are clearly line marked.

20. The proposal fails to minimise visual impacts of underground car parks in accordance with Objective 3J-4 of the ADG. The proposal incorporates a car park that exceeds a height projecting more than 1m above ground level. The proposed car park layout is not well organised and does not use a logical, efficient structural grid.

21. The proposal fails to comply with the requirements of Objective 4A-1 in optimising the number of apartments receiving sunlight to living rooms. Council's assessment concluded that the proposal doesn't meet the minimum design criteria specified with some apartments not receiving the minimum 2 hours of sunlight (as identified by the applicant) and some apartments that receive no direct sunlight (that the applicant identifies as receiving direct sunlight).

22. The proposal fails to provide at least 60% of apartments that are naturally cross ventilated in accordance with Objective and Design Criteria 4B-3 of the ADG.

23. The proposal fails to provide ground level apartments with a minimum private open space area of 15m² in accordance with Objective 4E-1 of the ADG. Building E includes 'terraces' which function as ground floor private open space, rather than a balcony and therefore is required to be at least 15m² in area.
24. Given the size of the development, Design Guidance associated with Objective 4F-2 encourages community rooms. The proposal fails to provide a community room and therefore fails the requirements of this Objective and Design Guidance.
25. The proposal fails to meet the Objective and Design Criteria for 4G-1 of the ADG regarding adequate and well-designed storage, including at least 50% to be located within the apartments.
26. The proposal fails to provide additional storage allocated to each apartment in accordance with Objective 4G-2 of the ADG.
27. The proposal fails to integrate building services within the overall building façade and fails to provide a building façade that provides visual interest in respecting the character of the area in accordance with Objective 4M-1 of the ADG.
28. The proposal fails to provide a roof design that is integrated into the building and responds positively to the street in accordance with Objective 4N-1 of the ADG. Service elements such as lift overruns are not integrated into the roof design therefore not complementing the building's presentation.
29. The landscape plan fails to provide appropriate plantings and an overall landscape design which is viable and sustainable for the residents in accordance with Objective 4O-1 of the ADG.
30. The proposal fails to provide an acceptable level of amenity in accordance with Objective 4S-2 of the ADG. Onsite residential car parking is accessed via commercial parking areas and safe pedestrian routes are not provided.
31. The proposal fails to provide waste storage facilities that are designed to minimise impacts and provide convenient and accessible locations for various waste service collectors in accordance with Objective 4W of the ADG.

Given the above, the proposal fails to address the requirements of the Apartment Design Guide in accordance with Clause 28(2)(c) of SEPP 65. The apartment design guide aims to deliver better quality design for buildings, improve liveability, deliver sustainability, and improve the relationship of apartments to the public domain. The above non-compliances prove the proposal provides a development of a poor design standard that facilitates poor amenity and a poor overall public domain outcome.

- ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

The provisions contained within State Environmental Planning Policy (Biodiversity and Conservation) 2021 apply to the development in so far as the proposal seeks the removal of vegetation from the site.

Relevantly Part 2.2 Clause 2.6(1) and Part 2.3 Clause 2.10 of SEPP (Biodiversity and Conservation) 2021 reads as follows;

2.6 Clearing that requires permit or approval

(1) A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part.

2.10 Council may issue permit for clearing of vegetation

(1) A council may issue a permit to a landholder to clear vegetation to which this Part applies in any non-rural area of the State.

(2) A permit cannot be granted to clear native vegetation in any non-rural area of the State that exceeds the biodiversity offsets scheme threshold.

(3) A permit under this Part cannot allow the clearing of vegetation—

(a) that is or forms part of a heritage item or that is within a heritage conservation area, or

(b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,

unless the council is satisfied that the proposed activity—

(c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and

(d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area

(4) A permit may be granted under this Part subject to any conditions specified in the permit.

Council's Landscape Architect reviewed the proposal and the submitted landscape plans. While no objections were raised to the removal of existing on-site vegetation, the proposed re-plantings and the landscape plans were not supported. Council's Landscape Architect seeks the submission of a revised landscape plan which, amongst other things, ensures compliance is achieved with the deep soil provisions contained in Objective 3E-1 of SEPP 65 (including satisfying minimum deep soil requirements, soil depths and volumes), Objective 3D-1 of SEPP 65 (relating to the communal open space) and the use of suitable tree planting and landscaping selections.

• **State Environmental Planning Policy (Industry and Employment) 2021**

The proposal incorporates signage that does not satisfy the assessment criteria specified in Schedule 5 as required by Section 3.6 of SEPP Industry and Employment 2021. Specifically:

- i. The proposed pylon sign presents an unacceptable scale and therefore fails to satisfy the 'Site and Building' requirements of the Schedule given the maximum area requirements as dictated by the Canterbury Bankstown Development Control Plan 2023 in achieving consistency for pylon signs for the Local Government Area.

- ii. The proposed pylon sign protrudes above the first floor of Building B and is located within an area which should be designated for mature tree canopies and vegetation buffer, which is contrary to the 'Streetscape, setting or landscape' requirements of the Schedule.

- **Canterbury Bankstown Local Environmental Plan 2023**

The site is zoned part B6 Enterprise Corridor and RE1 Public Recreation under the Canterbury Bankstown Local Environmental Plan 2023 (the LEP).

Clause 2.3(2) of the LEP states that '*the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within that zone*'.

The objectives for the B6 Enterprise Corridor zone are as follows:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*
- *To support urban renewal and a pattern of land use and density that reflects the existing and future capacity of the transport network.*
- *To promote a high standard of urban design and local amenity.*

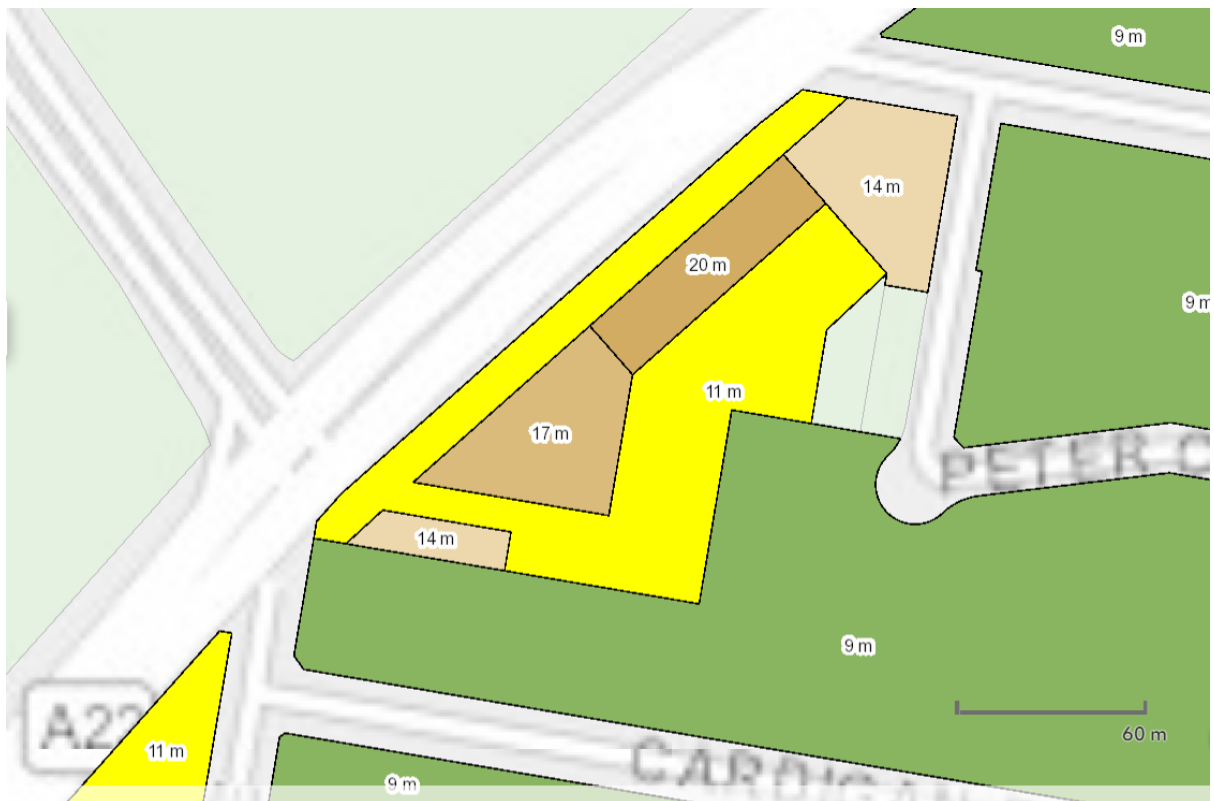
The objectives for the RE1 Public Recreation zone are as follows;

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To promote a high standard of urban design and local amenity.*

The following provides an assessment of the development application against the key controls and clauses in the Canterbury Bankstown Local Environmental Plan 2023.

1. THE PROPOSAL FAILS TO COMPLY WITH AIMS OF THE PLAN AS SET OUT IN SECTION 1.2 OF THE CBLEP 2023.
 - a) The proposal does not manage growth in a way that contributes to the sustainability of Canterbury-Bankstown in recognising the needs and aspirations of the community.
 - b) The proposal fails to provide development opportunities that are compatible with the prevailing suburban character and amenity of the adjoining residential areas.
 - c) The proposal fails to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety.
 - d) The proposal fails to enhance the quality of life and the social well-being and amenity of the community.
2. THE PROPOSAL FAILS TO COMPLY WITH THE ZONE OBJECTIVES AS SET OUT IN SECTION 2.3 OF THE CBLEP 2023.

- a) The proposal does not promote a high standard of urban design and local amenity, nor does it support urban renewal / density that reflects the existing and future capacity of the transport network as envisaged by the site specific development control plan and the relevant Design Criteria and Design Guidance as contained in the Apartment Design Guide.
3. THE PROPOSAL FAILS TO COMPLY WITH MAXIMUM ALLOWABLE HEIGHT OF BUILDINGS AS SET OUT IN SECTION 4.3 OF THE CBLEP 2023.
- a) The proposal is inconsistent with the objectives of the standard as it does not ensure that the height of the development is compatible with the character, amenity and landform for the area in which the development is located and does not provide appropriate height transitions between development, particularly at zone boundaries.



Height of Buildings Map (CBLEP 2023)

- b) The submitted plans detail a mixed use development that exceeds the maximum allowable building height of 17m for Building A and 20m for Building B.
4. THE PROPOSAL FAILS TO PROVIDE AN ADEQUATE STATEMENT IN REGARDS TO 'EXCEPTIONS TO DEVELOPMENT STANDARDS' AS SET OUT IN SECTION 4.6 OF THE CBLEP 2023.
- a) The maximum building height is exceeded in the central part of the roof level for both Building A and Building B where the proposed services and plant structure will be located. The extent of the variation is 0.5m (2.94%) for Building A and 2.9m (14.5%) for Building B.
 - b) It is not agreed (as mentioned in the submitted Clause 4.6 request) that the proposed variation is both 'unreasonable or unnecessary' and that there are sufficient

'environmental planning grounds' to justify contravening the development standard given:

- i. The overshadowing analysis submitted does result in additional overshadowing to future residents within the site. Given the proposal already fails to meet the minimum requirements of the Apartment Design Guide with regard to solar access, the additional height is therefore unreasonable and unnecessary.
 - ii. Both Building A and Building B could be both amended to reflect reduced floor to floor levels (particularly at the ground levels) and the setting of the finished ground level could also be reduced, in assisting with achieving compliance with the maximum height of the building.
5. THE PROPOSAL FAILS TO COMPLY WITH THE FLOOD PLANNING REQUIREMENTS AS SET OUT IN SECTION 5.21 OF THE CBLEP 2023.
 - a) The proposal does not allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change.
 - b) The proposal does not avoid adverse cumulative impacts on flood behaviour and the environment.
6. THE PROPOSAL FAILS TO COMPLY WITH THE EARTHWORKS REQUIREMENTS AS SET OUT IN SECTION 6.2 OF THE CBLEP 2023.
 - a) Council cannot be satisfied that the earthworks for the development will not have a detrimental impact on the subject site and the land surrounding given the absence of details being provided addressing this requirement of the CBLEP 2023 in the submitted documentation.
7. THE PROPOSAL FAILS TO COMPLY WITH THE STORMWATER MANAGEMENT AND WATER SENSITIVE URBAN DESIGN REQUIREMENTS AS SET OUT IN SECTION 6.3 OF THE CBLEP 2023.
 - a) The proposal does not avoid or minimise the adverse impacts of urban stormwater on the subject site, adjoining properties and ground water systems.
8. THE PROPOSAL FAILS TO COMPLY WITH THE ESSENTIAL SERVICES REQUIREMENTS AS SET OUT IN SECTION 6.9 OF THE CBLEP 2023.
 - a) Development consent must not be granted as the proposal does not provide adequate arrangements for the following essential services:
 - i. Stormwater drainage, and
 - ii. Waste Management.
9. THE PROPOSAL FAILS TO COMPLY WITH THE URBAN DESIGN REQUIREMENTS AS SET OUT IN SECTION 6.15 OF THE CBLEP 2023.
 - a) The proposal does not exhibit high quality architectural, urban and landscape design.
 - b) Clause 6.15(3) and (4) of CBLEP 2023 is provided below:

(3) Development consent must not be granted to development to which this clause applies unless the consent authority is satisfied the development exhibits design excellence.

(4) In deciding whether the development exhibits design excellence, the consent authority must consider the following—

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

(c) whether the development detrimentally impacts on view corridors,

(d) how the development addresses the following matters—

(i) heritage issues,

(ii) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,

(iii) bulk, massing and modulation of buildings,

(iv) street frontage heights,

(v) environmental impacts, including sustainable design, overshadowing, wind and reflectivity,

(vi) the achievement of the principles of ecologically sustainable development,

(vii) pedestrian, cycle, vehicular and service access, circulation and requirements,

(viii) the impact on, and any proposed improvements to, the public domain,

(ix) the integration of utilities, building services and waste management infrastructure in the site layout and building design,

(e) whether the development integrates high quality landscape design in the site layout and building design.

- c) The Canterbury Bankstown Urban Design Review Panel reviewed this proposal on 9 November 2023. The Panel consisted of Commissioner Matthew Pullinger, Stephen Cox and Adam Haddow (all professionals in this given field).
- d) It is clearly articulated in the minutes / advice that the proposal does not offer a high standard of architectural design, building form / general arrangement, internal amenity and materials.
- e) It is also clear that the five building form and external appearance of the development will not improve the quality and amenity of the private or public domain. The proposal is clearly fragmented and doesn't consider the end user experience / overall amenity of the future residents.

- f) The development does not offer a positive relationship to both the adjoining sites and itself (particularly the disparity in amenity between Buildings A/B and rear Buildings C/D/E) with respect to separation, setbacks, amenity and urban form.
- g) The bulk, massing and modulation of buildings is unacceptable and does not promote basic amenity outcomes such as solar access, communal open space and cross ventilation. The indicative structure plan, carefully planned through the Planning Proposal and CBDPC did not have a vision for five buildings on this site which was also agreed by the Urban Design Review Panel. The bulk, massing and modulation of buildings on this site is fundamentally flawed and causes significant flow on non-compliances across all levels of legislation as detailed in this report.
- h) The proposal presents an unacceptable level of environmental impact associated with overshadowing and does not facilitate positive pedestrian, cycle, vehicular or service access movements.
- i) The proposal does not integrate utilities, building services and waste management infrastructure in the site layout and building design.

Section 4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

No proposed instrument applies to this application.

Section 4.15(1)(a)(iii) Any development control plan

- **Canterbury Bankstown Development Control Plan 2023**

An assessment against the relevant parts of the Canterbury Bankstown Development Control Plan 2023 identified the following non-compliances:

- 1. The proposal fails to comply with the requirements of chapter 3.6 – Signs of the CBDPC 2023.**
 - a) The proposed pylon sign is inconsistent with the prescribed envelope of either 4m or 9m in height and a maximum of 2m in width in accordance with Clause 2.5(c) of Chapter 3.6.
 - b) Further information is required with regard to the detail of the sign's illumination and whether a specific illuminated screen would be proposed as part of any of the signage.
- 2. The proposal fails to comply with the requirements of chapter 5.1 – Residential Accommodation (former Bankstown LGA) of the CBDPC 2023.**
 - a) The development fails to integrate building services, utilities and substations into the buildings (away from public view) in accordance with Section 14.
- 3. The proposal fails to comply with the requirements of chapter 8.1 – General requirements (employment lands) of the CBDPC 2023.**

- a) The proposed development is inconsistent with the objectives of Chapter 8.1 of the CBDP 2023 as follows:
- i. The proposal does not provide a distinctive and high quality environment for employment and economic activities.
 - ii. The proposal does not achieve good design in terms of building form, bulk, architectural treatment, visual amenity and landscape.
 - iii. The proposed building form and design does not provide appropriate amenity for people who work, live and visit the site.
 - iv. The proposal is not compatible with the prevailing suburban character and amenity of neighbouring residential areas.
 - v. The proposal does not ensure façade designs and building footprints integrate into the overall building form.
 - vi. The proposal does not provide a modern and interesting roof skyline.
 - vii. The proposal does not integrate well with the public domain and fails to promote active pedestrian orientated environment.
 - viii. The proposal fails to provide adequate deep soil zones in managing urban heat and water and allowing for healthy plant and tree growth.
 - ix. The proposal fails to locate substations underground or integrated into the building design, concealed from public view.

4. The proposal fails to comply with the requirements of chapter 8.3 – Hume Highway Enterprise Corridor (employment lands) of the CBDP 2023.

- a) Clause 6.3 of the CBDP 2023 identifies and describes the desired character for the site. It makes note of the following key points:
- i. *Enabling a high-quality living environment ... to create a 'sense of community' for future residents and workers.* The proposal is fragmented and dysfunctional, not encouraging a sense of community, nor a high-quality living environment.
 - ii. *Well-designed mixed-use buildings with a focus on pedestrian amenity will enhance the vitality and attractiveness of the site in this highway location.* The proposal prioritises pedestrians last in the order of importance, encouraging them to walk around the commercial tenancy associated with Building B through long, isolated walkways which arrive them at a largely shadowed area of communal open space to get them to their residence. There is no journey or reason to stop and enjoy the space given the poor amenity created. The proposed driveways act as barriers in the form of a canyon which interrupt pedestrian access through the site which was mentioned by both the UDR Panel and the Sydney South Planning Panel.
 - iii. *New development will exhibit design excellence, provide appropriate articulation and have a high standard of architectural design to add visual interest.* The proposal does not exhibit design excellence for the reasons provided by both the Canterbury Bankstown Urban Design Review Panel and through the various non-compliances listed in this report.
 - iv. *The site's interface to the Hume Highway will include new landscaping to provide a green visual buffer for future occupants of the site and to improve the streetscape.* The proposal fails to provide a green visual buffer both

envisaged by this character statement and as prescribed numerically in this development control plan for the front setback.

The applicant states the following regarding the above:

It is not reasonable to provide 6m of landscaping and encouraging activation at the same time. The proposed setback arrangement is considered appropriate given the built form objectives are satisfied, the proposal provides a smooth entrance transition from the public domain to the commercial tenancies and no additional environmental impacts are created.

Council strongly disagrees with this statement given the ability to provide the landscaped setback is definitely achievable and was always specifically envisaged through this development control plan (formulated through the Planning Proposal). The Hume Highway corridor is a gateway for the City of Canterbury Bankstown, and the landscaped setback is a high priority in achieving this vision. Landscaped setbacks already form a significant part of this corridor and a departure from this standard is considered unacceptable. The ability to provide both the landscaped setback and a 'smooth entrance transition' is definitely still achievable.

b) Section 6.4 provide the Key Design principles and indicative structure plan which are provided below:

| Key Design Principle | Council's comment |
|---|---|
| <i>(a) Create an active highway related commercial frontage: Provide floor plates suitable for commercial uses mandated by the LEP, that are consistent with highway related commercial purposes.</i> | The proposal provides for two commercial associated uses across the ground floors of Buildings A and B. This design principle requires an 'active' commercial frontage, which is considered to be improved by relocating substations and services underground (shown within the front setback, creating a uninviting / fragmented / inactive frontage). |
| <i>(b) Improve permeability and access to the site: Improve site permeability and access for the residents and workers of the subject site by providing appropriate building layout and good design to allow easy access, effective orientation and clear wayfinding.</i> | The proposal provides a fragmented and circuitous five building layout, inconsistent with the indicative structure plan and one that puts the user experience last in the order of priorities. Residents are forced to travel 140m from the entry off the Hume Highway at Building B to the lift Lobby of Building E (as an example). This journey circumnavigates the 'canyon' like internal through driveway in the middle of the site (with it's associated fumes and vehicular sounds) seven turns and an isolated tunnel through Building B, again as an example. In addition to the above, the circuitous, fragmented five building layout does not result in an appropriate design that allows for easy access from Hume Highway to Peter Reserve given the multiple direction and level changes, and significant distance rather than a more direct way of travel. |

| | |
|---|---|
| | Overall, the proposal does not provide an appropriate building layout and design that allows for easy access, effective orientation and clear way finding. |
| <i>(c) Provide a landscaped setback along Hume Highway: Provide a landscaped buffer zone to Hume Highway in order to enhance the 'Remembrance Driveway' landscape corridor and to improve the amenity of development.</i> | The proposal does not provide the minimum landscape front setback as required by this Development Control Plan in achieving the vision and objective of this Key Design Principle for a landscape buffer zone to the Hume Highway in enhancing the 'Remembrance Driveway' landscape corridor. |
| <i>(d) Provide high quality communal open space: Create new landscaped and useable communal open spaces preferably on the ground floor to deliver a high level of amenity for all users. Open space areas above the ground plane may be permitted where they do not result in adverse overlooking impacts, or solar conditions, to adjoining land zoned R2 Low Density, or Peter Reserve.</i> | The proposal provides inappropriate communal open spaces which function predominantly as thoroughfares which discourage residents from staying in that space for individual recreation and activities as well as social interactions. In addition, the spaces are predominantly in shadow, creating a dark space which provides poor amenity for residents. The proposal also does not connect internal communal open spaces to Peter Reserve given the multiple direction and level changes, and significant distance rather than a more direct way of travel. |
| <i>(e) Provide high quality built form: Position, separate and scale new buildings to provide an urban form that is responsive to neighbouring land uses, supports the desired future character of the precinct and maximises amenity within apartments and to open space areas.</i> | The proposal does not provide an urban form that is responsive to neighbouring land uses given the solar contentions raised in this report, nor is the development consistent with the desired future character of the precinct given it's disparity from the indicative structure plan for a four building development. Given the above, the proposal results in poor amenity for residents with particular reference to the lack of solar access, cross ventilation and unusable open space areas. |
| <i>(f) Minimise overlooking and overshadowing to adjoining land: Provide appropriate side and rear setbacks to the surrounding Zone R2 Low Density Residential land and Peter Reserve to provide an acceptable transition and to address issues such as visual privacy, amenity and solar access. The setbacks may include deep soil zones to allow mature tree planting</i> | The proposal is inconsistent with this key design principle as it doesn't provide appropriate side and rear setbacks with sufficient deep soil zones surrounding Zone R2 Low Density Residential land. The minimum setback and deep soil requirements are designed to provide an acceptable transition and to address issues such as visual privacy, amenity, and solar access. The provided deep soil zones that follow rear and side boundaries do not allow mature tree planting and dense tree canopy cover given their use as footpaths, servicing, and underground parking. |
| <i>(g) Address site topography and</i> | The proposal does not provide an architectural design |

| | |
|--|---|
| <p><i>flooding: Provide an architectural design that addresses the level change across the site (approximately 5m drop from Hume Highway to Peter Reserve) and the proposed maximum building heights. Flood risk management strategies are required to identify a safe evacuation route to a point above the PMF flooding extent and protect the basement parking or below ground structures that are located adjacent to the flood extents.</i></p> | <p>that addresses the level changes across the site and the proposed maximum building heights. The proposal provides a non-compliance with the maximum building height standard which is considered to be achievable of demonstrating compliance. In addition, the level changes across the site result in subterranean residential units with extremely poor amenity and areas of blank walls (particularly fronting Peter Reserve) and poor pedestrian connection to the Reserve.</p> |
| <p><i>(h) Provide good amenity for future occupiers: To provide appropriate acoustic design and treatments to mitigate acoustic issues arising from Hume Highway and to address indoor air quality for future developments.</i></p> | <p>The proposal is accompanied by an air quality and acoustic report prepared by suitably qualified experts. Whilst Council contends that the overall amenity of the site is poor for residents given the location and functionality of buildings and communal open space, it is recognised that appropriate acoustic and air quality design is provided.</p> |



Indicative Structure Plan (CBDP 2023)

- c) The proposal fails to satisfy Section 6.5 – Access and Movement of Chapter 8.3 of the CBDP 2023 as follows:
- i. The proposal does not provide clear and legible site access as required by Objective 1, nor does it ensure pedestrians and cyclists receive priority movement within and around the site as required by Objective 2.

The proposal provides a fragmented and circuitous five building layout, inconsistent with the indicative structure plan and one that puts the user experience last in the order of priorities.

Residents are forced to travel 140m from the entry of the Hume Highway at Building B to the lift Lobby of Building E (as an example). This journey circumnavigates the 'canyon' like internal through driveway in the middle of the site (with it's associated fumes and vehicular sounds) seven turns and an isolated tunnel through Building B, again as an example.

- i. The proposal doesn't provide separate vehicular access points for service vehicles from commercial and residential traffic as required by C4.
 - ii. The proposal incorporates underground parking which encroaches into deep soil areas within the building setbacks, contrary to the requirements of C7.
 - iii. The proposal does not provide adequate on site bicycle parking in accordance with C9.
 - iv. The proposal does not provide a separate loading dock for each individual building as required by C11.
- d) The proposal fails to satisfy Section 6.6 – Land Use and Site Layout of Chapter 8.3 of the CBDP 2023 as follows:
- i. The proposal fails to satisfy objective 3 as the development does not minimise overlooking and overshadowing impacts to neighbouring properties.
 - ii. The proposal doesn't appropriately manage site features such as topography, services, orientation and microclimate in accordance with Objective 4.
 - iii. The proposal fails to minimise potential conflicts between vehicle access routes and pedestrian access points in accordance with Objective 5.
 - iv. The proposal fails to ensure that the built form and landscaped areas contribute to the public domain and streetscape in accordance with Objective 6.
 - v. The proposal does not locate buildings and site landmarks in accordance with the indicative structure plan and key design principles. The indicative structure plan (shown in Figure 4) details a four building development with more centralised, larger, single area of communal open space and a clearer site through-way from the Hume Highway to Peter Reserve. The proposal is inconsistent with the desired vision of the site as mentioned, and therefore fails to comply with C1.
 - vi. The proposal fails to provide awnings along the ground floor of commercial uses in accordance with C3.
 - vii. The proposal doesn't minimise overlooking into the private open space of the existing residential properties to the south and west in accordance with C4.
- e) The proposal fails to satisfy Section 6.7 – Built Form of Chapter 8.3 of the CBDP 2023 as follows:
- i. The proposal doesn't minimise overshadowing impacts to the surrounding low density residential zone in accordance with Objective 1.
 - ii. The proposal doesn't facilitate medium density living that exhibits high amenity and design excellence in accordance with Objective 3.
 - iii. The proposal fails to comply with the maximum building height for the site as prescribed in the CBLEP 2023 in accordance with C3.

- iv. The proposed tavern function areas present a floor to floor height of less than 4.5m, therefore failing the requirement of 6.7.1, C4.
- v. The proposal fails to comply with the minimum setbacks in accordance with C1 of 6.7.2 (noting *Habitable spaces such as balconies are not permitted within the nominated setback below*). Namely:

| Site Boundary | Minimum Setback | Proposed | Compliance |
|--|--|--|----------------------|
| Front setback along Hume Highway | 6m for commercial use on ground floor. | 6m | Complies |
| | 12m for residential use for first, second and third floors with the DA achieving sufficient acoustic design treatments. | 7.6m | Fails |
| | 15m for residential use for fifth and sixth floors with the DA achieving sufficient acoustic design treatments | 12.2m | Fails |
| Side setback to 185 Hume Highway | 4m for commercial development on ground floor. 6m for all other uses up to and including four storeys, except for the following: <ul style="list-style-type: none"> - Any residential uses with windows from habitable rooms directly facing the boundary, which should be set back a minimum of a further 3m if proposed. If wing windows or similar design solution is used to maintain visual privacy the additional 3m does not need to be provided. - Any further setbacks required to ensure compliant solar access can be achieved to the neighbours. | 4m >6m | Complies Complies |
| Side setback to the rear of 87- 81A Cardigan Road | 9m on the basis that deep soil and buffer planting is provided to the boundary. | 9m is provided (but not entirely as deep soil) | Fails |
| Rear setback to 81 Cardigan Road | 9m on the basis that deep soil and buffer planting is provided to the boundary. | 9m is provided (but not entirely as deep soil) | Fails |
| Side setback to 27 Peter Crescent and the rear of 81 Cardigan Road | 9m on the basis that deep soil and buffer planting is provided to the boundary. | 9m is provided (but not entirely as deep soil) | Fails |
| Side setback to 165 Hume Highway | Nil setback for commercial use up to one storey in height. 3m for all other uses above this height. | 7.6m | Complies |
| Rear setback | 3m on the ground floor. | 3m | Complies |

| | | | |
|---------------------------|--|----|-------|
| to expanded Peter Reserve | 6m for the third floor to address overshadowing to the Reserve. Facade adjacent to Peter Reserve to be treated the same as a street facade. | 3m | Fails |
|---------------------------|--|----|-------|

f) The proposal fails to satisfy Section 6.8 – Architectural Diversity and Articulation of Chapter 8.3 of the CBDP 2023 as follows:

- i. The proposal fails to ensure the scale, modulation and façade articulation of development responds to its context in accordance with Objective 1.
- ii. The proposal fails to achieve architectural diversity and visual interest in accordance with Objective 2.
- iii. The proposal includes buildings which exceed 45m in length, failing the requirement of C1.

g) The proposal fails to satisfy Section 6.9 – Façade Design, streetscape activation and passive surveillance of Chapter 8.3 of the CBDP 2023 as follows:

- i. The proposal fails to provide high quality facade treatments that contribute positively to the streetscape character and the view from neighbouring properties in accordance with Objective 1.
- ii. The proposal fails to activate and meaningfully address streets and public places with articulated building frontages and openings that allow opportunities for passive surveillance in accordance with Objective 2.
- iii. The proposal fails to support pedestrian comfort and enjoyment with design elements that provide climate control and enable activity to occur in most weather conditions in accordance with Objective 3.
- iv. The proposal fails to ensure that the building design contributes design excellence to the public domain for the duration of the building life in accordance with Objective 6.
- v. The proposal fails to provide facade treatments of a high-quality visual outlook from adjacent residential neighbours, Hume Highway and Peter Reserve in accordance with C1.
- vi. The design of the street frontage fails to provide a positive street address in the form of entries and lobbies (in this case, lack thereof), particularly for Building B in accordance with C3(b).
- vii. The proposal fails to provide continuous awnings to the ground level frontage as required by C5.
- viii. The submitted Public Art strategy does not promote way finding, site history and public art to a sufficient standard as required by C8. The Art strategy locates art in areas of low foot traffic and specific artworks which have minimal reference to the Creative City Strategic Plan 2019-2029.

h) The proposal fails to satisfy Section 6.10 – Landscape and Public Domain of Chapter 8.3 of the CBDP 2023 as follows:

- i. The proposal fails to promote attractive settings for development and provide

- pleasant spaces for people to use in accordance with Objective 1.
 - ii. The proposal fails to provide landscaping that uses local native provenance plant species from the Cooks River/Castlereagh Ironbark Forest (rather than use non-local native or exotic species) to positively contribute to improving local biodiversity, the streetscape and amenity in accordance with Objective 2.
 - iii. The proposal fails to promote green corridors and streetscapes of a high visual quality that provide continual landscaping connections to open space in accordance with Objective 3.
 - iv. The proposal fails to establish a landscaped buffer between the site and Hume Highway in accordance with Objective 4.
 - v. The proposal fails to minimise and mitigate potential visual and privacy impacts on existing low density residential buildings in accordance with Objective 5.
 - vi. The proposal fails to provide the minimum 8m landscape buffer of mature tree canopy between the site and Hume Highway as required by C1.
 - vii. The provided deep soil zones are not functional given the footpaths, services and areas of basement that they intertwine with, therefore not aligning with the intent of C4.
- i) The proposal fails to satisfy Section 6.11 – Stormwater of Chapter 8.3 of the CBDPC 2023 as follows:
- i. The proposed realignment of the easement / stormwater infrastructure is inconsistent with Council’s objectives in C2.
- j) The proposal fails to satisfy Section 6.14 – Acoustic Privacy of Chapter 8.3 of the CBDPC 2023 as follows:
- i. The proposal fails to submit a Plan of Management which sets out appropriate security, management and mitigation measures to protect the amenity of residents within the site and those within the immediate locality in accordance with C5.
- k) The proposal fails to satisfy Section 6.15 – Rooftop solar features and lighting of Chapter 8.3 of the CBDPC 2023 as follows:
- i. The proposal fails to detail necessary access requirements for cleaning and maintenance to solar panels, other plant and equipment that may include solar water heater storage tanks, ventilators, wind generators, air conditioning units and satellite dishes and antennae as prescribed in C2.

Section 4.15(1)(a)(iia) Planning agreements

A planning agreement has been entered into under Section 7.4 of the *Environmental Planning and Assessment Act 1979*. Schedule 3 of the Planning Agreement requires the dedication of land to increase the size of Peter Reserve to be 600m². The submitted plan of subdivision shows the dedication to be 599.7m², contrary to the agreement.

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

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation 2021.

Section 4.15 (1) (b) – The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

- a) *Environmental impacts on the natural environment*
 - i. The proposal incorporates areas of communal open space and deep soil zones which were found to be unsatisfactory.
 - ii. The absence of a functional 9m wide deep soil zone along the sites rear and side boundaries, will have an adverse impact on the adjoining residential properties.
 - iii. In the absence of on-site detention, concern is raised with respect to the occurrence of increased flooding downstream.

- b) *Environmental impacts on the built environment*
 - i. The subject report identifies numerous departures sought to the applicable built form controls. These departures result in the development failing to respond to the context of the area that is existing, that is emerging and that is envisaged through the Planning Proposal and the subsequent site specific planning controls.

- c) *Social impacts on the locality*
 - i. The development provides for a variety of land uses that will, no doubt, serve the needs of the local community and those within the broader locality.
 - ii. However, the proposed uses, unless properly managed will result in detrimental social impacts to adjoining residential properties to the south, with an overall reduction in amenity.
 - iii. The environmental and built environment impacts discussed in this report have significant social impacts on the liveability of both this proposal and adjoining residential properties.

- d) *Economic impacts on the locality*
 - i. The development will provide numerous employment opportunities given the wide and varied land uses proposed in addition to the opportunities provided at the construction stage.

Section 4.15 (1) (c) The suitability of the site

The site is considered suitable for a development that complies with the site-specific controls that are contained within Chapter 8.3 of the Canterbury Bankstown Development Control Plan 2023 and where potential impacts have been well managed. These controls are not old nor outdated and reflect Council's, and the community's, vision for this site. The site is suitable for a development that fully complies with these controls, not a development that

seeks departures particularly where these departures are unable to be fully justified and where they provide for a reduced amenity for both the occupiers of the development and the adjoining land users.

Section 4.15 (1) (d) – Any submissions made in accordance with this Act or the Regulations

The application was advertised for a period of twenty-one (21) days from 1 June 2022 to 21 June 2022 in accordance with Council's Community Participation Plan. At the time of preparing this report, Council is not in receipt of any public submissions.

Section 4.15(1)(e) The public interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and development controls by the consent authority, ensuring that any adverse impacts on the surrounding area and environment are avoided. The departures identified, and the impacts specifically caused by these departures, are concerning for the following reason. The site specific development control plan came into existence with considerable consultation between the applicant, Council officers across various disciplines, state government agencies and the community so as to determine the most appropriate built form outcomes for this site. The documentation accompanying the application fails to address the indicative structure plan and identify any site constraints that would give rise to support the development where it fails to comply with the provisions contained in Chapter 8.3 of CBDPC 2023.

The departures are largely arrived at in response to poor site planning. As such, approval of this development would not be in the broader public interest.

CONCLUSION

The development application has been assessed having regard to the matters for consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. As the report has demonstrated, the proposal was found to have not satisfied the various layers of planning legislation that apply and provides for unacceptable environmental impacts on the immediate locality.

RECOMMENDATION

It is recommended that the application be refused for the reasons as outlined in this assessment report.