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| **COUNCIL ASSESSMENT REPORT**  SYDNEY SOUTH PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PPSSSH-177 – DA-951/2024 |
| PROPOSAL | Construction of a 2-storey and 4-storey residential flat building comprising 20 affordable housing units, basement parking for 9 vehicles, associated site works, landscaping, and lot consolidation.  This application, being for community infrastructure (affordable housing) and having a Capital Investment Value greater than $5 million, will be determined by the Sydney South Planning Panel on behalf of Council. |
| ADDRESS | Lot 1 & 2 DP 35610  175 – 177 Wellington Road, Sefton |
| APPLICANT | Homes NSW |
| OWNER | NSW Land and Housing Corporation |
| DA LODGEMENT DATE | 18 September 2024 |
| APPLICATION TYPE | Crown DA |
| REGIONALLY SIGNIFICANT CRITERIA | Clause 2.19(1) of Chapter 2 and Clause 4 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*  declares the proposal regionally significant development as:  *The Development is carried out by or on behalf of the Crown with an estimated development cost of more than $5 million*. |
| CIV | $13,055,656 (excluding GST) |
| CLAUSE 4.6 REQUESTS | Canterbury-Bankstown Local Environmental Plan 2023   * Clause 4.3 Height of Buildings * Clause 4.4 Floor Space Ratio |
| KEY SEPP/LEP | * State Environmental Planning Policy (Biodiversity and Conservation) 2021 * State Environmental Planning Policy (Housing) 2021 * State Environmental Planning Policy (Sustainable Buildings) 2022 * State Environmental Planning Policy (Planning Systems) 2021 * State Environmental Planning Policy (Resilience and Hazards) 2021 * State Environmental Planning Policy (Transport and Infrastructure) 2021 * Canterbury-Bankstown Local Environmental Plan 2023 * Canterbury-Bankstown Development Control Plan 2023 |
| TOTAL & UNIQUE SUBMISSIONS | One (1) submission |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | * Architectural Plans prepared by Shakeup Architecture * Stormwater Plans prepared by Danmore Consulting Engineers dated 09.01.2025 Revision E. * Landscape Plans prepared by Shakeup Architecture dated 16.01.2025 Revision F, D and A. * Statement of Environmental Effects prepared by Explore Planning Solutions dated 17.01.2025 Revision 3 * Clause 4.6 Variation Request Report prepared by Homes NSW dated January 2025. * Survey Plan prepared by YSCO Geomatics dated 12.06.2024 Version 3. * Site Compatibility Certificate issued 18.02.2022. * Impact Assessment Report prepared by STS Geotechnics dated 08.08.2024. * Design Verification Statement prepared by Shakeup Architecture dated 14.08.2024 Revision C. * Estimated Development Cost Report prepared by MBM dated 13.08.2024. * BCA Report prepared by Philip Chun Building Compliance dated 14.08.2024 Revision R03. * BASIX Certificate bearing certificate number 1750680M\_02 dated 20.08.2024. * Arboricultural Impact Assessment Report prepared by Redgum Horticultural dated 08.04.2024. * Acoustic Report prepared by Pulse White Noise Acoustics dated 07.06.2024 Version R1. * Access Report prepared by Purple Apple Access dated 12.08.2024 Revision 2. * Waste Management Plan dated 14.08.2024. * Traffic Impact Assessment prepared by Headway Traffic and Transport dated 13.08.2024 Revision A.02 and addendum response dated 17.12.2024. * Aboriginal Due Diligence Assessment dated 01.08.2024. |
| PREVIOUS BRIEFINGS | Council briefing (current Panel) 11 November 2024 |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) | NA |
| RECOMMENDATION | Approval |
| DRAFT CONDITIONS TO APPLICANT | Yes |
| SCHEDULED MEETING DATE | 24 March 2025 |
| PLAN VERSION | Various |
| PREPARED BY | Fiona Kordahi – Canterbury-Bankstown Council |
| DATE OF REPORT | 17 March 2025 |

**EXECUTIVE SUMMARY**

Development Application No. DA-951/2024 is referred to the Sydney South Planning Panel (‘the Panel’) for determination. The proposed development is ‘regionally significant development’, pursuant to Clause 2.19(1) of Chapter 2 and Clause 4 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, as the development is proposed by the Crown and has an estimated development cost of more than $5 million.

The proposal seeks consent for the construction of a 2-storey and 4-storey residential flat building development comprising a total of 20 affordable housing units on a vacant allotment, with basement parking for 9 vehicles, associated site works, landscaping, and lot consolidation.

The subject site is known as Lots 1 and 2 in DP 35610, No. 175-177 Wellington Road, Sefton (‘the site’) and comprises two (2) rectangular shaped allotments with a combined 31.59 metre road frontage to the north. The site is located between Hector Street to the west and Shaw Lane to the east and occupies an area of 1,446m². There are two existing driveways providing vehicle access points to the site and one street tree situated on the Council reserve. The site is currently vacant and only consists of a number of trees and vegetation.

The site is located in an area of transition from high density in the B2 Local Centre and R4 High Density Residential zones (situated to the east and west located approximately within 100 and 200 metres respectively of the site), to low and medium density residential development which immediately surrounds the site to the south, east and west. The high density development that exists to the east of the site in the B2 zone comprises predominantly three (3) to four (4) storey mixed use and residential flat buildings.

The site is located in the R3 Medium Density Residential zone pursuant to Clause 2.3 of the Canterbury-Bankstown Local Environmental Plan 2023 (‘LEP’). While residential flat buildings are not permissible in the R3 zone, the application is supported by a Site Compatibility Certificate issued by NSW Department of Planning and Environment dated 18 February 2022, under the provisions of Chapter 2, Part 2, Division 5, Clause 39(5) of State Environmental Planning Policy (Housing) 2021. The Site Compatibility Certificate allows the development of a residential flat building at the site subject to certain requirements and criteria, all of which have been met by the proposal.

DA-951/2024 has been assessed against the principal planning controls relevant to the proposal, which include the following:

* State Environmental Planning Policy (Biodiversity and Conservation) 2021;
* State Environmental Planning Policy (Sustainable Buildings) 2022;
* State Environmental Planning Policy (Housing) 2021;
* State Environmental Planning Policy (Planning Systems) 2021;
* State Environmental Planning Policy (Resilience and Hazards) 2021;
* State Environmental Planning Policy (Transport and Infrastructure) 2021;
* Canterbury-Bankstown Local Environmental Plan 2023;
* Canterbury-Bankstown Development Control Plan 2023.

The proposal is inconsistent with various provisions of the planning controls including:

* Permissibility of the development in the zone and failure to comply with the height and Floor Space Ratio (FSR) development standards under the Canterbury-Bankstown Local Environmental Plan 2023.
* Provisions of the Apartment Design Guide (ADG) including the location of the substation within the front setback (Part 3C); setbacks to the front and side boundaries relating to the waste room, unit 04 and levels 1 and 2 (Part 3F); and living areas of units 05, 08, 09 and 12 which do not meet the minimum width dimension (Part 4D).

The application relies on a Clause 4.6 variation for the breach to the height of building and FSR development standards under the LEP.

The proposal necessitated the requirement for referral to agencies for concurrence pursuant to State Environmental Planning Policy (Transport and Infrastructure) 2021 (‘Transport and Infrastructure SEPP’)*.* Referral to Transport for NSW (Sydney Trains) and Ausgrid were made and no objections were raised by either agency.

The application was placed on public exhibition for 21 (twenty-one) days from 2 October 2024 to 22 October 2024, with one (1) submission being received. The submission raised issues relating to impacts during the construction of the development including trespassing, rubbish and debris. These issues are considered further in this report under **Section 4.3**.

A briefing was held with the Panel on 11 November 2024 where key issues were discussed, including zoning and permissibility of the development, the exceedance of the LEP development standards relating to height and FSR, design issues relating to the front setback, ADG non-compliances including solar access, communal open space and potential privacy impacts.

The key issues associated with the proposal and as noted by the Panel from the minutes of the preliminary briefing included the following:

1. *Consolidation of Services*

* *Council’s Urban Design Team recommends the consolidation of services at the front of the property. The key features of concern are: orientation of substation, fire hydrant placement at side, straightening entry for ‘legibility’, waste room to be relocated to beside the driveway.*
* *Applicant responded that there may be constraints such as the proximity of the fire hydrant to the substation, but noted that the bin relocation and rationalisation would be considered.*
* *Panel notes that Council is looking for a: “rationalisation of services in the front setback area to maximise the landscape setting of the building” and that applicant and Council should meet to discuss the opportunities and constraints.*

1. *Solar Access*

* *Council is still reviewing compliance of solar access to units due to factors such as balcony depth.*

1. *Privacy concerns*

* *Council flagged that living rooms with windows facing communal spaces may result in privacy issues. The applicant explained that the communal areas were largely landscaped and require passive surveillance.*

1. *Calculation of communal spaces*

* *Council raised that side setback areas may not be counted as communal open space.*
* *Applicant noted that communal open space needs to be managed carefully to provide amenity for occupants without providing some spaces that may encourage congregation and subsequent issues for neighbours and tenants.*

Amended plans were submitted seeking to resolve the key issues as noted in the preliminary briefing, which are summarised below:

* Due to site constraints, the consolidation of services as suggested is not achievable. However, the front of the development has been revised to provide a more legible entry point and increased provision of landscaping in the front setback.
* The side wall balcony openings for units 05, 09, 08 & 12 have been increased in width to 1200mm to provide additional solar access to the living spaces of these units. Shadow diagrams and solar studies confirm that adequate access to sunlight is achievable to the minimum required number of units in accordance with the ADG.
* Translucent glazing or high-level windows are provided for those facing communal areas with a substantial landscape buffer to separate the windows from the communal open space for acoustic and visual amenity.
* The communal areas within the side setback of the rear block is designed to contribute to the outlook and amenity of the useable part of the communal space as well as the outlook from within the development to create a pleasant setting for tenants. It is proposed to position the useable part of the communal open space centrally within the site and provide dense landscaped buffers at the side boundaries to assist in minimising potential amenity impacts on neighbours. The communal space located in the side setback areas are proposed to be densely planted and will not be accessible to residents. This is an intentional design solution by Homes NSW.

Following consideration of the matters for consideration under Section 4.15(1) of the *Environmental Planning & Assessment Act, 1979* (‘the EP&A Act’), which included an assessment against the provisions contained within the relevant State and local environmental planning policies, the proposal is worthy of support. The development is not considered to result in any unacceptable adverse environmental impacts and is not contrary to the public interest. It has been demonstrated that the development is suitable for the site and its surrounds, and through its innovative design would maintain and protect the amenity of the adjoining properties.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the EP&A Act, DA-951/2024 is recommended for approval subject to the conditions contained at **Attachment A** of this report.

1. **THE SITE AND LOCALITY**
   1. **The Site**

The subject development site comprises two allotments legally described as Lots 1 and 2 in DP 35610 and are individually known as 175 and 177 Wellington Road, Sefton. The combined development site forms a rectangular shaped allotment comprising a total site area of 1,446m2, with a frontage length of 31.59m to Wellington Road, a rear southern boundary length of 31.61m, an east side boundary length of 45.76m, and a west side boundary length of 45.76m.

The development site is situated on the southern side of Wellington Road between Shaw Lane to the east and Hector Street to the west. Opposite the site on the northern side of Wellington Road, is a railway corridor with a substantial concrete noise attenuation wall facing the site.

The development site is currently vacant and contains 9 trees, and one street tree situated on the adjacent road reserve. The topography of the land slopes towards the street with a cross fall of approximately 2.4m running from the south-eastern corner of the site towards the north-western corner of the site. The property identified as Lot 1 is burdened by an easement to drain water 1.5 metres wide which runs for the full length and parallel to the western boundary; registered under DP869633.



*Figure 1: Aerial view of 175 & 177 Wellington Road, Sefton; subject sites outlined in bold yellow.*

*Source: Nearmap January 2025*

* 1. **The Locality**

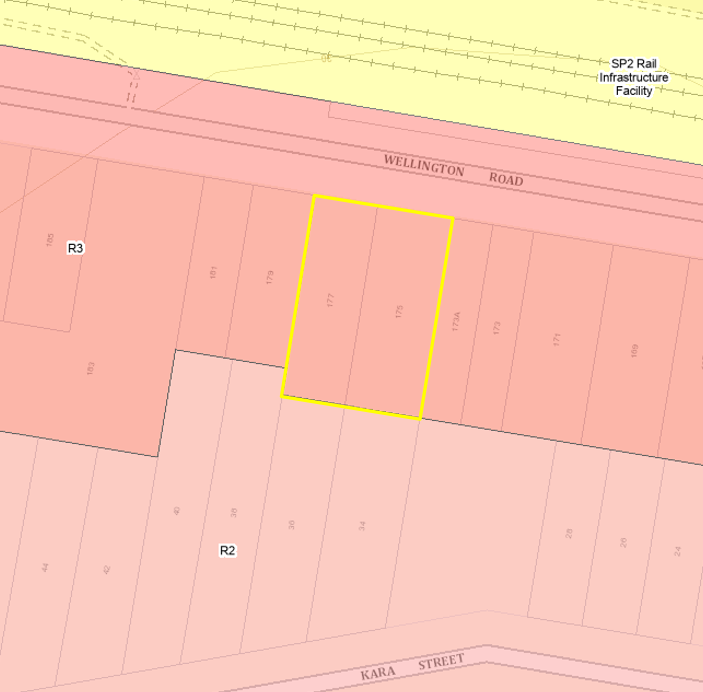
The subject site, along with sites to the east and west are zoned “R3 Medium Density Residential” in accordance with the LEP. Land adjoining the development site to the south is zoned “R2 Low Density Residential”.

The development site is located in an established mixed density residential area consisting of single and two storey building forms of varying architectural styles and designs. Immediately adjoining the development site to the east is an attached two storey dual occupancy and to the west and south-east are single storey detached dwellings. Adjoining the site to the south (rear) is a two storey dwelling and a multi dwelling housing development. The T3 Railway line is situated opposite the site to the north of Wellington Road and contains a noise attenuation wall that runs parallel to the railway corridor along Wellington Road.

The site is situated approximately 260m west of Sefton Railway station and the local town centre. A bus stop is located along Wellington Road adjacent to the Sefton train station entry. The station is surrounded by land uses predominantly commercial in nature and zoned “B2 Local Centre”. The site is also situated approximately 885m east of Chester Hill train station.

Development types in the immediate vicinity (within 150m of the site) that are similar to that which is proposed under the subject application include the following:

* 4-storey mixed use development at 153 Wellington Road, Sefton, located 143m east of the site (zone “B2 Local Centre”);
* 4-storey boarding house development at 155 Wellington Road, Sefton, located 130m east of the site (zone “B2 Local Centre”);
* 4-storey shop and boarding house development at 157 Wellington Road, Sefton, located 120m east of the site; recently approved in 2023 with construction not yet commenced (zone “B2 Local Centre”);
* 3-storey residential flat building at 159 Wellington Road, Sefton, located 105m east of the site (zone “B2 Local Centre”);
* 3-4 storey residential flat building including affordable housing at 29-31 Waldon Road, Sefton, located 65m north of the site (zone “R4 High Density Residential”);
* 3-4 storey residential flat building at 35 Waldron Road, Sefton, located 60m north of the site (zone “R4 High Density Residential”).



*Figure 2: Zoning Map of 175 & 177 Wellington Road, Sefton; sites outlined in yellow and is zoned R3.*

*Source: NSW Planning Portal 2025*

1. **THE PROPOSAL AND BACKGROUND** 
   1. **The Proposal**

In accordance with Clause 4 under Schedule 6 of SEPP (Planning Systems) 2021, development carried out by or on behalf of the Crown that has an estimated development cost of more than $5 million is considered ‘regionally significant development’.

The proposal seeks consent for the construction of a 2-storey and 4-storey residential flat building development comprising a total of 20 affordable housing units, basement parking for 9 vehicles, associated site and civil works, landscaping, and lot consolidation, pursuant to the affordable housing provisions of the Housing SEPP. This application is for community infrastructure (affordable housing) and has a Capital Investment Value greater than $5 million, and therefore is subject to determination by the Sydney South Planning Panel.

The development comprises 1 x studio apartment, 11 x 1 bedroom apartments, and 8 x 2 bedroom apartments, which are distributed within the proposed 4-storey and 2-storey buildings as follows:

|  |  |  |
| --- | --- | --- |
| **Level** | **4 Storey Building** | **2 Storey Building** |
| **Ground** | 1 x studio (unit 02)  3 x 1 bedroom units (units 01, 03 and 04) | 2 x 2 bedroom units (units 17 and 18) |
| **Level 1** | 2 x 1 bedroom units (units 06 and 07)  2 x 2 bedroom units (units 05 and 08) | 2 x 2 bedroom units (units 19 and 20) |
| **Level 2** | 2 x 1 bedroom units (units 10 and 11)  2 x 2 bedroom units (units 09 and 12) | - |
| **Level 3** | 4 x 1 bedroom units (units 13, 14, 15, 16) | - |

Specifically, the proposal involves:

* Consolidation of the two lots into one allotment;
* Removal of 8 trees within the site and retention of one tree;
* Construction of a 4-storey residential flat building at the front of the site (Building A) containing 16 units;
* Construction of a 2-storey residential flat building at the rear of the site (Building B) containing 4 units;
* Basement car parking to accommodate 9 vehicles, including 2 accessible spaces, 8 bicycle parking spaces / racks, storage cages, booster pump room, basement ventilation system, switchboard room, hot water system, fire pump room and comms room;
* Construction of a new driveway for vehicular access to the site from Wellington Road;
* Private open space areas for each dwelling in the form of courtyards or balconies which are directly accessible off living areas;
* Pedestrian access points connected to a newly constructed footpath along Wellington Road;
* Bin room integrated into the 4-storey residential flat building with direct pedestrian access to Wellington Road and sized to accommodate waste bins;
* Basement stormwater pump out system with a 6,000 litre capacity storage tank;
* Onsite stormwater detention in an underground tank with a capacity of 25m3 (25,000 litres);
* Underground rainwater tank with a capacity of 14,820 litres for landscaping / irrigation and car washing reuse;
* Civil works including the provision of stormwater drainage, water metres, fire hydrant booster, substation, new driveway and footpath to Wellington Road;
* Extensive landscaping scheme, including the provision of 272m2 of deep soil planting area, including the provision of trees and a variety of shrub and groundcover plantings and landscaping structures across the site.

The key development data is provided in **Table 1**, and the proposed development is illustrated in the images that follow.

**Table 1: Development Data**

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| --- | --- |
| **Control** | **Proposal** |
| Site area | 1,446m2 (as per survey plan) |
| GFA | 1,402m2 |
| FSR (residential) | 0.97:1 |
| Clause 4.6 Requests | Yes   * Clause 4.3(2) CBLEP – Height of Buildings * Clause 4.4(2) CBLEP – Floor Space Ratio |
| No. of apartments | 20 (11 x 1 bedroom units, 8 x 2 bedroom units, 1 x studio unit) |
| Max Height | 13.34m |
| Landscaped area | Deep soil zone 272m2  Front landscaping 104m2 = 55% of front setback area |
| Car Parking spaces | 9 parking spaces contained within basement level |
| Setbacks | 6m front setback to building  5.4m front setback to waste room  3.2m-5.5m east side setback  4.5m-6m west side setback  3.5m rear setback (2 storey building) |
| Cross ventilation | 75% of units |
| Solar access | 90% of units |
| Communal Open Space | 366m2 |



*Figure 3: North elevation 3D perspective of proposed 4 storey residential flat building*

*175 & 177 Wellington Road, Sefton*

*Source: Shakeup Architecture Drawing No. A400, Revision S dated 11.12.2024*



*Figure 4: 3D perspective of north elevation front entry of proposed 4 storey residential flat building*

*175 & 177 Wellington Road, Sefton*

*Source: Shakeup Architecture, Drawing No. A400, Revision S dated 11.12.2024*



*Figure 5: 3D perspective of north-west corner (top image) and north-east corner (bottom image)*

*of proposed 4 storey residential flat building*

*175 & 177 Wellington Road, Sefton*

*Source: Shakeup Architecture, Drawing No. A402, Revision C dated 11.12.2024*



*Figure 6: 3D perspective of development western elevation (top image), 3D perspective of communal open space facing the north elevation of proposed 2 storey building (bottom image)*

*175 & 177 Wellington Road, Sefton*

*Source: Shakeup Architecture, Drawing No. A401, Revision K dated 11.12.2024*

* 1. **Background**

There are no previous DA approvals for the subject sites, aside from a Complying Development application for the demolition of the existing dwellings, which was approved by Council on 29 January 2016; issued under CD-650/2015.

Prior to the lodgement of DA-951/2024, advice was provided by Council on 20 May 2019 to the applicant where various issues were discussed including permissibility, height, FSR and compliance with the ADG.

Residential flat buildings are not permissible in the R3 Medium Density Residential zone pursuant to the LEP, however, the proposed residential flat building development is permissible in this instance pursuant to a Site Compatibility Certificate, issued on 18 February 2022 by NSW Department of Planning and Environment, as per the provisions of Chapter 2, Part 2, Division 5, Clause 39(5) of the Housing SEPP.

In issuing the Site Compatibility Certificate, the Department of Planning, Housing and Infrastructure considered that the proposed land use is compatible with the surrounding land uses, however, acknowledges that the bulk and scale of the design exceeds the building height and floor space ratio controls contained in the LEP.

The following conditional requirements form part of the Site Compatibility Certificate:

* *The proposed development is to be configured to ensure a transition in height between the adjoining properties. Higher built form should be setback from Wellington Road, stepping down in height towards the adjoining properties and the low density residential zone to the rear of the site.*
* *The proposed development will be subject to the consent authority undertaking a detailed assessment of the proposal’s building design and height, and its impact on solar access and overshadowing and the amenity of surrounding residential development as part of the development application.*

Under Clause 36(3) of the Housing SEPP, the consent authority may consent to a development that is more stringent than those identified in a site compatibility certificate, or may refuse consent to development based on their own assessment of the compatibility of the development with surrounding land uses.

Council has considered the conditional requirements of the Site Compatibility Certificate as part of the assessment process, which is discussed in further detail under the LEP assessment section of this report.

Further advice was provided by Council on 15 February 2024 advising that any DA for the proposed scheme would need to be supported by clause 4.6 requests that set out the environmental planning grounds for the justification of the height and FSR departures.

The proposed development was also presented at a Design Review Panel (DRP) meeting on 11 July 2024, and advice and recommendations were provided to the applicant for consideration. The DRP was generally supportive of the building type and form, and commended the scheme for ‘achieving a positive and contextually appropriate solution to increase the availability of quality social housing in Sefton’*.* The Panel was also of the view that the height and form of the buildings minimise the potential impact of the development on its neighbours whilst presenting a quality benchmark for future development along this rail corridor.

The DRP acknowledged the Site Compatibility Certificate and also provided the following commentary: *“The panel understands that under the new planning instruments, it is permissible to develop the site for multi‐residential dwellings to 3 storeys within only 900mm setback of side boundaries up to 5m of the rear boundary. Furthermore, the guidance of the SEPP 65 ADG would not apply to such a development. Thus, a complying scheme could generate poor built‐form relationships with neighbouring sites. While also failing to provide much‐needed smaller living units.”* A discussion of this alternative development option of multi-dwelling housing, in comparison to the proposed residential flat development, is provided later in this report.

Prior to the lodgement of the subject development application, the proposal was amended in response to the recommendations made by the DRP’s Design Advice Letter and the pre-lodgement advice provided by Council. The application was subsequently lodged with Council on 18 September 2024. A chronology of the development application since lodgement is outlined below in **Table 2**.

**Table 2: Chronology of the DA**

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| --- | --- |
| **Date** | **Event** |
| 18 September 2024 | Application officially lodged with Council |
| 27 September 2024 | DA referred to internal Council officers |
| 30 September 2024 | DA referred to external agencies |
| 2 October 2024 | Exhibition of the application from 2 October 2024 until 22 October 2024 |
| 22 October 2024 | Response letter received from Ausgrid with conditions |
| 23 October 2024 | Response letter received from Sydney Trains with conditions |
| 11 November 2024 | Panel preliminary briefing |
| 2 December 2024 | Request for information sent to applicant |
| 17 January 2025 | Amended plans lodged and accepted by Council under Cl. 38(1) of the *Environmental Planning and Assessment Regulation 2021* (‘2021 EP&A Regulation’), addressing issues associated with engineering matters, urban design, waste, safety and security, and various ADG non-compliances |
| 20 January 2025 | DA referred to internal officers and external agencies (TfNSW-Sydney Trains) |
| By 11 February 2025 | All outstanding responses received from internal officers and external agencies (Ausgrid and TfNSW-Sydney Trains) |
| 28 February 2025 | Draft conditions sent to Homes NSW |
| 10 March 2025 | Response to Draft conditions received by Homes NSW |
| 24 March 2025 | Panel determination meeting |

1. **STATUTORY CONSIDERATIONS**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (‘EP&A Act’). These matters as are of relevance to the development application include the following:

1. *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*

*(i)  any environmental planning instrument, and*

*(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 (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii)  any development control plan, and*

*(iiia)  any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

*(iv)  the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*that apply to the land to which the development application relates,*

1. *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
2. *the suitability of the site for the development,*
3. *any submissions made in accordance with this Act or the regulations,*
4. *the public interest.*

In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant to the application and considered below:

* State Environmental Planning Policy (Biodiversity and Conservation) 2021;
* State Environmental Planning Policy (Sustainable Buildings) 2022;
* State Environmental Planning Policy (Housing) 2021;
* State Environmental Planning Policy (Planning Systems) 2021;
* State Environmental Planning Policy (Resilience and Hazards) 2021;
* State Environmental Planning Policy (Transport and Infrastructure) 2021;
* Canterbury-Bankstown Local Environmental Plan 2023;
* Canterbury-Bankstown Development Control Plan 2023.

It is noted that the proposal is a Crown DA (s4.33 of the EP&A Act) and written agreement from the Crown to the proposed conditions of consent must be provided. The proposed draft DA conditions were provided to Homes NSW for review and general agreement has been reached.

It is also noted that the application requires concurrence (s4.13 of the EP&A Act) from both Transport for NSW (Sydney Trains) and Ausgrid. During the assessment process, the application was referred to these external agencies. Comments and conditions were subsequently provided and form part of the development consent as contained at **Attachment A** of this report.

* 1. **Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

1. **Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application.

* State Environmental Planning Policy (Biodiversity and Conservation) 2021;
* State Environmental Planning Policy (Sustainable Buildings) 2022;
* State Environmental Planning Policy (Housing) 2021;
* State Environmental Planning Policy (Planning Systems) 2021;
* State Environmental Planning Policy (Resilience and Hazards) 2021;
* State Environmental Planning Policy (Transport and Infrastructure) 2021;
* Canterbury-Bankstown Local Environmental Plan 2023.

A summary of the key matters for consideration arising from these State and Local Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 3: Summary of Applicable Environmental Planning Instruments**

|  |  |  |
| --- | --- | --- |
| **EPI** | **Matters for Consideration** | **Comply (Y/N)** |
| State Environmental Planning Policy (Biodiversity & Conservation) 2021 | * Chapter 2: Vegetation in non-rural areas * Chapter 6: Water Catchments | Y |
| State Environmental Planning Policy (Sustainable Buildings) 2022 | Sustainable residential development determined against the objectives and requirements of the Building Sustainability Index. | Y |
| State Environmental Planning Policy (Housing) 2021 | * Chapter 2: Affordable Housing * Division 5 Residential flat buildings-social housing providers, public authorities and joint ventures * Chapter 4: Design of residential apartment development * Schedule 9 Design Quality Principles | N  - ADG |
| State Environmental Planning Policy (Planning Systems) 2021 | * Chapter 2: State and Regional Development * Schedule 6, Section 4 | Y |
| SEPP (Resilience & Hazards) | * Chapter 4: Remediation of Land | Y |
| State Environmental Planning Policy (Transport and Infrastructure) 2021 | * Chapter 2: Infrastructure * Division 5 Electricity transmission or distribution * Division 15 Railways | Y |
| CBLEP 2023 | * Clause 1.2 – Aims of plan * Clause 2.3 – Zone objectives and land use table * Cause 4.3 – Height of buildings * Cause 4.4 – Floor space ratio * Cause 4.6 – Exceptions to development standards * Cause 6.2 – Earthworks * Cause 6.3 – Stormwater management and water sensitive urban design * Cause 6.8 – Airspace operations * Cause 6.9 – Essential services * Cause 6.15 – Design excellence | N  - Height  - FSR |

Consideration of the relevant EPI’s is outlined in further detail below:

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

The proposal has been assessed against the relevant aims and objectives of the policy which seeks to protect remaining native vegetation within urban areas. The site does not contain remnant native vegetation and is consistent with the aims of the policy.

*Chapter 2 Vegetation in non-rural areas*

The site contains a total of 9 trees. The proposed development seeks approval for the removal of 8 trees within the site (with retention of one tree) and is supported by an Arboricultural Impact Assessment report (prepared by Redgum Horticultural). The proposed development was referred to Council’s Tree Management Officer for assessment and was found to be supportable subject to compliance with the recommendations of the Arboricultural Impact Assessment report, which recommends replacement plantings on site and also the retention of three trees that includes one site tree, one street tree and a tree situated on the eastern adjoining property. As such, the proposal is considered suitable with respect to the requirements of this chapter of the SEPP.

*Chapter 6 Water catchments*

The subject site is located within the Georges River Catchment; therefore Chapter 6 applies to the site as outlined by Clause 6.1(c). Chapter 6 requires Council to be satisfied that the proposal will satisfy the relevant requirements of the chapter that apply to the application, and these were considered as part of the assessment process.

Chapter 6 requires Council to be satisfied that the proposal will achieve the requirements of the following relevant clauses:

***6.6   Water quality and quantity***

* 1. *In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

*(a)  whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*

*(b)  whether the development will have an adverse impact on water flow in a natural waterbody,*

*(c)  whether the development will increase the amount of stormwater run-off from a site,*

*(d)  whether the development will incorporate on-site stormwater retention, infiltration or reuse,*

*(e)  the impact of the development on the level and quality of the water table,*

*(f)   the cumulative environmental impact of the development on the regulated catchment,*

*(g)  whether the development makes adequate provision to protect the quality and quantity of ground water.*

* 1. *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

*(a)  the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*

*(b)  the impact on water flow in a natural waterbody will be minimised.*

* 1. *Subsections (1)(a) and (2)(a) do not apply to development on land in the Sydney Drinking Water Catchment.*

***Note—***

*Part 6.5 contains provisions requiring development in the Sydney Drinking Water Catchment to have a neutral or beneficial effect on water quality.*

***6.10  Total catchment management***

*In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.*

***6.23   Demolition on certain land***

*(1)  This section applies to land—*

*(a)  in a regulated catchment, and*

*(b)  to which a local environmental plan that adopts the Standard Instrument does not apply.*

*(2)  Development that involves the demolition of a building or work may be carried out only with development consent.*

The site is not identified as flood liable land or situated within 100m of a watercourse. The documentation has been reviewed and it is considered that the development will not produce any unreasonable negative impact to the water quality, quantity or flooding within the Georges River Catchment. The stormwater design for the development includes the provision for on-site stormwater detention system. The proposal has been designed to ensure satisfactory stormwater management for the development and site that would not adversely impact adjoining properties. The stormwater design for the development seeks to provide an on-site detention system.

On the basis of the documentation submitted and reviewed by Council, the proposal is considered to satisfy the requirements of Chapter 6 of the SEPP. The proposal would not result in any adverse impact on the catchment as a result of the approval of the application, subject to compliance with the approved stormwater drainage design and the recommended conditions of consent.

[**State Environmental Planning Policy (Sustainability Buildings) 20**](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2004-0396)**22**

State Environmental Planning Policy (Sustainable Buildings) 2022 applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No. 1750680M\_02 prepared by Positive Eco dated 20 August 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the SEPP. The proposal is consistent with the SEPP subject to the recommended conditions of consent.

**State Environmental Planning Policy (Housing) 2021**

The Housing SEPP seeks to facilitate development of affordable and diverse housing in particular areas and includes the planning provisions for certain development including residential flat buildings, which must be considered as part of the assessment of the application.

It is noted that in accordance with the Housing SEPP, residential development is taken to be for the purposes of affordable housing if the development is carried out by or on behalf of Homes NSW (Land and Housing Corporation).

The development application seeks consent to provide a total of 20 affordable housing units comprising 1 x studio apartment, 11 x 1 bedroom apartments, and 8 x 2 bedroom apartments.

An assessment against the relevant standards and requirements of the Housing SEPP is considered in **Table 4** below, and is found to be consistent with the relevant requirements.

Table 4: Consideration of the Housing SEPP Controls

|  |  |  |  |
| --- | --- | --- | --- |
| **State Environmental Planning Policy (Housing) 2021** | | | |
| **Chapter 2 – Affordable Housing**  **Division 5 Residential flat buildings – social housing providers, public authorities and joint ventures** | | | |
| **Clause** | Requirement | Proposed | Complies |
| **36**  Land to which Division applies | Clause 36(1)(a)  This Division applies to the following land—  land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City within 800m of—  (i)  a public entrance to a railway station or light rail station, or  (ii)  for a light rail station with no entrance—a platform of the light rail station | The development site is located with the ‘Central River City’ (as per Schedule 9 of the EP&A Act) and is 290m walking distance from the Sefton train station which is situated to the east of the site. | Yes |
| Clause 36(1)(b)  Land in the following towns within 400m of land in Zone E2 Commercial Centre, Zone MU1 Mixed Use, Zone B3 Commercial Core or Zone B4 Mixed Use, or an equivalent land use zone | NA | NA |
| Clause 36(2)  This Division does not apply to land on which development for the purposes of residential flat buildings is permitted under another environmental planning instrument. | Residential flat buildings are not permitted under another environmental planning instrument. | Yes |
| **37**  Development to which Division applies | Clause 37(1)  This Division applies to development for the purposes of residential flat buildings carried out on land to which this Division applies—  (a)  by or on behalf of a public authority or social housing provider, or  (b)  by a person who is carrying out the development with a relevant authority | The proposed development is for the purpose of residential flat buildings and is to be carried out by Homes NSW (Land and Housing Corporation), a public authority and social housing provider. | Yes |
| Clause 37(2)  This Division does not apply to—  (a)  development to which this Part, Division 1 applies, or  (b)  development to which Chapter 3, Part 4 applies. | NA | NA |
| **38**  Development may be carried out with consent | Clause 38(1)  Development to which this Division applies may be carried out with consent. | Consent is sought for the proposed development in accordance with this Section. | Yes |
| Clause 38(2)  Development consent must not be granted under this Division unless the consent authority is satisfied that—  (a)  the Planning Secretary has certified in a site compatibility certificate that, in the Planning Secretary’s opinion, the residential flat building is compatible with the surrounding land uses, and  (b)  if the development relates to a building on land in a business zone—no part of the ground floor of the building that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use. | A Site Compatibility Certificate was issued on 18/02/2022 pursuant to Clause 39(5) of the Housing SEPP, subject to the specific requirements which are discussed in further detail under the LEP assessment section. |
| Clause 38(3)  Nothing in this section prevents a consent authority from—  (a)  consenting to development on a site by reference to site and design features that are more stringent than the ones identified in a site compatibility certificate for the same site, or  (b)  refusing consent to development by reference to the consent authority’s own assessment of the compatibility of the residential flat building with the surrounding land uses, or  (c)  considering another matter in determining a development application. | Approval is recommended for this application. |
| Clause 38(4)  Car parking is not required to be provided in relation to development to which this Division applies other than in relation to the tenanted component of a residential flat building used as build-to-rent housing. | Parking for the development is provided in the basement level; total of 9 parking space including 2 accessible spaces.  Note: the provision of parking for the development has been provided in accordance with the parking rates formulated for social housing under the Housing SEPP. Therefore, the parking is provided in line with the parking rate applicable for social housing developments within 800mm walking distance of a train station. |
| **39**  Site Compatibility Certificates | Clause 39(1)  An application for a site compatibility certificate under this Division may be made to the Planning Secretary—  (a)  by the owner of the land on which the development is proposed to be carried out, or  (b)  by another person with the consent of the owner of the land. | A Site Compatibility Certificate was issued on 18/02/2022. | Yes |
| Clause 39(10)  If a certificate is valid at the time a development application is made, the certificate remains valid for the purposes of the development application until the development application is finally determined. | The Site Compatibility Certificate, issued on 18/02/2022, is valid for a period of 5 years from the date of the certificate. | Yes |
| **40**  Must be used for affordable housing for at least 15 years | Clause 40(1)  Development consent must not be granted under this Division unless the consent authority is satisfied that, for at least 15 years from the date of the issue of an occupation certificate—  (a)  at least 50% of the dwellings to which the development relates will be used for affordable housing, and  (b)  the dwellings used for affordable housing will be managed by a registered community housing provider.  Clause 40(2)  Subsection (1) does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation. | Not applicable, as the development application has been made by Homes NSW (Land and Housing Corporation). | NA |
| **CHAPTER 4 Design of residential apartment development** | | | |
| **142**  Aims of chapter | The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—  (a)  to ensure residential apartment development contributes to the sustainable development of New South Wales by—  (i)  providing socially and environmentally sustainable housing, and  (ii)  being a long-term asset to the neighbourhood, and  (iii)  achieving the urban planning policies for local and regional areas,  (b)  to achieve better built form and aesthetics of buildings, streetscapes and public spaces,  (c)  to maximise the amenity, safety and security of the residents of residential apartment development and the community,  (d)  to better satisfy the increasing demand for residential apartment development, considering—  (i)  the changing social and demographic profile of the community, and  (ii)  the needs of a wide range of people, including persons with disability, children and seniors,  (e)  to contribute to the provision of a variety of dwelling types to meet population growth,  (f)  to support housing affordability,  (g)  to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,  (h)  to facilitate the timely and efficient assessment of development applications to which this chapter applies. | As demonstrated in the assessment of the report, the proposed development for the purpose of residential flat buildings meets the intent of the Aims of this chapter. | Yes |
| Clause 142(2)  This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high-quality design. | The requirements of the ADG and Design Principles under Schedule 9 have been considered in the design of the proposed development and are discussed separately in this report. Refer to ADG assessment. | Yes |
| **144**  Application of chapter | Clause 144(2)(a)  This chapter applies to the following—  (a)  development for the purposes of residential flat buildings | The proposed development is for the purpose of residential flat buildings. | Yes |
| Clause 144(3)  This chapter applies to development only if—  a)  the development consists of—  (i)  the erection of a new building, or  (ii)  the substantial redevelopment or substantial refurbishment of an existing building, or  (iii)  the conversion of an existing building, and  (b)  the building is at least 3 storeys, not including underground car parking storeys, and  (c)  the building contains at least 4 dwellings. | The proposal is for a new development.  The buildings comprise 2 and 4 storeys.  The development contains a total of 20 dwellings (4-storey building containing 16 dwellings and a 2-storey building containing 4 dwellings). | Yes |
| Clause 144(5)  This chapter does not apply to development that involves only a class 1a or 1b building within the meaning of the Building Code of Australia. | The development involves a Class 2 and Class 7(a) building under the Building Code of Australia, and is required to be a Type A construction. | Yes |
| **145**  Referral to design review panel for development applications | (1)  This section applies to a development application for residential apartment development, other than State significant development.  (2)  Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.  (3)  This section does not apply if—  (a)  a design review panel has not been constituted for the local government area in which the development will be carried out, or  (b)  a competitive design process has been held. | The proposed development was referred to the Canterbury Bankstown Design Review Panel (DRP) on 11 July 2024 under Pre-DA-21/2024.  As previously discussed in this report, the DRP recommended that minor adjustments to the design be considered. As a result, the proposed development was amended to address the matters raised. The revised design has been reviewed by Council’s Urban Design team and after further revisions, the design issues were satisfactorily resolved. | Yes |
| **147**  Determination of development applications and modification applications for residential apartment development | Clause 147 (1)  Consent must not be granted unless the following has been considered:  (a) quality of design evaluated in accordance with Schedule 9 (Design Principles);  (b) the ADG;  (c) advice from DRP. | (a) Design Verification Statement is provided in support of the application. Council’s Urban Design team have considered the design proposal – refer to **Attachment E**.  (b) The development has been designed with consideration to the objectives of each design criteria in the ADG.  (c) The proposed development was referred to the Canterbury Bankstown DRP on 11 July 2024 under Pre-DA-21/2024. The DRP provided advice and recommended that minor adjustments to the proposal be considered. As a result, the proposed development was amended to address the matters raised. | Yes |
| **148**  Non-discretionary development standards for residential apartment development-the Act, S 4.15 | Clause 148(1)  The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.  Clause 148(2)  (2)  The following are non-discretionary development standards—  (a)  the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,  (b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,  (c)  the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.  Clause 42(e) of the Housing SEPP requires the following parking rates:  (e)  for development on land in an accessible area—the development will result in the following number of parking spaces—  (i)  for each dwelling containing 1 bedroom—at least 0.4 parking spaces,  (ii)  for each dwelling containing 2 bedrooms—at least 0.5 parking spaces. | (a) Car parking for the development meets the Objectives of Part 3J of the ADG. Car parking has been provided in accordance with the car parking rates prescribed for Homes NSW under Section 42 of the Housing SEPP (see note below). These rates have been adopted as they have been formulated specifically for Homes NSW developments in direct response to the specific needs of social housing tenants. Accordingly, 9 off street parking spaces are provided in a basement level car park.  (b) Internal areas for the apartments are as follows, which meet the min. area requirements under Part 4D of the ADG:  Studio: min. 37m2  1 bedroom: 50m2-58m2  2 bedroom: 75m2-89m2  (c) The proposed development provides a minimum ceiling height of 2.7m.  NOTE:  12 x 1 bed dwellings @ 4 spaces = 4.8 (5)  8 x 2 bed dwellings @ 0.5 spaces = 4  Total required = 9  Total provided = 9 | Yes |
| **149**  Apartment Design Guide prevails over development control plans | Clause 149  (1)  A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—  (a)  visual privacy,  (b)  solar and daylight access,  (c)  common circulation and spaces,  (d)  apartment size and layout,  (e)  ceiling heights,  (f)  private open space and balconies,  (g)  natural ventilation,  (h)  storage.  (2)  This section applies regardless of when the development control plan was made. | Refer to the ADG assessment. | Yes |

*Design Quality Principles*

Chapter 4 of the Housing SEPP applies to design of residential apartment developments and is therefore required to be considered when assessing this application. It aims to improve the design quality of residential apartment development across NSW and provides an assessment framework under ADG for assessing ‘good design’.

The ADG provides consistent planning and design standards and criteria including general guidance about how development proposals can achieve the 9 design quality principles identified in Schedule 9 of the Housing SEPP.

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 in order to address the design quality principles and demonstrate how the objectives in Parts 3 and 4 of the ADG have been achieved.

A design verification statement was submitted by the applicant including an assessment of the design quality principles set out in Chapter 4 of the Housing SEPP. The proposal has had adequate regard for the design quality principles and responds appropriately to the context of the site. The assessment against the design quality principles submitted by the applicant can be found at Attachment E.

*Apartment Design Guide (ADG)*

In accordance with the requirements of the Housing SEPP, the proposal is required to be consistent with the ADG requirements. Refer to the ADG assessment in Table 5 below which provides an assessment against the relevant design criteria*.*

Table *5*: Consideration of the ADG Design Requirements

| **Apartment Design Guide** | | | |
| --- | --- | --- | --- |
| **Section** | **Design Criteria** | **Proposed** | **Complies** |
| **Part 3 Siting the Development** | | | |
| **3C**  Public Domain Interface | * Avoid long, high blank walls and fences * Direct access from the street to ground floor apartments and windows overlooking the street improve safety and social interaction; * Key components to consider when designing the interface include entries, private terraces or balconies, fence and walls, changes in level, services location and planting. * Safety considerations (real or perceived) and consideration of social interaction opportunities when viewed from the public domain. * Terraces, balconies and courtyard apartments to have direct street level entry where possible; * Changes in levels between ground floor and terraces to balance passive surveillance and privacy; * Provide seating at building entries, letter boxes and private courtyards adjacent the street. * Multiple building entrances to be clearly defined through architectural detailing, changes in materials, plant species and colours; * Concealment opportunities minimized. * Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1m * Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view | Windows and balconies of upper levels face and overlook the street.  Front facing units at ground level have private enclosed open spaces that are appropriately screened. All access to units is provided via one main street facing entry point.  Visual permeable materials used.  Height of solid walls along street frontage is limited to 1m in height.  Design of development takes into account CPTED principles with no concealment opportunities within the front setback.  Mailboxes located perpendicular to the street forward of the building.  A substation kiosk is proposed within the front setback along the street frontage – conditions from Ausgrid provided with no objection raised to proposed location of substation kiosk.  Waste room situated at ground level however has been designed to be suitably integrated into the building and suitably screened. | No |
| **3D** Communal and Public Open Space | Communal open space (COS) has a minimum area equal to 25% of the site. Total site area is 1,446m2, requiring a minimum 361.5m2 and min. 3m dimension. | Total COS area proposed 366sqm with min. 3m dimension | Yes |
| Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).  Note: there is no definition in ADG for ‘principle usable area’, however, the elected area by the applicant for the purpose of meeting the requirements of this clause is the area as discussed above. | COS is positioned centrally within the site in-between the 2 and 4-storey buildings. The area nominated as the ‘principal usable area’ receives a minimum of 2 hours direct sunlight between 1pm and 3pm at mid-winter. This nominated area is a single consolidated area at the western side of the COS with bench seating and is adjacent to a portion of the DSZ.  The COS areas within the side setback of the rear 2-storey building will contribute to the outlook and amenity of the useable part of the COS as well as the outlook from within the development itself. Positioning the useable part of the COS centrally within the site and providing dense landscaped buffers at side boundaries will assist in minimising potential amenity impacts on neighbours. | Yes |
| **3E**  Deep Soil Zones | Deep soil zones are to meet the following minimum dimensions:   |  |  |  | | --- | --- | --- | | **Site Area** | **Minimum** | **Deep Soil Zone**  **(% of site area)** | | Less than 650m² | - | **7%** | | **650m² - 1,500m²** | **3m** | | Greater than 1,500m² | 6m | | Greater than 1,500m² | 6m | | Site area = 1,446m2  7% x 1,446m2 = 101.22m2  DSZ proposed is 272m2.  Min. 3m width dimension achieved for the DSZ area | Yes |
| **3F**  Visual Privacy | Separation between windows and balconies is provided to ensure visual privacy is achieved.  Minimum required separation distances from buildings to the side and rear boundaries are as follows:   |  |  |  | | --- | --- | --- | | **Building Height** | **Habitable Rooms & Balconies** | **Non-habit-able Rooms** | | Up to 12m (4 storeys) | 6m | 3m |   Section 2F –  Up to four storeys (approx. 12m):   * 12m between habitable rooms/balconies * 9m between habitable and non-habitable rooms * 6m between non-habitable rooms   Note: ADG does not apply to 2 storey development. | 4-storey building – ground level:   * 6m front setback (aside from 600mm minor encroachment of waste room forward of building line). * 4.5m setback to east side boundary (non-habitable waste room wall). * 5.57m setback to east side boundary for unit 4. * 6m setback to west side boundary.   4-storey building – level 1 and 2:   * 6m front setback. * 4.5m east and west side setbacks for blank walls (aside from angled walls to units 5, 8, 9, 12 that are less than 4.5m measuring approx. 3245mm to the side boundaries).   4-storey building – level 3:   * 6m front setback * 6m east and west side setback   The rear 2-storey building proposes a 4m side setback and 3.5m rear setback, designed in accordance with the setbacks contained in the DCP.  Note: 2-storey buildings are not subject to the design controls of the ADG and such controls could only be referred to as a guide only. However, it is noted that the intent of Objective 3F-1 is met through the design of the development by way of providing reasonable levels of external and internal visual privacy. | No |
| **3G** Pedestrian Access and Entries | Multiples entries should be provided to activate the street edge.  Entry locations relate to the street and subdivision pattern / existing pedestrian network.  Building entries should be clearly distinguishable from private entries.  Building access areas (lift lobbies, stairwells and hallways) should be clearly visible from public domain and communal spaces.  Minimise ground floor and underground level changes along pathways and entries. Steps and ramps integrated into design.  Provide way finding maps for large developments. Electronic access and audio/video intercoms required.  Provide pedestrian links to streets and destinations with clear sight lines. | Scale of development allows for one main entry point from the street which is legible and activates the street.  Lift is visible from building entry. No steps at ground level entry.  Pedestrian links provided from the front of the building and to the basement.  Landscaping within front setback provided and allows for visible entry and clear sightlines. | Yes |
| **3J**  Bicycle and Car Parking | Metro Sydney & centres in regional areas:  For development on sites in the following locations   * On sites that are within 800 metres of a railway station in the Sydney Metro Area, or * On land zoned within 400m of land zoned B3 or B4 or equivalent in a nominated regional centre, the minimum car parking requirement is set out within the Guide to Traffic Generating Developments (GTTGD) or Council’s DCP parking requirements, whichever is the less.   Car parking needs for a development must be provided off street.  Clause 42(e) of Housing SEPP controls for RFB’s:  (e)  for development on land in an accessible area—the development will result in the following number of parking spaces—  (i)  for each dwelling containing 1 bedroom—at least 0.4 parking spaces,  (ii)  for each dwelling containing 2 bedrooms—at least 0.5 parking spaces. | The site is situated less than 400m from Sefton station and is located within the Sydney Metropolitan Area.  The development is proposed with 9 car parking spaces within the basement level in accordance with the requirements of Clause 42(e) of the Housing SEPP. Under this section of the Housing SEPP, car parking rates are prescribed for Homes NSW developments on land in an accessible area.  To have a basis for the provision of parking for the development, the applicant has applied the parking rate as stipulated under Clause 42(e) of the SEPP, which are as follows:  1 (studio) x 0.4 = 0.4  11 (1 bed) x 0.4 = 4.4  8 ( 2 bed) x 0.5 = 4  Total required = 9  Total provided = 9  + 8 bicycle spaces provided in basement. | Yes |
| The car parking needs for a development must be provided off street. | Car parking for the development is provided within a single basement level.  A Traffic & Parking Impact Assessment report has been submitted in support of the application and confirms that the driveway and basement car park has been designed in accordance with the design requirements of AS 2890.1. | Yes |
| **Part 4 Designing the Building** | | | |
| **4A**  Solar and Daylight Access | Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. | 20 units requires a min. 14 units to receive min. of 2 hours solar access.  The submitted shadow diagrams and solar study confirms that a total of 18 units receive min. 2 hours solar access at mid-winter between 9am and 3pm.   * 90% of units comply. * 10% do not meet this requirement.   Due to the depths of units 05, 08, 09 and 12, openings are provided to the side walls of each of the street facing balconies to ensure compliant solar access for these units.  Solar diagrams at hourly intervals have been provided (sheet A425 and A426) which confirm compliance with solar access requirements – refer to architectural plans at **Attachment C**. | Yes |
| A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter |
| **4B**  Natural Ventilation | At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartment at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. | Total of 20 units will require a min. of 12 units to be cross ventilated.  15 out of the 20 units are demonstrated to be cross ventilated, i.e. 75% of units. | Yes |
| Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | <18m overall depth | Yes |
| **4C**  Ceiling Heights | Measured from finished floor level to finished ceiling level, minimum ceiling heights are:   | **Minimum Ceiling Height for Apartment and Mixed-Use Buildings** | | | --- | --- | | Habitable rooms | 2.7m | | Non-habitable | 2.4m | | For 2 storey apartments | 2.7m main living area floor  2.4 for second floor, where its area does not exceed 50% of the apartment area |   These minimums do not preclude higher ceilings if desired. | Floor to floor height 3.15m.  Floor to ceiling height min. 2.7m  Non-habitable rooms 2.5m ceiling height | Yes |
| **4D**  Apartment Size and Layout | Apartments are required to have the following minimum internal areas:   |  |  | | --- | --- | | **Apartment Type** | **Minimum Internal Area** | | Studio | 35m² | | 1 bedroom | 50m² | | 2 bedroom | 70m² | | 3 bedroom | 90m² |   The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. | All units have 1 bathroom each.  Studio = 37m2  1 bedroom unit = from 50m2 to 58m2  2 bedroom unit = from 75m2 to 89m2 | Yes |
| Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. | Habitable rooms have windows with glass that is min. 10% of floor area of room | Yes |
| Habitable room depths are limited to a maximum of 2.5 x the ceiling height  (2.5m x 2.7m ceiling height = 6.75m) | All habitable room depth max. 6.75m (aside from some open plan layouts) | Yes |
| In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. | Max. 8m depth measured to closest window for open plan units.  Main living spaces are oriented to the street, living areas and bedrooms are located on external face and have external windows. | Yes |
| Master bedrooms have a minimum area of 10m2 and other bedrooms 9m² (excluding wardrobe space). | 4-storey building: all bedrooms comply with the minimum size requirements.  Note: the rear two storey building fails to meet these room size requirements (units 17, 18, 19, 20) proposing an area of approx. 9.5sqm for each bedroom, however, ADG principles do not apply to two storey buildings. Notwithstanding the room sizes, these units are designed with functional sized rooms that meet the objectives of this design criteria. | Yes |
| Bedrooms have a minimum dimension of 3m (excluding wardrobe space). | All bedrooms have min. 3m dimension excl. wardrobes | Yes |
| Living rooms or combined living/dining rooms have a minimum width of:   * 3.6m for studio and 1 bedroom apartments * 4m for 2 and 3 bedroom apartments | Units 05, 08, 09 and 12 do not meet the minimum 4m dimension. This is a partial non-compliance as a portion of the living area exceeds 4m in width.  Note: Living rooms of units 17, 18, 19, 20 (2 bed units) of the rear two storey building do not meet the min. width requirements, proposing a living room width of 3.6m, however, ADG principles do not apply to two storey buildings. Notwithstanding the living room widths, these units are designed with functional open plan layouts that meet the objectives of this design criteria. | No |
| The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. | No ‘cross-though’ apartments | NA |
| **4E**  Private Open Space and Balconies | All apartments are required to have primary balconies as follows:   |  |  |  | | --- | --- | --- | | **Dwelling type** | **Minimum Area** | **Minimum Depth** | | Studio apartments | 4m² | - | | 1 bedroom apartments | 8m² | 2m | | 2 bedroom apartments | 10m² | 2m | | 3+ bedroom apartments | 12m² | 2.4m |   The minimum balcony depth to be counted as contributing to the balcony area is 1m. | All units comply with min. area and depth requirements.  1 bedroom units have min. 8m2 and 2 bedroom units have min. 10m2.  All balconies are designed to have usable areas with depths of min. 2m. | Yes |
| For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m. | Ground floor apartments are provided with an enclosed POS with a min. area of 16m2. | Yes |
| **4F**  Common Circulation and Spaces | The maximum number of apartments off a circulation core on a single level is eight. | Max. of 4 apartments have access off a single corridor | Yes |
| **4G**  Storage | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:   |  |  | | --- | --- | | **Dwelling type** | **Storage size volume** | | Studio apartments | 4m³ | | 1 bedroom apartments | 6m³ | | 2 bedroom apartments | 8m³ | | 3+ bedroom apartments | 10m³ |   At least 50% of the required storage is to be located within the apartment. | At least 50% of storage is provided within the apartments.  Additional storage cages provided in the basement.  Basement plan indicates 17 storage cages ranging from 3.5m3 to 5.11m3 which contribute to remaining storage required. | Yes |
| **4H**  Acoustic Privacy | Adequate building separation is provided within the development and from neighbouring buildings / adjacent uses.  Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas.  Rooms with similar noise requirements are grouped together.  Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms | Building separation between the proposed two buildings and from adjoining buildings is adequate. Glazing will be used to address noise conflicts where required as recommended in the submitted acoustic report (prepared by Pulse White Noise Acoustics dated 07.06.2024 Version R1).  Living areas are positioned away from noisy access core.  Corridor and internal pathways are centrally located away from adjoining properties.  Lifts and access stairs adjoin bedrooms and bathrooms.  Major services and plant rooms located in basement level.  Where possible, rooms with similar noise requirements are grouped together, and bedrooms are not positioned adjoining communal areas such as corridors and walkways. | Yes |
| **4J**  Noise Pollution | In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings  Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission | A railway exists opposite the site to the north. An acoustic report (prepared by Pulse White Noise Acoustics dated 07.06.2024 Version R1) is submitted in support of the development proposal which includes acoustic measures that are required to be included in the design of the building.  Council’s EHO has reviewed the acoustic report and recommends that it form part of the development consent. Recommendations of the acoustic report are to be complied with as contained at **Attachment A**. | Yes |
| **4K**  Apartment Mix | A range of apartment types and sizes is provided to cater for different household types now and into the future | A variety of apartment types is provided including 1 and 2 bedroom apartments, with one studio apartment. | Yes |
| **4L**  Ground floor apartments | Street frontage activity is maximised where ground floor apartments are located (design solutions include common circulation entrances to ground floor apartments, POS next to the street, doors and windows face the street). Direct street access should be provided to ground floor apartments. | Direct street access is not provided for the ground floor apartments (units 02 and 03), rather are designed with private enclosed courtyards that form part of the front setback. Apartments designed with direct pedestrian access to/from via the POS is not desirable for a social housing development and the entry into the apartments is via the one main front entry point.  The design of the POS for the ground floor apartments are acceptable and meet the intent of Objective 4L-2 by providing appropriate amenity and safety for residents.  Windows that lead to the public domain have sill heights to minimise sight lines into apartments. | Yes |
| **4M**  Facades | Facades provide visual interest by meeting design solutions. Building services should be integrated within the overall façade.  Building entries should be clearly defined. | Building façade is well resolved by incorporating architectural elements and features that are aesthetically pleasing.  The building entry is clearly designed and services are satisfactorily integrated. | Yes |
| **4N**  Roof Design | Roof design relates to the street.  Roof treatments integrated with building design. | The roof and top floor is recessed from side setbacks which reduces the overall bulk and scale of the building.  Roof elements and its design, including buildings services, are well integrated into the overall building design. | Yes |
| **4O**  Landscape design | Landscape is viable and sustainable and responds to existing site conditions.  Plant selection should be endemic to the region.  Ongoing maintenance plans should be prepared. | The proposal includes an acceptable landscape scheme for the development including native plantings. COS is appropriately landscaped; refer **to Attachment F** for the landscape plan.  The consent includes a condition for a landscape management plan, as contained in **Attachment A**. | Yes |
| **4P**  Planting on structures | Plants are suited to site conditions.  Appropriate soil profiles provided.  Ongoing maintenance plans should be prepared. | Choice of plants are indigenous and drought tolerant and supported by irrigation and drainage systems (captured by rainwater).  The consent includes a condition for a landscape management plan, as contained in **Attachment A**. | Yes |
| **4Q**  Universal Design | Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.  Adaptable units should be provided in accordance with relevant policy. | Access report is submitted in support of the application which certifies that all dwellings, including adaptable units, are designed to meet the silver level standards.  2 out of 20 units are adaptable and 2 accessible car spaces are provided. | Yes |
| **4U**  Energy Efficiency | Adequate natural light is provided to habitable rooms (see 4A Solar and daylight access).  Well located, screened outdoor areas should be provided for clothes drying. | Apartments receive adequate natural light. POS areas are provided including sufficient area for clothes drying.  A BASIX certificate has been provided, dated 20 August 2024 bearing certificate number 1750680M\_02, which includes commitments for the development to meet. | Yes |
| **4W**  Waste Management | Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park. The storage areas to be well ventilated, designed for easy manoeuvring between storage and collection points.  A waste management plan (WMP) should be prepared.  All dwellings should have waste cupboard and recycling cupboard or temporary storage area of sufficient size to two days’ worth of waste and recycling. | Central waste room provided for development and is deemed satisfactory by Council’s Resource Recovery team, subject to conditions as recommended at **Attachment A**. Sufficient space within each unit to temporarily store waste / recycling.  Waste management for the development to be in accordance with the submitted WMP, subject to conditions. | Yes |
| **4X**  Building Maintenance | Include design solutions to provide protection from weathering, ease of maintenance and choice of material selection to reduce ongoing maintenance costs. | Appropriate building design solutions and materials have been selected for the development that meets these requirements. | Yes |

As identified in the ADG compliance table above, the proposal is generally consistent with the ADG requirements and seeks to depart from the following ADG design criteria; these are also briefly discussed under ‘Key Issues’ in Section 5.

ADG: 3C – Public Domain Interface

Objective 3C-2 of the ADG requires that substations be located in basement levels or away from view from the public domain. The substation for the development is proposed within the front setback of the building situated along the street frontage, to the east of the proposed driveway. The applicant submits that the location and positioning of the proposed substation is based on avoiding conflicts with other services required within the front setback.

The application was referred to Ausgrid for review, who raised no objection to the proposed location, subject to conditions that form part of the recommended consent at Attachment A. The design and location of kiosk substations are required to be in accordance with the standards and guidelines set by Ausgrid, which generally require an easement in favour of Ausgrid to house a substation for the development.

Although the substation kiosk is located close to the front boundary, it would be positioned behind an operable open style fence, which is not considered to have an unfavorable visual impact on the streetscape presentation of the development. Solid screening is to be provided around the sides and rear of the substation kiosk with landscaping incorporated around it.

The substation kiosk is designed such that it would not have an unreasonable or detrimental impact on the streetscape presentation of the development, particularly given the inclusion of landscaping around the structure. On this basis, the proposed location of the substation within the front setback is considered acceptable and is justified in this instance, despite the inconsistency with the public domain objectives of the ADG.

ADG: 3F – Visual Privacy (Building Separation )

Objective 3F of the ADG sets out the minimum required separation distances from buildings to the side and rear boundaries. A minimum 6m setback to the side and rear boundaries is required for habitable rooms and balconies of buildings comprising 4-storeys. The purpose of building separation is to assist in providing amenity and visual privacy between buildings, and to provide sufficient opportunity for deep soil and landscaping at ground level.

The development meets the minimum setback requirements to the front and side boundaries as required of the ADG, with the exception to the following elements as discussed below:

* Front setback of waste room:

The waste room is designed to be well incorporated into the design of the building; however, it presents a minor encroachment into the required 6m front setback. The departure to the setback requirement is considered minor and is justified on the basis that the waste room is well integrated in the design of the building with only a minor portion of the room being situated forward of the prescribed building line. The waste room is designed with side access and the front setback is proposed with landscaping which adequately screens the waste room when viewed from the public domain. On this basis, strict compliance with the 6m setback requirement is not considered necessary in this instance.

* East side setback of unit 04 (ground floor):

Ground floor unit 04 is proposed with a setback of 5.57m to the east side boundary which fails to meet the minimum 6m setback requirement. The shortfall of 430mm is considered minor and is justified on the basis that the development is designed to meet the objectives of the control by way of maintaining the amenity through means of access to sunlight, natural ventilation and including a vegetation buffer along the east side boundary providing visual and acoustic privacy between the subject development and the property to the east. Furthermore, strict compliance with this control for unit 04 would result in a compromised internal amenity to the apartment, with no substantive improvement to the amenity afforded to the neighbouring property.

* East and west side setback of angled walls on level 1 and 2 for units 05, 06, 09 and 12:

These units incorporate angled walls resulting in a non-compliance to the minimum setback requirement to the east and west side boundaries. The encroachment to the side setback relates to levels 1 and 2 and has been designed with the intent to incorporate projecting, north-facing window elements for units 05, 06, 09 and 12. The outer edge of the angled walls have a setback of approximately 3245mm from each side boundary. The windows are positioned on an angle in a northerly direction to provide additional solar access and natural light and are designed such that views are directed to the street, away from adjoining properties. As these walls are predominantly blank, the 4.5m setback requirement is applied in this instance as they can be deemed to be non-habitable in nature. As such, the non-compliant setback to the side boundaries is not considered to cause any significant detrimental impacts within the development or to adjoining properties. On the basis that the east and west facing walls are predominantly blank, with the exception of the northerly orientated windows that are designed with viewing angles to mitigate overlooking onto neighbouring properties, the variation in this instance is considered worthy of support.

The departures to the building separation requirements as discussed above are considered negligible and justified on the basis that the development is designed to meet the intent of the design criteria objectives of the control. Given the development is designed ensuring residential amenity is maintained for the subject development and adjoining properties, strict compliance with the control in this regard is not considered necessary.

The building separation requirement has not been strictly applied to the proposed 2-storey building, as it does not fall within the requirements of the ADG given it is less than 3 storeys in height. The design controls of the ADG are only used as a guide and the setbacks of the proposed 2-storey building are demonstrated to be consistent with the DCP controls.

Notwithstanding this, privacy screens are proposed to balconies of units 17 and 18 (ground floor units) to mitigate potential privacy impacts between the two buildings within the site. First floor units 19 and 20 have a 12m distance between their balcony edge and the habitable windows of units 5 and 8 in the 4-storey building. Furthermore, it is concluded that the intent of Objective 3F-1 of the ADG is met through the design of the development by way of providing reasonable levels of external and internal visual privacy.

ADG: 4D – Apartment Size and Layout

The 2-bedroom apartments are required to meet the minimum 4m width requirement for living rooms. The living rooms of units 05, 08, 09 and 12 do not meet the minimum 4m dimension, however, this is a partial non-compliance as a portion of the living space complies with the minimum 4m requirement.

Notwithstanding the shortfall to a portion of the living room widths of the subject units, these spaces are designed as open plan living spaces including dining and kitchen areas with an angled wall that provides a width of approximately 4.9m at the widest point. These spaces will have a sense of openness due to the flow through balconies, and additional windows provided between the dining area and kitchen will allow direct sunlight into the apartments.

The departure to the living room width requirement is considered minor and is justified on the basis that it is limited to only a portion of the open plan living space, with the remaining space exceeding the minimum 4m width requirement.

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

*Chapter 2: State and Regional Development*

The estimated development cost of the proposed project is $13,055,656. The proposal is regionally significant development pursuant to Clause 2.19(1) as it satisfies the criteria in Section 4 of Schedule 6 of the Planning Systems SEPP, as the proposal is development carried out by or on behalf of the Crown (within the meaning of Division 4.6 of the Act) that has an estimated development cost of more than $5 million. Accordingly, the application must be reported to the Sydney South Planning Panel for determination.

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

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 (‘the* Resilience and Hazards SEPP’) have been considered in the assessment of the development application. The Resilience and Hazards SEPP aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment. Clause 4.6 of the Resilience and Hazards SEPP requires a consent authority, prior to granting consent to the carrying out of any development on that land, to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

In order to consider this, a Preliminary Site Investigation is typically required. However, a review of the history of the site shows that previous uses have been limited to residential purposes and there is no evidence to suggest it has been used for purposes other than residential that could potentially involve contamination.

The Site Compatibility Certificate includes the following statement in relation to land contamination*, “a preliminary site investigation will not be required to accompany any future residential accommodation DA for the site”*.

Council’s Environmental Health Officers have considered the application and have not requested for any further contamination reports or investigations given the site was previously used for residential purposes. As such, a preliminary site investigation is not considered warranted in this particular instance.

Council’s assessment concludes that the site is suitable for the proposed development and land use, and the application is consistent with SEPP (Resilience and Hazards) 2021, subject to relevant conditions of consent being imposed in relation to unexpected finds of contaminated material during site works; refer to **Attachment A**.

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

*Ausgrid*

Cause 2.48(2) of Division 5 of the SEPP requires development applications to be referred to the electricity supply authority for the provision of a substation. The proposed development involves the installation of a new substation and therefore the application was referred to Ausgrid.

Ausgrid have assessed the plans lodged in support of the application and advised that they have no objection to consent being granted to the proposed development subject to conditions relating to certain matters including managing any impacts on existing electricity network assets. The full set of conditions contained within Ausgrid’s letter of concurrence is included in the recommended conditions of consent at **Attachment A**.

The relevant sections of the SEPP under Division 5 that were considered as part of the assessment of the application read as follows:

***Clause 2.48 Determination of development applications***

*(1)  This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*

1. *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
2. *development carried out—*
   1. *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
   2. *immediately adjacent to an electricity substation, or*
   3. *within 5m of an exposed overhead electricity power line,*

*(2)  Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must—*

1. *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
2. *take into consideration any response to the notice that is received within 21 days after the notice is given.*

*Transport for NSW – Sydney Trains*

A railway corridor is situated opposite the site to the north. In accordance with Section 2.99(4) of Division 15 of the SEPP, a referral to the rail authority is required for development adjacent to rail corridors and for impact of rail noise or vibration on development.

The DA was referred to Transport for NSW who are delegated to act as the rail authority for the rail corridor operated by Sydney Trains. Concurrence was subsequently granted by Transport for NSW subject to Council imposing operational conditions, which form part of the recommended conditions of consent at **Attachment A**. The conditions also include compliance with the recommendations of the acoustic report which was prepared in support of the application.

The relevant section of the SEPP under Division 15 that was considered as part of the assessment of the application reads as follows:

***Clause 2.99   Excavation in, above, below or adjacent to rail corridors***

1. *This section applies to development (other than development to which section 2.101 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land—*
2. *within, below or above a rail corridor, or*
3. *within 25m (measured horizontally) of a rail corridor, or*
4. *within 25m (measured horizontally) of the ground directly below a rail corridor, or*
5. *within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
6. *Before determining a development application for development to which this section applies, the consent authority must—*
7. *within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
8. *take into consideration—*
   1. *any response to the notice that is received within 21 days after the notice is given, and*
   2. *any guidelines issued by the Planning Secretary for the purposes of this section and published in the Gazette.*
9. *Subject to subsection (5), the consent authority must not grant consent to development to which this section applies without the concurrence of the rail authority for the rail corridor to which the development application relates.*
10. *In deciding whether to provide concurrence, the rail authority must take into account—*
11. *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on—*
12. *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
13. *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
14. *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*
15. *The consent authority may grant consent to development to which this section applies without the concurrence of the rail authority concerned if—*
16. *the rail corridor is owned by or vested in ARTC or is the subject of an ARTC arrangement, or*
17. *in any other case, 21 days have passed since the consent authority gave notice under subsection (2)(a) and the rail authority has not granted or refused to grant concurrence.*

***Clause 2.100 Impact of rail noise or vibration on non-rail development***

1. *This section applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—*
2. *residential accommodation,*
3. *a place of public worship,*
4. *a hospital,*
5. *an educational establishment or centre-based child care facility.*
6. *Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*
7. *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
8. *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
9. *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Canterbury-Bankstown Local Environmental Plan 2023

The relevant local environmental plan applying to the site is the Canterbury-Bankstown Local Environmental Plan 2023(‘the LEP’). The aims of the LEP include the following:

*Clause 1.2 Aims of Plan*

1. *This Plan aims to make local environmental planning provisions for land in Canterbury-Bankstown in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
2. *The particular aims of this Plan are as follows –*
3. *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
   1. *to manage growth in a way that contributes to the sustainability of Canterbury-Bankstown,*
   2. *to protect landforms and enhance vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Canterbury-Bankstown,*
   3. *to identify, conserve and protect the Aboriginal, natural, cultural and built heritage of Canterbury-Bankstown,*
   4. *to provide development opportunities that are compatible with the desired future character and amenity of Canterbury-Bankstown,*
   5. *to restrict development on land that is sensitive to urban and natural hazards,*
   6. *to provide a range of residential accommodation to meet the changing needs of the population,*
   7. *to provide a range of business and industrial opportunities to encourage local employment and economic growth and retain industrial areas,*
   8. *to create vibrant town centres by focusing employment and residential uses around existing centres and public transport,*
   9. *to provide a range of recreational and community service opportunities and open spaces to meet the needs of residents of and visitors to Canterbury-Bankstown,*
   10. *to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*
   11. *to ensure activities that may generate intensive car usage and traffic are located near public transport that runs frequently to reduce dependence on cars and road traffic,*
   12. *to consider the cumulative impact of development on the health of the natural environment and waterways and on the capacity of infrastructure and the road network,*
   13. *to support healthy living and enhance the quality of life and the social well-being and amenity of the community,*
   14. *to ensure development is accompanied by appropriate infrastructure,*
   15. *to promote ecologically sustainable development.*

The proposed development provides for the orderly and economic use of the land that is consistent with the desired future character of the area. It aims to provide opportunities for affordable housing that meets the needs of the community for people requiring social housing. The proposal, despite the departure to the height and FSR development standards under the LEP, is an appropriate design response for the site presenting an appropriate built form and scale that meets the requirements of the Site Compatibility Certificate. The proposal is therefore consistent with the aims of the LEP.

*Clause 2.3 Zone objectives and land use table*

The site is located in the R3 Medium Density Residential Zone pursuant to the LEP Land use table under Clause 2.3; refer to zoning map in **Figure 2**. Residential flat buildings are not permissible in the R3 zone pursuant to the LEP, however, the proposed residential flat building development is permissible in this instance pursuant to a Site Compatibility Certificate, issued by the Department of Planning and Environment on 18 February 2022, as per the provisions of Chapter 2, Part 2, Division 5, Clause 39(5) of the Housing SEPP.

The Housing SEPP Chapter 2, Part 2, Division 5 enables development for the purpose of a residential flat building in a zone where it would be otherwise prohibited subject to certain requirements being met. Clause 38 of the Housing SEPP permits development the subject of a Site Compatibility Certificate to be carried out with consent.

As noted earlier in this report, the following conditional requirements form part of the Site Compatibility Certificate issued on 18 February 2022:

* *The proposed development is to be configured to ensure a transition in height between the adjoining properties. Higher built form should be setback from Wellington Road, stepping down in height towards the adjoining properties and the low density residential zone to the rear of the site.*
* *The proposed development will be subject to the consent authority undertaking a detailed assessment of the proposal’s building design and height, and its impact on solar access and overshadowing and the amenity of surrounding residential development as part of the development application.*

The proposal has been designed to satisfy the conditional requirements specified in the Site Compatibility Certificate, which certifies that the development:

* *is compatible with the surrounding land uses having had regard to the matters specified in clause 39(6), only if it satisfies certain requirements specified in Schedule 2 of this certificate; and*
* *is not likely to have an adverse effect on the environment and does not cause unacceptable environmental risks to the land.*

The proposed development is designed to respond to the criteria and is considered to meet the conditional requirements of the Site Compatibility Certificate by way of the following:

* Concentrating the building bulk at the front of the site with the lower scale building at the rear of the site, transitioning to the lower density area located to the south.
* In order to mitigate the bulk and scale of the built form, the mass of the building has been divided into two portions with the taller 4-storey building at the front addressing the street frontage and a smaller low-scale 2-storey building at the rear.
* The 4-storey building is designed with a flat roof and recessed top floor from the front and side setbacks to reduce the bulk and scale of the development, resulting in increased separation from adjoining properties and the street. This minimises the impact of the building height allowing for an appropriate transition in scale from the site to adjoining properties, and also reduces the appearance of bulk and scale when viewed from the street.
* Noting the minor ADG setback encroachments, the potential amenity impacts to adjoining developments have been addressed in the design of the development. This has been achieved through the intentional positioning and angle of windows to direct views towards the street and restrict potential overlooking of adjoining properties. Where proposed windows are oriented toward the rear boundary, high-sill windows with adequate setbacks in addition to landscaping are used to mitigate any potential privacy impacts for rear neighbouring properties.
* The development generally complies with the DCP controls and the building footprint reasonably aligns with neighbouring properties.
* The design solution results in minimal shadow impacts on adjoining properties.
* Whilst the building height of the proposed 4-storey building and the FSR for the overall development surpasses the maximum LEP controls, they have been justified in the Clause 4.6 requests submitted in support of the proposal.

The objectives of the R3 Medium Density Residential Zone pursuant to the Land Use Table in Clause 2.3 are as follows:

* *To provide for the housing needs of the community within a medium density residential environment.*
* *To provide a variety of housing types within a medium density residential environment.*
* *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
* *To allow for certain non-residential uses that are compatible with residential uses and do not adversely affect the living environment or amenity of the area.*
* *To allow for development that provides a suitable visual transition between high density residential areas and low density residential areas.*
* *To ensure suitable landscaping in the medium density residential environment.*
* *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
* *To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling.*
* *To promote a high standard of urban design and local amenity.*

The proposed development is considered to meet the objectives of the R3 zone, despite the departures to various development standards and controls as discussed in this report, by way of the following:

* The application is considered to adequately meet the conditional requirements of the Site Compatibility Certificate as discussed above.
* The development is considered to provide a building bulk and layout that appropriately transitions in scale from high to low-density, with the lower scale 2-storey building located at the rear of the site. This transition of bulk and scale has been designed to occur within the site itself, rather than at the boundary. This ensures negligible amenity impacts to adjoining properties and allows for a built form that is compatible with the lower density adjoining properties to the rear.
* The type of housing proposed by Homes NSW, which includes diverse housing types (comprising 1 and 2 bedroom units), would meet the growing social housing needs and demand for the local area, whilst providing a high quality design that is aesthetically pleasing.
* The site is located within close proximity to public transport allowing for the maximisation of public transport.
* The 4-storey building at the front of the site is designed to ensure minimal impacts on the amenity of adjoining properties, by having a recessed top level to provide greater separation and side facing windows on level 1 and 2 that are oriented away from adjoining properties.
* The development would not hinder the ability of surrounding land to be developed for the purposes of providing facilities or services to meet the day to day needs of residents.

*LEP assessment of controls and development standards*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The proposed development complies, except for the proposed variation to the LEP development standards contained in Clause 4.3 and 4.4 relating to the height of buildings and FSR respectively. Accordingly, a Clause 4.6 request has been provided with the application for each departure for the exceedance of the maximum building height (which exceeds the maximum permitted height of 10m) and FSR (which exceeds the maximum permitted FSR of 0.75:1).

The controls relevant to the proposal are considered in **Table 6** below.

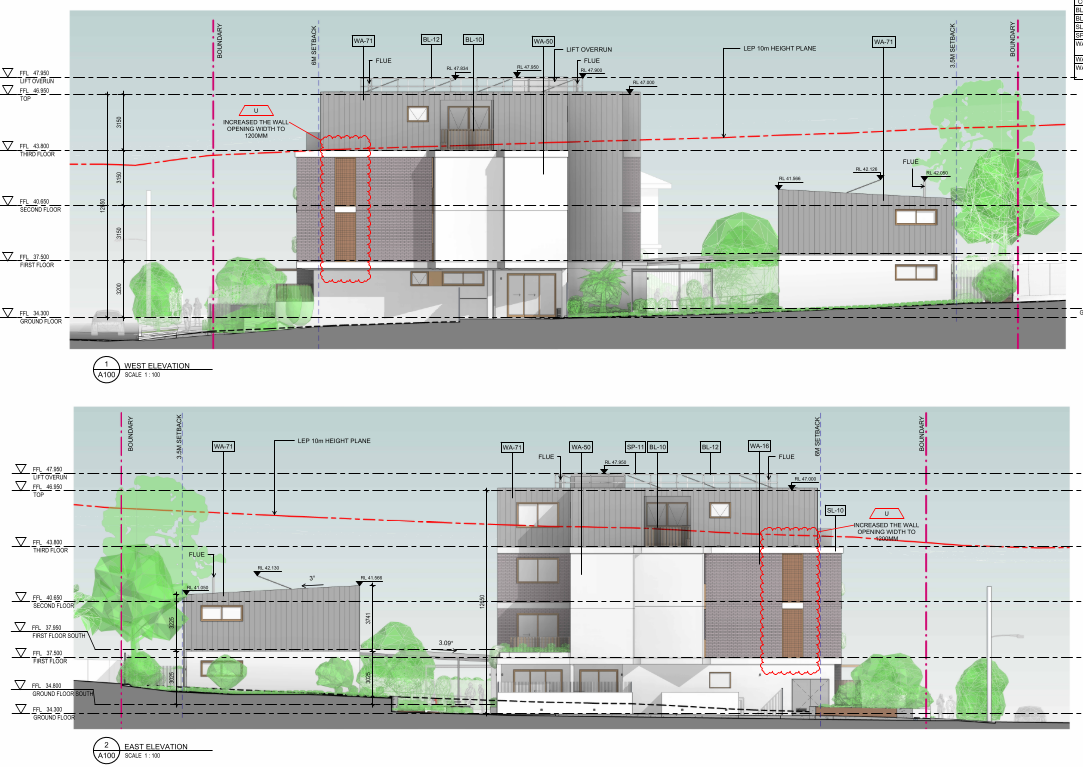
**Table 6: Consideration of the LEP Controls**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Requirement** | **Proposal** | **Comply** |
| Height of buildings  (cl.4.3(2)) | Max. height of 10 metres | * Proposed height 13.34m * Exceeds by 3.34m * 33.4% contravention from the development standard | No |
| FSR  (cl.4.4(2)) | Max. FSR of 0.75:1 (1,084.5m²) | * Proposed FSR 0.97:1 * Exceeds GFA by 317.5m2 * 29.3% contravention from the development standard | No |
| Exceptions to development standards  (cl.4.6) | Enables development consent to be granted for development despite the contravention to the development standard | Clause 4.6 written request submitted for breach to height of building under Clause 4.3(2) and FSR under Clause 4.4(2); refer to discussion following Table 4. | Yes |
| Earthworks  (cl.6.2) | Aims to ensure earthworks will not have a detrimental impact on surrounding land | The development is proposed with a basement level and requires excavation works. The recommended conditions at Attachment A would ensure all excavation works and backfilling are done in accordance with relevant standards and guidelines, and includes recommended conditions to cover issues associated with excavated material and quality of fill. | Yes |
| Stormwater Management (cl.6.3) | To avoid or minimise the adverse impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland, waterways and ground water systems. | The proposed stormwater drainage design, which includes an on-site stormwater detention system, has been assessed by Council’s Development Engineer. The impacts of stormwater runoff have been considered as part of the assessment of the application. The stormwater drainage design is deemed satisfactory and the consent is included with conditions as recommended by Council’s Development Engineer. | Yes |
| Airspace operations (cl.6.8) | (1) The objective of this clause is to protect airspace around airports.  (2) The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division. | The subject site is identified by the Sydney Airport prescribed Airspace Obstacle Limitation Surface Map as being located outside the Outer Horizontal Surface of the airport.  The subject site is identified by the Bankstown Airport Masterplan and the Bankstown Prescribed Airspace Future OLS (2013) Critical Surfaces Map as being located within the Airport’s Outer Horizontal Surface which has a limit of 70-80m AHD (Figure 44). Given the maximum height of the building is RL 47.950m the proposed development will not cause the OLS to be penetrated.  No controlled activity approval is required. | Yes |
| Essential services  (cl.6.9) | Aims to ensure services that are essential for the development are available or that adequate arrangements have been made to make them available when required. | The proposed development will be serviced by all essential services as required of this section. The provision of stormwater drainage and management has been designed to ensure compliance with Council’s stormwater drainage requirements. Waste storage areas have been provided in accordance with Council DCP requirements with waste to be collected routinely by Council’s kerbside ‘collect and return’ service. Vehicular access to the site will be provided via a driveway from Wellington Road to the basement carpark. | Yes |
| Design excellence  (cl.6.15) | Aims to ensure that development exhibits high quality architectural, urban and landscape design. | The proposal was presented to the DRP on 11 July 2024 to ensure the design of the development achieves the design excellence standards.  The DRP made a number of recommendations that were addressed in the amended design. A design verification statement has been submitted and further verifies how the design achieves design excellence as required of this section. | Yes |

As demonstrated in the table above, the proposal is considered to be generally consistent with the LEP controls, except for the proposed variation to the 10m maximum wall height development standard under Clause 4.3(2) – Height of buildings, and the FSR development standard under Clause 4.4(2) – Floor space ratio. This is discussed in further detail below and further summarised under ‘Key Issues’ in Section 5 of this report.

*Clause 4.3(2) – Height of buildings*

Clause 4.3(2) – Height of buildings under the LEP enforces a maximum building height of 10m for the subject development site. The proposed development seeks a maximum building height of 13.34m. The extent of variation sought to the height of buildings development standard is 33.4% or 3.34m. The non-compliance relates to only a portion of the development, namely the 4th floor of the building at the front of the site, and it is noted that this top level of the building is recessed from the front and side facades providing greater setbacks and separation to the side boundaries. The height breach is depicted in **Figure 7** below.



*Figure 7: East and West elevations of the proposed development at 175 & 177 Wellington Road, Sefton, indicating the maximum 10m building height permitted, as noted in red.*

*Source: Shakeup Architecture, Drawing No. A201, Revision U dated 11.12.2024*

The applicant has submitted a written request under Clause 4.6 – Exceptions to Development Standards of the LEP to vary the maximum building height development standard. A copy of the Clause 4.6 written request can be viewed at **Attachment D.**

The objectives as set out in Clause 4.6 of the LEP are as follows:

*(1) The objectives of this clause are as follows-*

*(a)  to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b)  to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

The preconditions to be satisfied are listed in Clause 4.6(3) of the LEP:

*(3)  Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

*(a)  compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(b)  there are sufficient environmental planning grounds to justify the contravention of the development standard.*

These matters are considered below for the proposed development having regard to the applicant’s Clause 4.6 request, which argues that the variation to the development standards is reasonable and justified and compliance with the standard is unnecessary based on the following:

* *There are sufficient environmental planning grounds to justify the contravention of the development standard namely the provision of more social housing/affordable housing in an accessible location consistent with the NSW Government’s plan Future Directions for Social Housing in NSW, the Greater Sydney Region Plan 2018, the South District Plan 2018, the City of Canterbury Bankstown Council’s Local Strategic Planning Statement (LSPS) - Connective City 2036, Council’s Housing Strategy and Council’s Affordable Rental Housing Strategy and consistency with the relevant objectives of the development standard under CBLEP 2023;*
* *The proposed development is in the public interest, as the objectives of the land use zone and the standards are both achieved notwithstanding the non-compliance;*
* *The contravention achieves a better outcome for the development and the community without significant environmental impact by providing more social housing, better utilisation of well-located land, efficient use of existing serviced urban land; and*
* *The request satisfies the tests set by the Land and Environment Court for the justification and assessment of variations to development standards.*

The Clause 4.6 request includes a comparison exercise to demonstrate that a permissible 3-storey multi-dwelling housing development on the site with a compliant building height would have a greater amenity impact than what the proposed scheme would have. The comparison scheme was demonstrated using the key controls under the Housing SEPP, LEP and DCP, including side and rear setbacks of just 900mm. The scheme demonstrated that a permissible development with a compliant built form in this instance would result in additional overshadowing, and substantially more building bulk and privacy impacts to adjoining properties due to the reduced side and rear setbacks.

Furthermore, the comparison scheme presented by the applicant indicates that a compliant multi-dwelling housing development, would not achieve the same yield (i.e. providing up to 8 less units) compared to the proposed residential flat building development, therefore impacting the number of social housing units being provided. A multi-dwelling housing scheme would also need to comprise 3-storey dwellings, a typology that does not align with the identified housing demand for NSW Land and Housing tenants in this local government area.

Council accepts this justification, and it is concluded that the Clause 4.6 request successfully demonstrates that the proposed development would have a lesser degree of impact compared to what might otherwise be developed under the standards and controls that apply to the site.

Furthermore, it is concluded that the fourth level of the building, which essentially contributes to the building height breach, would not result in any additional impacts on the amenity of neighbouring properties compared to a 3 storey building with a compliant building height.

It is also noted that the existing dual occupancy development that adjoins the subject site to the east is designed with an elevated floor level that is higher at the front due to the fall of the land. Although the proposed development has two additional floors compared to the dual occupancy, it would not result in an inappropriate transition in terms of height from a streetscape perspective, due to the elevated floor design of the dual occupancy.

Despite the non-compliant building height, the proposed variation is considered worthy of support in this instance. The applicant has adequately demonstrated within the submitted Clause 4.6 request that strict compliance in this case is unnecessary as the proposal meets the objectives of the R3 Medium Density Residential zone, achieves the underlying purposes of the building height objectives in Clause 4.3 of the LEP, and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

In conclusion, it has been demonstrated that the proposed development scheme would be a better outcome for the site, in terms of visual and amenity impacts, compared to a permissible and compliant multi-dwelling housing development on the site. The proposed development also achieves the objectives of the Act by way of promoting the orderly and economic use and development of land, providing affordable housing and promoting good design and amenity of the built environment.

The objectives of the Act under Section 1.3 are as follows:

*(a)  to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*

*(b)  to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

*(c)  to promote the orderly and economic use and development of land,*

*(d)  to promote the delivery and maintenance of affordable housing,*

*(e)  to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

*(f)  to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

*(g)  to promote good design and amenity of the built environment,*

*(h)  to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

*(i)  to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

*(j)  to provide increased opportunity for community participation in environmental planning and assessment.*

On the basis of the above and noting that the development remains consistent with the objectives of the development standards, the objectives of the zone, and meets the objectives of the Act, it is recommended that the variation to Clause 4.3(2) of the LEP be supported in this instance.

*Clause 4.4(2) – Floor space ratio*

Clause 4.4(2) – Floor space ratio under the LEP enforces a maximum floor space ratio of 0.75:1 for the subject development site. The FSR of the proposed development is 0.97:1. This presents a 29.3% contravention to the development standard, which is equivalent to 317.5m2 of GFA.

The applicant has submitted a written request under the provisions of Clause 4.6 of the LEP – Exceptions to Development Standards, to vary the FSR development standard. A copy of the Clause 4.6 written request can be viewed at **Attachment D.**

The objectives as set out in Clause 4.6 of the LEP are as follows:

*(1) The objectives of this clause are as follows-*

*(a)  to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b)  to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

The preconditions to be satisfied are listed in Clause 4.6(3) of the LEP:

*(3)  Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

*(a)  compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(b)  there are sufficient environmental planning grounds to justify the contravention of the development standard.*

These matters are considered below for the proposed development having regard to the applicant’s Clause 4.6 request, which argues that the variation to the FSR development standard is reasonable and justified and compliance with the standard is unnecessary based on the following. It is noted that this is the same justification put forward for the proposed maximum building height departure.

* *There are sufficient environmental planning grounds to justify the contravention of the development standard namely the provision of more social housing/affordable housing in an accessible location consistent with the NSW Government’s plan Future Directions for Social Housing in NSW, the Greater Sydney Region Plan 2018, the South District Plan 2018, the City of Canterbury Bankstown Council’s Local Strategic Planning Statement (LSPS) - Connective City 2036, Council’s Housing Strategy and Council’s Affordable Rental Housing Strategy and consistency with the relevant objectives of the development standard under CBLEP 2023;*
* *The proposed development is in the public interest, as the objectives of the land use zone and the standards are both achieved notwithstanding the non-compliance;*
* *The contravention achieves a better outcome for the development and the community without significant environmental impact by providing more social housing, better utilisation of well-located land, efficient use of existing serviced urban land; and*
* *The request satisfies the tests set by the Land and Environment Court for the justification and assessment of variations to development standards.*

As submitted with respect to the proposed maximum building height departure, the Clause 4.6 request for the breach to the FSR also provides a comparison exercise to demonstrate that a multi-dwelling housing scheme designed in accordance with the requirements of the Housing SEPP with a compliant FSR (which permits an FSR of up to 1.25:1 including a 0.5:1 bonus) would not be a better outcome compared to that of the proposed development. A multi-dwelling housing development with a 1.25:1 FSR would result in greater amenity impacts to adjoining properties in terms of greater building bulk, additional overshadowing, and privacy impacts due to reduced side and rear setbacks.

The applicant’s written request also submits that the proposed RFB scheme is of a lesser scale than the recent NSW government announcement regarding changes to housing policy, which envisages small-scale RFB developments of up to 6 storeys in the R3 zone where a site is located close to a transport hub, which is the case for the subject site.

Council accepts the provided justification, and it is concluded that the Clause 4.6 request successfully demonstrates that the proposed development would have a lesser degree of impact compared to that of a compliant 3-storey multi-dwelling housing development.

Furthermore, it is concluded that the additional GFA would not result in any additional impacts on the amenity of neighbouring properties compared to what might otherwise be developed at the site.

Despite the FSR non-compliance, the proposed variation is considered worthy of support in this instance. The applicant has adequately demonstrated within the submitted Clause 4.6 variation request that strict compliance in this case is unnecessary as the proposal meets the objectives of the R3 Medium Density Residential zone, achieves the underlying purposes of the FSR objectives in Clause 4.4 of the LEP, and there are sufficient environmental planning grounds to justify contravening the development standard.

In conclusion, it has been demonstrated that the proposed development scheme would be a better outcome for the site, in terms of visual and amenity impacts, compared to a permissible and compliant multi-dwelling housing development on the site. The proposed development also achieves the objectives of the EP&A Act by way of promoting the orderly and economic use and development of land, providing affordable housing and promoting good design and amenity of the built environment.

The objectives of the EP&A Act under Section 1.3 are as follows:

*(a)  to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*

*(b)  to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

*(c)  to promote the orderly and economic use and development of land,*

*(d)  to promote the delivery and maintenance of affordable housing,*

*(e)  to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

*(f)  to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

*(g)  to promote good design and amenity of the built environment,*

*(h)  to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

*(i)  to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

*(j)  to provide increased opportunity for community participation in environmental planning and assessment.*

On the basis of the above and noting that the development remains consistent with the objectives of the development standards, the objectives of the zone, and meets the objectives of the Act, it is recommended that the variation to Clause 4.4(2) of the LEP be supported in this instance.

1. **Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are no applicable draft environmental planning instruments.

1. **Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

* Canterbury-Bankstown Development Control Plan 2023 (‘the DCP’)

The application seeks consent for two residential flat buildings, one of which is 2 storeys in height containing 4 units. The proposed 2 storey building is not subject to the design controls of the ADG. As such, the relevant DCP controls are considered as part of the assessment for the proposed 2 storey building. It is pertinent to note that the controls contained in Chapter 5.1 under Section 8 of the DCP mostly relate to residential flat buildings in residential zones that would comprise 4 or more storeys. Therefore, the most relevant controls that are applicable to a 2 storey building are considered in **Table 7** below.

**Table 7: Consideration of the DCP Controls**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Requirement** | **Proposal** | **Comply** |
| Chapter 5.1 – Section 8  Residential Flat Buildings and Shop Top Housing in Residential Zones | | | |
| Street setback  (cl.8.6) | 6 metres | >6 metres from front boundary | Yes |
| Side and rear setbacks  (cl.8.8) | For a single or two storey building, the min. setback to the side and rear boundaries of the site is 0.6 x the wall height. | 0.6 x 5.6m = 3.36m  Side setbacks = 4.m  Rear setback = 3.5m | Yes |
| Side and rear setbacks  (cl.8.11) | The minimum setback for a basement level to the side and rear boundaries of the site is 2m. | Side setback of basement = min. 2m  Note: the driveway leading into the basement has a 1.5m setback from west side boundary. This minor non-compliance to the control of 0.5m is limited to only the driveway section leading into the basement, however the basement itself is compliant with the 2m setback requirement. | Yes |
| Side and rear setbacks  (cl.8.12) | The minimum setback for a driveway to the side and rear boundaries of the site is 1m. | Driveway setback = 1m min. | Yes |
| Private Open Space  (cl.8.13) | Development must locate the private open space behind the front building line. This clause does not apply to any balconies where it is used to provide articulation to the street façade. | POS for each unit within the 2-storey building is provided and all located behind the front building line. | Yes |
| Building Design  (cl.14) | Council applies the State Environment Planning Policy (Housing) 2021 (Chapter 4) and the Apartment Design Guide to residential flat buildings and shop top housing. This includes buildings that are two storeys or less, or contain less than four dwellings. | The design of the building is subject to the design requirements as contained in the ADG – refer to ADG assessment. | Yes |
| Building Design  (car parking)  (cl.8.22) | Development must locate the car parking spaces behind the front building line. | Basement level proposed for 9 car parking spaces. | Yes |
| Landscape  (cl.8.23) | Development must retain and protect any significant trees on the site and adjoining sites. To achieve this clause, the development may require a design alteration or a reduction in the size of the residential flat building and shop top housing. | Removal of 8 trees in total within the site. Trees to be retained as per the Arboricultural Impact Assessment report (prepared by Redgum Horticultural) which forms part of the consent conditions, as contained at Attachment A. | Yes |
| Landscape  (cl.8.24) | Development must landscape a minimum 45% of the area between the building and the primary street frontage and plant more than one 75 litre tree between the building and primary street frontage. | Development is proposed with 55% landscaping within the front setback area. Landscape plans include replacement plantings, this will form part of the consent conditions as contained at Attachment A. | Yes |
| Chapter 5.1 – Section 11  Livable Housing | | | |
| Livable Housing  (cl.11.1) | Development controls for residential flat buildings to comply with the Livable Housing Design Guidelines as follows:   * Min. 20% to achieve Silver Standard and * Min. 20% to achieve the Gold Standard. | An Access Report has been provided which considers the livable housing requirements and certifies that all units within the development, including adaptable units, achieve Silver Level LHA requirements. 2 out of 20 units are adaptable and 2 accessible car spaces are provided.  It is noted that the DCP seeks to achieve 20% of units (4) to achieve gold standard, however, the ADG supersedes the DCP control – refer to ADG assessment under 4Q. | Yes |
| Chapter 5.1 – Section 14  Site Facilities | | | |
| Site facilities  (cl.14.1-14.5) | The location and design of utilities and building services must be shown on the plans and are to be integrated into the building design and concealed from public view.  The location and design of substations must be shown on the plans and should be located underground. Where not possible, substations are to be integrated into the building design and concealed from public view. Substations must not locate forward of the front building line. | Services are appropriately integrated where possible and located with consideration to site constraints.  The proposed substation kiosk is shown on the plans and positioned in the most suitable location within the front setback in accordance with Ausgrid regulations. | No – refer to discussion under ADG. |
| Chapter 3.1  Development Engineering Standards | | | |
| Civil engineering requirements, stormwater drainage systems and on-site detention | To ensure that development provides a satisfactory level of engineering infrastructure.  To promote the consideration of possible engineering constraints to the development at the first stage of the design of the development.  To minimise the impact of development on the surrounding environment, roads and stormwater systems.  To ensure public infrastructure managed by Council is not compromised by development.  To protect and construct the interface between development and Council's assets under Council supervision and to Council's satisfaction. To ensure drainage systems are designed to collect and convey stormwater runoff from the site and into receiving systems with minimal nuisance, danger or damage to the site, adjoining sites or Council sites | The development provides suitable management of stormwater with a design that incorporates on-site detention system.  A Traffic & Parking Impact Assessment report submitted in support of the proposal confirms that the driveway and basement car park has been designed in accordance with the design requirements of this section of the DCP and AS 2890.1.  A BASIX Certificate and NatHERS Certificate dated 20 August 2024 have been obtained for the proposal, which demonstrate that the design meets the sustainability requirements.  Council’s Engineer has assessed the proposed stormwater drainage design for the development and civil works proposed, and deems it satisfactory, subject to conditions of consent, as contained at Attachment A. | Yes |
| Chapter 3.3 – Section 3  Waste Management | | | |
| All residential development types  (cl.3.1-3.10) | Each dwelling to have internal storage sufficient to hold two days of waste and recycling. Bin location to be convenient, screened from public domain and located away from habitable room windows Adequate storage designed in accordance with the Waste Design for New Development Guide. | Communal waste room is provided in a convenient location and integrated in the design of the building, away from habitable windows. It is appropriately screened from the public domain with the provision of landscaping. The size and overall design is adequate and considered to meet the waste design criteria of Waste Design for New Development Guide, subject to conditions of consent, as contained at Attachment A | Yes |
| Residential flat buildings  (cl.3.18-3.19) | Communal bin storage area designed in accordance with Council’s requirements and be of sufficient size. | Communal bin storage area is proposed and is appropriately integrated into the design of the front of the 4-storey building. Number and size of bins are subject to conditions of consent pertaining to waste, as contained at Attachment A. | Yes |
| Residential flat buildings  (cl.3.22) | Residential flat buildings must provide a bulky waste storage room for residents to store bulky waste. The design of the bulky waste storage room must ensure, it integrates with the building form and landscape, does not adversely impact on the streetscape, building design or amenity of dwellings, complies with the requirements of the applicable Waste Design for New Developments Guide. | Communal waste room is provided which makes provision for bulky waste. A waste management plan is also provided for the development. Council’s Resource Recovery team have reviewed the proposal and deems it satisfactory, subject to conditions of consent pertaining to waste, as contained at Attachment A. | Yes |
| Chapter 3.4 – Section 2 – 3  Sustainable Development | | | |
| Water Conservation  (Section 2)  and  Energy Minimisation  (Section 3) | To incorporate more sustainable use of water in development and incorporate energy efficiency in the design and operation of development proposals. | The development is designed incorporating energy minimising measures. A BASIX Certificate dated 20 August 2024 is provided for the development and the consent is conditioned to require compliance with the requirements, as contained at Attachment A. | Yes |
| Chapter 3.7 – Section 2  Landscape | | | |
| Landscape Design  (Section 2) | Landscaping design must integrate with the overall design of the development, promote the retention and planting of large and medium size trees, and the healthy growth of trees in urban areas. It must provide deep soil zones to manage urban heat and water, and to allow for and support healthy plant and tree growth. Must contribute to the quality and amenity of communal open space and courtyards. | The proposed landscaping scheme integrates with the overall design of the development, retains trees where possible and contributes to the streetscape and the amenity of the communal areas. Adequate deep soil zone is provided in accordance with ADG requirements. Landscape conditions are included in the consent, including the requirement for ongoing management, as contained at Attachment A. | Yes |

*Contributions*

It is noted that in accordance with the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, development that involves public housing provided by or on behalf of the Land and Housing Corporation is exempt from the Housing and Productivity Contribution. There are also no local contributions that would be relevant to this application involving Crown development.

1. **Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

1. **Section 4.15(1)(a)(iv) - Provisions of Regulations**

The proposed development is consistent with the applicable provisions contained in the Environmental Planning and Assessment Regulation 2021. The relevant provisions have been considered and are addressed in the recommended draft conditions (where necessary).

* 1. **Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls as outlined in this report.

The consideration of impacts on the natural and built environments includes the following:

* Context and setting – It has been demonstrated that the proposed 2 and 4 storey residential flat buildings are contextually appropriate and align with the conditional requirements of the Site Compatibility Certificate issued by the Department of Planning and Environment. The proposal is considered to be generally consistent with the context of the site with an appropriate distribution of built form. The proposal is consistent with the character of the wider locality and fits within the streetscape. The potential amenity impacts on adjoining properties have been mitigated through the appropriate distribution of building bulk incorporated through the design.
* Access and traffic – public transport is easily accessible to the site with bus stops and Sefton train station being located approximately within 260m east of the site. The proposal makes provision for a single driveway providing access to a single basement level containing 9 car parking spaces. A traffic report has been submitted in support of the application which considers traffic generation and impacts on the local road network.
* Public Domain – The development includes a front building design and landscaping scheme that enhances the quality of the public domain, whilst providing privacy and amenity for occupants. Visually permeable elements are incorporated with minimal solid walls that reduce opportunities for concealment. The construction of a new pedestrian footpath in front of the development site is required and forms part of the recommended consent conditions.
* Utilities – The development site previously included two residential dwellings however is currently vacant. As the proposal includes additional dwellings on the site, the consent is imposed with a condition, as contained in **Attachment A**, to require evidence of written consent from all relevant service providers for the site prior to the commencement of building works, i.e. electricity provider, water authority, and any other relevant utilities or services.
* Heritage – The subject development site is not a heritage item, is not located within a Heritage conservation area, nor located within close proximity to a heritage item.
* Contamination – The site has continuously been used for residential purposes and the residential use of the land is not proposed to be changed with this development proposal.

The Site Compatibility Certificate includes the following statement in relation to land contamination*, “a preliminary site investigation will not be required to accompany any future residential accommodation DA for the site”*. Council’s Environmental Health Officers have considered the application and have not requested any further contamination reports or investigations, subject to conditions, given the site was previously used for residential purposes. As such, a preliminary site investigation is not considered warranted in this particular instance.

Notwithstanding this, recommended conditions of consent pertaining to unexpected finds is included with conditions pertaining to unexpected finds of contaminated material during construction are included at **Attachment A.**

* Flora and fauna impacts – The site is not identified as containing any threatened species or within a biodiversity sensitive area. The application seeks the removal of 8 trees in total and retaining one tree on the site. The application is supported by an Arboricultural Impact Assessment report (prepared by Redgum Horticultural) and confirms that the trees for removal are either exempt or weed species, have low retention value or are located in a position where they cannot be retained due to the proposed building footprint and associated works, where encroachment would have an adverse impact on roots and crown for viability and stability. Trees required for retention and protection are outlined in the report in accordance with the Tree Protection Plan. Recommended conditions of consent requiring the development to comply with the requirements and recommendations of the Arboricultural Impact Assessment report are included at **Attachment A**.
* Natural environment – The subject development site is currently a vacant lot of land with demolition works previously undertaken. The topography of the land slopes towards the street with a cross fall of approximately 2.4m running from the south-eastern corner of the site towards the north-western corner of the site. There are no significant changes proposed to the existing landform, aside from excavation works that are required to accommodate the basement level for the 4-storey building. A cut and fill plan is provided which illustrates the extent of excavation required for the development. The consent is included with conditions pertaining to the safe execution of excavation works, as contained at **Attachment A**.
* Noise and vibration – The impacts from construction and ongoing use of the development have been considered in the assessment of the application. An acoustic assessment was undertaken by Pulse White Noise Acoustics for the development. The impacts are mitigated with recommended conditions included in the consent, as contained at **Attachment A**, relating to noise and vibration, and maintaining the amenity of adjoining properties by ensuring compliance with the *Protection of the Environment Operations Act, 1997*, and implementing the recommendations of the acoustic report.
* Natural hazards – The site is not affected by any natural hazards such as flooding or bushfire.
* Safety, security and crime prevention – The principles of Crime Prevention Through Environmental Design (CPTED) have been considered throughout the design phase of this development proposal. Specifically, the proposal has been designed to avoid entrapment spaces and blind spots, and uses wayfinding, access control and territorial features such as fencing and controlled entry to manage surveillance and security.

An assessment of the proposed development against the four key principles of CPTED is provided by the applicant. These are briefly discussed below:

* + Surveillance – the development is designed with measures to ensure a good level of natural and technical surveillance is available throughout the site.
  + Access control – the development incorporates design measures to ensure safe access and wayfinding throughout the site.
  + Territorial reinforcement – the development is designed to provide a safe and secure environment with clearly defined private and public spaces. It establishes clear entry points and boundaries using fencing and landscaping.
  + Space management – measures have been implemented in the design to ensure the development provides attractive spaces and facilitates a sense of place and ownership for tenants which would in turn increase the sense of safety and decrease the likelihood of criminal activity.
* Social impact – It is considered that the proposed development would have a number of positive community and social effects, which include the following:
  + Assist Homes NSW in meeting its continually growing demand for social housing in the City of Canterbury Bankstown local government area and surrounding areas.
  + Assist Homes NSW in improving the amenity of accommodation for its tenants, by providing new, more appropriate housing.
  + Improve the environmental sustainability of housing on the site, particularly through improved thermal performance, solar access, natural ventilation, energy and water efficiency.
  + Assist Homes NSW to grow its social housing portfolio in line with the NSW Government’s Future Directions for Social Housing in NSW.
  + Assist the City of Canterbury Bankstown Council to increase the provision of affordable housing in the LGA, in line with the Canterbury-Bankstown Affordable Housing Strategy 2020 and the Canterbury-Bankstown Housing Strategy 2020.
* Economic impact – The proposed development is likely to contribute to a range of economic benefits in the City of Canterbury Bankstown local government area and surrounding areas through:
  + More efficient use of land resources, existing infrastructure and existing services.
  + Local sourcing of construction materials.
  + Promotion of housing affordability, through the expansion of publicly owned social housing.
  + The local sourcing of tradespeople and other construction-related professionals.
  + Ongoing consumption from new/additional households.
  + The reduced maintenance costs of the newer housing.
  + Savings associated with improved energy and water efficiency.
* Site design and internal design – The proposal is considered to have an appropriate distribution of built form across the site with consideration to maintaining the amenity of adjoining properties. Potential impacts on the amenity of adjoining properties are mitigated through the choice of building design and architectural elements used, which ensure privacy and solar access is maintained. In order to mitigate the bulk and scale of the built form, the mass of the building has been divided in two portions, being a 4-storey building addressing the street frontage and a smaller and lower 2-storey building at the rear / south end of the site. This transitioning from higher to lower results in shadow impacts on southern neighbouring properties and their private open spaces being minimised.
* Construction – The potential impacts from construction and site works have been adequately mitigated in recommended conditions of consent, as contained in **Attachment A** under heading ‘During Building Work’, which include conditions relating to hours of construction work, the requirement for dilapidation reports for adjoining developments, hoarding fences, safety during excavation works, and compliance with the recommendations of the acoustic report.
* Cumulative impacts – The proposed development is not considered to result in any adverse cumulative impact. It is generally compliant with relevant planning policies and controls, with the exception of the departures to the height and FSR development standards. Notwithstanding the departures, the development is not considered to produce any unacceptable adverse effects for the following reasons:
  + the proposed development activity would not result in any adverse cumulative impact when considered in conjunction with any other proposals or developments in the area.
  + there would be no synergistic effects of individual project impacts from the proposed development activity when considered in combination.
  + there are no known environmental stresses in the area affected by the proposed development activity or likely contribution of the proposed activity to increasing or decreasing those stresses.

Accordingly, it is considered that the proposal would not result in any significant adverse impacts in the locality as outlined above, subject to adherence with the recommended conditions of consent as at **Attachment A**.

* 1. **Section 4.15(1)(c) - Suitability of the site**

The suitability of the site for the proposed development has been addressed in the above sections of this report. There are no prohibitive constraints posed by adjacent developments. Through the Site Compatibility Certificate process, it was assessed that the proposed development of the site is compatible with the surrounding land uses, is not likely to have an adverse effect on the environment and does not cause unacceptable environmental risks to the land. There are no planning or environmental matters that would hinder the proposed development of the site. In this regard, it can be concluded that the proposal fits into the locality and the site attributes are conducive for the development.

* 1. **Section 4.15(1)(d) - Public Submissions**

One (1) submission was received which is considered in **Section 4.3** of this report.

* 1. **Section 4.15(1)(e) - Public interest**

The proposed development would provide economic and social benefits by way of providing social housing to meet the needs of the community in the local area. The housing provided through the development also contributes to meeting the significant, long-standing and continually growing demand for social housing in the Canterbury-Bankstown local government area, thus allowing Homes NSW to grow its social housing portfolio in line with the NSW Government’s Future Directions for Social Housing in NSW.

Furthermore, the development would assist Homes NSW to improve the amenity of accommodation for its tenants, by providing new, more appropriate housing aligning with the demand for housing. The development would also improve the environmental sustainability of housing on the site, particularly through improved thermal performance, solar access, natural ventilation, energy, and water efficiency. Potential impacts on the amenity of adjoining properties are mitigated through the choice of building design, maintaining privacy and solar access.

The development would not result in any unacceptable adverse environmental impacts and is demonstrated to be a suitable development for the site despite the departures. Having regard to the matters discussed in this report, approval of the proposed development would not contravene the public interest.

1. **REFERRALS AND SUBMISSIONS** 
   1. **Agency Referrals and Concurrence**

The development application has been referred to various agencies for concurrence and referral as required by the EP&A Act and outlined below in **Table 8**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 8: Concurrence and Referrals to agencies**

|  |  |  |  |
| --- | --- | --- | --- |
| **Agency** | **Concurrence/**  **referral trigger** | **Comments**  **(Issue, resolution, conditions)** | **Resolved** |
| Concurrence Requirements (s4.13 of EP&A Act) | | | |
| Rail authority for the rail corridor | Section 2.99(4) - *State Environmental Planning Policy (Transport and Infrastructure) 2021* | The proposal involves the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor.  The application was referred to TfNSW-Sydney Trains during the assessment of the application. No objection was raised to the proposal and concurrence has been granted, subject to the imposition of operational conditions as contained at Attachment A. | Y |
| Referral/Consultation Agencies | | | |
| Electricity supply authority | Section 2.48 – *State Environmental Planning Policy (Transport and Infrastructure) 2021*  Development near electrical infrastructure | The application seeks the installation of a substation kiosk. A referral to Ausgrid was made during the assessment of the application. No objection was raised to the proposal, subject to the imposition of conditions as contained at Attachment A. | Y |

* 1. **Council Officer Referrals**

The development application has been referred to various Council officers for technical review as outlined **Table 9.**

**Table 9: Consideration of Council Referrals**

|  |  |  |
| --- | --- | --- |
| **Officer** | **Comments** | **Resolved** |
| Development Engineer | Council’s Development Engineer has reviewed the submitted stormwater concept plan and proposed drainage design. No objection is raised, subject to recommended conditions imposed on any consent granted, as contained in Attachment A. | Y  (conditions) |
| Traffic Engineer | Council’s Traffic Engineer has reviewed the proposed development, and no objection is raised to the final design proposed, subject to recommended conditions imposed on any consent granted, as contained in Attachment A. | Y  (conditions) |
| Waste Officer | Council’s Waste Officer has reviewed the proposed development, and no objection is raised to the final design proposed, subject to recommended conditions pertaining to the effective management of waste imposed on any consent granted, as contained in Attachment A. | Y  (conditions) |
| Urban Design | Council’s Urban Design team have reviewed the proposed development, and no objection is raised to the final design, subject to recommended conditions imposed on any consent granted, as contained in Attachment A. | Y  (conditions) |
| Community and Safety Officer | Council’s Community and Safety Officer has reviewed the proposed development, and no objection is raised to the final design, subject to recommended conditions imposed on any consent granted, as contained in Attachment A. | Y  (conditions) |
| Tree Management Officer | Council’s Tree Management Officer has reviewed the proposed development, and no objection is raised, subject to recommended conditions imposed on any consent granted, as contained in Attachment A. | Y  (conditions) |
| Building Surveyor | Council’s Building Surveyor has reviewed the proposed development, and no objection is raised, subject to recommended conditions imposed on any consent granted, as contained in Attachment A. | Yes (conditions) |
| Environmental Health Officer | Council’s Environmental Health Officer has reviewed the proposed development, and no objection is raised, subject to recommended conditions pertaining to environmental health, as contained in Attachment A. | Yes  (conditions) |

The outstanding issues raised by Council officers are considered in the ‘Key Issues’ under **Section 5** of this report.

* 1. **Community Consultation**

The proposal was placed on public exhibition in accordance with the Council’s Community Participation Plan from 2 October 2024 until 22 October 2024. The notification included the following:

* An advertisement in the News Local Website.
* A sign placed on the site.
* Notification and plans published on the NSW planning portal.
* Notification letters sent to adjoining and adjacent properties (20 letters were sent to owners/occupiers).
* Notification on the Council’s website.

Council received a total of one (1) unique submission that does not object to the proposal, rather raised concerns regarding the impacts on their property during site works. The issues raised in the submission are considered in **Table 10**.

**Table 10: Community Submissions**

|  |  |  |
| --- | --- | --- |
| **Issue** | **No of submissions** | **Council Comments** |
| Submission raised concerns relating to impact on the neighbouring property due to potential trespassing upon, rubbish or debris  in the course of any work that might be carried out at the development site, particularly that an easement to drain water exists within the subject site adjacent to the adjoining property. | 1 | Issue: Impacts associated with trespassing, rubbish and debris on adjoining property.  Outcome: The application does not seek to alter the existing easement to drain water which runs adjacent to the western boundary of the site. Issues associated with debris and the like resulting from site works will be appropriately managed through the imposition of conditions of consent, which include the requirement for temporary hoarding fencing which must be erected around the development site. All such fencing must be maintained throughout the construction period to ensure that the work area is secured and to mitigate any issues associated with debris and the like. The consent is included with conditions to address such issues, such as the requirement for compliance with the *Protection of the Environment Operations Act, 1997*, the Regulations, and a Construction Site Management Plan as contained at Attachment A. |

1. **KEY ISSUES**

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

* 1. **Permissibility**

Residential Flat Buildings are not permissible in the R3 Medium Density Residential zone pursuant to the LEP Land use table under Clause 2.3, however, the proposed development is permissible in this instance pursuant to a Site Compatibility Certificate, issued by the Department of Planning and Environment on 18 February 2022, under the provisions of Chapter 2, Part 2, Division 5, Clause 39(5) of the Housing SEPP. The Housing SEPP Chapter 2, Part 2, Division 5 enables development for the purpose of a residential flat building in a zone where it would be otherwise prohibited subject to certain requirements being met. Clause 38 of the Housing SEPP permits development the subject of a Site Compatibility Certificate to be carried out with consent.

The proposal has been designed to satisfy the conditional requirements specified in the Site Compatibility Certificate, which certifies that the development:

* is compatible with the surrounding land uses having had regard to the matters specified in clause 39(6), only if it satisfies certain requirements specified in Schedule 2 of this certificate; and
* is not likely to have an adverse effect on the environment and does not cause unacceptable environmental risks to the land.

Resolution: The permissibility issue has been resolved through the attainment of a Site Compatibility Certificate.

* 1. **Height of buildings**

Clause 4.3(2) – Height of buildings under the LEP enforces a maximum building height of 10m for the subject development site. The proposed development seeks a building height of 13.34m and the extent of the variation sought is 33.4% or 3.34m. The non-compliance relates to only a portion of the development, namely the 4th floor of the building at the front of the site. A Clause 4.6 request has been submitted for this breach to the LEP and is discussed in detail earlier in this report.

Resolution: The breach to the height of building development standard under Clause 4.3(2) of the LEP has been resolved through the Clause 4.6 request, which successfully demonstrates that there are sufficient environmental planning grounds to justify the contravention.

* 1. **Floor Space Ratio**

Clause 4.4(2) – Floor space ratio under the LEP enforces a maximum floor space ratio of 0.75:1 for the subject development site. The development seeks an FSR of 0.97:1 which presents a 29.3% contravention to the development standard, equivalent to 317.5m2 of GFA. A Clause 4.6 request has been submitted for this breach to the LEP and is discussed in detail earlier in this report.

Resolution: The breach to the FSR development standard under Clause 4.4(2) of the LEP has been resolved through the Clause 4.6 request which successfully demonstrates that there are sufficient environmental planning grounds to justify the contravention.

* 1. **Apartment Design Guide**

ADG: 3C – Public Domain Interface

Objective 3C-2 of the ADG requires that substations be located in basement levels or away from view from the public domain. The substation for the development is proposed within the front setback of the building situated along the street frontage to the east of the proposed driveway and is positioned such that it does not conflict with other required services for the development.

Resolution: The application was referred to Ausgrid for review, who raised no objection to the proposed location, subject to conditions that form part of the recommended consent at Attachment A.

ADG: 3F – Visual Privacy (Building Separation )

Objective 3F of the ADG sets out the minimum required separation distances from buildings to the side and rear boundaries. A minimum 6m setback to the side and rear boundaries is required for habitable rooms and balconies of buildings comprising of 4 storeys to provide appropriate building separation for maintaining amenity and visual privacy between buildings.

The development meets the minimum setback requirements to the front and side boundaries as required of the ADG, with the exception to the following:

* Front setback of waste room.
* East side setback of unit 04 (ground floor).
* East and west side setback of angled walls on level 1 and 2 for units 05, 06, 09 and 12.

Resolution: Despite the non-compliance, the intent of Objective 3F-1 of the ADG is considered to be met through the design of the development by way of providing architectural elements and features that allow for reasonable levels of external and internal visual privacy and amenity.

ADG: 4D – Apartment Size and Layout

Apartments are required to meet minimum width requirements for living rooms, with 2 bedroom apartments being a minimum width of 4m. The living rooms of units 05, 08, 09 and 12 do not meet the minimum 4m dimension, however, this is a partial non-compliance as a portion of the area exceeds the minimum 4m requirement.

Resolution: Despite the non-compliance, these units are designed with functional open plan layouts with a high level of useability and amenity units. Therefore, the non-compliance identified with the ADG in this regard is justified in this instance and is considered worthy of support.

1. **CONCLUSION**

The proposed development has been designed in accordance with the Housing SEPP and the associated ADG to respond and contribute positively to the existing and emerging character of the locality. The proposal demonstrates that it is consistent with the requirements of the Site Compatibility Certificate issued by the Department of Planning and Environment, which affirms that the proposed development of the site is compatible with the surrounding land uses, is not likely to have an adverse effect on the environment, and would not cause unacceptable environmental risks to the land. Careful consideration has been given to the massing of the built form and the relationship of the proposal with surrounding properties and streetscape. Careful consideration has also been given to the specific characteristics of the site, including topography and orientation of the lots to minimise environmental impacts and maximise tenant amenity. The proposal is considered to fit into the locality and the site attributes are conducive for the development.

The application demonstrates that the proposed development would not result in any unacceptable adverse environmental impacts and the proposed development is considered suitable for the site and its surrounds, despite the departure to the height and FSR development standards.

The proposed development would also provide much needed social housing to meet the needs of the community, assisting Homes NSW to meet the growing demand for social housing in the Canterbury-Bankstown local government area and surrounding areas.

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions, and the key issues identified in this report during the assessment, it is considered that the application can be supported. Accordingly, it is requested that the development application be approved, subject to the conditions as recommended and contained in **Attachment A**.

1. **RECOMMENDATION**

That Development Application No. DA-951/2024 for the construction of a 2-storey and 4-storey residential flat building development comprising a total of 20 affordable housing units on a vacant allotment, with basement parking for 9 vehicles, associated site works, landscaping and fencing, and lot consolidation, at the properties known as No. 175-177 Wellington Road, Sefton, be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979,* subject to the draft conditions of consent attached to this report at **Attachment A**.

The following attachments are provided:

* Attachment A: Draft Conditions of consent
* Attachment B: Approval from the Crown (applicant) for imposition of Conditions
* Attachment C: Architectural Plans
* Attachment D: Clause 4.6 Request
* Attachment E: Design Verification Statement & Design Quality Principles
* Attachment F: Landscape Plan