

## SYDNEY SOUTH PLANNING PANEL - ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSSH - 79
<b>DA Number</b>	DA-452/2021
<b>LGA</b>	Canterbury Bankstown Council
<b>Proposed Development</b>	Demolition of existing structures, removal of 18 trees and the construction of a shop top housing development comprising 142 residential apartments within four residential podiums, rooftop communal open space; retail floor space, 3 storey basement car parking including a mezzanine level comprising 242 car spaces, storage and waste facilities. The development includes Torrens Title subdivision of land to enable dedication of the new lane works along the rear and slip lane with associated public footpath.
<b>Street Address</b>	280-300 Lakemba St and 64-70 King Georges Rd, Wiley Park
<b>Applicant/Owner</b>	<u>Applicant:</u> Jacquel Australia Project Management (JAPM) Pty Ltd <u>Owner:</u> Lakemba Street Development Pty Ltd
<b>Date of DA lodgement</b>	18 June 2021
<b>Number of Submissions</b>	Nil
<b>Recommendation</b>	Approval, subject to conditions of consent
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Part 4, Clause 20(1) of the SEPP (State and Regional Development) 2011 the application is declared as regionally significant development. Schedule 7 includes 'General Development over \$30million'. The proposal has a capital investment value of \$42,555,477.23 and therefore falls within this category.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• Water Management Act 2000</li> <li>• State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)</li> <li>• State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX)</li> <li>• State Environmental Planning Policy (Housing) 2021</li> <li>• Canterbury Local Environmental Plan 2012 (CLEP 2012)</li> <li>• Canterbury Development Control Plan 2012 (CDCP 2012)</li> <li>• Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)</li> <li>• Draft Planning Legislation including, State Environmental Planning Policy – Design and Place and Draft Consolidated Canterbury Bankstown Local Environmental Plan</li> </ul>
<b>List all documents submitted with this</b>	<ul style="list-style-type: none"> <li>• Attachment A - Architectural plans</li> <li>• Attachment AA – Plan of Subdivision</li> </ul>

<b>report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment B - Design Verification Assessment</li> <li>• Attachment C - SEE including Clause 4.6 to vary building height</li> <li>• Attachment D - Traffic and Parking Report</li> <li>• Attachment E - Landscape Plans</li> <li>• Attachment F - Civil and Stormwater Plans</li> <li>• Attachment G - Waste Management Plan</li> <li>• Attachment H - Arborist report</li> <li>• Attachment I - Plaza, basement and rooftop management plans.</li> <li>• Attachment J- Acoustic Report</li> <li>• Attachment K - Wind Impact Assessment Report and Memo</li> <li>• Attachment L -Loading Dock Management Plan</li> <li>• Attachment M - Natural Ventilation Report</li> <li>• Attachment N -Geotechnical Reports and Statement.</li> <li>• Attachment O- BCA Report</li> <li>• Attachment P -Access Report</li> <li>• Attachment Q -Hazardous Materials Survey and Site Investigation Report</li> <li>• Attachment R – Fire Services Solution</li> <li>• Attachment S – Construction Waste Management Plan</li> <li>• Attachment T – Draft Conditions of Consent</li> </ul>
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"> <li>• Canterbury Local Environmental Plan 2012 (CLEP 2012);</li> <li>• The Clause 4.6 relates to Clause 4.3 Height of Buildings of the CLEP 2012; and</li> <li>• The subject site is in a B2 Local Centre Zone</li> </ul>
<b>Summary of key submissions</b>	Nil
<b>Report prepared by</b>	Alice Pettini – Acting Team Leader (East)
<b>Report date</b>	24 January 2021

#### **Summary of s4.15 matters**

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

#### **Legislative clauses requiring consent authority satisfaction**

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

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

#### **Clause 4.6 Exceptions to development standards**

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

#### **Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### **Conditions**

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

## **EXECUTIVE SUMMARY REPORT**

This matter is reported to the Sydney South Planning Panel as the development application proposes a development that exceeds a capital investment value of \$30 million in accordance with Schedule 7(2) of State Environmental Planning Policy (State and Regional Development) 2011.

The Development Application (DA) DA-452/2021 seeks development consent for the demolition of existing structures, removal of 18 trees and the construction of four (4) shop top housing developments over part three (3), part four (4) levels of basement. The basement incorporates a supermarket, residential, commercial and visitor parking, storage rooms and plant and services rooms.

The following is incorporated into the four (4) x building design:

- Basement parking containing 121 residential parking spaces, 29 residential visitor parking spaces, 1 car wash bay, 92 commercial car parking spaces, 24 motorcycle parking spaces and 67 bicycle parking spaces.
- 15 retail tenancies, including a supermarket located in the basement and ground floor.
- 142 residential apartments over 7/8 levels. The apartment configuration is broken down as follows:
  - 18 x studio apartments.
  - 40 x one-bedroom apartments.
  - 80 x two-bedroom apartments.
  - 4 x three-bedroom apartments.
- Rooftop communal open space area.
- A central public plaza providing public art, community access and pedestrian connections
- Combined residential and commercial loading docks.
- Waste facilities.
- New vehicular access from Lakemba Street.
- Construction and dedication to Council by Torrens Title Subdivision of an 8.475m wide laneway on the site from Lakemba Street to the rear boundary of the property.
- Construction and dedication to Council by Torrens Title Subdivision of a 3m wide footpath along Lakemba Street, which will support the widening of Lakemba Street for an additional traffic lane.
- Associated landscaping.

The application has been assessed against the relevant provisions of Water Management Act 2000, State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy 65 Design Quality of Residential Apartment Development (SEPP 65), State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX), CLEP 2012 and CDCP 2012.

The key matters to be considered by the Sydney South Planning Panel (Panel) are:

- Building Height non-compliance, a variation at its highest of 850mm (3%).
- The Clause 4.6 lodged with the application has adequately addressed Clause 4.6(4)(a) of the CLEP 2012 in that the Clause 4.6 submission has satisfied why compliance with the maximum building height development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

- The design seeks variation to the deep soil, visual privacy and natural ventilation requirements contained within the Apartment Design Guide.
- The design seeks variation to the controls relating to overshadowing, front setbacks and minimum building depth requirements outlined within CDCP 2012.
- For the reasons outlined within the report, the abovementioned variations are considered acceptable, on merit in the circumstances of this case.

The application was advertised twice throughout the duration of the development assessment process for a period of 28 days consistent with the Canterbury Bankstown Community Participation Plan. The advertising dates are provided below:

- Between 7 July 2021 – 3 August 2021. No submissions were received during this period.
- Between 3 November 2021 – 30 November 2021. No submissions were received during this period.

### **POLICY IMPACT**

This matter has no direct policy implications.

### **FINANCIAL IMPACT**

This matter has no direct financial implications.

### **RECOMMENDATION**

It is recommended the Sydney South Planning Panel **approve** Development Application No. DA-452/2021, subject to the recommended conditions of consent provided in a separate attachment (refer to Attachment T).

## **BACKGROUND**

On 16 December 2020, the Sydney South Planning Panel refused DA-484/2017 which sought consent for the following:

*Demolition of existing structures, removal of trees and construction of two x eight (8) storey shop top developments with 150 residential apartments. The amended proposal includes a ground level plaza, retail premises (including a supermarket), new lane works along the rear (to be dedicated to Council), third slip lane on Lakemba Street and three levels of basement car parking.*

*The Application was refused for the following reasons:*

- 1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application does not comply with Clause 50(1AB)(a) of the Environmental Planning and Assessment Regulation 2000 as the Design Verification Statement submitted does not comprise a statement that the qualified designer verifies that he/she designed, or directed the design, of the development.*
- 2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012 relating to 'Height of buildings' and exceeds the allowable height of building of 27m.*
- 3. The Clause 4.6 Request to vary Clause 4.3(2) 'Height of buildings' of the Canterbury Local Environmental Plan 2012 is not well founded and it has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- 4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application is not consistent with State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development with respect to Schedule 1 Design Quality Principles. The proposed development does not meet Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density and Principle 6: Amenity.*
- 5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the solar access requirements contained within Part 4A of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.*
- 6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the minimum natural ventilation requirements contained within Part 4B of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.*
- 7. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the maximum habitable room depth requirements contained within Part 4D of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.*

8. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application fails to comply with the minimum master bedroom area requirements contained within Part 4D of the Apartment Design Guide in accordance with Clause 28(2)(c) of State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.
9. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and thorough assessment of the design against the provisions outlined within Clause 6.4 – Stormwater Management of Canterbury Local Environmental Plan 2012.
10. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and thorough assessment of the design against the provisions outlined within Clause 6.6 – Essential Services of Canterbury Local Environmental Plan 2012.
11. The proposed development is unsatisfactory, pursuant to the provisions Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls of the Canterbury Development Control Plan 2012 (CDCP 2012) including:
  - a. Part B1 – Traffic and Parking  
Insufficient information has been submitted to allow a proper and thorough assessment of the application against the relevant traffic and parking controls outlined within Part B1 of CDCP 2012.
  - b. Part B5 – Stormwater and Flood Management  
Insufficient information has been submitted to allow a proper and thorough assessment of the application against the relevant stormwater controls outlined within Part B5 of CDCP 2012.
  - c. Part B9 - Waste  
Insufficient information has been submitted to allow a proper and thorough assessment of the application against the relevant waste controls outlined within Part B9 of CDCP 2012.
  - d. Part C5 – Shop Top Housing  
The layout and orientation of the development requires further consideration to ensure the residential apartments within the design receive adequate solar access and natural ventilation pursuant to Part C5.2.1.4(C1) and (C5).
  - e. Part D1 – Business Centres – General  
Majority of the ground floor retail tenancies (15 of the 19 tenancies) do not meet the minimum 10m depth requirement pursuant to Part D1.3.5(C1).
12. Insufficient information has been submitted to address concerns raised by Council's Infrastructure Specialist and subsequently a detailed assessment of the likely impacts of the development pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 could not be determined.
13. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
14. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

On 14 January 2021, a pre-da meeting was held with representatives of the Applicant and Council Officers to run through the reasons of refusal and how to move forward. The following comments/advice was provided at the meeting:

- Building Height: The Applicant was advised to review the previous assessment report to understand how the Clause 4.6 variation request could be improved.
- Solar Access: The level of solar access to apartments could be improved through reducing the depth of the affected apartments and use of skylights. Council noted that the façade features are welcomed and don't believe these affect the solar access compliance figures.
- Natural Ventilation: Council advised that the Windtech report should consider the apartments that rely on plenums and/or skylights to determine whether such apartments should be incorporated into natural ventilation figures.
- Proposed Laneway: Discussions regarding access between Council's Traffic Department and the traffic consultants.
- Waste: Discussions regarding the waste storage rooms and carting routes were had between Council's Waste Officer and the Architect.

The subject application (DA-452/2021) was lodged on 18 June 2021. The original application sought consent for:

*Demolition of existing structures, removal of 18 trees and the construction of a shop top housing development comprising 142 residential apartments within four residential podiums, rooftop communal open space; 2,195sqm of retail floor space, 3 storey basement car parking including a mezzanine level comprising 248 car spaces, storage and waste facilities. The development includes a dedication for new lane works along the rear and slip lane with associated public footpath.*

At the conclusion of the first advertising period and SSPP Panel Briefing on 26 August 2021, an additional information request letter was issued to the Applicant. The letter raised the following concerns to be addressed by the Applicant:

- Non-compliances with the minimum requirements outlined within the ADG relating to communal open space, visual privacy, solar access, apartment size and layout, private open space and storage.
- Matters relating to State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX).
- Further information required to determine whether the development complied with the maximum 27m building height development standard outlined within Canterbury Local Environmental Plan 2012.
- Non-compliances with relevant controls outlined within CDCP 2012 including parking, roof design, overshadowing, side setbacks and general building design.
- Matters raised by WaterNSW, Council's Environmental Health Officer, Council's Infrastructure Officer, Council's Urban Design Team, Council's Traffic Department, Council's Waste Officer, Council's Community Safety Officer, Council's Spatial Planning Team, Council's Landscape Officer and Council's Tree Management Officer.

Information to address the above was to be submitted on 30 September 2021. Meetings were held with the Applicant on the 23 and 27 September to discuss some of the above matters and further clarification was provided to the Applicant via email, as required.

The information requested was submitted by the Applicant on 15 October and 4 November 2021.

The application was re-advertised between 3-30 November 2021, of which no submissions were received.

On 23 December 2021, a further additional information letter was issued to the Applicant requesting confirmation on the following:

- Method of mechanical ventilation to proposed apartments.
- Matters relating to State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX).
- Revised information to address matters raised by Council's Traffic and Community and Safety Departments.

Information to address the above was submitted on 24 December 2021. The assessment below is based on the revised design submitted in October 2021 as well as the additional clarification provided in the documentation received after.

### **SITE & LOCALITY DESCRIPTION**

The site is located at 280-300 Lakemba Street and 64-70 King Georges Road, Wiley Park and is legally described as follows:

- Lot A, DP962951.
- Lot A, DP402053.
- Lot B, DP402053.
- Lot 1, DP 501587.
- Lot 2, DP 501587.
- Lot 3, DP 501587.
- Lot 2, DP6970.
- Lot 2, DP 206965.
- Lot 1, DP 124636.
- Lot 1, DP 124613.
- Lot 1, DP 124635.

The lots, as the development site, have a primary frontage to King Georges Road of 67.285m and a secondary frontage to Lakemba Street of 64.605m with a splay at the corner measuring 3.44m. The site has a total site area of 5,851m<sup>2</sup> (by title dimensions) and slopes approximately 3m from the south to north across the site. The site currently consists of single and two storey commercial tenancies as well as detached dwellings.

The site is zoned B2 Local Centre and is bound by Lakemba Street to the north. An existing 6 storey shop top housing development is located opposite the site on the northern side of Lakemba Street. R4 zoned land comprising of two-three storey walk-up residential flat buildings directly adjoin the site to the east. B2 zoned land directly adjoins the site to the south comprising a mix of commercial, mixed use and residential development. King Georges Road directly adjoins the site to the west. B2 zoned land is located on the opposite side of King Georges Road consisting of single-two storey commercial premises as well as the Wiley Park Railway Station.





**Figure 1:** Aerial of subject site in yellow.  
**Source:** NearMaps 2020



**Figure 2:** Zoning context of site, site outlined in yellow  
**Source:** NSW Planning Portal 2020



**Figure 3:** The subject site, view south-west along Lakemba Street



**Figure 4:** The subject site, view south-east at the corner of Lakemba Street and King Georges Road



**Figure 5:** Existing development to the north of the subject site, view north-east at the corner of Lakemba Street and King Georges Road



**Figure 6:** Existing development to the east of the subject site, view south-east along Lakemba Street



**Figure 7:** Existing development to the south of the subject site, view east along King Georges Road

## **PROPOSED DEVELOPMENT**

The Development Application (DA) seeks development consent for the demolition of existing structures, removal of 18 trees and the construction of four (4) shop top housing developments over part three (3), part four (4) levels of basement. The basement incorporates a supermarket, residential, commercial and visitor parking, storage rooms and plant and services rooms.

The following is incorporated into the four (4) x building design:

- Basement parking containing 121 residential parking spaces, 29 residential visitor parking spaces, 1 car wash bay, 92 retail car parking spaces, 24 motorcycle parking spaces and 67 bicycle parking spaces.
- 15 retail tenancies, including a supermarket located in the basement and ground floor.
- 142 residential apartments over 7/8 levels. The apartment configuration is broken down as follows:



- 18 x studio apartments.
- 40 x one-bedroom apartments.
- 80 x two-bedroom apartments.
- 4 x three-bedroom apartments.
- Rooftop communal open space area.
- A central public plaza providing public art, community access and pedestrian connections
- Combined residential and commercial loading docks.
- Waste facilities.
- New vehicular access from Lakemba Street.
- Construction and dedication to Council by Torrens Title Subdivision of an 8.475m wide laneway on the site from Lakemba Street to the rear boundary of the property.
- Construction and dedication to Council by Torrens Title Subdivision of a 3m wide footpath along Lakemba Street, which will support the widening of Lakemba Street for an additional traffic lane.
- Associated landscaping.



**Figure 8:** Photomontage  
**Source:** Marchese Partners

### **Statutory Considerations**

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

- Water Management Act 2000
- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP 2007)
- State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX) (BASIX)
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

- State Environmental Planning Policy (Housing) 2021
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)
- Draft Consolidated Canterbury Bankstown Local Environmental Plan
- Draft Environment SEPP
- Draft Design and Place SEPP

#### **SECTION 4.15 ASSESSMENT**

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

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

##### **Water Management Act 2000**

A Geotechnical Investigation Report prepared by JK Geotechnics dated 22 June 2017 and a supplementary statement dated 20 May 2021 was submitted with the application. The report noted that groundwater seepage was encountered in the boreholes during auger drilling. The report concluded that it did not consider that there is a likelihood of the construction of the basement causing any significant interference to the regional groundwater flow due to the relatively impermeable nature of the subsurface profile as well as given proper drainage systems are to be designed and installed in the basement by a qualified hydraulic/drainage engineer. The statement dated 20 May 2021 noted that the findings of the report dated 22 June 2017 are still applicable to the proposal.

Notwithstanding the above, the application was referred to NSW Natural Resources Access Regulator (NRAR) pursuant to Clause 91 of the Water Management Act 2000 and Water NSW pursuant to Clause 90(2) of the Water Management Act 2000. NRAR raised no objection in their response dated 11 August 2021. WaterNSW provided their general terms of approval on 22 December 2021. These have been incorporated into the recommended conditions of consent.

Considering the above, the application satisfies the requirements of the Water Management Act 2000.

##### **State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**

Clause 7 of SEPP 55 – Remediation of Land requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, we must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, we must be satisfied that the land will be remediated before the land is used for that purpose.

The Applicant submitted a Stage 1 and Stage 2 Environmental Site Assessment, both prepared by Environmental Investigation Services. The Stage 1 report recommended that a Stage 2 assessment be undertaken and a Hazardous Material's Assessment (Hazmat) report be undertaken for the existing buildings prior to the commencement of demolition on the site.

Based on the results of the above, Council's Environmental Health Officer requested the following be provided:

- *A revised Detailed Site Contamination Investigation (Stage 2) Report is required to address data gaps. This report is required prior to any further assessment of this application by the Environmental Health Unit.*
- *The above-mentioned review also recommends that a Hazardous Materials Survey to be undertaken prior to demolition on the entire site and to include all buildings and structures.*

In response, the Applicant submitted an Additional Site Investigation (ASI) Report and Hazardous Materials Survey both prepared by EI Australia and dated 1 November 2021.

The findings of the ASI Report were as follows:

- *A hazardous materials survey was completed at the site. This survey identified asbestos containing materials (ACM), lead based paints, synthetic mineral fibre materials (SMF), and potential Polychlorinated Biphenyls (PCBs) within the existing building structures;*
- *No unusual (suspicious/hydrocarbon) odours were detected during the intrusive site works or visits;*
- *Sub-surface conditions for the site consisted of fine to medium grained sands, low to medium plasticity clays, gravels, with travel levels of slag and silty clays with shale at depth;*
- *Concentrations of COPCs in representative soil samples were all below the adopted soil investigation levels applicable to the proposed development; and*
- *Contaminant concentrations in the representative groundwater samples were found to comply with the adopted investigation levels, with exception to dissolved chromium, copper and zinc however were considered reflective of background concentrations. Upon assessment of the data, EI did not consider local groundwater conditions to pose a risk to human health, the environment or the proposed development.*

In light of the findings of the investigation, EI conclude that the site is suitable for the proposed development.

The Hazardous Materials Survey identified hazardous building materials on the site. However, the materials found were ranked Priority 3 or Priority 4 (i.e. stable and posing negligible health risk under present conditions). No immediate remedial action was deemed necessary. Section 6 comprises a range of recommendations to ensure such materials are removed or managed in accordance with relevant legislation.

Council's Environmental Health Officer has reviewed the above reports and raised no objection, subject to conditions of consent.

### **State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65)**

This policy applies to residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component. The development must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least 3 or more storeys and contain at least 4 or more dwellings. Residential apartment development does not include boarding houses or serviced apartments.

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for

assessing 'good design'. Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 (the Regs) requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses the design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the ADG have been achieved. The documentation submitted comprises the Design Verification Statement. The statement comprises an assessment against the SEPP 65 principals and ADG guidelines and comprises a statement that the qualified designer verifies that he/she designed, or directed the design, of the development pursuant to Clause 50(1AB)(a) of the Regs.

The principles outlined within Schedule 1 of SEPP 65 are discussed as follows:

#### Principle 1: Context and Neighbourhood Character

The site is located within the B2 Local Centre zone. The site is consistent with the objectives of the zone as the development consists of a well-designed shop top housing development that provides residential use as well as retail floor area in an accessible area. The mixed-use design will subsequently contribute to supporting the viability of centres and encourage employment opportunities along King Georges Road.

The immediate surrounding area is undergoing transition as it comprises a mix of development ranging from retail to residential and mixed-use development. The proposal is compatible with the existing and desired future character of the area and will contribute to the quality and identity of the immediate locality.

#### Principle 2: Built Form and Scale

The proposed development is generally compliant with the building envelope controls. The design seeks a minor variation to the maximum building height development standard. A variation to the building height development standard has been submitted in accordance with Clause 4.6 of CLEP 2012 and is considered acceptable, on merit for the reasons outlined later within this report.

Despite the variation, the scale of the development is consistent with that envisaged by the planning controls and is of a suitable bulk and scale for the locality.

The façade has been articulated to address all three street frontages by incorporating changes in the built form, appropriate landscaping and a mixed palette of building material and finishes. These elements also contribute to reducing the overall bulk and mass of the building.

#### Principle 3: Density

As outlined within the body of this report, the proposed design generally complies with the applicable development standards. Any variation proposed has been considered as part of this assessment and is considered acceptable on merit.

Overall, the design is considered to achieve a high level of amenity for residents. Furthermore, the proposed density is an appropriate response to the desired future character and built form of the locality.

#### Principle 4: Sustainability

A BASIX Certificate has been submitted to Council with this development application, which details the resource, energy and water efficiency measures that will be incorporated into this proposal.

#### Principle 5: Landscape

The proposal incorporates landscaping at ground level as well as on some of the upper levels of the development, including the rooftop as part of the communal open space area. Sufficient deep soil area is incorporated into the proposed design.

Landscape details have been provided which have been reviewed and accepted by our Landscape Architect. All the proposed apartments have access to private open space, in the form of balconies. The proposal satisfies the relevant landscaping requirements of the ADG and CDCP 2012.

#### Principle 6: Amenity

The proposed development complies with the minimum solar access requirements and is considered to meet the natural ventilation requirements, on merit. The proposed apartments will have considerable internal amenity. Their size and room dimensions satisfy, and in some cases, exceed the minimum standards outlined within the ADG. As such, they will provide adequate space to meet the needs of future occupants.

Storage is provided within all units with additional storage within the allocated basement car parking spaces. The outdoor private balconies are of sufficient size to meet the recreational needs of future occupants. Lift access has been provided from the basement throughout the building, thereby providing full accessibility for all residents and visitors.

#### Principle 7: Safety

The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The proposal provides increased activation and passive surveillance of the surrounding streets and private open space areas on the site. Residential entry and lobby areas are to be secured and well lit. Council's Community Safety and Crime Prevention Officer has reviewed the design and raises no objection.

#### Principle 8: Housing Diversity and Social Interaction

The proposed design incorporates various dwelling sizes and includes adaptable units promoting diversity, affordability and access to housing choice.

#### Principle 9: Aesthetics

The application is accompanied by a Design Verification Statement and confirms that the development satisfies the general design principles contained within SEPP 65. The articulation of the external façades through incorporating varying setbacks and materials and finishes lessens any perception of bulk, whilst maintaining internal and external amenity. These elements contribute to the desired future character of the locality and enhance the existing surrounding streetscapes.

#### **Apartment Design Guide**

Further to the design quality principles discussed above, the proposal has been considered against the various provisions of the Apartment Design Guide in accordance with Clause 28 (2) (c) of SEPP 65.

Section	Design Criteria	Proposed	Complies
<b>Part 3 Siting the Development</b>			
<b>3C Public Domain Interface</b>	<ul style="list-style-type: none"> <li>- Avoid long, high blank walls and fences</li> <li>- Direct access from the street to ground floor apartments and windows overlooking the street improve safety and social interaction;</li> <li>- Key components to consider when designing the interface include entries, private terraces or balconies, fence and walls, changes in level, services location and planting.</li> <li>- Safety considerations (real or perceived) and consideration of social interaction opportunities when viewed from the public domain.</li> <li>- Terraces, balconies and courtyard apartments to have direct street level entry where possible;</li> <li>- Changes in levels between ground floor and terraces to balance passive surveillance and privacy;</li> <li>- Provide seating at building entries, letter boxes and private courtyards adjacent the street.</li> <li>- Multiple building entrances to be clearly defined through architectural detailing, changes in materials, plant species and colours;</li> <li>- Concealment opportunities minimised.</li> </ul>	<p>Blank walls are avoided, as openings are provided along each elevation which facilitates improved amenity for future occupants.</p> <p>The building has been designed to incorporate private open space/habitable rooms facing the internal communal areas as well as the adjoining public domains to facilitate passive surveillance.</p> <p>Direct access to the retail tenancies from the adjoining street frontage is provided and the development has been designed to respond to the adjoining footpath as much as possible. Where there is a change in level between the street frontage and tenancy, a ramp or a method that complies with the BCA and DDA premises standards is provided to facilitate access for all persons.</p> <p>Letterboxes provided at the residential entrance.</p> <p>Entrances to the residential component are demarcated through incorporating a different awning to that provided for the retail component. Appropriate signage etc has been conditioned.</p>	Yes – via condition of consent



Section	Design Criteria	Proposed	Complies
<b>3D Communal and Public Open Space</b>	<p>Communal open space has a minimum area equal to 25% of the site. (Total site area is 5,851m<sup>2</sup>, requiring a minimum 1,463m<sup>2</sup>)</p> <p>Min 6m dimension.</p>	<p>Communal Open space for the residents is provided on the rooftops of the 4 x buildings and a common room is provided on Level 6 of Building 2. The areas incorporate BBQ areas, seating, water play area, play areas and a range of facilities for use. Such areas equate to 943m<sup>2</sup> or 16.1% of the site area.</p> <p>However, the design does also incorporate a plaza on the ground floor that is available to residents as well as the general public. The Plaza measures 1,017.9m<sup>2</sup> and contains landscaping, seating and art.</p> <p>Incorporating this area, the site includes 1,960.9m<sup>2</sup> or 33.5%. The design meets the objectives of Part 3D and is considered appropriate in this instance. As outlined within the ADG, communal open space can be open to the public.</p>	Yes

Section	Design Criteria	Proposed	Complies
	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).	<p>50% of the required communal open space area equates to 731.4m<sup>2</sup>. The total area of the communal open spaces on the rooftop of the buildings equates to 894.1m<sup>2</sup>.</p> <p>Collectively, the two rooftop communal spaces receive solar access to approximately 630m<sup>2</sup> between 11am-1pm on 21 June. In addition, at least 170m<sup>2</sup> of the communal space on the ground floor receives solar access between 12noon-2pm on 21 June (noting the area increases substantially from 1pm onwards).</p> <p>Therefore, between the rooftop communal open space, the area on level 7 of building 2 and ground floor plaza, at least 50% of the required communal open space area receives at least 2 hours solar access between 9am-3pm on 21 June.</p>	Yes

Section	Design Criteria	Proposed	Complies
3E Deep Zones	Soil  Deep soil zones are to meet the following minimum dimensions:	Deep soil is provided along the southern boundary which equates to 350m <sup>2</sup> or 6%	No – but acceptable on merit, refer to comment [1] below
	Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)
	Less than 650m <sup>2</sup>	-	7%
	650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	
	Greater than 1,500m <sup>2</sup>	6m	
	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	

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:			For the purposes of the assessment below, reference to the floors is as shown on architectural plans.  <b>North (measured to halfway across Lakemba Street)</b> - Level 1: 13.6m - Level 2: 13.6m - Level 3: 13.6m - Level 4: 15.5m - Level 5: 15.5m - Level 6: 15.5m - Level 7: 15.5m - Rooftop: 23m  <b>East</b> - Level 1: 9m - Level 2: 9m - Level 3: 9m - Level 4: 12m - Level 5: 12m - Level 6: 17m - Level 7: 18.5m  <b>South</b> - Level 1: 9m - Level 2: 9m - Level 3: 9m - Level 4: 9m - Level 5: 9m - Level 6: 9m - Level 7: 9m - Rooftop: 12m  <b>Within Site</b> The distances between Building 1 and Building 2 comply with the minimum building separation requirements.  The distances between Building 1 A and B as well as Building 2 A and B do not comply with the minimum distances as a 7m building separation is provided between the buildings. This does not comply	Yes
	Building Height	Habitable Rooms & Balconies	Non-habitable Rooms		
	Up to 12m (4 storeys)	6m	3m		
	Up to 25m (5-8 storeys)	9m	4.5m		
	Over 25m (9+ storeys)	12m	6m		
	Note: An increased 3m building separation is required given the land to the east is a different zone (R4 High Density Residential) that permits lower density residential.			Yes	
				Yes	
				No – but acceptable on merit, refer to comment [2] below	

Section	Design Criteria	Proposed	Complies
		<p>with the minimum 12m requirement for up to 4 storeys and 18m for 5-8 storeys.</p> <p>Some apartments on levels 1-6 within buildings B01-A and B01-B are separated 1.5m which do not comply with the minimum 12m requirement for up to 4 storeys and 18m for 5-8 storeys.</p>	
<b>3J Bicycle and Car Parking</b>	<p>For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements as set out in the table below. Otherwise, the CDCP 2012 controls apply.</p> <p>The site is within 800m walking distance of Wiley Park Railway Station. Based on Council's calculations, the residential parking generation rate outlined within RMS Guide is lesser than CDCP 2012 and therefore applies.</p> <p>The proposal generates the following residential parking requirements:</p> <ul style="list-style-type: none"> <li>- 1bed = 0.6spaces per dwelling (34.8 (35) spaces required).</li> <li>- 2 bed = 0.9 spaces per dwelling (72 spaces required)</li> <li>- 3 bed = 1.4 spaces per dwelling (5.6 (6) spaces required).</li> <li>- Visitor = 1 space for 5 dwellings (28.4 spaces required).</li> </ul> <p><b>TOTAL = 141.4 (141) spaces required</b></p>	<p>The basement design incorporates the following parking for residential:</p> <ul style="list-style-type: none"> <li>- 121 residential spaces (including 14 accessible spaces)</li> <li>- 29 visitor spaces (including 1 accessible space)</li> <li>- 1 car wash bay.</li> </ul> <p><b>TOTAL = 150 residential parking spaces plus 1 x car wash bay</b></p> <p>An assessment of the retail/supermarket parking is undertaken within the CDCP 2012 section of this report.</p>	Yes
	<p>The car parking needs for a development must be provided off street.</p>	<p>Parking is provided within basement.</p>	Yes

<b>3G Pedestrian Access and Entries</b>	<p>Multiples entries should be provided to activate the street edge.</p>	<p>Multiple entries are provided along the street frontages to the retail and residential components (where relevant) to activate King Georges Road and Lakemba Street.</p>	Yes
	<p>Entry locations relate to the street and subdivision pattern / existing pedestrian network.</p>	<p>Entry locations relate to existing pedestrian network.</p>	Yes
	<p>Building entries should be clearly distinguishable from private entries.</p>	<p>Residential entry point is separated from commercial and is demarcated using a different awning. Appropriate signage etc could be conditioned should the application be supported.</p>	Yes – via condition of consent
	<p>Building access areas (lift lobbies, stairwells and hallways) should be clearly visible from public domain and communal spaces.</p>	<p>Residential lift visible from public domain with exception of the lifts within Building 1 A. Access to the lifts are restricted to ensure safety is provided. A mirror could also be incorporated into the design to facilitate viewing of the lift from the street, should the application be supported.</p>	Yes – via condition of consent
	<p>Minimise ground floor and underground level changes along pathways and entries. Steps and ramps integrated into design.</p>	<p>The buildings have been designed to ensure the entrance to the tenancy / residential entry points aligns, where possible, with the pathway it adjoins. In the instance where this is not possible ramps and steps have been integrated within the design to allow easy access.</p>	Yes

Section	Design Criteria	Proposed	Complies
	Provide way finding maps for large developments. Electronic access and audio/video intercoms required.	Can be conditioned.	Yes – via condition of consent
<b>Part 4 Designing the Building</b>			
<b>4A Solar and Daylight Access</b>	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.	A total of 114 apartments (80%) receive at least 2 hours solar access to living rooms and private open space between 9am-3pm on 21 June.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	A total of 56 apartments (10.5%) receive no direct sunlight).	
<b>4B Natural Ventilation</b>	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.	52 apartments (36.6%) are naturally cross ventilated.  The Applicant's figures have included the 28 apartments that comprise high louvres and solid fin/plenums (required for acoustic measures) as well as 6 apartments that rely on plenum ducts which results in 86 apartments (60%).	<b>No – but acceptable on merit, refer to comment [3] below</b>
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	All cross through apartments included in the above calculations are less than 18m when measured glass line to glass line.	

Section	Design Criteria	Proposed	Complies										
4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum Ceiling Height for Apartment and Mixed-Use Buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>Mixed use</td><td>3.3m for ground floor</td></tr></table> These minimums do not preclude higher ceilings if desired.	Minimum Ceiling Height for Apartment and Mixed-Use Buildings		Habitable rooms	2.7m	Non-habitable	2.4m	Mixed use	3.3m for ground floor	<b>Commercial:</b> Floor to ceiling varies between 3.43-6.39m.  <b>Residential:</b> Floor to floor heights are minimum 3.1m to enable 2.7m floor to ceiling heights.	Yes  Yes		
	Minimum Ceiling Height for Apartment and Mixed-Use Buildings												
Habitable rooms	2.7m												
Non-habitable	2.4m												
Mixed use	3.3m for ground floor												
4D Apartment Size and Layout	Apartment are required to have the following minimum internal areas: <table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedrooms</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedrooms</td><td>90m<sup>2</sup></td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.  A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.	Apartment Type	Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedrooms	70m <sup>2</sup>	3 bedrooms	90m <sup>2</sup>	All apartments comply with the minimum internal area requirements.  NB: some studio apartments have the potential to be converted to one bedroom – these will be conditioned as studio apartments to ensure compliance.	Yes – via condition of consent
	Apartment Type	Minimum Internal Area											
	Studio	35m <sup>2</sup>											
	1 bedroom	50m <sup>2</sup>											
	2 bedrooms	70m <sup>2</sup>											
	3 bedrooms	90m <sup>2</sup>											
	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.	Noted.	Yes										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	All apartments with open plan layouts have a maximum depth of less than 8m.	Yes											
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	All bedrooms meet the minimum area requirements.	Yes											
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms meet minimum dimension requirements.	Yes											



Section	Design Criteria	Proposed	Complies															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1-bedroom apartments</li><li>4m for 2- and 3-bedroom apartments</li></ul>	The combined living/dining rooms within each apartment comply with the minimum width requirements.	Yes															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	All cross through apartments are at least 4m internally.	Yes															
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	All apartments comply with the minimum balcony area and depth requirements.	Yes															
	<table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1-bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2-bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table>			Dwelling type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1-bedroom apartments	8m <sup>2</sup>	2m	2-bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m
	Dwelling type			Minimum Area	Minimum Depth													
	Studio apartments			4m <sup>2</sup>	-													
	1-bedroom apartments			8m <sup>2</sup>	2m													
	2-bedroom apartments			10m <sup>2</sup>	2m													
	3+ bedroom apartments	12m <sup>2</sup>	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m.																		
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.	Apartments U3.01 and U3.05 within Building B01-B and apartments U3.01 and U3.05 within Building B01-A have a podium greater than 15qm in size and 3m in depth.	Yes																
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Maximum 7 apartments off the two circulation cores.	Yes															

Section	Design Criteria	Proposed	Complies										
4G Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	All apartments comprise 50% of the required storage volume within the apartment. Adequate storage is provided in the basement to accommodate the remaining 50% requirements, except for apartment 7.05 within Building 01-A which only comprises half of the required storage area (4m <sup>2</sup> ). This non-compliance (and the storage requirements in general) can be imposed via condition of consent to ensure the minimum storage areas and locations are met.	Yes – via condition of consent										
	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>3</sup></td></tr><tr><td>1-bedroom apartments</td><td>6m<sup>3</sup></td></tr><tr><td>2-bedroom apartments</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>3</sup></td></tr></table>			Dwelling type	Storage size volume	Studio apartments	4m <sup>3</sup>	1-bedroom apartments	6m <sup>3</sup>	2-bedroom apartments	8m <sup>3</sup>	3+ bedroom apartments	10m <sup>3</sup>
	Dwelling type			Storage size volume									
	Studio apartments			4m <sup>3</sup>									
	1-bedroom apartments			6m <sup>3</sup>									
	2-bedroom apartments			8m <sup>3</sup>									
	3+ bedroom apartments			10m <sup>3</sup>									
At least 50% of the required storage is to be located within the apartment.													

Section	Design Criteria	Proposed	Complies
<b>4H Acoustic Privacy</b>	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses	The design meets the minimum building separation requirements to neighbouring buildings/uses.	Yes
	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	Corridors are located directly above each other on each floor. Bedrooms have been grouped together where possible.	Yes
	Rooms with similar noise requirements are grouped together	Rooms with similar noise requirements are grouped together, where possible.	Yes
	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	No bedrooms directly adjoin the driveway, building services or communal open space. The bedrooms on upper levels which face the driveway or communal areas will be appropriately designed to mitigate any noise impacts as per the recommendations of the acoustic report submitted.	Yes – via condition of consent

Section	Design Criteria	Proposed	Complies
4S Mixed Use	<p>Mixed use developments positively contribute to the public domain. Design solutions may include:</p> <ul style="list-style-type: none"> <li>• development addresses the street</li> <li>• active frontages are provided</li> <li>• avoiding blank walls at the ground level</li> </ul>	<p>The development has been designed to appropriately address the street, particularly at ground level, to activate the street frontage. Direct access from the relevant adjoining street front has been provided to the ground floor retail and residential uses (where appropriate). The design doesn't incorporate any large spans of blank walls at ground level apart from screening the substation. However, this is considered acceptable given it ensures the substation is integrated within the design and it is located on the secondary frontage.</p>	Yes
	<p>Residential circulation areas should be clearly defined. Design solutions may include:</p> <ul style="list-style-type: none"> <li>• residential entries are separated from commercial entries and directly accessible from the street</li> <li>• commercial service areas are separated from residential components</li> <li>• residential car parking and communal facilities are separated or secured</li> <li>• security at entries and safe pedestrian routes are provided</li> <li>• concealment opportunities are avoided</li> </ul>	<p>Generally, the residential and commercial uses are adequately separated. The residential use has been demarcated using a different awning compared to the rest of the frontage.</p> <p>Appropriate signage can be incorporated via condition of consent.</p>	Yes – via condition of consent
	<p>Landscaped communal open space should be provided at and commercial podium or roof levels</p>	<p>The plaza and rooftop communal open space areas incorporate landscaping.</p>	Yes

#### [1] Part 3E - Deep soil

Part 3E of the ADG requires sites with an area of 1,500m<sup>2</sup> or greater to comprise a deep soil area that meet the following minimum requirements:

- Minimum dimension of 6m; and
- Deep soil zone that equates to 7% of the site area.

The proposal comprises deep soil landscaping along the southern boundary. Based on Council's assessment, this area meets the minimum dimension requirement however it equates to 350m<sup>2</sup> or 6% of the total site area representing a shortfall of 59.57m<sup>2</sup>.

The objective of Part 3E -1 is as follows:

*Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.*

Despite the minor variation, the proposal is considered to allow for and support healthy plant and tree growth, particularly along the southern boundary. It is also noted that trees and other landscaping is proposed within the site as well as along the street frontages which contribute to improving residential amenity, the visual presentation of the site and promote management of water and air quality.

Council's Landscape Architect has reviewed the proposal and raise no objection, subject to conditions of consent.

In addition to the above, it is noted that the application involves subdivision of part of the site (920.7m<sup>2</sup>) for laneway and footpath dedication. Once this area has been subdivided, the subject site of which the development is located on will subsequently comply with the minimum deep soil area requirements as 7% of the site will comprise deep soil.

On this basis, the proposed variation is supported in this instance.

#### [2] Part 3F – Visual Privacy

Part 3F-1 of the ADG specifies minimum separation distances between windows and balconies of a development. The proposed development complies with the minimum building separation distances apart from separation distances within the site. The ADG outlines that separation distances between buildings on the same site should combine required building separations depending on the type of room.

As outlined in the table above, the proposed design does not comply with the minimum building separation controls in the following instances:

- The distances between Building 1 A and B as well as Building 2 A and B do not comply with the minimum distances as a 7m building separation is provided between the buildings on all levels.
  - A minimum 12m separation should be provided between habitable rooms (including balconies) for storeys 1-4 representing a 5m or 41.6% variation.
  - A minimum 18m building separation should be provided between habitable rooms (including balconies) for storeys 5-8 representing an 11m or 61.1% variation.
- The distances between the balconies associated with apartments 1.04 and 1.05, 2.04 and 2.05, 3.03 and 3.04, 4.03 and 4.04, 5.03 and 5.04, 6.03 and 6.04 and 7.03 and 7.04 within Building B01-A as well as apartments 1.03 and 1.04, 2.03 and 2.04, 3.02 and 3.03, 4.02 and 4.03, 5.02 and 5.03, 6.02 and 6.03 and 7.02 and 7.03 within Building B01-B do not comply with the minimum distances as a 1.5m building separation is provided between the building on all levels.

- A minimum 12m separation should be provided between balconies for storeys 1-4 representing a 10.5m or 87.5% variation.
- A minimum 18m building separation should be provided between balconies for storeys 5-8 representing a 16.5m or 91.6% variation.

The objective of Part 3F is:

*Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.*

It is imperative to note that overall, the proposed development complies with the objective of Part 3F as the design complies with the minimum building separation distances to adjoining properties, including the additional setback required to the eastern boundary.

The proposed variation to the abovementioned building separation distances is considered acceptable in this instance given visual privacy will be afforded to future residents of the affected apartments through the incorporation of the following:

- Affected habitable windows comprise a sill height of 2.2m, measured from the finished floor level. It is noted that the affected habitable windows are secondary windows to the relevant habitable rooms and therefore appropriate residential amenity is maintained.
- 1.8m high frosted glass screens or privacy louvres will be applied to the relevant elevation of affected balconies. The privacy louvres are orientated differently between each balcony to ensure optimum privacy is achieved.

The above mitigation measures have been incorporated into the proposed design.

It is noted that a break between the buildings is not entirely necessary based on the applicable controls, however it is supported to break up the visual bulk of the development when viewed from the public domain and adjoining properties as well as improve pedestrian circulation within the site. The CDCP 2012 requires a 9m x 9m landscape indent for street frontages that exceed 50m. It is noted that this design requirement would not comply with the ADG requirements either. The proposed design is considered to result in an improved design than one that solely comprised the 9m x 9m landscape indent along King Georges Road as it provides for through-site links within the site, thereby improving the visual presentation of the site but also pedestrian circulation within and around the site. The proposed design also has an improved visual appearance from the public domain than one envisaged by the controls in CDCP 2012 and an approximately 75m long solid building for Building 02 which is permitted.

Strict compliance with the minimum building separation controls applicable to the proposed design would result in more narrow, short and tiered internal buildings which are not considered to have an integrated streetscape presence such as the proposed design. The design is considered to meet the objective of the control and therefore is acceptable on merit. It is also noted that the proposed design was specifically requested by Council's Urban Design team as part of the previous application considered by the Panel.

In addition to the above, the Acoustic Report prepared by Renzo Tonin and Associates considered the potential acoustic impacts on the affected residential apartments resulting from the proposed building separation variation. In summary, the report concluded that through the incorporation of building recesses, solid fin walls and acoustic plenums (as required), adequate acoustic privacy will be maintained to the affected apartments. Such recommendations have been incorporated into the design.

Considering the above, Council is supportive of the design from a visual privacy and acoustic perspective, despite the variation as it is considered the objective of the control is still met.

However, it is noted such design (particularly the use of solid fin walls and plenums) is considered to impact the design's compliance with the minimum natural ventilation requirements. This matter is considered below.

### [3] Part 4B – Natural Ventilation

Part 4B – 3 of the ADG requires at least 60% of apartments are naturally cross ventilated within the first nine-storeys of the development. The design relies on 28 apartments that comprise high louvres and solid fin/plenums (required for acoustic measures) as well as 6 apartments that rely on plenum ducts to meet the minimum 60% requirement (86 apartments).

The proposed variation primarily results from the 7m separation required between Buildings 01 and 02, which was requested by Council's Urban Design team as part of the previous application. As a result of the separation, acoustic measures (i.e. high louvres and solid fins/plenum ducts) have been incorporated into the design of the affected apartments (as detailed within the visual privacy justification above). Council raised concern that these design measures incorporated into the design would impact on the natural ventilation of the affected apartments. The Applicant subsequently submitted a Natural Ventilation Statement prepared by Windtech Consultants dated 27 May 2021. The report investigated whether the design (including the apartments that incorporated high louvres/solid fins/plenums) were able to be considered in the natural ventilation calculations to meet the minimum 60% requirement in the ADG.

The results of the Statement indicate that the design (including the apartments that incorporate high louvres/solid fins/plenums) meets the minimum 60% natural ventilation requirement. *"This has been achieved through openings on orthogonal or opposite aspects (for example corner or through apartments) with direct exposure to the prevailing winds such as operable windows or proposed cross-over plenum ducts as indicated in the architectural drawings, and/or windows located in significantly different pressure regions with an overall depth of cross-over or cross-through apartments not exceeding 18m from glass line to glass line"*. In addition, this conclusion is based on the relevant habitable room openings to be at least 5% of the floor area served by the opening, in accordance with Objective 4B-1 of the ADG. The recommendations of the Statement are incorporated into the recommended conditions of consent.

The objective of 4B-3 is as follows:

*The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents*

As outlined above resulting from the findings of the Natural Ventilation Statement, the proposed development meets the minimum natural ventilation requirements outlined within the ADG despite some apartments relying on different design alternatives. Therefore, the objective of the control is also achieved.

Notwithstanding the above, as detailed within ISEPP 2007 below, the acoustic report submitted recommends that the perimeter of all window and door frames are to be seal airtight in the external façade. The acoustic report therefore recommends mechanical ventilation to be accessed by each apartment. The applicant confirmed that wall mounted split system air conditioning units will be provided to each apartment with the associated condensers being located in the dedicated plant space on the roof or in the basement to ensure they don't impact on private open space or the streetscape appearance of the development. A condition of consent in relation to this is subsequently incorporated into the recommended conditions of consent.

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP 2007)**

## **Ausgrid**

The proposed development involves works within 5m of overhead power and requires the installation of a new substation. In accordance with Clause 45 of ISEPP, a referral to the electricity supply authority for the area was required.

Ausgrid have assessed the plans lodged in support of the application and advise that they consent to the proposed development subject to conditions relating to certain matters including the supply of electricity to the site, infrastructure installation, and managing any impacts on existing electricity network assets.

The conditions contained in Ausgrid's advice would be incorporated in the conditions of consent, should the Panel resolve to approve the proposal.

## **Transport for New South Wales (TfNSW)**

### Vehicle access

As the site has a frontage to a classified road, Clause 101 of the ISEPP is relevant and requires Council to be satisfied that vehicular access to the land is provided by a road other than the classified road where practical. The design incorporates vehicle access to/from Lakemba Street. As outlined later within this report, the design also includes a rear laneway (along the eastern boundary of the site) to facilitate effective operation of the site.

The design also incorporates a new slip lane to be constructed along Lakemba Street to facilitate vehicles turning left onto Kings Georges Road.

On this basis, the application was referred to the NSW Transport for New South Wales (TfNSW) for comment in accordance with Clause 101 of the ISEPP.

Within the correspondence received from TfNSW dated 20 July 2021, approval and concurrence was granted subject to conditions of consent being included in the development consent should the application be supported.

### Noise and vibration

According to the TfNSW traffic volume viewer, King Georges Road is identified as a road with an annual average daily traffic volume of more than 40,000 vehicles. Subsequently, Clause 102 of ISEPP is relevant and requires Council to consider whether the development is likely to be adversely affected by road noise/vibration and requires Council be satisfied that appropriate measures will be taken to ensure that certain noise criteria in decibels, is not exceeded.

An acoustic report prepared by Renzo Tonin & Associates dated 28 May 2021, was prepared in support of the application. The report includes recommendations to achieve the acoustic levels outlined in Clause 102 of ISEPP.

Section 5 of the report recommends the following elements to achieve acceptable acoustic privacy, including:

- Glazing treatment to affected building facades.
- Incorporate full perimeter acoustic seals to all operable glass windows and doors.
- The perimeter of all window and door frames are to be sealed airtight in the external facade
- Ensure facade and roof sound insulation meets minimum ratings.



- Appropriate acoustic treatment for bedroom/kitchen windows that have a proximity of 7m.
- Internal walls and floors are to comply with the National Construction Code of Australia 2019.

The measures proposed are consistent with the Department of Planning, Industry and Environment's 'Development near Rail Corridors and Busy Roads – Interim Guideline' relating to development near busy roads as well as satisfying the requirements of ISEPP and relevant Australian Standards.

Council's Environmental Health Officer has reviewed the report and raises no objection subject to conditions of consent.

The recommendations of the report as well as the recommended conditions from Council's Environmental Health Officer have been incorporated into the conditions of consent., should the application be supported.

#### Traffic generation

According to Clause 104 and Schedule 3 of ISEPP the proposal qualifies as a 'traffic generating development' as it comprises more than 75 residential dwellings with a vehicular access point proposed within 90m of connection to a classified road (King Georges Road). On this basis, the application was referred to TfNSW. As outlined above, within TfNSW's response dated 20 July 2021, concurrence for the proposal was granted, subject to conditions of consent should the application be supported.

#### **State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX) (SEPP BASIX)**

In accordance with BASIX SEPP, a BASIX Certificate accompanies this application (Certificate No. 858702M\_08 dated 28 May 2021). The Certificate makes several energy/resource commitments relating to water, energy and thermal comfort. The relevant commitments indicated on the BASIX Certificate have been shown on the plans in order to satisfy objectives of the SEPP. Therefore, the requirements of SEPP BASIX have been met.

#### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The proposed development seeks approval for the removal of 18 trees. Council's Tree Management Team have reviewed the application and raised no objection to the removal of the trees, subject to conditions.

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

The Housing SEPP came into effect on 26 November 2021. The SEPP essentially consolidates the following five existing housing-related policies:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);*
- *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);*
- *State Environmental Planning Policy No 70 - Affordable Housing (Revised Schemes) (SEPP 70);*
- *State Environmental Planning Policy No 21 - Caravan Parks; and*
- *State Environmental Planning Policy No 36 - Manufactured Home Estates.*

In addition, it introduces two new housing types (Co-living housing and Independent living units) to meet changing needs.

The proposal does not comprise any of the above-mentioned housing typology. Therefore, no further assessment of the application against the controls contained in this SEPP is required.

## Canterbury Local Environmental Plan 2012 (CLEP 2012)

This site is zoned B2 Local Centre under CLEP 2012. The controls applicable to this application are discussed below.

### Clause 1.2 Aims of Plan

The proposed development is consistent with the relevant aims of the CLEP 2012.

### Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the B2 Local Centre Zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate and support investment, economic growth and development for active, diverse and well-designed centres*

The proposed development meets the objectives of the B2 zone as it provides ground floor retail premises that can be adapted for a range of permissible uses to serve the needs of people who live in, work in and visit the local area. The retail uses encourage employment opportunities on a site that is located within proximity to rail and bus transport modes.

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 2 Permitted or Prohibited Development</b>			
2.1-2.3 Zoning	B2 Local Centre	The proposal is defined as shop top housing which is permitted in the zone.	Yes
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Demolition of existing structures proposed.	Yes
<b>Part 4 Principal Development Standards</b>			
4.3 Height of Buildings	27m	<b>Applicant's Calculation:</b> Max 28.99m.  <b>Council's Calculation:</b> Max 27.85 (proposed RL = 70.150 (shade structure minus existing RL = 42.30))	<b>No – refer to Clause 4.6 assessment below</b>
4.4 Floor Space Ratio	N/A	N/A	N/A
<b>Part 5 Miscellaneous Provisions</b>			

<b>Provision/ Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
5.10 Heritage Conservation	(5) Heritage assessment The consent authority may, before granting consent to any development— (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned	The site is not identified as a heritage item pursuant to CLEP 2012.  The subject site is within proximity to Local Heritage Item I159 “Inter war railway station building” (Wiley Park Railway Station) located at 91-93 King Georges Road, Wiley Park. The proposal is not considered to adversely impact on the heritage significance of this item and therefore a heritage management document is not required in this instance.	Yes
<b>Part 6 Local Provisions</b>			
6.1 Acid Sulfate Soils	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	The site is not impacted by Acid Sulfate Soils.	N/A

Provision/ Standard	Requirement	Proposal	Complies
6.2 Earthworks	<p>Before granting consent to development including earthworks, the following must be considered:</p> <ul style="list-style-type: none"> <li>(a) drainage patterns and soil stability</li> <li>(b) the likely future use or redevelopment of the land,</li> <li>(c) quality of the fill or the soil to be excavated, or both,</li> <li>(d) effect of development on existing and likely amenity of adjoining properties,</li> <li>(e) the source of any fill material and the destination of any excavated material,</li> <li>(f) the likelihood of disturbing relics,</li> <li>(g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</li> <li>(h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</li> </ul>	<p>A Geotechnical Report prepared by JK Geotechnics was prepared and submitted as part of the DA. The recommendations of the report including, but not limited to, the preparation of dilapidation reports, footing systems, demolition, excavation and retention systems, vibration monitoring, basement slab and pavement design could be enforced via condition of consent.</p> <p>In addition to the above, the recommendations of the Additional Site Investigation Report, prepared by Environmental Investigation Services could be enforced via condition of consent.</p> <p>Council's Development Engineer and Environmental Health Officer has reviewed the above and raise no objection, subject to conditions of consent.</p> <p>Based on the above, the requirements of Clause 6.2 are satisfied.</p>	Yes – via condition of consent

<b>Provision/ Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
6.3 Flood Planning	<p>This clause applies to land at or below the flood planning level.</p> <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses and is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>	The site is not located within a flood planning zone.	N/A
6.4 Stormwater Management	<p>Consent must not be granted unless:</p> <p>(a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration.</p> <p>(b) Includes on-site detention if practical as an alternative means of water supply.</p> <p>(c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.</p>	The application was considered by Council's Development Engineer who raised no concern regarding the stormwater design.	Yes

Provision/ Standard	Requirement	Proposal	Complies
6.6 Essential Services	<p>Essential services must be available or adequate arrangements have been made to make them available, including:</p> <ul style="list-style-type: none"> <li>the supply of water;</li> <li>the supply of electricity (<b>substation</b>);</li> <li>the disposal and – management of sewage;</li> <li>stormwater drainage or on-site conservation;</li> <li>suitable vehicular access.</li> </ul>	<p>Council's Traffic Team raised no objection regarding the proposed vehicular access.</p> <p>The design includes suitable arrangement for the supply of water and electricity (through incorporating a substation).</p> <p>In terms sewage, the sewer line (Sydney Water asset) runs through the middle of the site. The Application was referred to Sydney Water on this basis pursuant to s78 of Sydney Water Act 1994 who raised no objection, subject to comments which were relayed to the Applicant and conditions of consent. Such conditions could be incorporated into the consent, should the application be recommended for approval.</p>	Yes – via condition of consent

As demonstrated above, the proposal is generally consistent with the objectives of CLEP however it does not comply with the standards outlined in Clauses 4.3 of CLEP 2012. Further discussion is provided below with respect to the contravention to the height of buildings development standard contained in Clause 4.3, and the associated Clause 4.6 variation submission to seek flexibility in the application of this development standard.

### **The proposed variation**

The proposal complies with the development standards contained in CLEP 2012, except for Clause 4.3 – Height of Buildings. The non-compliant building height derives from the shading structures located on the rooftop of Buildings 01-A and 01-B.

Pursuant to Clause 4.6 of CLEP 2012, the applicant has made a submission seeking a variation to the provisions contained in Clause 4.3 of CLEP 2012. The Clause 4.6 submission details the extent of the variation as follows:

- 27m – Building Height maximum
- 28.99m – Maximum Building Height proposed
- 1.99m – 7.3% degree of contravention

Based on Council's assessment, the degree of variation between Council and the Applicant is not agreed upon. Council's assessment included overlaying the roof design over the survey plan and calculating the maximum height by utilising the existing ground level points provided on the survey and the RLs of the highest point on the architectural plans. In the instance ground level markings were not available on the survey, the existing ground level was determined by calculating the median of the two nearest survey markings. In this regard, Council's assessment determined the extent of the variation as follows:

- 27.85m – Maximum Building Height proposed
- 850mm – 3% degree of contravention

An assessment of the development against Clauses 4.6(2), (3) and (4) of CLEP 2012, including extracts from the applicant's submission, is provided below:

- 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.*
- 2. Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.**

**Comment:** The development standard to be varied is Clause 4.3, Height of Building, which is not expressly excluded from the operation of Clause 4.6.

- 3. Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:**
  - a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

The Applicant's written request states that compliance with the building height standard is unnecessary or unreasonable as follows:

- The design (despite the variation to the building height development standard), is consistent with the objectives of height of buildings development standard (consistent with the advice in *Wehbe v Pittwater* [20007] NSWLEC 827) for the following reasons:
  - The development is consistent and compatible with the existing and future character of the area despite the minor height non-compliance for the rooftop weather protection elements. The development provides for residential accommodation above an activated ground floor providing a range of food and drink premises and an activated public plaza.
  - *To ensure that residents receive adequate amenity of the roof, weather protection is provided which exceeds beyond the height control... which also provide weather protection on the roof.*
  - *The design of the rooftop communal space has been designed, positioned and orientated to ensure the minor additional height for the weather protection elements does not adversely impact on the amenity of adjoining neighbouring properties and has been carefully located to ensure there is minimal adverse impacts.*
  - *The non-compliant elements of the rooftop (on buildings 01-A and 01-B) do not result in any additional overshadowing impacts on neighbouring properties or public open space, including the public plaza.*
  - *The rooftop weather protection elements have been well setback from the street frontage to ensure they are not visible from the streetscape. Furthermore, the encroachments do not comprise any gross floor area and do not contribute to the overall bulk and scale of the proposed development.*

- *The rooftop weather protection elements which exceed the building height control form part of the overall design of the rooftop communal space on Building 01-A and 01-B and will not detract from the development's ability to reinforce the road frontages along Lakemba Street and King Georges Road.*
- *The proposal provides high quality communal open space on each of the four rooftops with a range of facilities including BBQ areas, children's play areas and water play. Given the topography of the site, the three shade structures within the rooftop communal space of both Buildings 01-A and 01-B exceed the height of buildings development standard. It is noted that the weather protection elements within the rooftop communal space of Buildings 02-A and 02-B fully comply with the height of buildings development standard*
- *If the proposed buildings were to be fully compliant with the building height, weather protection would not be provided on two of the communal rooftops (Building 01-A and 1-0B). This would result in a loss of amenity for residents and does not reflect the design criteria of Part 3D Communal and Public Open Space of the Apartment Design Guide.*
- *Given that the shade structures exceeding the height limit do not result in any amenity impacts to surrounding neighbours, nor do they contribute to the building's overall bulk and scale, it would be unreasonable to require strict compliance with the development standard. Strict compliance would unnecessarily diminish the quality of the rooftop space and amenity for residents. Strict compliance would also require the reduction in publicly accessible plaza space at the ground level in order to provide an adequate area of communal open space on the site.*

**Comment:**

The justification provided by the Applicant is supported by Council. As outlined by the Applicant, the proposed variation is limited to 6 awning structures located on the rooftop of Building 01-A and Building 01-B to provide for weather protection to residents utilising the communal open space. All other elements of the development (i.e. lift overrun, fire stairs, balustrades and the building itself) are within the maximum building height limit. The Applicant has considered the potential impact associated with the awnings and as such, has located them away from the elevations that adjoin the street frontages. Therefore, despite the minor height variations, the design maintains the 8-storey presentation along the street frontages which is consistent with the character envisaged for this zone.

The design and location of the shade structures, which exceed the maximum building height control, do not result in any overshadowing on adjoining properties or the public domain. The shadow cast by the structures solely falls on the rooftop of the building they are located on.

It is also acknowledged that the proposed structures are located on the Buildings 01-A and 01-B which are located along the western boundary of the site. These buildings are located furthest away from the lower density residential zone to the east of the site which comprise a 11.5m height and 0.9:1 FSR development standard. This subsequently maintains an improved visual bulk and amenity to these properties.

***b) that there are sufficient environmental planning grounds to justify contravening the development standard.***

The Applicant's written request gives the following reasons that there are sufficient 'environmental planning grounds' to justify contravening the development standard:



- *The proposal is consistent with the objectives of the development standard and objectives of the B2 Local Centre zone.*
- *The proposed non-compliance arises directly from the sloping topography of the site. Buildings 02-A and 02-B both provide adequate weather protection which is compliant with the height of buildings development standard. To provide weather protection on Buildings 01-A and 01-B as requested by Council in September 2021, a minor non-compliance is required.*
- *The shade structures which exceed the height standard do not comprise any gross floor area, rather they comprise rooftop elements which ensure weather protection is provided for all rooftop communal open spaces. Without these elements the space would be less usable for residents, would provide less amenity and would not achieve compliance with the relevant design criteria in the Apartment Design Guideline.*
- *The location and design of the shade structures have been organised to ensure the non-compliance is not visible from the streetscape and does not result in any impacts on neighbouring properties. The non-compliant elements of the rooftop communal space improve the overall amenity of rooftop communal space without impacting on the amenity of the proposed development or neighbouring sites. All other elements of the rooftop including mechanical plant and rooftop amenities are compliant with the height of buildings development standard.*

**Comment:**

The above justification is supported by Council. It is agreed that the shade structures provide for weather protection for users of the rooftop communal space and therefore contribute to the amenity afforded to residents of the site.

It is agreed that the minor variation is somewhat contributed to the fall of the site. It is noted that Buildings 02-A and 02-B comprise a storey less to ensure compliance with the maximum building height is proposed where the land is lower which ensures adequate amenity is maintained to the adjoining lower density residential zones. Furthermore, communal open space is also provided elsewhere within the site by virtue of providing it on the ground floor and level 06 of Buildings 02-A and 02-B. By doing so, the design comprises a communal open space above the minimum requirement specified within the ADG. The location of the communal open space on the rooftop is supported as it ensures the communal area receives adequate solar access, which it wouldn't in the event it was solely incorporated on the ground floor.

As shown on Drawing No. DA2.14 (Plan Level Roof), the Applicant has carefully considered the design and placement of the shade structures within the site and within Buildings 01-A and 01-B to ensure, despite the minor variation, they do not impact on the presentation of the site when viewed from the public domain or adjoining properties and do not result in any adverse impacts.

Considering the above, the written request has demonstrated that there are sufficient environmental planning grounds to support the proposed variation to building height.

**4. Development consent must not be granted for development that contravenes a development standard unless:**

- a. the consent authority is satisfied that:**
  - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and**

**Comment:** As detailed above, the written request has adequately addressed the matters required in subclause 3 above.

- ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and***

The objectives for building height seek:

- (a) to establish and maintain the desirable attributes and character of an area,*
- (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
- (c) to support building design that contributes positively to the streetscape and visual amenity of an area,*
- (d) to reinforce important road frontages in specific localities.*

**Comment:**

The Clause 4.6 variation statement submitted outlines that the proposal is consistent with the objectives of the development standard as outlined within Section 3(a) above.

The objectives for the B2 Local Centre Zone seek:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- To encourage employment opportunities in accessible locations.*
- To maximise public transport patronage and encourage walking and cycling.*
- To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.*

**Comment:**

The Clause 4.6 variation statement submitted outlines that the proposal is consistent with the objectives of the B2 Zone for the following reasons:

- The proposal provides a mix of retail and residential uses that are appropriate for the site and its close proximity to Wiley Park Station. The retail will serve the needs of the residents of the development and the surrounding community.*
- The ground floor retail and public domain improvements will create a vibrant, active and safe environment for the benefit of the greater community as well as for residents.*
- Location of the private communal open space on the roof assists in the delivery of the public plaza at ground level, which provides significant public benefit.*
- The proposal will make a positive contribution to the Wiley Park Station Precinct and notwithstanding the minor breaches to the height control will significantly enhance the visual amenity of the site and be a catalyst for much needed investment in Wiley Park.*
- The proposal incorporates a diversity of uses, provides an active street frontage and will enhance the public domain with a central plaza and retail offering at ground level.*
- The proposal encourages pedestrian movement via the through-site links of the central public plaza.*
- The development supports the revitalisation and economic growth of the Wiley Park local centre, which has a number of vacant commercial uses. The proposal is a significant investment in the town centre and will be a catalyst for future redevelopment. Importantly the proposal will create 109 direct operational jobs, with*

*a further 23 indirect supply chain jobs both within and beyond the trade area as a result of flow-on effects of the proposed development*

As shown above and in line with this report, the proposed variation to the building height development standard is consistent with the objectives of the zone and development standard. Accordingly, approval would be in the public interest.

***b. the concurrence of the Secretary has been obtained.***

**Comment:**

The concurrence of the Secretary is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 17-006.

**Conclusion**

As outlined above, it is considered that there are sufficient environmental planning grounds to justify a contravention to the height of buildings development standard, in this instance. The provision of a rooftop communal open space results in a superior outcome than what would be the case if the communal open space was solely provided at ground level of the development.

The orientation of the site and development controls applicable to the site does not allow for the provision of a communal open space at ground level that achieves adequate solar access. The rooftop communal open space provides for an outdoor area that receives adequate solar access, which in turn, contributes to a greater level of amenity for future residents.

Despite the proposed variation to the maximum building height development standard, the development presents as an 8-storey development, which is consistent with the existing and future desired character of the area.

For the reasons outlined above, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development remains an appropriate built form outcome for the site, despite the contravention to the development standard.

It is considered appropriate in this instance to support the submission under Clause 4.6 of CLEP 2012 to permit the proposed development.

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

***Consideration of Draft EPIs***

**Draft Canterbury Bankstown Consolidated LEP**

The draft Canterbury Bankstown Consolidated LEP does not propose to alter the land use zone, land use permissibility or Height of Building development standard currently applying to the land. No FSR development standard is proposed to be introduced.

Having regard to the intended land use and built form of this application no relevant changes are proposed that would impact upon the assessment of the application.

Draft Clause 6.14 Design Quality is proposed to apply to stop top housing developments. Clause 6.14 as drafted and if in force would require a consent authority to have regard to a range of design quality indicators.

In considering the draft Clause 6.14 provisions the consent authority could be satisfied that the proposal:

- Will contribute positively to the Wiley Park Commercial Centre streetscape, with active retail frontages and street interface consistent with the applicable DCP provisions;
- Will contribute positively to the public domain through providing a public plaza, active interface, retail options, and improved pedestrian amenity conditions;
- Will comprise materials that are durable, high quality and of low maintenance;
- Is of high architectural quality from a well-regarded architectural firm;
- Has sought to maximise solar access, ventilation and acoustic privacy;
- Includes room layouts that are functional and fit for purpose;
- Incorporates appropriate waste management facilities to cater for the proposed use; and
- Integrates landscaping into the design at ground level and within upper levels of the building.

The draft DCP proposes no changes to the provisions currently applying under the Canterbury DCP, other than car parking. As such no further assessment of the Draft DCP is necessary.

#### Draft Environment SEPP

The draft Environment SEPP seeks to consolidate existing SEPP provisions relating to water catchments, waterways, bushland and protected areas. The site is not located in the Georges River Catchment and does not contain urban bushland. Consequently, no matters under this draft EPI arise for further consideration.

#### Draft Design and Place SEPP

The draft Design and Place SEPP is currently on public exhibition until 28 February 2022. It will replace SEPP 65 – Design Quality of Residential Apartment Development and SEPP (BASIX) – in addition to replacing these EPI's will facilitate the implementation of an Urban Design Guide and an updated Apartment Design Guide. It is noted that the draft SEPP proposes a savings and transitional provision to ensure that existing applications are assessed in accordance with the provisions in force prior to any Design and Place SEPP coming into force. As the application is to be assessed in accordance with SEPP 65 and SEPP BASIX as currently in force, further assessment is not required.

Notwithstanding the above, it is noted that the Design and Place SEPP will be introducing alternative solutions for designs that do not meet various minimum standards outlined within the ADG, including requirements relating to building separation and natural ventilation. The proposed alternative design solutions implemented by the Applicant, as discussed above, are consistent with the draft alternative design solutions/recommendations outlined within the Draft Design and Place SEPP.

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

The following table provides a summary of the development application against the controls contained in Canterbury Development Control Plan 2012.

#### **Canterbury Development Control Plan 2012 (CDCP 2012)**

The proposed development has been compared to the requirements of CDCP 2012 as follows:

### Part B1 – Transport and Parking

An assessment of the proposal against the car and bicycle parking rates in Part B1 of CDCP 2012 is provided below:

Standard	Requirement	Proposal	Complies
<b>Residential Car Parking</b>	In this circumstances of this application, the residential car parking rates outlined within the RMS Guide to Traffic Generating Developments applies to the site. An assessment of the development against these rates is discussed within the ADG section of this report.		Yes
<b>Residential Bicycle Parking</b>	<ul style="list-style-type: none"> <li><b>Residents:</b> 1 space per 5 dwellings (28.4) spaces required).</li> <li><b>Visitors:</b> 1 space per 10 dwellings (14.2) spaces required)</li> </ul> <p><b>Total:</b> 42.6(43) spaces required.</p>	<p>48 bicycle spaces proposed as follows:</p> <ul style="list-style-type: none"> <li>32 residential bicycle spaces.</li> <li>16 visitor bicycle spaces.</li> </ul>	Yes
<b>Retail Car Parking</b>	<p><b>Parking:</b> 1 space per 27smq = 80 spaces required.</p> <p><b>Visitor:</b> 80% of parking rate to be allocated to visitors and short-stay parking. 20% of parking rate is to be allocated to staff and long-stay parking.</p> <p><b>Trolley Storage:</b> Where a supermarket is proposed, areas for the storage of shopping trolleys are to be incorporated in the car park.</p>	<p>A total of 92 retail car parking spaces are provided in the basement. This can accommodate the 80 spaces required to cater for the retail uses within the site.</p> <p>This allocation can be conditioned.</p> <p>Trolley bays are incorporated into the basement design.</p>	<p>Yes</p> <p>Yes – via condition of consent</p> <p>Yes</p>
<b>Retail Bicycle Parking</b>	<p><b>Staff:</b> Minimum 1 space per 300m<sup>2</sup> = 7.2(7) spaces</p> <p><b>Patrons:</b> Minimum 1 space per 500m<sup>2</sup> GFA over 1,000m<sup>2</sup> = 2.3 (2) spaces</p> <p><b>TOTAL: 9 spaces</b></p>	A total of 19 retail bicycle spaces are provided in the basement which can cater for the total 9 spaces generated by the retail uses on the site.	Yes

In addition to the above, the design also incorporates a combined residential and commercial loading/unloading bay at ground floor. A goods lift adjoins the loading bay to provide for access

to the supermarket in the basement. There are also service corridors to assist in transporting any goods to the remaining retail premises at ground level.

This proposed design was referred to Council's Traffic, Engineering and Waste Departments for comments. No objections were raised to the proposed design, subject to conditions of consent which form part of the recommended determination notice.

#### Part B2 – Landscaping and Part B3 – Tree Preservation

The application submitted a Landscape Plan prepared by a suitably qualified Landscape Architect in accordance with the requirements of Part B2 of CDCP 2012. The Landscape Plan could form part of the conditions of consent, should the application be supported, to ensure that the proposed development adequately satisfies the requirements.

The application was also referred to Council's Tree Management team and Landscape Architect who raised no objection with the current design, subject to conditions of consent, should the application be supported.

#### Part B4 – Accessible and Adaptable Design

The Access Report prepared by Accessibility Solutions (NSW) Pty Ltd) dated 21 May 2021 was submitted as part of the DA. The report concludes that the design generally complies with the relevant standards. Where the design includes some non-compliances, these matters can be resolved through further design details being provided at the relevant Construction Certificate stage. The report was reviewed by Council's Building Surveyor who raised no objection. On this basis, the design is considered acceptable from an accessible and adaptable design perspective. The recommendations of the report have been incorporated into conditions of consent, should the application be approved.

#### Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no objection to the proposed stormwater design, subject to conditions of consent.

#### Part B7 – Crime Prevention and Safety

An assessment of the proposed design against the relevant provisions of Part B7 is provided in the table below:

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Crime Prevention through Environmental Design	Avoid blind corners	The design avoids blind corners.	Yes
	Provide natural surveillance for communal and public areas.	The ground floor retail design allows for natural surveillance of Lakemba Street and King Georges Road as well as the internal public plaza.  At least one habitable room of each of the residential apartments located on the upper floors are orientated towards the adjoining street fronts and internal public plaza to facilitate natural surveillance.	Yes
	Provide clearly visible entries.	The entry points to the retail components are clearly	Yes

		defined along the ground floor within the public plaza as well as along the two street frontages.  The residential entry points are also clearly visible through the use of different awnings compared to the awning provided above the retail components. Further elements such as signage and the like can be conditioned, should the application be supported.	Yes – via condition of consent
	Design the fence to maximise natural surveillance from the street to the building.	No fence proposed.	N/A
	Avoid landscaping that obstructs natural surveillance.	Landscaping on the ground floor and on upper levels will not obstruct natural surveillance.	Yes
	Ensure buildings are clearly identified by street numbers.	Can be conditioned.	Yes – via condition of consent
	Use materials that reduce the opportunity for vandalism.	Can be conditioned.	Yes – via condition of consent
	Provide an appropriate level of security for individual dwellings, car parks and communal areas through use of intercoms, self-closing doors and signage.	Can be conditioned.	Yes – via condition of consent

In addition to the above, the application was referred to Council's Community Safety Team who raised no objection to the design.

#### Part B9 – Waste

The application was referred to Council's Project Officer – Resource Recovery who raised no objection, subject to conditions of consent.

- **C5 - Shop Top Housing**

The table below provides an assessment of the proposed design against the relevant controls outlined in Part C5 of CDCP 2012.

Standard	Requirement	Proposal	Complies
<b>C5.2.1.3 – Balconies and Communal Open Space</b>	The apartment layout and communal open space requirements specified within Part 3D and 4E of the ADG override the balcony and communal open space controls outlined within Part C5.2.1.3 of CDCP 2012. An assessment of the proposal against these ADG controls has been undertaken earlier within this report.		
<b>C5.2.1.4 – Layout and Orientation</b>	Orientate development to maximise solar access and natural lighting.	The development is appropriately orientated to maximum solar access and natural lighting. As	Yes

		outlined within the ADG assessment above, the design meets the minimum solar access requirements.	
	Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	The design complies with the minimum building separation controls to the adjoining boundaries. The development has been designed to avoid casting shadowing onto neighbouring properties as much as possible.	Yes
	Site new development and private open space to avoid existing shadows cast from nearby dwellings.	The development has been sited to avoid existing shadows cast from nearby buildings.	Yes
	Site a building to take maximum benefit from cross-breezes and prevailing winds.	The design of the building benefits from the prevailing winds. As outlined within the ADG assessment above, the design is acceptable from a natural ventilation perspective.	Yes
	Do not compromise the creation of active street frontage or casual surveillance of the street, communal space and parking areas, through the required orientation.	The orientation of the design does not compromise the creation of active street frontage/casual surveillance.	Yes
<b>C5.2.2.1 – Floor Space Ratio</b>	The development is to comply with the maximum FSR development control stipulated within CLEP 2012.	A maximum FSR development standard does not apply to the site pursuant to CLEP 2012.	N/A
<b>C5.2.2.2 – Floor to Ceiling Height</b>	The floor to ceiling heights specified within Part 4C of the ADG override the floor to ceiling height controls outlined within Part C5.2.2.2 of CDCP 2012. An assessment of the proposal against these ADG controls has been undertaken earlier within this report.		
<b>C5.2.2.3 – Setbacks</b>	The development is assessed against the relevant setback controls outlined within Part D1 of CDCP 2012 pursuant to Part C5.3.2.3(C1) of CDCP 2012.		
<b>C5.2.2.4 – Building Depth</b>	The ADG sets the objectives and controls for building depth in the LGA for shop top housing to which SEPP 65 relates. Refer to 4B Natural Ventilation of the ADG for objectives, design criteria and design guidance.		
<b>C5.2.2.5 – Building Separation</b>	The ADG sets the objectives and controls for building separation in the LGA for shop top housing to which SEPP 65 relates. Refer to 3F Visual Privacy of the ADG for objectives, design criteria and design guidance.		
<b>Part C5.2.3 – Building Design</b>			
Building Entries	Provide accessible entries for all potential use such as the	Entry to the residential component is accessible to facilitate the	Yes



	transporting of furniture.	transporting of furniture.	
	Face habitable rooms towards the street, private open space, communal space, internal driveways etc in order to promote passive social interaction and community safety.	The design includes facing habitable rooms windows towards the street, private open space, communal space and internal driveways.	Yes
Façade Treatment	The development is assessed against the relevant façade treatment controls outlined within Part D1 of CDCP 2012 pursuant to Part C5.2.3.1(C3) of CDCP 2012.		
<b>C5.2.3.2 – Roof Design and Features</b>	Roof terraces are permitted with consent in all business zones except the B1 zone.	A roof terrace is proposed and is permitted in the B2 zone.	Yes
	A management strategy is required and must be approved by Council as part of the development application, for any proposed roof terrace.	A rooftop management plan has been submitted.	Yes
	Supplement open space on roof terraces by providing space and appropriate building systems to support the desired landscape design, incorporating shade structures and windscreens to encourage use of roof top open space.	Each rooftop terrace comprises suitable weather protection, seating, tables, children's playground and/or BBQ area.	Yes
	Demonstrate that roof terrace has been designed so as to protect the privacy, solar access and amenity of adjoining buildings. Measures to minimise overlooking of adjoining properties include screening or planting between properties, and preventing rooftop users from standing at the edge of roof terraces that look into adjoining properties through planting and screens.	The rooftop terraces are centrally located within the building design and are therefore setback from the boundaries to minimise visual and overshadowing impacts.  Landscaped areas are also proposed along the edge of the terraces to minimise overlooking into adjoining properties.	Yes
	Allow for views and passive surveillance of streets and public open space from roof terraces.	The design allows for views and passive surveillance of adjoining streets.	Yes
<b>C5.2.3.3 – Dwelling Layout and Dwelling Mix</b>	Min 10% of apartments to be adaptable or accessible	15 of the 142 apartments proposed (10.5%) are proposed to be accessible/adaptable.	Yes – via condition of consent.
<b>C5.2.3.4 – Building services</b>	All letterboxes be installed to meet Australia Post Standards	This can be conditioned.	Yes – via condition of consent
	Design and provide discretely	Mailboxes are integrated	Yes

	located mailboxes at the front of the property.	within the pedestrian entry point for each residential entrance.	
	Integrate systems, services and utility areas within the design of the whole development.	System, services and utility areas integrated within design of the development.	Yes
<b>C5.2.4.1 – Solar Access and Overshadowing</b>	The ADG sets the objectives and controls for solar access and overshadowing in the LGA for Shop Top Housing to which SEPP 65 relates. Refer to 4A Solar and Daylight Access of the ADG for objectives, design criteria and design guidance.		
<b>Solar Access and Overshadowing – Adjoining Development</b>	Development to retain a minimum of 3 hours of sunlight between 8am-4pm on 21 June for existing living areas and 50% of the principal private open space.	Refer to comment [1] below.	<b>No – but acceptable on merit, refer to comment [1] below</b>
<b>C5.2.4.2 - Acoustic Privacy</b>	Communal balconies are not to be located directly adjoining bedroom window.	No communal balconies directly adjoin bedrooms windows.	Yes
	Bedroom windows in new dwellings that would be located at or close to ground level are to be raised above, or screened from, any shared pedestrian pathway.	No residential dwellings are proposed on the ground level. All residential apartments are raised above the ground floor.	Yes
	Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp	No residential dwellings are located on the ground floor, adjoining the driveway or basement ramp. Nonetheless, the east facing balconies and windows on levels 1-2 comprise screening, as appropriate.	Yes
	Design to address all requirements in 'Development Near Rail Corridors and Busy Roads- Interim Guideline'	This is discussed under the ISEPP section of this report.	Yes

[1] Part C5.2.4.1 - Solar Access and Overshadowing – Adjoining Development

Controls C1 and C2 in Part C5.2.4.1 of CDCP 2012 state the following:

*C1 Proposed development must retain a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.*

*C2 If a neighbouring dwelling currently receives less than 3 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property*

The objective of Part C5.2.4.1 is as follows:

*O1 To ensure habitable areas have reasonable daylight access.*

An assessment of the proposal against the above controls is provided in the table below:

Affected Site	Comment	Comply
<b>East (278 Lakemba Street)</b>	<ul style="list-style-type: none"> <li>• The existing western elevation is in shadow (cast by the building itself) until 2pm on 21 June.</li> <li>• Therefore, the living room windows and balconies along the western elevation currently receive less than 3hr solar access.</li> <li>• The proposed development impacts the site (specifically the western elevation) at 4pm.</li> <li>• Therefore, the development results in further non-compliance.</li> </ul>	<b>No</b>
<b>South (72-74 King Georges Road)</b>	<ul style="list-style-type: none"> <li>• The living rooms and private open space (balconies) within the property are orientated primarily to the east and west.</li> <li>• Living room windows to the east facing apartments comprise a window along the northern elevation as well.</li> <li>• The windows serving the living room on the eastern elevation receive less than 3 hours solar access on 21 June. The proposed development does not further reduce this. However, it is noted that the proposed development does impact the northern facing window that serves the living room of these east facing apartments (3 apartments). Notwithstanding this, the 3 north facing windows will receive 3 hours solar access on 21 June (9am, 12-2pm).</li> <li>• The east facing balconies will continue to receive solar access for 3 hours on 21 June (8-10am and 1-2pmpm).</li> <li>• In terms of the west facing apartments, the living room windows and balconies already receive less than 3 hours solar access on 21 June as they are primarily in shadow cast by the building itself until 1pm/2pm. The proposed development results in further non-compliance to 3 of the west facing apartments from 1pm-2pm on 21 June. Therefore, the western facing balconies receive solar access between 2-4pm (2 hours) or 3-4pm (1 hour).</li> </ul>	<b>No</b>
<b>South (76 King Georges Road)</b>	<ul style="list-style-type: none"> <li>• There are 4 buildings located on 76 King Georges Road (nominated as buildings A, B, C and D on the shadow plans submitted).</li> <li>• The existing buildings do not comprise any private open space. However, it is noted that at least 50% of the central communal open space within the site will maintain at solar access between</li> </ul>	<b>No</b>

	<p>11am-2pm on 21 June (3hours), which is considered acceptable.</p> <ul style="list-style-type: none"> <li>• The proposed development does not impact building A.</li> <li>• The proposed development impacts building B at 2pm-4pm. However, at this time, the affected living rooms windows along the western elevation are already in shadow. Therefore, the proposed development does not impact this property any further.</li> <li>• The proposed development impacts building C at 3pm and 4pm only. However, at this time (particularly), the living room windows along the western elevation are already partially or completely in shadow by the buildings on site. Nonetheless, the development further impacts these windows.</li> <li>• The proposed development impacts building D between 1pm-4pm. However, the northern elevation (that contains living room windows) receives 3 hours solar access between 9am-12pm and therefore adequate solar access is maintained.</li> </ul>	
<b>West (Opposite side of King Georges Road)</b>	The proposed development does not impact the existing development to the west, on the opposite side of King Georges Road after 10am and therefore sufficient solar access is maintained to these properties.	Yes

The proposed variation is considered acceptable and consistent with the objective of Part C5.2.4.1, in this instance, given the following:

- The proposed development has been sited to minimise impacts (including overshadowing) on adjoining properties.
- The design achieves compliance with the minimum building separation controls to the southern and eastern boundaries. In some instances, a greater separation than the minimum requirement is provided.
- The design complies with the building height plane requirements contained within CDCP 2012, to the side (eastern boundary).
- The existing property to the south of the site is located within 3m of the northern boundary shared with the subject site. This building separation distance does not comply with the current standards applicable in the ADG today. An additional setback for the first 4 storeys (9m rather than the required 6m) has been accommodated on the subject site to try and minimise impacts on the property to the south.
- The design incorporates a minimum 13m separation between buildings 1 and 2 on the subject site to encourage solar access within the site as well as to adjoining properties.
- The shadow impact diagrams provided within drawings DA7.01-7.03 demonstrate that the proposed height breach does not result in further overshadowing impacts on the elevations of adjoining properties.
- The overshadowing impacts resulting from the proposed development can be considered to be somewhat attributed to the building height permitted on the site, the existing lower scale nature of the existing adjoining properties, the proximity of existing buildings to the site boundaries (particularly in regard to 72-74 King

Georges Road) as well as the orientation of the site and its relationship with the adjoining properties.

- The proposed development maintains some level of solar access to the impacted properties which is considered reasonable in the circumstances of this case.

- **D1 – Business Centres - General**

The table below provides an assessment of the proposed design against the relevant controls outlined in Part D1 of CDCP 2012:

Standard	Requirement	Proposal	Complies
<b>D1.2.1 – Minimum Frontage</b>	A minimum frontage of at least 18m shall be provided.	The site's frontage to King Georges Road and Lakemba Street is greater than 18m.  The site does not isolate the property to the south as it comprises a minimum frontage of 18m. The property to the east is zoned residential.	Yes
<b>D1.3.3 – Floor to Ceiling Height</b>	The floor to ceiling heights specified within Part 4C of the ADG override the floor to ceiling height controls outlined within Part D1.3.3 of CDCP 2012. An assessment of the proposal against these ADG controls has been undertaken earlier within this report.		
<b>D1.3.4 – Setbacks</b>	<b>Front Setback:</b> 1-3 storeys built to front boundary	<b>King Georges Road:</b> 1-3 storeys built to front boundary  <b>Lakemba Street:</b> 1-3 storeys setback 3m from front boundary	Yes
	<b>Front Setback:</b> Greater than four storeys – 5m (all storeys to be set back this distance including the fourth storey)	<b>King Georges Road:</b> 4-8 storeys are setback min 4.3m from boundary. Rooftop of Building 01 is setback 5m.  <b>Lakemba Street:</b> 4-8 storeys are setback minimum 4.2m from boundary. Rooftop of Building 02 is setback 6.7m. Rooftop of Building 01 is setback 14.2m.	<b>No – but acceptable on merit, refer to comment [2] below</b>
	<b>Side setbacks:</b> Except where a proposed development adjoins a residential zone boundary, setbacks are not required in the B2 zones when the desired character is for a continuous street frontage.	A setback of 8.53-9.18m is provided to the B2 zoned land to the south given it comprises residential development. 9m (measured from boundary to window of development) is provided as the existing	Yes

		development to the south is only setback 3m from its northern boundary and therefore the additional setback was required within the subject site to achieve compliance with the building separation controls outlined within the ADG relevant to the number of storeys (4 storeys) provided on the adjoining site.	
	Proposed developments that adjoin residential zone boundaries to the side are to comply with the side setback that is defined by D1.3.4(C4-C6).	The development complies with the building height plane, at all levels.	Yes
<b>D1.3.5 – Building Depth</b>	Building depth for commercial premises must be Min 10m and Max 24m in depth	Only 3 of the 15 retail tenancies do not meet the minimum 10m depth requirement. Three tenancies comprise a depth between 6-6.9m. All other tenancies are over the 10m depth requirement.	<b>No – but acceptable on merit, refer to comment [3] below</b>
	Max Street frontage wall length of 50m.	<50m. Wall frontage length ranges between 22m-34m.	Yes
<b>D1.4 – Building Design</b>	Design and orient development to maximize solar access and natural light, without unduly increasing the building's heat load.	The development has been orientated to maximise solar access from the northerly and westerly aspects.	Yes
	Locate entries so they relate to existing street and are clearly visible	Entry points along King Georges Road and Lakemba Street relate to the existing street pattern and are clearly visible.	Yes
	Provide entries to upper levels from the street front façade to encourage activities on the ground floor.	Separate entry to the residential component in Building 1 is provided along King Georges Road.	Yes
	Provide an awning over entry to contribute to legibility and the public domain	Awning provided over entry points along street frontages and within plaza.	Yes
	The façade of the building shall be built to the front street boundary	The first three storeys of the development are built to the existing street front along King Georges Road and the proposed street front along Lakemba Street,	Yes

	Cantilevered awning to overhang the footpath a minimum width of 3m	Cantilevered awning overhangs footpath by minimum 3m along both street frontages.	Yes
	Cantilevered awning height to be in the range of 3.2m-4.2m	Awning is 3.2m-4.2m above ground level.	Yes
	Posted awnings or colonnades will not be supported.	The design does not include a posted awning or colonnade.	Yes
	Windows on the street frontage must not be mirrored.	To be conditioned.	Yes – via condition of consent
	Do not place external solid roller shutters or brick walls on shopfronts	None proposed.	Yes
	Security grilled must be discreet.	None proposed.	Yes
<b>D1.4.3 – Façade Treatment</b>	New building forms and design features shall not mimic traditional features.	The proposed building does not mimic traditional features.	Yes
	Incorporate contrasting elements in facades	The design incorporates contrasting elements in the façade.	Yes
	Use a harmonious range of high-quality materials, finishes and detailing.	High quality materials proposed. The range is considered acceptable as the use of materials help differentiate the base, middle and upper levels of development	Yes
	Consideration in the design of commercial premises is to be made for mechanical ventilation required by potential future food shops and restaurants	Adequate floor to ceiling height is provided to retail tenancies to enable mechanical ventilation to be incorporated into tenancy, if required. Furthermore, service rooms are provided on the ground floor of each building to connect to, if required.	Yes
	Refer to existing height datum for new development to existing buildings such as eave and parapet lines, as a guide to aligning the height to levels of adj development	This control primarily applies for development in B2 where a nil setback is provided. This isn't the circumstance in this case.  Notwithstanding, the design does align with the nearby mixed-use development as much as possible given the slope of the road.	Yes
	Roofs must not exceed pitch of	Roof does not exceed pitch	Yes – via

<b>D1.4.4 – Roof Design</b>	10 degrees	of 10 degrees.	condition of consent
	Relate roof design to the desired built form and context.	Flat roof is in keeping with roof design of buildings located in the B2 zone.	Yes
<b>D7.8 – Wiley Park</b>	Development in the Wiley Park Local Centre is to be in accordance with the structure plan shown in Figure D7.8	<p>The proposal incorporates retail tenancies on the ground floor along the King Georges Road and Lakemba Street frontages. This design facilitates an active street front.</p> <p>The design also incorporates the laneway and a public plaza place that runs up the middle of the site.</p>	Yes

#### **[1] D1.3.4 – Setbacks**

The objectives of the Setback controls are as follows:

- O1 To establish the desired spatial proportions of the street and define the street edge.*
- O2 To minimise building size and bulk by setting back upper storeys.*
- O3 To minimise amenity impacts on adjoining properties.*
- O4 To encourage increased setbacks along Canterbury Road to provide for possible future implementation of street parking and assist in reducing traffic noise impacts.*
- O5 To allow for flexible design and building articulation by permitting minor encroachments.*

The proposed design results in a variation to the following setback controls contained within Part D1.3.4:

- **Front Setback:** Control C2 requires that for developments greater than 4 storeys, a 5m setback is provided to the upper levels (including the 4<sup>th</sup> storey). Given the unique presentation of the buildings to King Georges Road and Lakemba Street, the front setback control has been applied to both street frontages. This approach will also ensure the design is in keeping with the objectives of the setback controls. Storeys 4-8 (indicated as Levels 3-7 on the architectural plans) comprise a minimum setback to King Georges Road and Lakemba Street of 4.3m and 4.2m respectively, resulting in a maximum 0.8m or 16% variation.

Although the design seeks to vary the front setback controls as above, the design is still in keeping with the objectives of the setback controls given the following:

- The minor protrusions in the front setback controls result from architectural design features. No additional gross floor area or habitable space is located within the protrusions. The architectural design features add visual interest to the facades.
- The minor protrusions occur at intervals along the King Georges Road and Lakemba Street facades, rather than the entire length of the facades.
- The main building line is setback 5m and 5.5m from the front boundary along the King Georges Road and Lakemba Street facades respectively.
- The minor protrusions to the front setback controls are located on the upper levels of the development and therefore, the design still defines the two street edges.



- The design achieves compliance with the building separation requirements specified within the ADG, including the additional setbacks requirements to the eastern boundary given the land to the east comprises a lower density residential zone.
- Given the orientation and the controls applicable to the site, amenity impacts on the adjoining development to the east and south are inevitable. However, the increased building setbacks to the eastern and southern boundaries, assist in maintaining a suitable level of visual privacy and solar access to the properties to the east and south.
- The upper levels on each elevation of the four buildings comprise a greater setback than the lower levels to minimise perceived size and bulk of the development.

In light of the above, the proposed minor variations to the front setback requirements are considered acceptable in this instance.

### **[3] - D1.3.5 – Building Depth**

Control C1 of Part D1.3.5 requires commercial premises to have a minimum building depth of 10m. Of the 15 retail premises proposed, 3 tenancies on the ground floor (tenancies 11, 12 and 13) comprise a depth of less than 10m, ranging between 6m and 6.9m. This represents a maximum variation of 4m or 40%.

The objectives of Part D1.3.5 are as follows:

*O1 - To ensure that natural daylight is available in all parts of the building so that artificial light is not necessary during daylight hours.*

*O2 - To ensure an appropriate level of depth is available to create viable building spaces for retail and commercial use.*

Despite the non-compliance with the depth requirements, the three tenancies comprise a width of 10m or greater. Therefore, the design and size of the tenancies are still considered to create viable spaces for a range of retail and commercial uses. Furthermore, given majority of the tenancies proposed (12 of the 15 or 80%) comply with the minimum depth requirement, it is considered that the range of tenancies themselves promote a range of retail and business uses. Given the tenancies are less than 10m in depth, it is considered that natural light will still be provided and therefore they will not rely on artificial light during daylight hours.

In light of the above, the proposed variation to the 10m building depth requirement is acceptable in this instance.

### **Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)**

The Canterbury Development Contributions Plan 2013 applies to the site. A calculation of the contributions applicable is provided in the table below:

<b>Contribution Element 2013</b>	<b>Contribution</b>
Community Facilities	\$154,163.72
Open Space and Recreation	\$1,506,864.34
Plan Administration	\$43,366.06
<b>TOTAL PAYABLE:</b>	<b>\$1,704,394.12</b>

The requirement for payment of the above contributions is incorporated into the recommended conditions of consent, should the application be supported.

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

There are no planning agreements associated with this application.

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

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

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

The key potential impacts of the development have been discussed through-out this report. Apart from those matters already addressed, the following likely impacts are considered:

#### **Acoustic Impacts**

Majority of the potential acoustic impacts have been discussed within the relevant sections of the report above. In addition to the matters discussed, the potential acoustic impacts of the new rear laneway, driveway and loading dock on the residential within the site as well as on adjoining sites has been considered.

In summary, the Acoustic Report prepared by Renzo Tonin and Associates dated 28 May 2021 recommended the following:

- *Provide a solid fence with minimum height of 1.8m between driveway and existing residential neighbour to the north-east. Acceptable fence materials are Colorbond, fibre cement, Hebel, lapped and capped timber.*
- *Loading dock door shall be solid construction and shall be shut when trucks are operating inside the loading dock*
- *Ventilation louvres on walls of loading dock shall be acoustically rated and equivalent to Fantech SBBL1.*
- *Provide a minimum 300mm thick concrete slab separating the loading dock and apartments above.*
- *Soffit of concrete slab separating loading dock and apartments above shall be acoustically treated with sound absorptive material such as 50mm Pyrotek Sorber Poly 2D or 50mm Reapor,*
- *Wall surfaces inside loading dock shall also be acoustically treated with sound absorptive material such as 50mm Pyrotek Sorber Poly 2D or Reapor from height of 2m extending to ceiling line.*
- *Wall surfaces inside loading dock shall also be acoustically treated with sound absorptive material such as 50mm Pyrotek Sorber Poly 2D or Reapor from height of 2m extending to ceiling line.*
- *Lower section of wall surfaces inside the loading dock should be acoustically treated with minimum 20mm thick rubber/neoprene pads adhered to the perimeter walls to a height of 1.5m off the finished floor to dampen impacts onto walls and minimise transfer of structure-borne transfer.*
- *Operation of turn table shall be inaudible in any habitable space.*
- *Stormwater grates located in driveways and driveway ramps shall be vibration isolated using minimum 10mm thick rubber pads.*
- *Low-profiled rubber/neoprene speed humps shall be used through-out the basement carpark including driveways with recommended maximum vehicle speed limit of 10km/hr. Speed humps shall be firmly fixed to structural floor. Concrete-formed speed humps are not recommended.*
- *Expansion joints at bottom ramp shall be fitted with a rubber-based joint cover that is flush with the surface of finished floor such as Zip Block (ZB) EPDM rubber joint covers.*
- *Provide a minimum 200mm thick slab separating ramp and apartment above*
- *Underside of concrete slab separating ramp and apartments above shall be acoustically treated with sound absorptive material such as Enviro spray 300. Treatment shall extend at least 3m into the basement carpark at bottom of the ramp.*

- *The acoustic fence recommended in Section 8.1.3 will assist in shielding break-out noise to residential neighbours on the north-east boundary.*

The above recommendations have been incorporated into the design, as required. Furthermore, the recommendations of the acoustic reports have been incorporated into the conditions of consent, should the application be supported.

#### Wind Impacts

A Pedestrian Wind Environment Statement prepared by Windtech Consultants Pty Ltd dated 16 September 2020 was prepared to understand the likely impact of the proposed development on the local wind environment at the critical outdoor areas within and around the subject site.

Although no wind testing was undertaken as part of the assessment, the report considered the existing wind effects and any localised effects that were identifiable by visual inspection. The conclusions of the report were drawn from the findings of this assessment and from the extensive experience in the field. For the purposes of this assessment, this methodology is considered acceptable.

In summary, the results of the assessment concluded the subject development benefits from shielding provided by the subject and neighbouring building as well as the use of effective wind mitigating features in the design (such as recessed balconies, full-height privacy screens, impermeable balustrades and blade walls).

It was identified that there could be potential impacts on the wind comfort within certain areas within the development due to wind effects generated from the interaction of the prevailing winds with the development-built form. However, it was determined that these potential effects could be ameliorated through incorporating the following into the design:

- *Ground Level Areas:*
  - *The retention of the proposed awning along the Lakemba Street and King Georges Road frontages of the site as indicated in the architectural drawings.*
  - *The inclusion of the proposed densely foliating street trees along the Lakemba Street and King Georges Road frontages of the site as indicated in the architectural drawings; in particular the street trees around the corners of Buildings 01 and 02.*
  - *The inclusion of the proposed densely foliating trees north-eastern and south-eastern boundaries of the site as indicated in the architectural drawings.*
  - *The inclusion of the proposed densely foliating trees and shrubs/hedge planting within the proposed planter areas along the through-site pedestrian footpath as indicated in the architectural drawings.*
  - *The inclusion of densely foliating vegetation such as trees or shrubs/hedge planting along the entrance walkway from the King Georges Road frontage of the site.*
  - *Restrict areas intended for short duration stationary activities such as outdoor seating, away from the corner areas of the building.*
- *Private Balconies*
  - *Retention of the proposed balustrades, blade walls and full-height privacy screens as indicated in the architectural drawings.*
  - *Consideration of louver screens along of the expose perimeter edges of the upper corner balconies; in particular those along the Lakemba Street frontage and southwestern aspects on Levels 5 and above.*
- *Level 7 Communal Outdoor Spaces – Building 02*

- *Retention of the proposed full height blade wall between the outdoor terraces and the adjacent private residential balconies.*
- *Rooftop Communal Outdoor Spaces – Buildings 01 and 02*
  - *The inclusion of densely foliating vegetation such as trees or shrubs/hedge planting within the proposed planter areas around the communal outdoor spaces as indicated in the architectural drawings; in particular those along the perimeter edge of the communal outdoor spaces.*
  - *Restrict areas intended for short duration stationary activities such as outdoor seating, away from the corner areas of the building.*
- *Note the densely foliating vegetation is to be of an evergreen species to ensure their effectiveness in wind mitigation throughout the year.*
- *The inclusion of additional wind mitigation elements such as baffle screens, pergolas and densely foliating vegetation such as trees or shrubs/hedge planting within the various outdoor trafficable areas; particularly around areas intended for short duration stationary activities such as within the child play areas and outdoor seating along the pedestrian walkways and communal outdoor spaces etc., is expected to be effective in further enhancing the localised wind conditions. The north-eastern entrance of the through-site link between Building 02 and the King Georges Road entrance of the through-site link between Building 01 are susceptible to accelerating flows and funneling wind effects, hence these entrances can also benefit from the inclusion of additional wind mitigation elements detailed above.*

The abovementioned recommendations have been incorporated into the draft conditions of consent. Furthermore, a condition of consent has been incorporated in the draft conditions to ensure appropriate wind tunnel testing is undertaken once the development is constructed and should the recommendations of the report need to be amended, further approval should be sought to incorporate any additional mitigation measures (if required).

### Economic Impacts

A Retail Impact Assessment (and associated review) prepared by Urbis dated 21 May 2021 accompanied the application. In summary, the report found that:

- There is sufficient population growth within Wiley Park that is driving demand for additional retail as proposed as part of the proposed development.
- The development will not result in any adverse competitive impacts on existing centres (including regional and sub regional shopping centres, supermarket centres and smaller retail strips).
- The proposal would generate approximately 109 direct operational jobs.

In light of the above, the report concludes that the proposed development will not result in any significant adverse economic impacts. Council has reviewed the report and does not oppose the findings of the Retail Impact Assessment.

### External Referrals

The Application was referred to the following external stakeholders for review and comment:

- Sydney Water
- Ausgrid
- NRAR
- TfNSW
- WaterNSW.

All of the external stakeholders raised no objection, subject to conditions of consent which have been incorporated into the draft consent.

### Infrastructure

The Applicant was requested to provide written “In Principle” agreement to the relocation of the following services prior to the issue of consent for the development:

- Telstra
- Ausgrid
- Jemena Gas
- Sydney Water
- RMS for Traffic Signals
- Canterbury Bankstown Council for drainage.

The Applicant submitted a Utility Services Investigation Report prepared by LP Consulting to address the above. “In Principle” agreement from the relevant authorities was provided, where possible.

### Laneway and Footway Dedication

The proposed dedication along the northern and eastern boundaries to facilitate a laneway and footpath was considered by Council’s Traffic and Infrastructure Departments. No objection was raised, subject to conditions of consent.

### National Construction Code

Council’s Building Surveyor has reviewed the application and raises no objection, subject to conditions of consent.

### Proposed excavation works

The proposed development involves excavation and construction works in close proximity to property boundaries and neighbouring properties. Should the application be approved, relevant conditions requiring the applicant to provide a dilapidation report for the adjoining properties, prior to the issue of the Construction Certificate could be included on any consent issued. Should any damage to adjoining properties result from the proposed excavation works at the subject site, the applicant would be required to rectify all damages.

### Sediment and Erosion Control

Standard conditions could be included regarding the installation and maintenance of the sediment and erosion control measures as part of the pre and during construction phase of the development, should the application be supported.

The development will involve excavation of part of the site to accommodate the development. Any excavated material not utilised elsewhere on the property, will require proper disposal and transport in accordance with the Waste Avoidance and Recovery Act, and the Protection of the Environment Operations Act. A condition could be imposed in this regard should the application be supported.

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

The proposed development is permitted with consent on the subject site and represents a built form that is compatible with the existing and future character of the locality. The application has been assessed under Section 4.15 of the Act, and as demonstrated throughout the body of this report, the proposal generally complies with the relevant development controls. The proposed variations to the relevant ADG, CLEP 2012 and CDCP 2012 controls regarding deep soil, visual privacy, natural ventilation, building height, front setbacks and building depth have been assessed on merit and are acceptable for the reasons outlined within the body of the report.

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

The application was originally advertised for a period of 28 days between 7 July 2021 and 3 August 2021. No submissions were received during this period.

The application was readvertised between 3 November 2021- 30 November 2021. No submissions were received during this period.

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

The proposed development would not contravene the public interest. The development appropriate responds to the applicable environmental instruments and development controls, and the proposed development would contribute to housing diversity within the Canterbury-Bankstown LGA. No submissions were received during the advertising periods.

### **CONCLUSION**

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 and all relevant development control plans, codes and policies.

The proposed variations to the controls relating to building height, deep soil area, visual privacy (building separation), natural ventilation, front setbacks and building depth will not result in any significant adverse impact on the amenity of future occupants of the site as well as existing residents on adjoining properties. The design of the proposed development is compatible with the future and desired local character of the area and represents a quality development that will positively contribute to the streetscape and the local built environment. As such, it is recommended that the development application be approved subject to conditions of consent.

### **RECOMMENDATION**

THAT the Sydney South Planning Panel **approve** Development Application No. DA-452/2021, subject to the recommended conditions of consent provided in a separate attachment (refer to Attachment T)..