



21 February 2019

Dr P Williams
Chair of IPC Panel
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2001

Attention: Ms Diana Mitchell

Subject: Gateway Determination Review, Canterbury Road Belmore

I write in relation to IPC's consideration of the abovementioned review and meeting with Council on 23 January 2019.

Further to this meeting, we wish to provide the Commission with the additional information for their consideration.

Site Compatibility Certificate for 677 Canterbury Road, Belmore

A Site Compatibility Certificate (SCC) was issued under State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP) for the site in July 2014 for the construction of a mixed use development comprising three buildings, with ground floor commercial space along Canterbury Road and residential development pursuant to the SEPP. The proposal the subject of the SCC includes two buildings that are six storeys in height with a partial seventh storey. The SCC lapses on 14 July 2019.

The issuing of an SCC does not mean that the development has been approved by the Department and can now be constructed – it is only the first step in the assessment process and will require assessment and determination by the consent authority before it lapses on 14 July.

As of 21 February 2019 Council has not received any development application for this site in connection with the site compatibility certificate.

RMS objection to the Development Application

The RMS has reviewed the submitted development application and does not support the proposed development. The reasons provided include:

"It is understood that Council is undertaking a comprehensive traffic and transport study to assess the cumulative impacts of mixed use developments within the Canterbury Road Corridor. It is noted the subject proposal seeks variation to the LEP height limit (using clause 4.6 variation) which would result in additional units over and above what is permissible under existing controls. Roads and Maritime is now of the view that Council should give consideration to not supporting such applications until the outcome of the broader traffic and transport study, determination of any required transport mitigation works (including road widening requirements for the corridor) and funding mechanisms are finalised".



A copy of the RMS letter is enclosed for your information.

Canterbury Road Review

The Canterbury Road Review included the establishment of an interagency steering committee with representatives from Department of Planning and Environment, Greater Sydney Commission, Transport for NSW, RMS and Council. The output of the steering committee was the 'Canterbury Road Review' report, which details findings for the future redevelopment of the Canterbury Road Corridor on the basis of planning, urban design, traffic and feasibility studies.

Employment lands on the site

Council's calculations indicate there is approximately 3,553.5m² of land zoned for B6 Enterprise corridor currently on the site which would be replaced with between 1,510m² - 2,242m² of commercial uses under the DA. This would be made up of between 732m² - 1,464m² on Site A (not owned by the applicant) and 778m² on Site B.

In any case the planning proposal would result in loss of urban services land, which would likely be replaced with commercial uses as part of a mixed use development. The South District Plan specifically advises against proposals of this nature:

'All existing industrial and urban services land should be safeguarded from competing pressures, especially residential and mixed-use zones. This approach retains this land for economic activities required for Greater Sydney's operation, such as urban services.

Specifically, these industrial lands are required for economic and employment purposes. Therefore, the number of jobs should not be the primary objective – rather, it should be a mix of economic outcomes that support the city and population.'
(Page 76 of the South District Plan)

Clause 4.6 – variation to the height limit

The DA includes the submission of a Clause 4.6 variation to seek additional height on the site. A height of 25m proposed under the planning proposal would apply. Under the DA a height of 25.8m (excluding roof feature) has been sought by the applicant.

A copy of the proponent's Clause 4.6 submission is enclosed for your information. No amendments to that submission have been made since the DA was lodged.

I trust the above information is sufficient. Should you require any further information or clarification please do not hesitate to contact me on 9789-9361.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mitchell Noble', written over a blue line.

Mitchell Noble
Manager Spatial Planning



23 August 2018

Our Reference: SYD18/01085/01
Council Ref: DA-591/2015

The General Manager
City of Canterbury Bankstown
PO Box 8
BANKSTOWN NSW 1885

Attention: Shona Porter

Dear Sir/Madam

**CONSTRUCT MIXED USE COMMERCIAL & RESIDENTIAL DEVELOPMENT
642-644 CANTERBURY RD, 1-3 PLATTS AVENUE & 2A, 2B 2C & 2D LIBERTY STREET,
BELMORE**

Reference is made to Council's letter dated 3 July 2018, regarding the abovementioned Application which was referred to Roads and Maritime Services (Roads and Maritime) for concurrence in accordance with Section 138 of the *Roads Act, 1993*.

Roads and Maritime has reviewed the submitted application and does not support the proposed development at this stage for the following reason:

It is understood that Council is undertaking a comprehensive traffic and transport study to assess the cumulative impacts of mixed use developments within the Canterbury Road Corridor. It is noted the subject proposal seeks variation to the LEP height limits (using a clause 4.6 variation) which would result in additional units over and above what is permissible under existing controls. Roads and Maritime is of the view that Council should give consideration to not supporting such applications until the outcome of the broader traffic and transport study, determination of any required transport mitigation works (including road widening requirements for the corridor) and funding mechanisms are finalised.

Should you have any further inquiries in relation to this matter, please do not hesitate to contact Nav Prasad by email at development.sydney@rms.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aleks Tancevski', with a long horizontal flourish extending to the right.

Aleks Tancevski
**A/Senior Manager Land Use Assessment
South East Precinct, Sydney Division**

Clause 4.6 Exception to Development Standard – Height of Building

Canterbury LEP 2012

In relation to a Development Application for a mixed use development at 642-644 Canterbury Road, 1-3 Platts Avenue & 2A, 2B, 2C & 2D Liberty Street, Belmore

November 2015

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Standard to be varied: Height of Building – Clause 4.3
Address: 642-644 Canterbury Road, 1-3 Platts Avenue & 2A, 2B, 2C & 2D
Liberty Street, Belmore (Site)
Proposal: Construction of an eight storey mixed use development with
basement car parking.

1. INTRODUCTION

This is a request to seek an exception to a development standard under Clause 4.6 – Exceptions to Development Standards of the Canterbury Local Environmental Plan 2012 (CLEP).

The development standard for which the variation is sought is Clause 4.3 (Height of Building) pursuant to the CLEP. The Building Height Map (HOB) prescribes a maximum height for the site of 25m ("T1").

This application has been prepared in accordance with the NSW Department of Planning and Environment guidelines and has incorporated relevant principles identified in recent Land and Environment Court judgements.

This request is made on the basis that:

- a) compliance with the development standard is unreasonable and unnecessary in the circumstances of the case,
- b) that there are sufficient environmental planning grounds to justify contravening the development standard,
- c) it is consistent with the objectives of the LEP, the particular standard and the zone in which the development is proposed to be carried out, and
- d) it is in the public interest to allow a departure from the numerical standard in this case.

These relevant matters are set in this submission.

The objectives of Clause 4.6 in CLEP are:

- 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.*

In accordance with sub-clause 4.6(2), development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

2. DESCRIPTION OF PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

Summary of Legal Context and Proposed Variation	
EPI applicable:	Canterbury Local Environmental Plan 2012
Zoning:	B5 – Business Development
Standard being varied:	Height of Building (Clause 4.3)
Numeric measure of variation:	Allowed: 25m ("T1") on the LEP Map Proposed: 25.8m (excluding roof features)
Percentage of variation:	3.2% (0.8m)

3. CONSISTENCY WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

Sub-clause 4.3(1) outlines the objectives of this clause in relation to HOB are as follows:

- 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."*

Comments supporting the proposal's consistency with each of the above objectives are addressed below:

Objective (a)

To establish and maintain the desirable attributes and character of an area.

This Site is along the Canterbury Road Business Development corridor which has a desired future character articulated by the Residential Development Strategy 2013 and the Canterbury Road Masterplan 2010 and implemented by the controls within the LEP and DCP.

This future character is for eight story mixed use development that activates the street frontage and demonstrates quality contemporary design.

The proposed development helps establish this character in terms of overall height and is consistent with heights being approved along Canterbury Road.

It is noted that the proposal adjoins other residential lands and the interface with these lands is a design consideration in terms of massing and transition and not directly related to the overall building height being proposed.

As such, the proposed development is consistent with the desired future character of this locality.

Objective (b)

To minimise overshadowing and ensure there is a desired level of solar access and public open space.

The breach in overall height does not contribute to additional overshadowing as the breach is minor and located some 17m from the southern boundary.

There is minimal impact during the winter Solstice and no public open space is impacted.

The proposed development satisfies this objective and provides a suitable level of solar access.

Objective (c)

To support building design that contributes positively to the streetscape and visual amenity of an area.

The minor increase in height does not alter the eight storey building form. The breach in height is appropriate in terms of achieving this objective and largely as a result of site cross

fall. Overall massing within the site is an unrelated issue in terms of visual impact and transition to adjoining zones. The variation to height is supportable.

In order to assess the compatibility of the proposal relative to its surroundings, reliance is placed on the Land Environment Court Planning Principle of 'compatibility with context' in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. To test whether a proposal is compatible with its context, the following two questions can be asked:

1. Are the proposal's physical impacts on surrounding development acceptable? (The physical impacts include constraints on the development potential of surrounding sites).

The site is zoned B5 Business development and eight storey building forms are established along the Canterbury Road corridor. The Site is large and the height breach is toward the centre of the Site does not contribute to any new impact or unacceptable character.

The design responds well to it's context by providing higher bulk at the Canterbury Road corner to provide a strong urban block edge, leading to lower central form to allow light into a central courtyard and a terrace style form that steps down toward the southern boundary to create a sense of place along the laneway and ensure minimal impacts on the adjoining residential properties. As a result of this design philosophy, there are minimal impacts on the surrounding development, and none that are exacerbated by the minor height exceedance.

2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The locality is currently undergoing significant urban change which is articulated by the Residential Development Strategy 2013 and the Canterbury Road Masterplan 2010 and being implemented through CLEP and CDCP.

The existing character and buildings are of a commercial and industrial nature, which is consistent with the active street front proposed within the DA, but the proposal is more in keeping with the desired future character of Canterbury Road stated within Council's policy documents

4. CONSISTENCY WITH THE OBJECTIVES OF THE ZONE

The B5 zone objectives are as follows:

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design.*
- *To support urban renewal that encourages an increased use of public transport, walking and cycling.*
- *To encourage employment opportunities on Canterbury Road and in accessible locations.*

The proposed mixed use building meets the relevant objectives of the zone by:

- *Providing for the housing needs of the Canterbury community through providing additional housing choice and affordability in the locality;*
- *Providing for additional business and employment space in the adjacent communities;*
- *The development proposal provides a range of smaller unit types which enhances transport patronage; and*
- *Additional population within the Canterbury Road corridor will stimulate new business activity and support existing businesses.*

The proposal is consistent with the zone objectives.

5. CONSISTENCY WITH THE AIMS OF LEP

In accordance with Clause 1.2(2), the aims of the CLEP are as follows:

- a) to provide for a range of development that promotes housing, employment and recreation opportunities for the existing and future residents of Canterbury,*
- b) to promote a variety of housing types to meet population demand,*
- c) to ensure that development is of a design and type that supports the amenity and character of an area and enhances the quality of life of the community,*
- d) to create vibrant town centres by focusing employment and residential uses around existing centres and public transport nodes,*
- e) to revitalise Canterbury Road by encouraging a mix of land uses that does not detract from the economic viability of existing town centres,*
- f) to retain industrial areas and promote a range of employment opportunities and services,*

- g) to promote healthy lifestyles by providing open space that supports a variety of leisure and recreational facilities and encouraging an increased use of public transport, walking and cycling,*
- h) to protect the natural environment for future generations and implement ecological sustainability in the planning and development process,*
- i) to protect and promote the environmental and cultural heritage values of Canterbury.*

The LEP objectives clearly work together to maximise development of appropriate sizes which meet emerging demand and create vital centres around the Municipality. Specifically, this will see the revitalisation of Canterbury Road, new employment uses, better-use of transport infrastructure, all within the balance of environmental protection.

The proposal will have no negative impact on natural areas and the additional height is minor.

The proposed development supports the LEP objectives.

6. ADDITIONAL CONSIDERATIONS

6.1 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

The objects specified in Section 5(a)(i) and (ii) of the Act are as follows:

“to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land...”*

The proposed development is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 5(a)(i) and (ii).

The presence of new commercial suites and additional residential density supports the attainment of orderly and economic use and development of the site. Any impact arising from the 'extent' of height variations across the site relates largely to issues surrounding character and transition to lower density lands surrounding.

6.2 The variation allows for a better planning outcome

The proposed exceedance of the HOB control results in an eight storey building form which is consistent with the desired future character of Canterbury Road and is an appropriate height given the width of the road and the presence of ground level commercial suites.

In seeking to demonstrate a better outcome for the site, the following matters are also considered:

6.2.1 Would a complying development result in an unreasonable outcome in the circumstances of the case?

A complying building would not be an unreasonable outcome in terms of overall building appearance or overall impacts. It would however, result in less dwellings on a town centre site near transport and the 25m height limit anticipates the approval of eight storey forms with activated roof areas. Refer to 6.2.3 below.

6.2.2 Would the underlying objectives of the zone or the development standard be defeated or thwarted if compliance was required?

No.

6.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

Yes, in that minor variations to height (within a 5% - 10% range) are common-place along Canterbury Road. Furthermore, it is Council's clear desire to have meaningful, attractive roof elements designed into the overall building to soften the design and provide useable open space on the roof.

6.2.4 Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is appropriate.

6.3 There are sufficient environmental grounds to permit the variation?

Careful design consideration was given to the proposed building form to ensure solar access to the living areas and private open space of these neighbouring properties is maintained as far as practical and in compliance with the ADG.

This is achieved by providing higher bulk at the Canterbury Road corner to provide a strong urban block edge, leading to lower central form to allow light into a central courtyard and a terrace style form that steps down toward the southern boundary to create a sense of place along the laneway and ensure minimal impacts on the adjoining residential properties. As a result of this design philosophy, the impacts on the neighbouring properties are minimised and compliance with the ADG is achieved.

The shadow diagrams show demonstrate that the proposed built form is entirely appropriate in its context.

The proposed variation does not compromise any significant natural feature or result in any significant new loss of amenity within the Canterbury Road context. The proposed variation results in no significant new impact than a complying building would bring. As previously indicated, the extent of building that breaches the height limit must be examined in terms of Council's desired future character of the area and the slope on the site.

6.3 Is the proposed development in the public interest?

A development that is the public interest would demonstrate that it is consistent with the objectives of the particular standard and the objectives for development in that particular zone.

It has been demonstrated previously that the proposal is consistent with the objectives of the Development Standard (Section 3) and consistent with the Zone objectives (Section 4).

As outlined in the Planning Report attached the Development Application, the proposed development supports the desired future character of this locality and is in keeping with the character buildings along Canterbury Road.

Strict compliance would weaken the building form and potentially remove the consistent eight storey form that is emerging along the corridor. This will not result in a better planning outcome.

No significant public benefit would result from strict compliance with the standard in this instance. The extent of building form that exceeds the limit relates to overall site massing and the transitional character of the adjoining lands. This must be assessed in this context and not having regard to the overall numeric height breach.

6.4 The objection is well founded

For the reasons outlined in previous sections, the objection is well founded in this instance and the granting an exception to the development standard can be supported in the circumstances of the case.

7. CONCLUSION

The proposed development will be compatible with the surrounding land uses and desired future character of Canterbury Road. The breach is only 3.2% and is consistent with other buildings approved with minor height variations.

Strict compliance would serve no environmental grounds and make no meaningful improvement to building design. Massing across the site (or the extent of building that exceeds the height) is an unrelated issue and should not impact the appropriateness of any variation to height on the site, particularly towards Canterbury Road.

For this reason, strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 of CLEP 2012 is available to Council in this instance.