
JOINT REGIONAL PLANNING PANEL REPORT

OCTOBER 23 2014



Development Application No.	➤ D/2014/312
Address	➤ 22 George Street, LEICHHARDT NSW 2040
Description of Development	➤ Site preparation works (including diversion of services, remediation, demolition of existing structures and excavation) and construction of a mixed use development of 5 buildings of 4 to 9 storeys in height. The buildings shall comprise 2 commercial tenancies and 290 residential units above a basement car park containing 283 parking spaces. Associated landscaping and public domain works.
Date of Receipt	➤ 27 June 2014
Value of Works	➤ \$98,500,000
Applicant's Details	➤ Greenland Sydney George Street Development Pty Ltd C/- Alexander Rodakis Suite 201, Level 2 233 Castlereagh St SYDNEY NSW 2000
Owner's Details	➤ KGS Victoria Pty Ltd C/- Sweetvale Pty Ltd, Att: Tim Selleck Level 9, 161 Collins St MELBOURNE VIC 3000
Notification Dates	➤ 17th July 2014 to 28th August 2014.
Number of Submissions	➤ 98
Building Classification	➤ 2, 6 and 7a
Integrated Development	➤ No

Main Issues	➤ Contamination, flooding, amenity, zone objectives, non-compliance with SEPP, LEP and DCP.
Recommendation	➤ Refusal

1. PROPOSAL

Proposal (Early Works) D/2012/240

The development application known as the 'early works' DA, is solely to demolish all existing buildings on site as preparation for excavation and construction and to divert the existing underground Sydney Water and sewer pipes which run under the south-west corner of the site. Demolition of the buildings will incorporate removal of existing hazardous materials eg asbestos.

Proposal (Main Works)

The 'main works' DA, which is the subject of this report, incorporates all the works sought under D/2014/240, as well as the following:

- Remediation of the site
- Excavation for basement carparking – the basement is proposed to contain 283 car spaces, plant and equipment rooms, storage and bicycle parking. Access in and out is via a single point on George Street near the southern end of the site.
- Construction of 290* dwelling units and two business tenancies accommodated across five buildings, as follows:

Building A

- 66 dwelling units divided as follows
 - nil x one bedroom units
 - 22 x one bedroom plus separate study/storage area
 - 16 x two bedroom units
 - 28 x two-bed plus study
 - nil x three bedroom units

Building B

- 87 dwelling units divided as follows
 - 5 x one bedroom units
 - 28 x one bedroom plus separate study/storage area
 - nil x two bedroom units
 - 49 x two-bed plus study
 - 5 x three bedroom units
 - Two retail tenancies

Building C

- 36 dwelling units divided as follows
 - nil x one bedroom units
 - 36 x one bedroom plus separate study/storage area
 - nil x two bedroom units
 - nil x two-bed plus study
 - nil x three bedroom units

Building D

- 82 dwelling units divided as follows
 - 2 x one bedroom units
 - 40 x one bedroom plus separate study/storage area
 - 26 x two bedroom units
 - 10 x two-bed plus study
 - 4 x three bedroom units

Building E

- 19 dwelling units divided as follows
 - 3 x studio units
 - 8 x one bed
 - 8 x one bedroom plus separate study/storage area
 - Nil x two bedroom units
 - Nil x three bedroom units

In total the dwelling mix proposed is

- 3 x studio
- 15 x one bedroom units
- 134 x one bedroom plus separate study/storage area
- 42 x two bedroom units
- 87 x two bed plus study
- 9 x three bedroom units

**following discussions with Council staff draft amended plans were lodged in September 2014, aimed at addressing a number of concerns primarily related to internal amenity of proposed dwellings. Upon assessment Council staff noted that the number of proposed dwellings had changed from 288 to 290. This came about as a consequence of the re-arrangement of floor layouts in Building D. However, the additional two units were not referred to in the accompanying cover letter, nor was any formal request made to amend the description of the development application to incorporate the two additional units.*

- Provision of two through-site links from George St to Upward St – one (foot traffic only) located near the southern end of the site, and one (incorporating bicycle access) located along the northern end of the site, abutting the boundary with the Labelcraft property known as 30-40 George Street.
- A communal (not public) central open space incorporating passive and active recreational facilities (swimming pool) and landscaping, for the use of residents of the site only.
- Flood mitigation measures including raised podiums on the perimeter of the site, and setbacks from the boundaries to the podiums along McAleer Street and Upward Street.
- Provision of two 'GoGet' shared car spaces – one in the basement and one on George Street.

Note regarding submission of amended plans known as Revision B

During assessment of the application Council staff identified a number of concerns with the design and proposal. The applicant subsequently provided amended plans for consideration aimed at addressing some of these concerns. In summary these amended plans involved the following changes:

- a) separation of the basement driveway to George Street from the southern pedestrian through-link
- b) modification to the basement garage to facilitate traffic flow, relocate disabled parking spaces closer to the lifts and create access to bicycle storage rooms
- c) modification to the layout of various nominated dwelling units to allow ease of physical changes to satisfy adaptable dwelling requirements

- d) modification to various dwelling layouts (* this also resulted in the introduction of two additional dwellings)
- e) opening up of various floor layouts to overcome lack of natural light and ventilation to formerly internalised studies.

Although these amended plans achieved some better outcomes, particularly with regard to the separation of cars and pedestrians, the adaptable units and improved access/amenity, the introduction of two more dwelling units had not been previously canvassed. Nor was the development application formally amended to encompass these. If Council was minded to recommend approval of the application it would be necessary to have the application formally amended, and re-notified.

This report is based on the amended plans (Revision B) referred to above as those plans do deliver some better outcomes than originally lodged, and aspects of them are worthy of support. Due to ongoing deficiencies with the proposal, the report is recommending refusal. Should the consent authority be minded to approve the application notwithstanding it is Council's position that the application would need to be renotified due to the various design changes, correction of inaccurate information and lodgement of additional contamination reports.

Further note on Revision C amended plans

On Thursday 2nd of October the applicant provided Council with a third set of plans being Revision C. Amongst other things these plans alter the floor layouts of various units facing Upward Street in order that living rooms are brought forward to the building edge, so as to improve the solar amenity of these units, and achieve closer compliance with SEPP 65. There has not been sufficient time between the provision of those plans and the submission date for the Council report to be lodged with the JRPP secretariat (9 October) to enable either proper assessment or renotification of those amendments. On face value the changes involved may address the SEPP 65 solar access issues, however other considerations, such as how to best manage privacy implications, would need to be thoroughly assessed.

2. SITE DESCRIPTION

The site has an area of 1.013 ha. It is approximately rectangular in shape with street frontages of approximately 172m along Upward Street, 100m along George Street, and 24m along McAleer Street. The site contains a series of 'purpose built' brick and concrete factory, warehouse, and office facilities formerly used for the manufacture of clothing (Kolotex). The existing structures can generally be described as including:

- A large two-storey brick and concrete factory with concrete roof to the south-east of the site, incorporating significant floor-to-floor heights and pedestrian/vehicle access via George Street
- A three-storey rendered brick and steel office and factory facility to the north-east of the site, with off-street surface car-parking accessed via George Street
- A single-storey brick factory/warehouse facility on the corner of Upward Street and McAleer Street, at the south-west of the site.
- A two-storey brick factory/ warehouse facility fronting Upward Street; and
- Two single-storey brick factories/warehouses fronting Upward Street to the north-west of the site.

The site is partly zoned B4 – Mixed Use and partly R3 – Medium Density Residential under Leichhardt Local Environmental Plan 2013.

The site is a high risk Flood Affected site. Site levels fall considerably from George Street to Upward Street in an east-west line.

3. SITE HISTORY

The site has an extensive history of industrial uses from the early Twentieth Century until the present.

2006: rezoning application to rezone the Kolotex site from industrial to allow for mixed use, predominantly residential, lodged with Council. Council resolved (under s.54 of the Act) to initiate the rezoning process and commence a draft LEP Amendment.

2007: Department of Planning advised Council that it was unlikely to support the proposed draft LEP Amendment, including the need for additional justification for the loss of industrial land.

July 2009: Department of Planning supported the proponent's request to reclassify the Kolotex site (and Labelcraft site) as Category 2 Employment Land in the Inner West Sub-Regional Strategy. The support was contingent on some employment uses being retained on the site.

2009: Department of Planning advised the proponent that a new Council resolution was required before any additional information would be considered by the Department under the Gateway determination process.

April 2010: a new planning proposal to rezone both the Kolotex and Labelcraft sites was submitted to Council by the proponent. The Council resolved to refer the proposal to the Department for a Gateway Determination (under s56 of the Act).

June 2010: the Department determined that the Gateway Determination should not proceed, including due to inadequate justification regarding consistency of the proposal with Council's strategic planning framework for the area.

2011: the Department advised the proponent it would not support a request to consider the proposal as a concept plan under the now repealed Part 3A of the EP&A Act.

March 2011: Council resolved to defer the progression of the rezoning proposal, with clarification required on a number of matters, and resolved:

- FSR no greater than 0.5:1;
- Maximum four (4) storeys;
- Maximum two (2) levels to street fronts;
- Dedication of a significant proportion of open space as a public park;
- Addresses risk of overshadowing;
- Addresses privacy issues;
- Key environmental sustainability principles; and
- all other recommendations as outlined in the Council officer's report

June 2011: the Director General wrote to Council requesting that it submit a planning proposal for the site to the Department for a Gateway determination. No response was received.

January 2012: Kolotex site owner submitted a planning proposal to the Department of Planning and Infrastructure requesting the referral of the matter to the Planning Assessment Commission (PAC) and the appointment of an alternative Relevant Planning Authority under s.54(2) of the Act. The planning proposal notes that the Kolotex site owner considered that the level of detail required to be addressed in Council's resolution (March 2011) was premature within the context of the Gateway process (mechanism for preparing LEPs).

May 2012: Planning Assessment Committee (PAC) determined the planning proposal had strategic merit and recommended to the Minister that the proposal proceed to the Gateway determination process. The PAC advised that it did not carry out a detailed assessment of the planning proposal, and its recommendation did not indicate a support of the planning proposal, including matters such as proposed floor space ratio or building height controls and that those matters would be considered in the course of the Gateway determination process.

June 2012: the Minister directed the Director General of Planning to be the Relevant Planning Authority (RPA) for the planning proposal.

February 2013: the Department representatives met with Councillors and Council staff to provide an overview of strategic investigations undertaken following the Director General's appointment as the Relevant Planning Authority and to seek Council feedback and comments on the planning proposal.

March 2013: the Minister's delegate issued a Gateway Determination under s56(7) of the Act for the planning proposal and determined that the proposal should proceed and that it be finalised within 6 months. The Gateway determined that the proposal should proceed and contained conditions to be addressed prior to public exhibition including:

- an initial site contamination investigation report which demonstrates that the site is suitable for rezoning to the proposed zones;
- further built form and urban design analysis to identify appropriate floor space ratio, building height controls, distribution and mix of land uses and development controls across the site;
- preparation of development controls to guide the future development to ensure the underlying objectives of the planning proposal could reasonably be achieved;
- feasibility modelling analysis to identify an appropriate and economically feasible affordable housing contribution; and
- consultation requirements.

August 2013: Department of Planning issued a Revised Gateway Determination for the planning proposal to rezone land for medium density housing and mixed use retail and commercial purposes (R3 Medium Density Residential and B4 Mixed Use) and specified the consultation requirements.

August 2013: Department of Planning representatives provided Councillors and Council staff with an overview of the strategic investigations and sought Council feedback and comments prior to public exhibition of the planning proposal.

August – September 2013: public exhibition of the Planning Proposal and supporting documents.

Voluntary Planning Agreement (VPA)

A “Voluntary Planning Agreement” is a legally binding document between the Relevant Planning Authority (RPA) and an applicant – normally a land owner and/or developer, whereby it is agreed that certain things will occur in relation to a proposed rezoning.

In August 2008 Council considered an Item in relation to “Voluntary Planning Agreements” and resolved “That Developers applying to Council for a change to or the making or revocation of use of an environmental planning instrument to allow a change of use (such as from Industrial to Residential Zoning) be advised that development contributions and/or material public benefits will be negotiated subject to a valuation of the likely increase in market value of the land as a result of the proposed change.”

The Voluntary Planning Agreement for the development site requires the provision of seven affordable dwelling units, and standard Section 94 levies capped at \$20 000 per dwelling (the affordable dwellings being excluded from any levy). In particular, the relevant wording of the Agreement is as follows:

The application of sections 94 and 94A of the Act is not excluded in respect of the Development with the following qualifications:

- (a) the Affordable Housing Lots are to be disregarded when calculating any payment required under sections 94 and 94A of the Act; and*
- (b) the maximum monetary contribution (including any indexation) per lot under section 94 or 94A will be \$20,000.*

Affordable Housing Lots means seven strata lots in the Building configured as one bedroom units to be used for Affordable Housing purposes of such sizes as:

- (a) agreed with the Director-General, acting reasonably; or*
- (b) acceptable to the Minister or his nominee.*

Seven one-bedroom units have been nominated as part of the proposal to meet the terms of the VPA. They are all proposed to be located in ‘Building E’, and it is not known whether they are of a size agreeable to the Director-General, Minister, or her nominee.

Council does not consider it appropriate that all the units be clustered in one part of the site, and any approval would be recommended to include a condition of consent that distributed the affordable housing equitably throughout the development.

4. ASSESSMENT

The following is a summary of the assessment of the application in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

(a)(i) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- State Environmental Planning Policy No.55 – Remediation of Land
- State Environmental Planning Policy No.64 – Advertising and Signage
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Leichhardt Local Environmental Plan 2013

State Environmental Planning Policy 55 – Remediation of Land

A total of five previous environmental investigations have been conducted at the site. The key findings of the investigations have indicated that contaminated fill material and groundwater exists on the site which will require remediation to render the site suitable for the proposed mixed use development. Clause 7 of SEPP 55 requires that the consent authority be satisfied that the site is, or can be made to be, suitable for the proposed use. This satisfaction is obtainable by way of suitable contamination testing and reporting and the submission to Council of a Remediation Action Plan in compliance with the relevant legislation and guidelines.

Various investigations of the site have revealed soil and groundwater contamination in excess of the guidelines.

Concentrations of heavy metals (including cadmium and lead), total PAHs, benzo(a)pyrene (BaP), and TPH C10-C36, were reported within fill material exceeding the adopted NEPM (1999) Health Investigation Levels (HIL) for residential land use with minimal access to soils.

Concentrations of cadmium, copper, lead, nickel and zinc within samples collected from the fill material were also reported exceeding the NEPM (1999) Ecological Investigations Levels (EILs).

The 2005 report recommended significant additional work including: assessment of the former boiler house underground storage tank; assessment in inaccessible areas (including the electrical substation); waste classification; groundwater assessment; and a hazardous building materials assessment. The report also recommended additional work should be undertaken once the buildings on the site had been demolished.

Concentrations of heavy metals (including copper, nickel and zinc), benzene, naphthalene and BaP were reported exceeding the adopted groundwater guidelines.

Council commissioned an independent review of the contamination documentation by an accredited site auditor with extensive experience in the field. His review concluded that there were discrepancies and flaws with the level of documentation submitted. In particular deficiencies were noted with regard to sampling and understanding of groundwater contamination, as advised by Council's consultant in the following:

In my opinion, it can be concluded that the directions of flow of groundwater onto, through and off the Site remains unknown in consideration of the results reported in the RAP. In view of the contamination identified in groundwater, described below, the directions of groundwater flow onto, through and off the Site are required to be identified with confidence.

In addition, it should be identified at the earliest possible time whether contaminated groundwater is discharging into sub-surface services (as indicated by Figure 9) or whether the sub-surface services are discharging into groundwater on the Site, perhaps only during peak flows, as indicated by Figure 10). It should also be determined whether installation of BH301 and/or BH 303 caused damage to the sub-surface services and/or to the integrity of the backfill materials around the services.

The method of collection of groundwater samples, the appropriateness of the container types, order of filling, complete filling of containers, preservation of samples and custody of samples during their transport to the laboratory were not assessed in the RAP and, consequently, it is not possible by review of the RAP to form an opinion as to the reliability of the results reported in the EIS reports and in the RAP. The appropriateness of the processes listed in the paragraph above are particularly important for the assessment of volatile organic compounds (VOCs) in groundwater, such as light fraction petroleum hydrocarbons, benzene, toluene, ethyl benzene, xylenes and VCHs, all of which were either reported in the RAP to have been identified on the Site or had a potential to be present.

Inspection (of the data) indicates that the concentrations of the VCHs and methylated and chlorinated benzenes reported in groundwater from BH307 greatly exceed the ANZECC/ARMCANZ (2000) trigger values for protection of marine ecosystems

The advice to Council is that certain of the contaminants so far identified on the site exceed applicable guidelines, and are recognised as being hazardous to human health, including carcinogenic, and hazardous to aqueous ecosystems.

The advice to Council was to require further testing in order to inform an appropriate Remedial Action Plan which would then allow the issue of a 'Section B Site Audit Statement', and that this should be done prior to determination of the application.

The applicant has apparently engaged additional testing, however at the time of writing this report a revised RAP and a Site Audit Statement B have not been lodged.

Council does not have before it a RAP and Site Audit Statement B, which means that clause 7 of SEPP 55 has not been satisfied.

State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (and the draft SEPP 65 amendments currently on exhibition)

SEPP 65 applies to the following development types.

- The erection of a new residential flat building (RFB); and
- The substantial redevelopment or the substantial refurbishment of an existing RFB; and
- The conversion of an existing building to a RFB.

An RFB is defined as a building that comprises or includes:

- Three (3) or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2m above ground level), and
- Four (4) or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),

but does not include a Class 1a building or a Class 1b building under the Building Code of Australia. (Note – part of the exhibited amendment to the State Environmental Planning Policy is to add shop-top housing to the category of residential development covered by the SEPP, as this category has inadvertently resulted in residential apartment buildings located over business/commercial premises not being technically covered by the existing SEPP, which only relates to RFB's.)

The development is more than three (3) storeys and contains more than four (4) dwellings and consists of, variously, residential flat buildings and shop-top housing, and therefore, the provisions of the SEPP apply.

In accordance with clause 30(2) of SEPP No.65:

- (2) *In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*
- (a) *the advice (if any) obtained in accordance with subclause (1), and*
 - (b) *the design quality of the residential flat development when evaluated in accordance with the design quality principles, and*
 - (c) *the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*

The following table outlines Council's assessment of the proposal against the design principles of SEPP No.65.

Principle	Assessment	Comment
Principle 1: Context	The site specific Development Control Plan and Leichhardt LEP amendment combine to establish context parameters for the site. These include height, form, setbacks and layout. The proposal is consistent with these design parameters. See assessment later in this report and	Satisfactory having regard to constraints and planning controls imposed via site specific planning

	Appendix 1 for further details.	controls.
Principle 2: Scale	<p>As identified above, the LEP amendment and DCP controls for the site identify appropriate scale for building components on the site, ranging from three storeys along the perimeters, to eight stories internally (albeit the statutory height limit is 32m above existing ground level and actually allows up to nine storeys in height)</p> <p>See assessment under Principle 1 above and the detailed assessments later in this report.</p>	Satisfactory having regard to constraints and planning controls imposed via site specific planning controls.
Principle 3: Built form	The DCP controls for the site envisage an apartment style group of buildings fronting both major street frontages. The submitted design is consistent with these controls.	Satisfactory
Principle 4: Density	The development complies with the FSR controls within the amended LEP. However building depths and separations do not comply with the SEPP.	Unsatisfactory
Principle 5: Resource, energy & water efficiency	The development is required to be accompanied by a BASIX certificate.	A BASIX Certificate has only been submitted for Revision C plans – these are the plans Council has not had sufficient time to assess. No BASIX certificate was submitted for either the first plans, or Revision B.
Principle 6: Landscape	Detailed and significant landscape plans have been provided which include the creation of a landscaped edge around the site and a large internal communal landscaped space. There is also a proposed linear park along New Road. All landscaped areas are located in areas consistent with the site specific controls, and with direct communal access for residents. These spaces will	Satisfactory, subject to conditions

	<p>allow also for privacy planting between units, to further improve the amenity of those dwellings.</p> <p>The proposal will be conditioned to ensure that adequate soil depths are proposed across the site, and to retain trees where appropriate as required by Council's Landscape Assessment Officer.</p>	
Principle 7: Amenity	Internal amenity for most occupants is of a satisfactory standard. The scheme has been generally well designed with regard to room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.	Unsatisfactory
Principle 8: Safety & Security	The buildings have been designed to address the respective streets to ensure overlooking of public and communal spaces: Balconies and living areas are oriented to look towards the street where practical. Entrance-ways and ground areas will be well lit in accordance with a lighting plan to be recommended via condition, and security systems can be provided to all vehicle and pedestrian entrances. Care has generally been taken to avoid publicly accessible secluded areas. All parking has been provided in secure basement areas.	Satisfactory
Principle 9: Social dimensions & housing affordability	The proposed development will provide local commercial spaces, through site links & private and public outdoor spaces, including two new pedestrian access points east-west across the site. Many of the units will be one bedroom, which will assist in the provision of more affordable rental accommodation.	Satisfactory
Principle 10: Aesthetics	Council originally had concerns about the relationship of the Upward St buildings to the public domain, and the streetscape appearance of these. (This matter is addressed in more detail under the site specific DCP headings). The applicant has since amended the materials and finishes palette and provided more clarification and detail for	Satisfactory

	<p>both buildings, which has assuaged Council's concerns in this regard.</p> <p>The composition of building elements such as facades, balconies, walls, columns, windows, roofs, sunshades and privacy screens, materials such as masonry glazing and metalwork, textures such as render, paint, cladding, stone & colours, and the use of these modern materials and finishes, will result in a high quality external appearance of a modulated mixed-use development that will provide a strong contextual relationship to its surroundings and will make a generally positive aesthetic contribution to Leichhardt..</p> <p>The proposed buildings will provide a positive contribution to the desired future character of the area.</p>	
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The proposal has been considered against the Residential Flat Design Code (RFDC). The application is not considered satisfactory, particularly with regard to the failure of the design to achieve good levels of direct solar access as required by the Instrument.

Solar Access: The RFDC prescribes that at least 70% of the dwellings receive not less than three hours sunshine to a main living room and balcony between 9.00am and 3.00pm midwinter. The proposal as submitted (Revision B) achieves less than 40% compliance.

The original solar access report as submitted indicated that 61.11% of dwellings met the SEPP 65 requirement. Detailed analysis of the solar access floor plans/report did not however support this claim. That analysis revealed that the floor plans relied on in the solar access report differed from the floor plans submitted formally with the application, solar access identified in the floor plans was being received into bedrooms, not the living room as required, and in some instances solar access was being claimed notwithstanding that the floor plans showed a projecting room in between, which would have in fact cast a shadow. Submission of a subsequent amended solar access report revised this compliance figure from 61.11% to 37.93% (n.b that figure is also based on the addition of two extra units each of which obtains compliant solar access).

The reasons given with the application for this high level of non-compliance are as follows:

Due to several site constraints including physical orientation, neighbouring property height and proposed architectural design response, the minimum compliance target of 3hrs direct solar access has not been achieved during the typical assessment profile of 9am - 3pm.

Council does not concur with these justifications. In particular the following is noted:

physical orientation – whilst it is true that there are two sections of the site which are more north-south oriented than otherwise, these are two relatively small sections of the overall property, one located in the south-west corner of the site, and one located in the north-west corner. However, the greater part of the site is a large square approximately 82m wide (east-west) and 70m long (north-south) (5760sqm +/-) meaning that a considerable portion of the development site is not particularly constrained when it comes to orientation.

neighbouring property height – there are no high buildings to the east or west which would impede morning or afternoon sunshine, nor, given the surrounding zoning, is there any reasonable likelihood of any such buildings being constructed in the foreseeable future. The buildings to the immediate north are one/two storey industrial warehouses/factories. That property is identified for development, with building heights and footprints nominated in the site specific DCP. There is no inherent reason why a design on the subject site should not pre-empt this, and accommodate it.

proposed architectural design response – the fact that the proposal has been designed the way it has is a self-imposed constraint and is not an inevitable consequence of the site or its location. Council considers that other architectural design responses would achieve much better outcomes with regard to solar access. The applicant has expressed the concern that positioning living rooms at the building edge, rather than bedrooms which is largely the current proposal, would simply result in unacceptable overlooking to neighbouring properties, and that the design has traded-off solar access for privacy. However other designs for similar sized residential development have demonstrated that no such trade-off is inevitable. Living rooms could, for example, be brought to the outer edge of the building line on the lowest two levels of each building without any significant overlooking potential. At higher levels living rooms could be brought to the outer edge of the building line and served by fixed external privacy louvres, angled to allow sun penetration, or a combination of higher sill windows. Alternatively the building footprint could be massaged to maximise the exposure of walls (and therefore windows) to a north-eastern/north-western parabola.

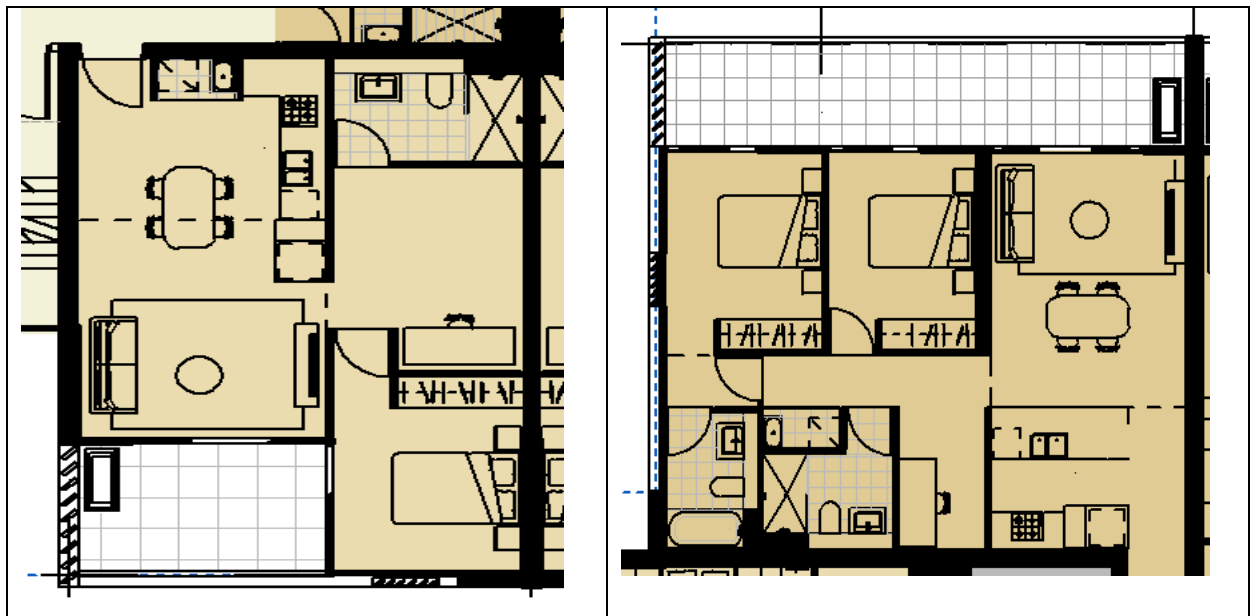
The reasons given for the failure of the development to comply are not considered compelling.

Building depth: The rules of thumb in the RFDC recommend a maximum Building depth not exceeding 18m. For any building in excess of this depth the Code states:

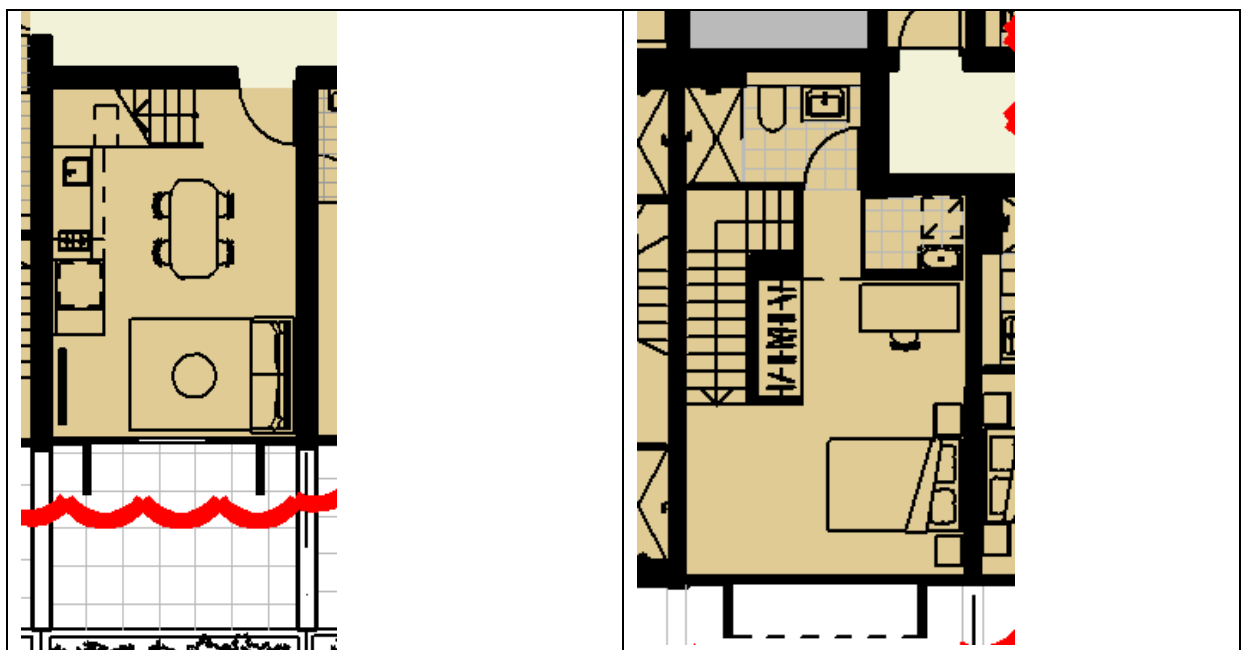
The 18 metre guideline generally applies to street wall buildings, buildings with dual and opposite aspect and buildings with minimal side setbacks. Freestanding buildings (the big house or tower building types) may have greater depth than 18 metres only if they still achieve satisfactory daylight and natural ventilation. Use building depth in combination with other controls to ensure adequate amenity for building occupants. For example, a deeper plan may be acceptable where higher floor to ceiling heights allow sun access or where apartments have a wider frontage

Buildings A and D exceed the recommended depth (22m each). Council staff continue to be concerned regarding the amenity of some of the dwellings contained in these buildings.

Apartment layout: The various iterations of the proposed floor plans have not entirely overcome Council's initial concerns with regard to dwelling amenity. Coupled with the building depths, which in several instances exceed the Guideline recommendation of 18m, numerous dwellings continue to have internalised "studies" with little to no direct access to natural light and ventilation (see figure below). This is particularly true of those buildings A and D which exceed the 18m depth rule of thumb – Buildings A and D have depths up to 22m.

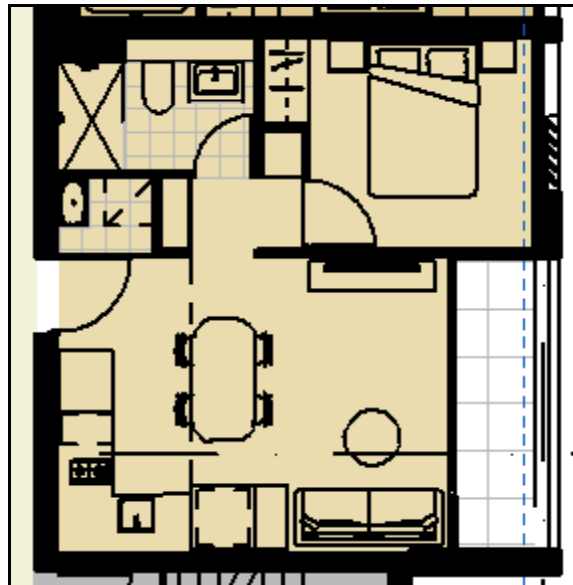


Also, the Revision B plans, which inserted two additional units, have resulted in two dwellings being quite small in area, and single aspect. See below.



Internal living/kitchen/dining space measures 4m x 4.6m (excluding stairs) – bedroom level is 23.57sqm – total GFA is 42sqm. Under the rules of thumb a one-bedroom single aspect maisonette style dwelling unit should be not less than 62sqm in area.

Building B which at 17.7m deep comes close to the recommended maximum depth, also has a number of small one bedroom single aspect (and in this instance south-facing) dwellings which are only 34.4sqm in area.(figure below). Balcony sizes for these units are also sub-standard (3.7sqm instead of 10sqm)



Building Configuration: Many of the proposed dwellings are provided with outdoor space less than the required area in the Code.

Separation between entries and kitchens is however generally considered reasonable. It is considered that in-unit storage could be better provided. Few units have designated cupboards/linen closets etc, and largely rely on informal storage in rooms also meant to be studies. The SEPP requires that storage be provided at least in part (50%) within each dwelling. This could be achieved with little difficulty.

A number of dwellings have the kitchen located unacceptably deep in relation to closest window.

None of the SEPP 65 deficiencies are intrinsically unfixable. However documentation purporting to demonstrate the variously requested solutions has not been submitted in sufficient time to allow assessment and verification.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate dated 1 October 2014 has been lodged with the Revision C amended plans which Council has not had the opportunity to assess.

State Environmental Planning Policy (Infrastructure) 2007

In accordance with SEPP (Infrastructure) 2007, the development is classified as a Traffic Generating Development, and in accordance with Schedule 3 of the SEPP, was referred to Roads and Maritime Services (RMS).

Council received a response to this referral on 18 August 2014.

The response from RMS raises no objections to the proposal on either traffic or parking grounds, subject to the following standard conditions.

- 1. The swept path of the longest vehicle (to service the site) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTRROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.*
- 2. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004.*
- 3. All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.*

Leichhardt Local Environmental Plan 2013 – Amendment 1

This amendment imposed site specific LEP changes on the development site, including re-zoning.

B4 Mixed use zoning

Objectives

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the renewal of specific areas by providing for quality medium density residential and small-scale retail and commercial uses.*
- *To ensure that development is appropriately designed to enhance the amenity of existing and future residents and the neighbourhood.*
- *To constrain parking and restrict car use.*

Comment: The submitted development application proposes two retail tenancies with a combined floor area of 175sqm (10% of that anticipated). Council officers sought advice from a third party as to the employment prospects of this space, which are approximately 7-9 jobs (7%). This advice concluded that there is indeed scope for additional employment generating activity on the site beyond that which has been proposed in the development application. Larger retail is not supported, however additional commercial activities could be accommodated.

The provision of two shops of 175sqm total is not much more than could be accommodated in the Residential zone. In this regard it is unclear to Council how

such limited provision of a use which is not dependent on the B4 zoning can be said to meet the objectives of the B4 zoning, when the proposed outcome could be implemented almost as easily on the part of the site zoned residential.

R3 Medium Density Residential Zone

Objectives

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To permit increased residential density in accessible locations so as to maximise public transport patronage and to encourage walking and cycling.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

Comment: Whilst the design accommodates a variety of housing types in a manner consistent with the LEP requirements, Council is not of the opinion that the design achieves a high level of residential amenity.

Clause 4.3 – Building Heights

Maximum building height on this site is 32m above existing ground level. The application complies with this restriction.

Clause 4.4 Floor Space Ratio

Floor Space Ratio on this site is allowed a maximum of 2.15:1. The application complies based on the GFA calculation plans submitted with the application.

Leichhardt Local Environmental Plan 2013

The site is subject to (some of) the provisions of LEP 2013, and these are addressed below.

Clause 1.2 – Aims of Plan

(2) The particular aims of this Plan are as follows:

- (a) to ensure that development applies the principles of ecologically sustainable development,*
- (b) to minimise land use conflict and the negative impact of urban development on the natural, social, economic, physical and historical environment,*
- (c) to identify, protect, conserve and enhance the environmental and cultural heritage of Leichhardt,*
- (d) to promote a high standard of urban design in the public and private domains,*
- (e) to protect and enhance the amenity, vitality and viability of Leichhardt for existing and future residents, and people who work in and visit Leichhardt,*
- (f) to maintain and enhance Leichhardt's urban environment,*

- (g) to ensure that land use zones are appropriately located to maximise access to sustainable transport, community services, employment and economic opportunities, public open space, recreation facilities and the waterfront,*
- (h) to promote accessible and diverse housing types, including the provision and retention of:*
 - (i) housing for seniors or people with a disability, and*
 - (ii) affordable housing,*
- (i) to provide for development that promotes road safety for all users, walkable neighbourhoods and accessibility, reduces car dependency and increases the use of active transport through walking, cycling and the use of public transport,*
- (j) to ensure an adequate supply of land and housing to facilitate:*
 - (i) employment and economic opportunities, and*
 - (ii) the provision of goods and services that meet the needs of the local and subregional population,*
- (k) to protect and enhance:*
 - (i) views and vistas of Sydney Harbour, Parramatta River, Callan Park and Leichhardt and Balmain civic precincts from roads and public vantage points, and*
 - (ii) views and view sharing from and between private dwellings,*
- (l) to ensure that development is compatible with the character, style, orientation and pattern of surrounding buildings, streetscape, works and landscaping and the desired future character of the area,*
- (m) to ensure that development provides high quality landscaped areas in residential developments,*
- (n) to protect, conserve and enhance the character and identity of the suburbs, places and landscapes of Leichhardt, including the natural, scientific and cultural attributes of the Sydney Harbour foreshore and its creeks and waterways, and of surface rock, remnant bushland, ridgelines and skylines,*
- (o) to prevent undesirable incremental change, including demolition, that reduces the heritage significance of places, conservation areas and heritage items,*
- (p) to provide for effective community participation and consultation for planning and development,*
- (q) to promote opportunities for equitable and inclusive social, cultural and community activities,*
- (r) to promote the health and well being of residents, business operators, workers and visitors,*
- (s) to ensure that development applies the principles of crime prevention through design to promote safer places and spaces,*
- (t) to ensure that development responds to, conserves, protects and enhances the natural environment, including terrestrial, aquatic and riparian habitats, bushland, biodiversity, wildlife habitat corridors and ecologically sensitive land,*
- (u) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design,*
- (v) to ensure that existing landforms and natural drainage systems are protected,*
- (w) to ensure that the risk to the community in areas subject to environmental hazards is minimised,*
- (x) to ensure that the impacts of climate change are mitigated and adapted to.*

Comment: These matters are addressed throughout this report where relevant.

Clause 4.1 Minimum subdivision lot size

No subdivision is proposed as part of this application.

Clause 5.9 Preservation of trees or vegetation

The site contains a number of palm trees of no great significance. No objection is raised to the removal of these as significant areas of planting would be incorporated into the new development.

Clause 5.10 Heritage Conservation

The site is not a heritage conservation area, nor does it contain any listed heritage items. The closest heritage conservation area is located two streets away (Albert St conservation area) to the east, whilst the nearest heritage items are located at 59-71 Upward Street to the north of the site, and are not directly adjacent to the site.

Clause 6.3 Flood Planning

(1) The objectives of this clause are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (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*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Comment: The applicant has submitted a strategy which would reduce flooding in the immediate vicinity of the site. This is proposed to be achieved by increasing pipe capacity below street level, and incorporating a three metre setback from the site boundary. However, the applicant has not provided for an overland flowpath through the site, between McAleer Street and Upward Street, which Council concludes would require part of Building C to be redesigned (and possibly reduced in footprint).

Failure to allow for a flow path would result in an unacceptable long term risk of flooding to the site and local area and limit the capacity for the relevant agencies/ authorities to implement future flood mitigation options. In effect, Council's strategy, which is supported by Sydney Water, seeks to minimise flood risk along the entirety of the flood path, both upstream and downstream of the site, and not just deal with flooding immediately adjacent to the site. Failure to incorporate the overland flow path means that long term minimisation will never be able to be realised, as the essential link in the middle (the flow path) will not be able to be retrofitted whilst Building C remains as submitted.

The applicant's strategy is a risk reduction solution for the site and its immediate surrounds, but does not allow for flood minimisation over time and across the entirety of the flood catchment. Consequently the application is not consistent with Clause 6.3 of the LEP.

6.13 Diverse housing

(1) The objective of this clause is to ensure the provision of a mix of dwelling types in residential flat buildings and mixed use development that includes shop top housing.

(2) This clause applies to development for the purpose of a residential flat building or a mixed use development that includes shop top housing but only if the development includes at least 4 dwellings.

(3) Development consent must not be granted to development to which this clause applies unless:

(a) at least 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development will include self-contained studio dwellings or one-bedroom dwellings, or both, and

(b) no more than 30% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development will include dwellings with at least 3 bedrooms.

Comment: The application complies with this clause.

6.14 Development control plans for certain development

Comment: Amendment 1 to LEP 2013 exempts the subject site from this provision.

(a)(ii) Draft Environmental Planning Instruments

The application has been assessed against the relevant Draft Environmental Planning Instruments listed below:

- Draft Amendment to State Environmental Planning Policy No.65 (Design of Residential Flat Buildings)
- Draft Leichhardt Local Environment Plan 2013 – Amendment No.4

The amendments to draft State Environmental Planning Policy No.65 have been included in the assessment above.

There are no provisions of Leichhardt Local Environment Plan 2013 - Amendment 4 which are of relevance to this assessment.

(a)(iii) Development Control Plans

The application has been assessed against the relevant Development Control Plans listed below:

- George and Upward Streets, Leichhardt Development Control Plan 2014
- Leichhardt Development Control Plan 2013

George and Upward Streets, Leichhardt Development Control Plan 2014

Pursuant to Clause 1.5 of the George and Upward Streets DCP, which states that *"the consent authority is to be flexible in applying the controls and allow reasonable alternative solutions that achieve the objectives of the controls"*, the proposed development provides an alternative 'design solution' for the subject site, which is assessed on merit as follows.

2.1 Site Layout and Built Form

Objectives

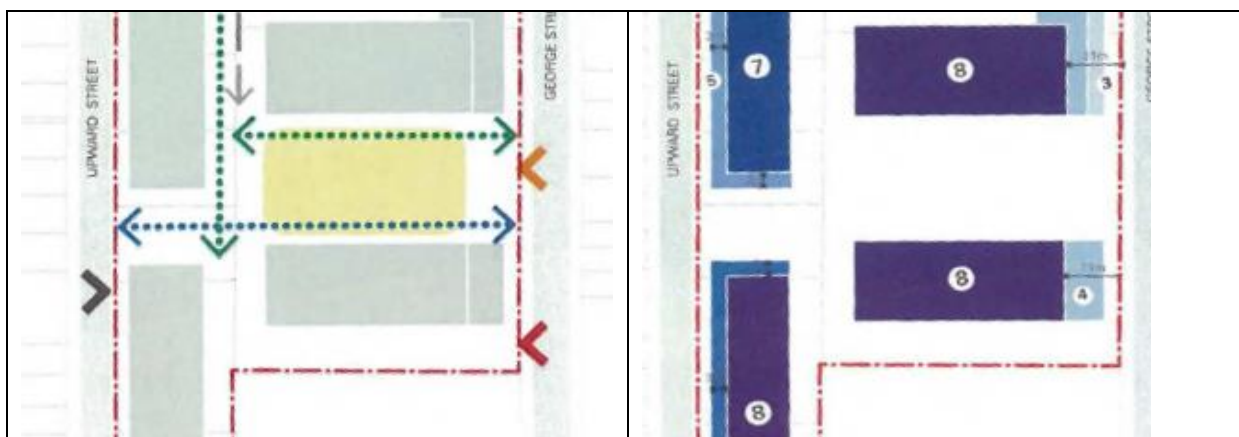
01. To integrate new buildings with the adjoining and neighbouring buildings through the transition of building height.
02. To provide a design that is responsive and sympathetic to the form and cultural character of the existing urban landscape.
03. To use building orientation to maximise views and minimise overlooking and overshadowing on neighbouring properties.
04. To maximise the benefits of communal open space for residents.
05. To create built form that responds to the site terrain and flood risks.
06. To provide opportunities for the provision of non-residential uses at the ground floor in appropriate locations that activate the public domain.

Controls

C1. New building forms on the site are to be generally consistent with the layout shown at Figure 2 and the following principles:

- (a) address and align with the streets to form perimeter blocks / courtyards,
- (b) have depths generally as shown and consistent with the NSW Residential Flat Design Code,
- (c) meet solar access and visual and acoustic privacy requirements outlined in this DCP,
- (d) the ground floor of buildings indicated at Figure 2 may include non-residential uses that have an active frontage to the public domain, and
- (e) adequate separation is provided for the at-grade shared zone off George Street including pedestrian links and landscaping.

Comment: Generally the development is compatible with the above, although building footprints have been modified in regard to the anticipated development around the middle/southern half of the site. In this area the DCP had anticipated two eight-storey buildings running east-west with a central plaza type space between, containing one of the two site through links (see plan extract below).



Through-site links and central plaza/shared zone

Building height and footprints.

(Source: George & Upward Streets, Leichhardt DCP 2014)

The developer argues, convincingly, that this arrangement would have resulted in the shared plaza being heavily overshadowed and overwhelmed, as well as limiting the number of proposed dwelling units that could have good access to northerly sun. As an alternative the applicant has suggested a design which deletes the northern most 8 storey building on the site, and redistributes that floor space partly to the southern 8 storey form, which now becomes nine storeys, and partly to the building facing George Street, wherein some areas which the DCP nominates as being 3 and 4 storeys become instead four and six storeys.

In terms of the redistribution of floor space/building height, it is considered that such redistribution would have to be equal to or better than the DCP provisions, in terms of meeting the objectives, if it was to warrant support. The modified design is demonstrated below.

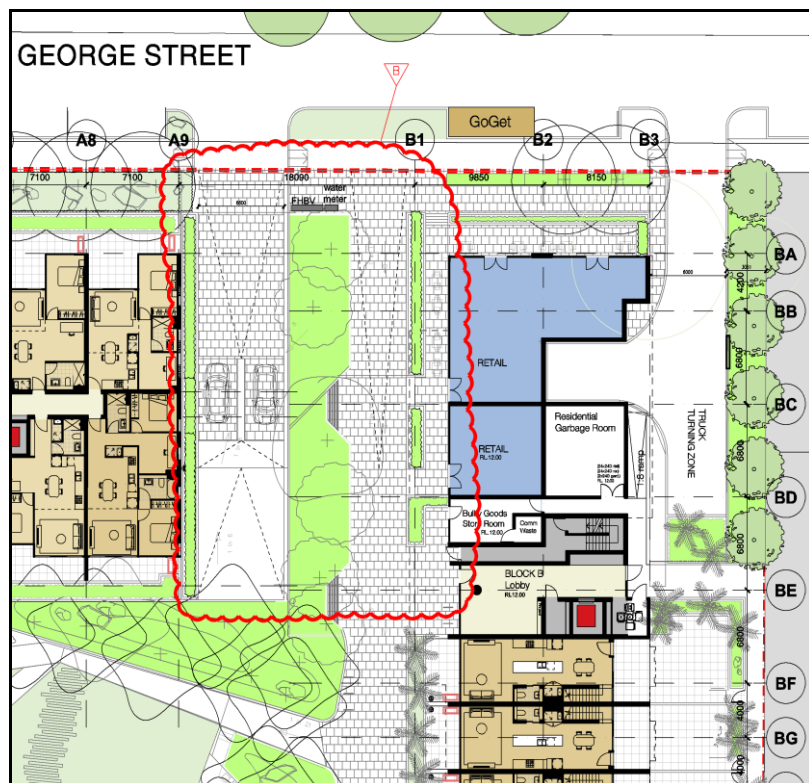


Diagram: Amended entry layout to basement car park – pedestrian access separated - building footprint east-west reduced and communal space opened up

Council accepts that the applicant's preferred design results in better amenity outcomes for users of the plaza, through-link and retail/café tenancy, as this area would be less visually overwhelmed and much less overshadowed. The modification also allows the north facing units of Building B to have largely unfettered solar access.

The addition of a ninth storey to Building B is compatible with the over-riding height limit in the Leichhardt Local Environmental Plan 2013. More importantly, it is achieved in a location which creates no further overshadowing to any nearby residential dwelling or property than that already allowed for under the DCP. In terms

of overlooking, the development of an additional storey results in two additional units having potential view-lines to the backs of Flood Street properties.



Diagram: Floor plan of top level (9th storey) units facing George St.

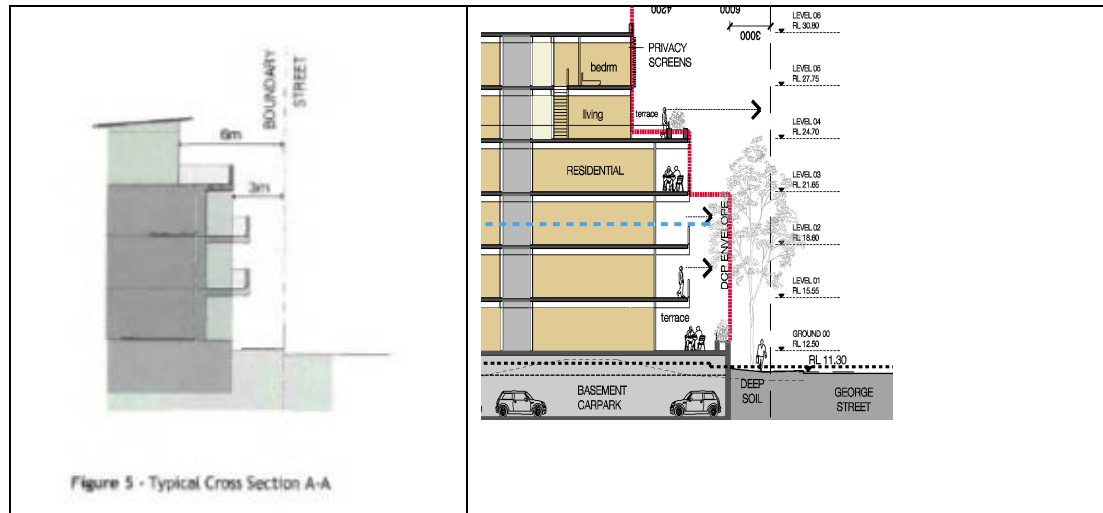
These two units have three balconies and two major windows between them with such potential. The submitted floor plans indicate screening to two balconies, and to the living room windows of the right-hand unit, however there is some discrepancy as the elevation to these two units indicates screening in slightly different positions. Notwithstanding the discrepancy, it is clearly the applicant's intent to screen the potential privacy loss sources, and this is capable of being reinforced by suitable conditions. In this regard the increase from eight to nine storeys does not impact on the amenity of neighbouring residential properties by virtue of overshadowing or overlooking.



Diagram: Elevation of the top two units reading right to left to accord with the floor plan above.

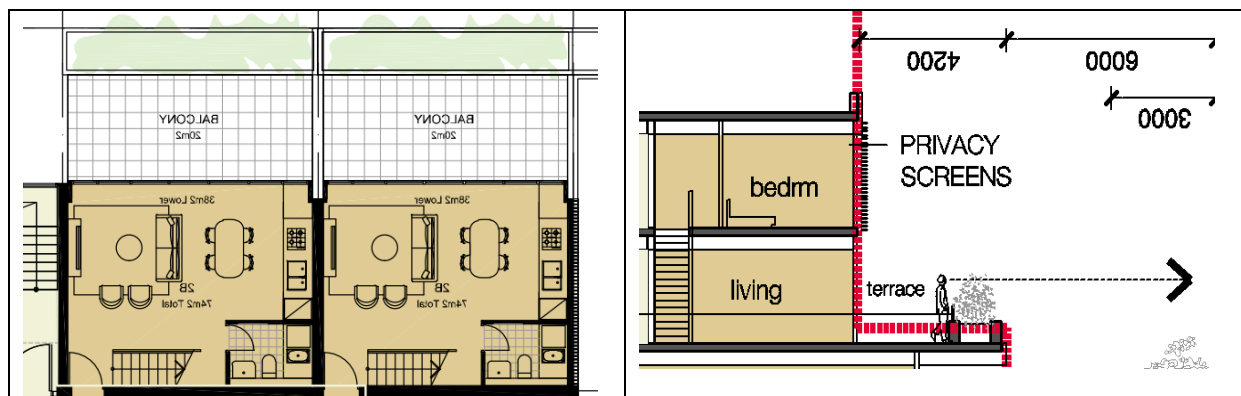
The modification of Building A from 3 and 4 storeys to 4 and 6 storeys has also been examined with regard to justification for this redistribution. The two additional storeys would result in some additional overshadowing to the central communal space during the morning at different times of the year, but the orientation to true north means that this internal impact is very limited, and other changes to building footprint have resulted in better solar outcomes for the communal space overall.

The addition of these two extra storeys does not result in additional overshadowing to the rear of the Flood St neighbours, partly because the design has incorporated greater setbacks from the George Street boundary than the DCP suggests.



DCP setback recommendations Applicant's alternative with greater setbacks

With regard to overlooking, the consequences are less clear. The design has proposed two-level dwellings utilising the top two floors, with living rooms/balconies on the lower levels, and bedrooms above. The bedroom windows are proposed to be fully screened. The balconies are proposed to be provided with planter beds, of such a depth as to limit access to the outer edge of the balconies, and thus, in theory, restrict sight lines, as shown below:



It is not considered that reliance on planter box landscaping alone would create sufficient long term certainty with regard to privacy protection. However, the depth of these balconies is such that their amenity would not be compromised by the introduction of fixed screening to the outermost edge. This would allow users of the balcony the amenity benefit of the greening provided by the planter, whilst ensuring there is no longer term diminution resulting from poor maintenance of plants, or soil nutrient depletion or the like. A condition is recommended.

Summary: The deletion of the northern 8 storey building, and the redistribution of yield elsewhere on the site results in better communal and public amenity outcomes for the open space and through-site link/plaza, without necessarily compromising the solar access and privacy protections identified within the DCP for neighbouring properties. Consequently it is concluded that the design is appropriate having regard to the flexibility inherent in the DCP as expressed below.

“Variations may be considered where the above principles and the aims and objectives of this DCP are satisfied”.

C2. Building footprints (including balconies) are to cover no more than 50% of the site area.

Comment: Building footprint is 4942sqm, over a site slightly in excess of 10 000sqm, and therefore has a coverage of 49%. This complies.

C3. The maximum number of storeys, excluding basement and/or podium parking areas, is to be in accordance with Figure 3. Structures including plants rooms, roof elements, lift overruns and landscape elements may be provided on podium areas or rooftops above the specified number of storeys, subject to consideration of potential impacts on the streetscape, the amenity of the adjoining properties and the overall character of the area.

Comment: The redistribution of height has been assessed above.

C4. The predominant street frontage height along George Street is to be 3 storeys. Along Upward it may vary from 3 - 6 storeys (increasing from north to south).

Comment: The predominant street frontage height to George Street is proposed to be four storeys but with a greater setback in order to mitigate the height. This is considered an acceptable variation to the DCP.

C5. Upper level setbacks are to be provided as shown at Figures 3, 5, 6 and 7, in order to minimise the bulk of the taller building forms. Additional upper level setbacks may be required to improve solar access within the site to both apartments and open space.

Comment: The amended design has adopted this strategy.

C6. The ground floor of buildings is to be set above the Flood Planning Level

Comment: Complies.

C7. Building setbacks are to be consistent with Figure 4. Relaxation of the setbacks at the corner of Upward and McAleer Streets is possible where greater expression to the corner of the building is proposed.

Comment: Building setbacks are consistent with the DCP.

C8. The maximum length of a building fronting a street is 60m.

Comment: The maximum building length (of Building D facing Upward St) is 58m and complies.

C9. The main building fronting George Street is to be divided into 3 segments at ground level with allowance for pedestrian access points at ground level into the site. At least one of the access points is to be a full height gap between buildings with a minimum width of 10m.

Comment: It must be remembered that these controls apply to the entirety of the area covered by the DCP, and not just to the Kolotex site. This means that there are

two possible interpretations in regard to this control – firstly, that it is to be achieved over the entirety of the area covered by the DCP thus meaning that each development application only has to achieve partial (proportional) compliance, or, secondly, that each application must achieve total compliance in its own right, notwithstanding any equal or greater compliance achieved by the other application. The second position would arguably impose greater constraints on a given development application than anticipated by the DCP, and would not be consistent with the DCP provision that enjoins flexible application of those same controls. The Kolotex DA has divided the main George St building (on its site) into three discernible segments, with a separation to the next north and south buildings of 6m and 20m respectively. This seems to be a reasonable interpretation of the DCP control, bearing in mind that any application for the Labelcraft site will need to demonstrate a similar nature of achievement.

C10. Building separation distances are to be generally consistent with those shown at Figure 4 and the NSW Residential Flat Design Code.

Comment: Figure 4 of the DCP generally shows 12m setbacks between buildings within the site, 9m from the tallest building to the southern boundary, and 15m from the 7 and 8 storey proposed buildings along Upward Street. SEPP 65 provides for lesser setbacks for lower buildings, and varied setbacks depending on whether the separation is between habitable rooms/balconies and other habitable rooms/balconies, or to/between non-habitable rooms. Generally setbacks are required to increase the higher the building is, with a flexible allowance for habitable vs non-habitable spaces.

The separation of buildings in the proposal is not entirely consistent with either the SEPP or the DCP. For example, Building A (6 storeys) is only separated from Building B (9 storeys) by 18m from habitable room to habitable room/balcony. This is acceptable for buildings up to eight storeys but is less than the 24m required for buildings eight storeys or greater. Building D and E are only separated by 9.3m instead of the 12m nominated in the SEPP. Building B (9 storeys) and Building C (6 storeys) are only separated by 7.8m at the closest point instead of 18m.

It seems likely that the lack of separation is contributing to some less than desirable amenity outcomes for internal occupants of the site, particularly with regard to visual and acoustic privacy. It is unclear, for example, how the lack of separation between Building B and C could be appropriately managed to achieve reasonable amenity outcomes (see figure below for example)

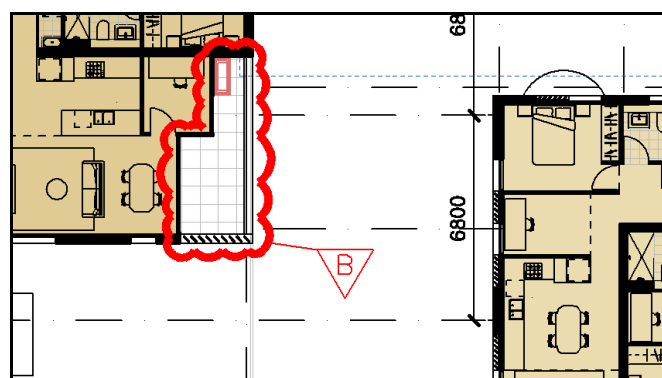


Diagram: Distance from (only) balcony to nearest bedroom is 7.8m

Unless the design can demonstrate good outcomes in terms of solar access, visual and acoustic privacy, Council is of the opinion that given the proposal seeks the benefit of a varying number of storeys greater than the DCP guidelines, it should also be bound by the burden inherent in achieving those greater number of storeys.

2.2 Building Design

Objectives

01. To provide a mix of dwellings that cater for the needs of the resident population and to encourage a diverse population.

Comment: The mix of dwellings complies with LEP 2013.

02. To ensure that the grain, rhythm and palette of materials used in the design of new buildings respond to the character of the surrounding area.

Comment: Council officer sought an urban design review by a third party which concluded that the design presents well and has appropriately handled streetscape appearance.

03. To ensure that buildings have a high quality appearance and have regard to the character of the surrounding area.

Comment: See above – satisfactory.

04. To minimise the impacts of vehicular entry on the streetscape where possible.

Comment: Two only access points are provided. This is satisfactory.

Controls

C1. Buildings fronting George Street, the northern end of Upward Street and the internal shared zone / plaza are to be designed with individual entrances and ground level (ie terrace or maisonette style dwellings).

Comment: Individual entries have not been provided to all such units. Not all units at ground level facing the two main streets lend themselves to such a design outcome, however the northern most blocks do, and this could be readily achieved.

C2. Minimum dwelling sizes are to be consistent with the NSW Residential Flat Design Code.

Comment: The proposal complies in this regard.

C3. Adaptable housing is to be in accordance with Part C - Section 3 - C3.14 Adaptable Housing of Leichhardt DCP 2013.

Comment: The proposal complies in this regard.

C4. Building facades facing both George and Upward Streets are to display a distinct vertical modulation and rhythm that complement the fine grain character of the locality.

Comment: The proposal complies in this regard.

C5. Articulation for balconies, sun shading devices, architectural features and the like may extend up to 1m into the building setback area on both George and Upward Streets, for no more than 50% of the facade area.

Comment: All such features have been pulled back and do not encroach into the setback zone.

C6. Building articulation, design and materials are to be of contemporary design providing an appropriate balance between the new development and the older character of the locality.

Comment: The proposal complies with this clause.

C7. Buildings elements, including balconies, entries, roof features and screening are to contribute to the character of the streetscape and the quality of the building design.

Comment: Complies.

C8. Roof forms, plant and lift overruns are to be designed to be simple compact forms that are visually unobtrusive.

Comment: Complies.

C9. Air-conditioning units are located and designed to be screened from view from other dwellings, other sites and the public domain.

Comment: It appears that air conditioning units have been recessed into the balconies such as to satisfy this requirement.

C10. The bulk of the larger buildings is to be articulated to create proportional relationships with the surrounding buildings.

Comment: Complies.

C11. Expansive sections of blank facade are to be avoided and roof equipment is to be integrated into building articulation.

Comment: Complies.

C12. Building materials are to be fit for purpose and reflect the character and climatic conditions and be of a suitably high specification to ensure long term quality and sustainability.

Comment: No documentation has been submitted addressing this.

C13. Vehicular entries are to be designed to minimise the visibility of garage doors on the street. This is to be achieved by providing parking below ground level and setting doors back from the street boundary and building edge where possible.

Comment: Complies.

C14. Particular attention required to the design of the ground level along the Upward Street frontage where parking / podium areas are required to be elevated above the ground due to flooding. Any structure is to be treated through the use of materials, landscape etc to enhance its streetscape presentation.

Comment: Additional plans and detailed sections have been submitted demonstrating the landscaping treatment of this area. Staggered walling effects are also proposed, in order to mitigate the visual impact on the wall, as per the artists image below. This is considered satisfactory.



2.3 Residential Amenity

Objectives

- 01. To optimise solar access to habitable rooms and private open space of new housing to improve amenity and energy efficiency.*
- 02. To protect the visual privacy of adjoining dwellings by minimising direct overlooking of principal living areas and private open space.*
- 03. To ensure that dwellings have good access to fresh air and that energy efficiency is maximised.*

Controls

C1. Solar access to residential development on the site is to meet the minimum requirements of the NSW Residential Flat Design Code, specifically, living rooms and private open spaces for at least 70% of apartments should receive a minimum of 3 hours direct sunlight between 9 am and 3 pm in mid-winter.

Comment: The proposal does not comply with this control.

C2. New development is to retain appropriate solar access to adjoining residential properties, being

(a) at least three hours of direct sunlight to 50% of the primary private open space and into living rooms between 9am and 3pm on 21 June, or

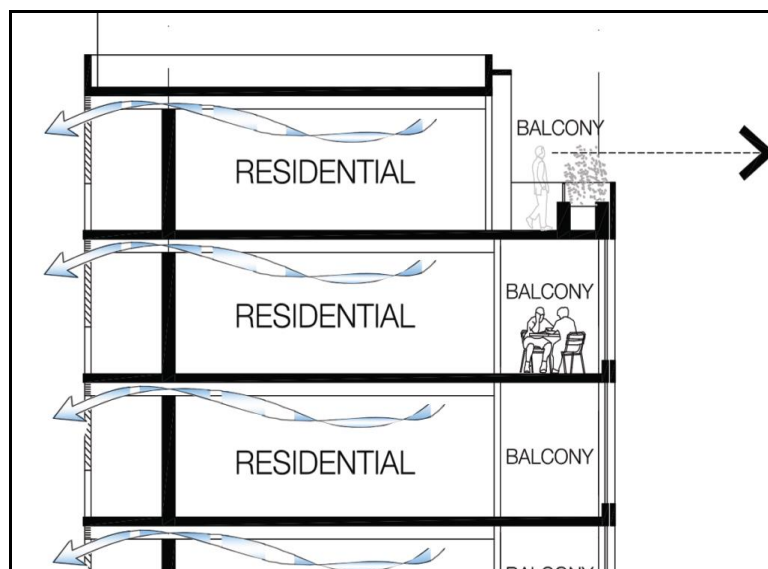
Comment: Not demonstrated.

(b) the existing levels of direct sunlight between 9am and 3pm on 21 June (whichever is less).

Comment: Not demonstrated

C3. Residential buildings are to be naturally cross ventilated consistent with the NSW Residential Flat Design Code.

Comment: Additional unit cross ventilation is proposed to be achieved via plenums. (see figure below for demonstration)



C4. Visual privacy within and external to the site is to be achieved through a combination of:

- (a) building setbacks and separation consistent with Figure 4 and the NSW Residential Flat Design Code,*
- (b) building layouts that minimise direct overlooking from apartments to other rooms and private open spaces,*
- (c) screening devices to retain views and privacy from rooms and outdoor spaces, and*
- (d) staggering doors, windows and primary balconies to block direct views between apartments.*

Comment: Screening to balconies is probably necessary in order to protect the privacy of surrounding dwellings. Privacy within the site is considered reasonable provided that balustrades to balconies are not glazed. This is considered necessary in order to reduce the internal overlooking from balconies particularly between the three largest buildings.

C5. Buildings fronting the residential properties to the north of the site are to be designed to minimise overlooking.

C6. New development is to incorporate measures that reduce the entry of noise from external sources into dwellings. Where necessary, include acoustic measures to reduce the impact of noise from external sources.

Comment: The Kolotex development has no buildings facing residential buildings to the north. Acoustic treatment to windows could be conditioned.

2.4 Open Space and Landscape

Objectives

01. To provide communal open space for residents that offers social opportunities and quality outlook from apartments.
02. To provide landscaping that supports substantial trees as well as a diverse range of planting, including native species.
03. To improve local amenity by incorporating landscaping, open and public spaces, integrated connections and environmental features.
04. To provide a new streetscape and external pedestrian footpath zone to contribute to the surrounding network.

Controls

C1. Indicative landscaped areas are shown at Figure 8. A minimum of 20% of the site area is to be landscaped area (either communal or private). The landscaped area is to include a large area(s) in the middle of the site to form a communal open space for residents. Opportunities for public art/ furniture in the central communal open space area should be considered, particularly a piece relating to the historical use of the site.

C2. A minimum 10% of the site is to consist of deep soil planting. The deep soil planting areas are to be:

- *distributed across the site,
- * a minimum width of 3m,
- * form part of the semi-private communal open space,
- * have no structures encroaching into the area below or above the ground level,
- *landscaped with large trees, and
- *planted with a majority of indigenous species providing habitat for native fauna.

C3. Street verges and buildings setbacks to George and Upward Streets are to be utilised for widened pedestrian footpaths and substantial street tree planting (including deep soil planting, where possible).

C4. Opportunities for green walls, green roofs and communal gardens within the site are to be explored.

C5. Landscape materials are to be fit for purpose, reflect the character and climatic conditions and be of a suitably high specification to ensure long term quality and sustainability.

C6. The external public domain and internal communal open space are to be designed with a similar material palette to create a continuous path of travel across the site.

C7. Fencing to private open space is to be designed to achieve a level of privacy for residents whilst not visually overwhelming the streetscape or internal circulation spaces.

C8. The existing overhead powerlines adjacent to the site in George Street are to be relocated underground.

C9. Private open space is to be consistent with the NSW Residential Flat Design Code. Where it is located at ground level, it is to have a minimum area of 16m², a minimum dimension of 3m with a maximum gradient of 1 in 20.

C10. Private open space is to be directly accessible from the living area of the dwelling and capable of serving as an extension of the living area.

C11. Common open space / courtyards are to be located, designed and landscaped to:

- (a) enhance views from residential apartments and create recreational opportunities,*
- (b) be the focal point of a site and incorporate public art and water features where appropriate, and*
- (c) achieve good amenity for the dwellings in terms of solar access, natural air flow and ventilation.*

C12. Provision of additional unroofed communal open space on roof tops is encouraged in locations where it does not adversely impact on the amenity of surrounding residents.

Comment: Council's response below is limited only to those measures above which are not demonstrated in the submitted proposal.

C2 – deep soil areas are provided along the perimeters of the site facing George and Upward St. They are three metres deep and constitute 20% of the site area. No “deep soil” area is technically provided in the central communal space, as this area has a basement carpark wholly beneath it and does not meet the definition. However raised banked areas of deep soil are included in the landscape plans to achieve a similar planted outcome.

C9 – the provision of private open space at ground level does not in any event equal or exceed 16sqm, however this is capable of rectification and could be achieved by way of condition if deemed appropriate.

All other aspects of the above mentioned measures have been generally satisfied, or would be the subject of conditions.

2. 5 Access, Movement and Parking

Objectives

- 01. To facilitate pedestrian access through the site to link Upward and George Streets.*
- 02. To ensure that traffic, transport and parking solutions are integrated within the development without diminishing the quality of amenity to occupants and neighbours.*
- 03. To minimise visual impact of parking areas and driveways.*
- 04. To encourage use of active transport including public transport, cycling and walking.*

Controls

C1. At least two publicly accessible through site links are to be provided linking George and Upward Streets generally as shown in Figure 9. The through site links are to:

- (a) have a minimum width of 6m,*

(b) be direct and have a clear line of sight between public places and be open to the sky as much as is practicable,
(c) align with breaks between buildings so that views are extended and there is less sense of enclosure,
(d) be easily identified by users and include signage advising of the publicly accessible status of the link and the places to which it connects.

C2. Preferred vehicle access points are to be generally consistent with Figure 9. A maximum of 3 basement access points are to be provided and all required vehicular parking is to be located within the basement parking areas.

C3. A shared zone / plaza is to be provided off George Street. The shared zone is to provide space for loading and service delivery vehicles and accessible visitor parking. The level of the shared zone/ plaza is to include minimal falls to allow accessibility for all users.

C4. Any vehicle access beyond the shared zone / plaza is to be strictly limited to emergency vehicles and only provided if required.

C5. Basement parking areas and structures are not to protrude more than 1.0m above the level of the adjacent street or public domain, except for in the south-western corner of the site that is flood affected. Where visible, basement structures and vent grills are to be integrated into the building and landscape design to minimise visual impact.

C6. The maximum rates for on-site car parking are:

Residential Studio Dwellings Nil

1 Bedroom Dwellings 0.8 per dwelling

2 Bedroom Dwellings 1 per dwelling

3+ Bedroom Dwellings 1 per dwelling

Visitors 0.1 per dwelling

Commercial 1.5 per 100m² GFA

C7. Residential development must provide at least 2% of total car parking spaces as car share parking spaces. Car share parking spaces are included in the maximum number of car parking spaces permitted on the site. The car share parking spaces are to be:

(a) retained as common property by the Owners Corporation of the site, and not sold or leased to an individual owner/occupier at any time,

(b) made available for use without a fee or charge,

(c) publicly accessible at all times and visible from the public domain wherever possible, so that scheme members do not require specific security access to the space. They are to be provided on site, where possible. However, accessible, convenient locations along McAleer and George Street would also be acceptable,

(d) located together in the most convenient locations relative to car parking area entrances and pedestrian lifts or access points,

(e) located in a well lit place that allows for casual surveillance,

(f) located adjacent to a public road and integrated with the streetscape through appropriate landscaping where the space is external, and

(g) made known to building occupants and car share members through appropriate signage which indicates the availability of the scheme and promotes its use as an alternative mode of transport.

A development application is to demonstrate how the car share parking space is to be accessed, including arrangements for access if car share parking is accessed through a security gate. A covenant is to be registered with the strata plan advising of any car share parking space. The covenant is to include provisions that the car share parking space(s) cannot be revoked or modified without prior approval of Council.

C8. All bicycle parking is to comply with the provisions contained in Part C - Place - Section 1 - General Provisions, C1.11 Parking, C1.6.3 Bicycle Parking Rates and Facilities of Leichhardt DCP 2013.

C9. A Travel Access Guide will be required to be available to residents and non-residential tenants of the development and approved by Council prior to occupation.

C10. Future development applications are to provide details of legal covenants, notations and easements to secure public access over privately owned through site links and shared zones/plazas.

C1 – C9 - Comment: Parking and access have been designed to the satisfaction of Council. The shared zone was deemed best outcome, as it would have involved avoidable conflicts between pedestrians and vehicles. The amended scheme, whilst not technically in accord with the above, is considered superior by Council due to improved safety and urban design. Parking is compliant with the controls. Other aspects above would be addressed by way of conditions. Consultation with share car providers indicates six car spaces would significantly exceed demand, and that only 2 spaces are necessary. One space is proposed to be provided in the basement (effectively for the needs of occupants of the development) and another space is to be provided on George Street. Council's Traffic Engineer concurs with both the quantum, and the locations.

2. 6 Safety and Security

Objective

01. To minimise opportunities for criminal and anti-social behaviour.

Controls

C1. Building design is to maximise opportunities for casual surveillance of the streets and communal spaces within the site.

C2. Ground floor dwellings fronting the streets are to have an "address" or "front door" that is visible and directly accessible from the street where possible.

C3 . The detailed design of the external areas of the ground floor is to minimise blind-corners, recesses and other areas which have the potential for concealment.

C4. Building entries are to be clearly visible, unobstructed and easily identifiable from the street, other public areas and other development.

C5. Where practicable, lift lobbies, stairwells and corridors are to be visible from public areas by way of glass panels or openings.

Comment: With the exception of direct street accessibility to ground floor units the above is satisfactory.

2. 7 Flooding and Stormwater

Objectives

01. To minimise the impact of flooding on adjacent properties and be consistent with the relevant provisions contained at Part E - Section 1 - Sustainable Water and Risk Management of Leichhardt DCP 2013.

02. To reduce peak stormwater flows downstream, minimise transport of pollutants into waterways and maximise water recycling.

Controls

C1. Development is to incorporate an appropriate Flood Planning Level to be designed at 0.5m above the 1 in 100 year ARI flood event.

C2. The Water Management report submitted with the development application is to specifically address:

(a) flooding impacts affecting the site , with particular regard to the south western corner of the site.

(b) the necessary augmentation of existing stormwater capacity in McAleer and Upward Streets, and

(c) the accommodation of water sensitive urban design strategies on the site.

Comment: See Engineers response later in this report. The submitted information does not satisfy the flood minimisation requirements of the LEP.

2.8 Waste Management

Objectives

01. Waste Management to be consistent with the relevant provisions within Part D- Section 2 - Resource Recovery and Waste Management of Leichhardt DCP 2013.

02. To ensure that adequate on-site provision is made for the temporary storage and disposal of waste and recyclable materials.

03. To ensure that opportunities to maximise source separation and recovery of recyclables are integrated into the development.

Controls

C1. Facilities required for the management, temporary storage, loading and unloading of waste and recyclable materials are to be provided wholly within the development.

C2. Waste management and storage areas are to be located, designed and constructed to ensure integration into the streetscapes.

Comment: See comments by Waste Management officer later in this report. In summary, the proposed waste management is not consistent with the relevant provisions of the DCP.

Development Control Plan 2013

Certain aspects of DCP 2013 continue to apply to the site although not all are relevant to this property. The relevant provisions have been listed and addressed below (provisions not listed have been assessed as not relevant to the site and/or application):

Part A - Introductions

Part B – Connections

Health and wellbeing

Social Impact Statement

Part C

C1.1 Site and context analysis

C1.2 Demolition

C1.5 Corner sites

C1.6 Subdivision

C1.7 Site facilities

C1.8 Contamination

C1.9 Safety by design

C1.10 Equity of access and mobility

C1.11 Parking (and bicycle parking)

C1.12 Landscaping

C1.13 Open Space Design Within the Public Domain

C1.14 Tree Management

C1.15 Signs and outdoor advertising

C1.16 Structures in or over the public domain: Balconies, Verandahs and awnings

C1.21 Green Roofs and green living walls

C3.14 Adaptable Housing

Part C Place – Section 4 Non-residential provisions

Part D – Energy and Waste

Part E – Water

Part F – Food

Comment: The provisions above are largely replicated in the site specific DCP and in other Instruments/controls such as SEPP 55 and SEPP 65. There are no matters above which have not been adequately addressed elsewhere in this assessment.

(a)(iv) Environmental Planning and Assessment Regulation 2000

The Development Application has been assessed against the relevant clauses of the Environmental Planning and Assessment Regulation 2000. The Development Application fully complies with the relevant provisions of the Environmental Planning and Assessment Regulation 2000.

Clause 92(1)(b) of the Regulation Council to consider the provisions of *Australian Standard AS 2601-1991: The demolition of structures*. The demolition of the existing structures is to be carried out in accordance with a construction/demolition management plan, which is to be submitted prior to the issue of a Construction Certificate. Conditions to this effect could be included.

(b) The likely environmental both natural and built environment, social and economic impacts in the locality

The assessment of the Development Application demonstrates that the proposal will have an adverse impact on the locality in the following way:

- Contamination and remediation – the levels of contaminants in the soil and groundwater are hazardous to human health, and at the time of drafting the report this issue has not been adequately resolved
- Amenity – there are poor levels of amenity internally, especially with regard to overlooking to neighbouring properties, and this needs to be better resolved

- Flooding management – failure to minimise ongoing flood risk
- Limited ability of site to contribute to employment provision/meet zoning objectives

(c) The suitability of the site for the development

It is considered that the proposal will have an adverse impact on the adjoining properties, and that the suitability of the site for residential development has not been adequately demonstrated and therefore it is considered that the site is unsuitable to accommodate the proposed development.

(d) Any submissions made in accordance with the Act or the regulations

The Development Application was notified for a period of six weeks. The notification period was from 17th July 2014 to 28th August 2014. The notification of the application included:

- 1295 letters sent out
- Multiple yellow site notices placed on the site.
- Listing under the notification section on Council's website
- Public notice in local newspaper

Ninety eight (98) submissions have been received objecting to the application.

In summary, the objection letters fall into three categories as follows:

- Signatory to a pro-forma objection letter provided by Save Our Suburb Leichhardt – no additional/customised comment included.
- Signatory to a pro-forma objection letter provided by Save Our Suburb Leichhardt –additional/customised comment was included.
- Personalised letter submitted.
- Leichhardt Councillors Submission

A. Pro-forma objection letter.

The pro-forma objection letter raises the following issues:

It does not provide sufficient non-residential uses on the ground floor that activates the public domain

It does not maximise the benefits of communal open space for residents

It does not respond to the character of the surrounding area

It does not encourage a diverse population

It does not provide communal open space for residents

It does not ensure visual privacy and sufficient sunlight to surrounding residents, the proposed bulk and scale are out of proportion with the local environment and results in unacceptable overshadowing

In addition:

Site suitability due to contamination & hazardous waste - there is currently an unacceptable risk to human health & the environment. The current DA does not

satisfy the requirements of either SEPP 55 or the NSW EPA guidelines for Consultants Reporting on Contaminated Sites. This gives me great concern for my, and the communities, health and safety.

Traffic density, safety concerns & congestion during construction - the already congested and overloaded roads (including Parramatta Road) will not be able to effectively and safely sustain the predicted truck movements on and off the site and will result in my, and the communities, safety being seriously compromised. The applicants Transport Impact Assessment is based on a report prepared in 2012, traffic in the area has increased substantially in the last 2 years!

Increased traffic volume & safety concerns post construction - if completed, this development will generate greatly increased traffic volumes in the vicinity of the site. This will certainly compromise my, and the communities, safety and the effective function of the surrounding road networks plus the related parking issues.

B. Signatory to a pro-forma objection letter provided by Save Our Suburb Leichhardt –additional/customised comment was included.

A number of the pro-forma letters prepared by SOS Leichhardt also contained personalised comments added by signatories. Council also received thirty-seven individual letters of objection to the proposal. Between them the various submissions listed the following concerns, and Council's response follows.

On west side of Flood Street from Treadgold to Parramatta Road residents lose their parking with resumption of road to provide room for hundreds of cars. Most residents are not aware of that as set out on last pages of development book.

Comment: Council has previously advised that these concerns can be addressed by converting Treadgold Street South to one-way westbound and Treadgold Street North to one-way eastbound, including the installation of a roundabout at the Treadgold Street North/ Flood Street intersection. This option results in a significantly reduced loss of on street parking, approximately 3 (in Flood Street). Whilst it is noted that any loss of on street parking will adversely impact on the local residents, the safety benefits of providing a roundabout would outweigh this impact. It is also noted that this arrangement would require traffic control measures to be installed at all Treadgold Street intersections to ensure safe controlled movements. Note that this would still require approval by Council's Traffic Committee.

A. Overdevelopment

(i) proposal contains too many units and does not provide sufficient car parking.

(ii) The nine storey building is too high.

(iii) Building A presents a significant bulk and scale facing George Street with unacceptable overshadowing and reduced privacy and amenity due mainly to it being 6 stories. This building should be reduced down to a maximum of 4 stories, and either widened or lengthened to help the developer maintain project yields.

Comment: the site is governed by an LEP site specific amendment and a site specific Development Control Plan. The application must be assessed for its compliance with those planning controls, along with any other planning controls applying by virtue of other Instruments such as State Environmental Planning Policies. The site specific controls allow buildings of up to 32m in total, with the DCP

recommendations for specific building heights being open to flexibility in order to improve designated outcomes. No controls have been imposed as to the maximum number of dwelling units allowed. Carparking provision is limited by the DCP.

B. Non-compliance with planning controls

(i) It does not provide sufficient non-residential uses on the ground floor that activates the public domain and is therefore not consistent with the B4 zoning. This development is a high-rise residential development – less than one per cent of the proposed development is for non-residential purposes. The proposed development may be appropriate to a purely high-density residential zoning but not to the mixed use zoning that applies to the bulk of this site. It would make a mockery of the planning instruments governing this site to approve the current DA.

Comment: Council concurs with this concern. See previous comments in report relating to B4 zoning objectives.

(ii) Buildings A and D appear to straddle zoning areas between mixed use B4, with its 32 metre height limit, and medium density R3 with its lower 16 metre height limit. As currently proposed, both these buildings seem to exceed the allowed high limit within the R3 zone with 6 plus stories.

Comment: The maximum building height map is not meant to correspond with the zoning. The application is compliant with regard to height..

(See below)



Blue = B4; Red = R3

Red = 32m; Brown = 16m

(iii) The Draft Metropolitan Strategy for Sydney to 2031, Appendix D: Glossary of Terms includes the following definitions:

Building Height

Low rise – three storeys or less, including terraces, townhouses, shop-top housing, semi-detached housing and small residential flat buildings.

Medium rise – four to five storeys, includes residential flat buildings and shop-top housing.

High rise – six storeys or more, includes residential flat buildings, shop-top housing and large mixed use developments, such as offices and shops with housing above.

Residential density

The number of dwellings within land zoned for housing, not including land for open spaces, roads, etc, defined as:

Low density – fewer than 25 net dwellings per hectare.

Medium density – between 25 to 60 net dwellings per hectare

High density – more than 60 net dwellings per hectare. High density does not necessarily mean ‘high rise’, there are a number of development forms that result in medium and high density which are low or medium rise. See also, building height.

The application is a high-rise, high density development. It has an overall height of greater than six (6) storeys and a density of greater than 60 net dwellings/ha. The application is not consistent with the B4 - Mixed Use and R3 - Medium Density zoning. As Leichhardt Local Environmental Plan 2013 does not include an R4 - High Density Residential zoning, and consideration should be taken that the zoning in the immediate vicinity of the development are R1 – General Residential Zoning.

Comment: The definitions of the Draft Metropolitan Strategy are noted, however they do not seem to bear much resemblance to development as it is currently occurring across R3, R4 and B4 zones in New South Wales. Based on the DMS definitions there are large areas of Leichhardt which would already be classified as Medium to High density currently. However the character of Leichhardt is not one which would normally be described as medium to high density by either planning professionals or laypersons, compared to, for example, areas around railway stations such as Ashfield, Strathfield, Chatswood, Edgecliff, Burwood, Rhodes, Meadowbank etc. The discrepancy between the DMS and actual development in NSW is not of assistance in this assessment process.

(iv) It does not maximize or provide the benefits of communal open space for local residents

Comment: There seems to be some misunderstanding that the communal open spaces identified in the DCP is meant to be publicly accessible open space. There is no such requirement in the DCP.

(v) It does not encourage a diverse population

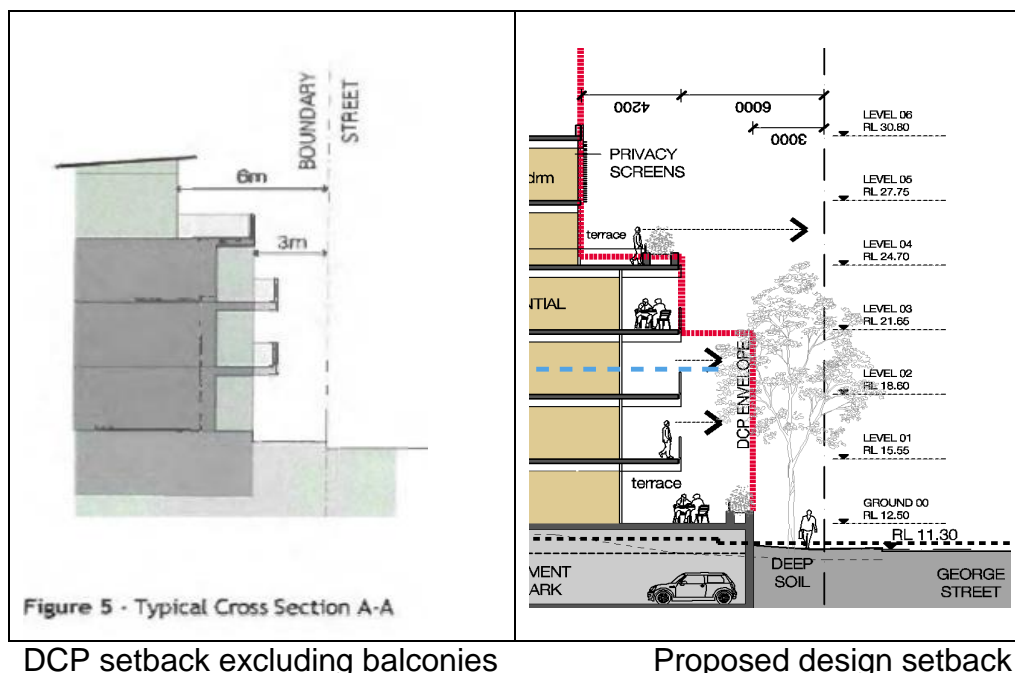
Comment: Council's LEP 2013 imposes minimum and maximum dwelling types based on numbers of bedrooms, including a maximum number of three bedroom dwellings permitted. The development complies with this control.

(vi) Section BB seems to show that both buildings A and D are outside the building envelope allowed under the DCP and hence it would appear this application is not a complying development. This same diagram shows the outline of the existing industrial building with only a 3 metre set-back from the property boundary, which is incorrect. It is currently over 6 metres. These errors should be rectified by the applicant as it makes it very difficult to rely on any of the documentation when it contains such glaring mistakes.

(vii) The plans refer to a setback of three metres on the Upward Street side of the proposed development and a setback of six metres on the George Street side of the proposed development. On closer inspection of the plans, however, it seems that the setback does not include balconies. In other words, whilst the building itself is said to

be setback three metres, the balconies will then come forward from this point. This means that the setback is not three metres at all.

Comment: The DCP footprints are guidelines. The DCP specifically requires the consent authority to apply flexibility in order to achieve better outcomes. The DCP setback requirements allow incursions by the balconies (see figure below). However the design has set back the entirety of the building including the balconies and is therefore compliant in this regard.



(viii) Non-compliance with SEPP 65 – the Residential Flat Design Code

The proponent admits that the crucial requirement for direct sunlight to the living areas of 70% of dwellings for 3 hours at the winter solstice would not be met. There is an attempt to justify this failure by stretching the time this is to occur from 9.00am-3pm to 8am-4pm. However, all the solar calculations are done without reference to the adjoining site, which is slated under the DCP to include an eight-storey block on the northern boundary of this site (see the DCP George & Upward Streets, Leichhardt 2014).

Comment: The issues with non-compliance with SEPP 65 have been discussed earlier. There is currently no application before Council for the adjoining Labelcraft site therefore no accurate assessment of solar access implications can be made.

C Contamination

(i) Site suitability due to contamination & hazardous waste – there is currently an unacceptable risk to human health & the environment. The current DA does not satisfy the requirements of either SEPP 55 or the NSW EPA guidelines for Consultants Reporting on Contaminated Sites.

(ii) The applicant's Remediation Action Plan (RAP) relies mainly on environmental investigation reports prepared by Environmental Investigation Services from 2005 through to 2011, which appear to be significantly inadequate in many areas following review by Ryall Environmental Pty Ltd, but specifically in relation to ground water contamination and the existence of unacceptable levels of volatile chlorinated hydrocarbons (VCH) and as per Dr Ryall's report "VCHs belong to a class of

compounds referred to as Dense Non-aqueous Phase Liquids (DNAPLs), and are recognised to be hazardous to human health (some VCHs are known human carcinogens) and to aqueous ecosystems”.

(iii) Discovery of levels of VCH's as present at 22 George Street is required by law to be reported to the EPA, who may place major restrictions on the site. The applicant has not reported their findings to the EPA. The applicant must be required to undertake much further contaminates investigation before this development can proceed.

(iv) Due to the site's close proximity to Kegworth Pre-School and Kegworth Public School playgrounds, can we recommend that air-monitoring is performed as part of the asbestos removal action plan within Kegworth school grounds?

Comment: The issue of contamination has been addressed in detail in the body of the assessment report. In the event of an approval being granted suitable conditions would be imposed for the protection of surrounding residents.

D. Amenity impacts

(i) It does not ensure visual privacy and sufficient sunlight to surrounding residents, the bulk and scale are out of proportion with the local environment and results in unacceptable overshadowing

(ii) Loss of view of Centrepoint Tower from rear window in the upstairs part of house. Losing this view will cost in loss of visual amenity and future enjoyment as well as reduced resale value. (5 Hathern St)

Comment: The development complies with the height and footprint provisions of the LEP/DCP. These heights imply an allowance for view loss.

(iii) The current planned apartments have clear views directly into bedrooms, living rooms and backyards.

Comment: Agreed. Even allowing for the setbacks the mere height of the various buildings means there would be lines of sight into neighbouring properties.

(iv) Several of the living rooms appear to be placed directly on the property boundary, with direct views over and into existing Flood/George street residences.

Comment: There are no living rooms proposed directly on the property boundaries which would have clear lines of sight into Flood/Upward St residences.

(v) Most of the louvers on the south eastern end of Building A are articulated to not only enhance their ability to overlook existing residents but also funnel the air conditioning noise directly onto existing residents. All these louvers should face similar to level 2. This is unacceptable.

Comment: The site specific planning controls set parameters for development of the site which, if followed, would inevitably result in some level of amenity impact on nearby properties, including visible bulk, loss of sunshine and loss of views. The issue of overlooking is, however, not necessarily a result of the design parameters, as the location and screening of windows and balconies is not something that has been directed by the DCP.

There is an apparent conflict between the design parameters of the DCP and the objectives and controls of Cl. 2.3 of the DCP, which do require the amenity of adjoining residential properties to be observed. The shadow diagrams submitted with

the application are inaccurate and do not enable a proper assessment of whether this control is met.

E. Traffic, Transport, Pedestrians & Parking

(i) Increased traffic and demand for on-street parking will increase safety risks and adversely impact on the operation of near-by business.

(ii) The Traffic and Parking Report does not provide sufficient detail for Upward Street. There does not appear to have been any consideration given to the increased traffic flow or 'overflow' parking that the development will create in Upward St, which in turn affects access to Tebbutt St properties.

(iii) Extra traffic that will be forced onto Albert St - traffic calming steps should be taken on Albert St if this development is approved e.g. speed bumps or chicanes.

(iv) traffic model should include the impact of further proposed developments including Lords Rd, George St, Allen St and the Allied Mills development in Summer Hill.

(v) Lewisham Railway Station is very close to the proposed development however the train services in peak hour are currently under stress, the station itself provides little amenity and has no provision for less mobile travellers. We also feel that there will be an increase in pedestrian accidents on Parramatta Rd as residents take a shorter for direct route to the station by avoiding the traffic lights on Flood St. The provision of light rail will only benefit those who work in the city.

(vi) The Applicant has provided inadequate modelling and has not taken into account scenarios where the commercial floor space is increased or the unit mix is changed.

Comment: Council's Traffic Engineers have assessed the proposal, and Council commissioned third party analysis of traffic and parking implications. All parties have agreed that the traffic and parking implications of the development are reasonable and will have marginal impact on surrounding traffic networks.

F. Errors with documentation/incomplete or unclear documentation

(i) Shadow diagrams as submitted do not show existing levels of overshadowing from the Kolotex buildings currently on site.

(ii) No existing elevations have been submitted making it difficult to determine the extent of impacts of the changes.

(iii) An 8.00am shadow is referenced in the Basix report but is not shown on the shadow diagrams. Owner of 47 Tebbutt St concerned by additional overshadowing between sunrise and 9.00am. Owner wants to see shadows cast by existing and proposed at 7.00am, 7.30am, 8.00am and 8.30am.

(iv) The shadow diagrams for 21 December at 3pm appear to be incorrect. The sun is not coming from far enough south plus the shadow cast by the existing 2 story Labelcraft building to the north of the site is of similar length to the 4 and 6 story Building A shadow. Further, I assume this diagram is using the day light savings time, so should be produced at 4pm for more relative comparison.

(v) The current shadow diagrams do not provide an accurate representation of the existing buildings on Tebbutt St. request that Greenland provide diagrams that more accurately depict the existing buildings and that include the property numbers and property boundaries of the affected section of Upward and Tebbutt streets on all shadow diagrams

Comment: The submitted shadow diagrams did not clearly show the impacts on neighbouring properties. The footprints and open space of neighbouring properties were not accurately shown, nor were lot boundaries or property addresses indicated.

The publicly notified shadow diagrams were so unclearly drawn that it was not possible to say with certainty which property was affected or to what degree. Furthermore, the shadow diagrams have not been drawn to True North as required. The shadow impacts shown on plan are therefore not accurate. (It is acknowledged that shadow impacts are only required to be demonstrated between 9.00am and 3.00pm however this does not change the aforementioned conclusions)

(vi) The proposed street section shows planter boxes on the balconies of levels 1 to 3. however the related plans on pages 32, 33, 34 and 37 do not show the planter boxes as a design feature.

(vii) The landscape plans are different in plan and cross section regarding tree planting. In 6.0 Landscape Design Plan (Pages 49 and 50) trees are shown centred within the 3m setback (1.5m inside the boundary). In the Lower Ground Plan (Page 30), street trees are shown planted in the 2m wide footpath, with no trees in the front setback. In cross section, Page 32, the tree trunk is shown on the site boundary, to allow the tree canopy to be as wide as possible. This is problematic, as the tree cannot be planted on the boundary between the public footpath and the private landscape. These 3 tree locations in three different drawings show that the Upward Street tree planting has not been resolved. SEPP 65 legislation requires landscape plans to be prepared for a DA, and it is standard practice for tree and plant species and sizes to be nominated.

(viii) Flood Management study is incomplete.

G. Urban Design concerns

(i) The DA Design Report states that “both George and Upward streets are to be setback 3m from the boundary”. However, the George Street setback has been increased to 6m to allow for the planting of mature trees to provide a privacy barrier and to reduce overshadowing of properties in West Street. Will Upward and Tebbutt Street properties be afforded the same consideration

Comment: The DCP nominates minimum required setbacks to George and Upward Streets. The application is compliant in that regard and the applicant is under no obligation to provide additional setbacks. The height of buildings on Upward St is compliant with the DCP.

(ii) The proposed raised ground floor, which is required for flood management, is going to be particularly unsightly and it will feel like living in front of a brick barricade. significant alterations are needed to make it aesthetically pleasing and a deeper set back is part of making this all feel less imposing. A set back of a minimum of 6m could also help with this as will investing in some aesthetically pleasing additions to the plan.

Comment: This issue was raised with the applicant, and additional detail of wall treatment and landscaping was submitted which, other factors being dismissed, would be capable of support.

H. Other

(i) There has been inadequate public consultation.

Comment: The re-zoning process was extensive and involved numerous meetings and lengthy consultation. The application was also the subject of:

A six week public notification period
A public information session held by staff
Neighbour consultation held by the applicant
A public meeting held by Councillors

It is considered that the concern is unmerited.

(ii) There is already a lack of open space in West Leichhardt.

Comment: The application includes communal open space for the use of the residents of the development. Nothing in the planning controls requires open space dedication to Council. In the event of an approval Section 94 levies would be implemented on the development and the majority of that levy would be dedicated to the purchase and/or embellishment of new/existing public open space.

(iii) The demand on amenities and services in the local area, including but not limited to, schools, childcare, public transport, recreational space would not be sustainable given Council's limited resources, and would lead to a significant decline in the quality of life for current and new residents. It would also put a strain on schools and hospitals.

Comment: This is a matter for Department of Planning and/or the Department of Education.

(iv) Lack of contextual relationship to proposed WestConnex revitalisation along Parramatta Road.

Comment: Noted

(v) Vibration and foundation damage – the developer may be required to use rock breakers which creates not only lots of noise but also vibration which could compromise the foundations of the surrounding dwelling. The applicant should be required to undertake pre and post construction dilapidation reports

Comment: Agreed.

(vi) Noise and fumes –No treatment of car fumes from the underground car park. Individual air conditioning compressors are to be situated on each apartment's balcony which are predominately facing existing dwellings, with no apparent noise reduction treatment. Similarly no people noise reduction treatment.

Comment: There are Australia Standards applying to both of these, which would be mandatory during and after construction.

(vii) Leichhardt already has a shortage of three bedroom accommodation and this development will do little to accommodate, the number of families in the area.

Comment: The development complies with LEP 2013 in this regard.

(viii) No regard has been given to improving the carbon footprint of the development through:

- . installation of solar panels,
- . collection of rainwater,
- . reducing run off through use of soft surfaces,

. design elements to limit the cooling and heating requirements of the residents. 6. Leichhardt Council has policies regarding sustainable development and we believe a development of this size should be required to be sustainable. The ground water should be captured and used throughout the development as happens in the city of Sydney.

Comment: The development is not bound by any other requirement than that imposed by State Environmental Planning Policy Building Sustainability (Basix).

(ix) The Social Impact Report associated with the Development Application shows the Kegworth Public School playground as passive open space. This is not open space available for any recreation.

Comment: Noted.

(x) Kegworth Public School will reach capacity by 2017, This growth has also impacted on capacity of the out of school hours service which is highly likely to be full in the coming years. The P&C is concerned about the affect that this development will have on the capacity of the school and after care service.

Comment: Noted.

(xi) The commercial tenancies will require delivery trucks, rubbish removal and operating times that should be subject to those of Marketplace for the same reasons as the Land and Environment Court has repeatedly required them for Marketplace. We object to the inclusion of commercial tenancies being built within the development as there are many empty shops/restaurants and workshops throughout the entire Leichhardt Municipality including Norton Street, Marketplace, and the buildings surrounding it and on Marion Street.

Comment: The amount of commercial space is slight and not comparable to Marketplace and therefore no such constraints are considered necessary. The zoning (B4) is for mixed use and this implies some allowance for business operations.

(xii) Concerns about the vermin population in the old warehouses and what will happen once construction starts.

Comment: Noted

(xiii) Impacts on solar panels on neighbouring properties

Comment: There are currently no such considerations imposed in the DCP or LEP controls applying to the site, however the draft SEPP for Residential Apartment Design which is currently on Exhibition does contain such provisions. It is unclear whether the application would comply.

(ivx) The proposal is not consistent with Leichhardt Affordable Housing Strategy (2011), which seeks a 10% affordable housing contribution.

Council response: the proposal complies with the VPA in this regard.

(e) The public interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal in its current form is contrary to the public interest.

5. SECTION 94 CONTRIBUTIONS

Section 94 contributions are payable for the proposal.

The VPA excludes the seven affordable units from any Section 94 levy.

Of the remaining 283 units any dwelling in excess of 53sqm would exceed the \$20,000 cap imposed by the State Government. Council has identified ten units of less than 53sqm in area (not including the affordable units). These ten units would generate a Section 94 levy of \$155,525.40.

The remaining 273 units are capped at \$20,000 per dwelling, being \$5,460,000

Additionally, a credit is to be applied for the existing commercial use. This credit is \$113,311.78. Therefore the payable Section 94 levy, in the event of any approval is:

\$155,525.40 plus \$5,460,000 minus \$113,311.78 = **\$5,502,213.70.**

6. INTERNAL REFERRALS

The Development Application was referred to the following Council Officers:

Building

Initial concerns were raised that the various internalised studies had no access to light and ventilation as required by the Building Code of Australia. Floor layout revisions included in Amended Plan Revision B re-arranged the proposed layouts to allow some of these spaces better access to light and ventilation but have not overcome that deficiency in totality. Council has not had sufficient time to determine if this solution was incorporated into Amended Plans Revision C.

Compliance with the Building Code of Australia – Volume One is required as applicable, including but not limited to the following matters identified in the proposed design:

- a) Part F4.2(b) – all windows to northern elevation of Block E are required to provide natural light and are less than 1m from boundary. This non-compliance has not been noted in the BCA report or as a non-compliance which an alternative solution is proposed.

It is further noted in regard to a) above that there is no impediment to Labelcraft proposing a building hard to the common boundary with Building E, in which case all windows on that boundary would lose light and ventilation. These windows would be required to be deleted by any consent.

Other concerns relate to the non-provision of disabled access into the communal swimming pool, and the lack of detail as to the location of basement exhaust, or the extent of roof mounted plant equipment.

Flooding

Reference is made to the Flood Study prepared by Wood & Grieve Engineers (WGE) dated September 2014 and Flood Management Plan in the Stormwater Management Plan prepared by WGE dated June 2014. These reports have been reviewed by Cardno on behalf of Council and their assessment is detailed in a report dated 7 October 2014.

It is noted that Cardno has identified minor inconsistencies in the Flood Study report that need to be addressed. These issues would need to be addressed as part of any future submissions.

The submitted documentation does not adequately demonstrate that the proposal meets the objectives and associated controls of Council's LEP 2013 and DCP 2013 for the following reasons:

- a) The reports do not address Control C8 of Section E1.3.1 of DCP 2013 in relation to the High Hazard Category of the subject site. In this regard, it has not been demonstrated that all dwellings and common areas are located above the Probable Maximum Flood (PMF) level and an evacuation route is provided clear of the floodway.
- b) The reports do not address Control C9 of Section E1.3.1 of DCP 2013 in relation to the basement carpark design. In this regard, the basement carpark must have all access and potential water entry points above the PMF level, and a clearly signposted flood free pedestrian evacuation route from the basement area separate to the vehicular access ramps. Whilst it may be impractical to provide the entry ramp at the PMF level, the reports have not addressed this issue or proposed any alternative management option.
- c) The reports do not adequately demonstrate how the proposal addresses the following objectives of Clause 6.3(1) of LEP 2013 which are:
 - (i) to minimise the flood risk to life and property associated with the use of land,
 - (ii) to allow development on land that is compatible with the land's flood hazard,
 - (iii) to avoid significant adverse impacts on flood behaviour and the environment.

In addition, in relation to Clause 6.3(3) of LEP 2013 the reports do not adequately demonstrate that the development:

- (a) is compatible with the flood hazard of the land
- (b) incorporates appropriate measures to manage risk of life from flood, and
- (c) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Whilst the proposed stormwater drainage diversion and upgrade is generally supported and meets Council and Sydney Water requirements, the applicant has not provided for an overland flowpath through the site, between McAleer Street and Upward Street. This would result in an unacceptable long term risk of flooding to the site and local area and limit the capacity for the relevant agencies/ authorities to implement future flood mitigation options.

Based on the local topography, it appears that the only feasible location for an overland flowpath would be across the south western corner of the site, adjacent to the intersection of Upward Street and McAleer Street. This currently conflicts with the location of Building C and the associated basement carpark below.

It should also be noted that the provision of an overland flowpath would run the risk of increasing flood levels in Upward Street in the short term; at least until the entire drainage system is upgraded in accordance with Council's Flood Risk Management Plan. In this regard, the overland flowpath would need to be temporarily blocked until such works take place in the future.

Traffic

Reference is made to the submitted Transport Impact Assessment (TIA) report prepared by GTA Consultants dated 27 June 2014. The report makes reference to the Traffic Management Plan (TMP) prepared by GTA Consultants dated 20 May 2014, submitted as part of the previous early work development application (D/2014/240). Reference is also made to the letter from GTA Consultants dated 2 September 2014 in response to Council's request for further information dated 13 August 2014.

Construction Traffic

The additional details as supplied by the applicant in relation to Construction Traffic are considered to satisfactorily address Council's issues and proposed ingress via Parramatta Road and George Street and egress via George Street, Treadgold Street South and Flood Street to Parramatta Road is supported subject to manned traffic control at

- Flood Street/Treadgold Street South
- Treadgold Street South/George Street
- George Street/Parramatta Road

Proposed Development Traffic Implications

Additional SIDRA assessment has been provided and indicates that there will be minimal change to the performance of all assessed intersections, with minimal additional delays associated with the additional traffic generated by the development. The GTA report dated 2 September 2014 concludes as a result of the SIDRA assessment that all surrounding intersection configurations do not need upgrading.

Council acknowledges that the capacity of the existing intersections surrounding the site will adequately accommodate the traffic generated by the proposed development.

However, Council has significant concerns with respect to the impact of the proposal on the intersections of Treadgold Street North and South and George and Flood Street. In this regard, the submitted reports do not address the safety impacts of the additional traffic movements on these intersections.

Specifically the safety issues at these intersections include:

- Restricted sight lines for opposing vehicle movements at the Treadgold Street North and South intersections with Flood Street
- Restricted sight lines for opposing vehicle movements at the George Street/ Treadgold Street South intersection
- Restricted road carriageway width in Treadgold Street South resulting in potential conflict between opposing turning movements at both intersections

As the submitted reports detail that the additional traffic will use Treadgold Street South as opposed to Treadgold Street North, this will create an unacceptable safety impact at both intersections. Whilst the intersection with George Street could be adequately treated with traffic control measures, the intersection with Flood Street could only be safely treated by the installation of a roundabout.

However, the installation of a roundabout at the Treadgold Street South/ Flood Street intersection would result in an unacceptable loss of on street parking, approximately 8 existing spaces (2 in Treadgold Street South and 6 in Flood Street).

Council has previously advised that these concerns can be addressed by converting Treadgold Street South to one-way westbound and Treadgold Street North to one-way eastbound, including the installation of a roundabout at the Treadgold Street North/ Flood Street intersection. This option results in a significantly reduced loss of on street parking, approximately 3 (in Flood Street). Whilst it is noted that any loss of on street parking will adversely impact on the local residents, the safety benefits of providing a roundabout would outweigh this impact. It is also noted that this arrangement would require traffic control measures to be installed at all Treadgold Street intersections to ensure safe controlled movements.

It must be noted that any changes to traffic or parking arrangements will require Local Traffic Committee approval.

Basement Carpark

A number of significant concerns are raised in relation to the design of the proposed basement carpark and associated vehicular access, which relies on a single access to service all proposed spaces within the carpark.

The concerns relate principally to the design of the access driveway and the potential for traffic conflicts at the base of the driveway. Further general concerns are raised regarding the vehicle circulation and the provision for service vehicles and garbage trucks.

- a) The proposed basement access is inadequate in width and will result in unsafe vehicle movements and potential conflict with pedestrians within George Street. In this regard, the access driveway width is inadequate to service the number of parking spaces proposed in accordance with the requirements of AS/NZS 2890.1:2004. The proposal includes a total of 272 parking spaces with a single access from the George Street frontage. Under Table 3.1 of the standard, this is on the upper range of a Category 2 access facility. In addition, as discussed in more detail below, the carpark is required to service larger vehicles including garbage and removalist trucks which require additional manoeuvring area. Accordingly, Council requires the access to have a minimum opening width of 8 metres.

b) The carpark must be redesigned/ reconfigured to address the following issues:

i) A waste storage collection area must be provided within the basement carpark to accommodate a garbage truck as defined in Appendix D Section 4 of DCP 2013. In addition, adequate areas must be provided for removalist trucks in the vicinity of lift access to each building.

Minimum headroom of 4500mm must be provided at the access ramp and within the carpark where access is provided to garbage trucks or removalist vehicles.

ii) Access aisles and ramps must be designed as circulation roadways where required in accordance with Clauses 2.5.1 and 2.3.3 of AS/NZS 2890.1-2004. In this regard, the aisle immediately at the base of the access ramp, must be designed as a circulation roadway for its entire length, including the intersections.

iii) The design of the basement carpark must include a minimum of 5 car wash bays within the development in accordance with Section E1.2.4 (C4) of DCP 2013.

It is likely that the basement carpark will need to be significantly redesigned to address the above issues.

Property Manager

The through-site links would need to be the subject of conditions requiring these to become public rights of way or similar.

Heritage Advisor

In light of the circumstances of this case no heritage objections are raised to this development proposal on heritage grounds.

Landscape Officer

Prior to any demolition the 12 most mature *Archontophoenix cunninghamiana* (Bangalow Palms) located in the existing carpark area adjacent to George Street are to be removed in such a way that they can be relocated at a later date, stored off site, and installed into the landscape associated with the future site development.

Additional information required - A Transplantation Methods Statement detailing the following points is to be prepared by an AQF Level 5 Arborist and submitted to the Council. The report shall include at a minimum:

- Pre transplantation schedule of works
- Preparation of transplantation site and palms to be transplanted
- Transplantation method
- 'Off site' storage maintenance schedule and program
- Relocation methodology
- Relocation maintenance schedule and program

This would be addressed by suitable condition/s of consent if required.

Waste Management Officer

Waste comments based on the MACK Group submission dated 29 August 2014.

The applicant has stated that it is intended that a private waste collection contractor will collect all waste and will undertake 2 weekly collections. The applicant is to note that each residential unit will be required to pay Council an annual Domestic Waste Charge whether they use the service or not. Council's service is one weekly collection. All waste and recycling calculations are to be based on council providing the service.

Council does not encourage the use of chutes for garbage and recycling collection and storage. If this approach is pursued, it must be noted that co-mingled containers (yellow lid bins) cannot be compacted as this results in contamination of materials which will prevent recycling.

The residential waste and recycling bin collection area has not been located within the basement as required by Council. The basement is to be accessible by a standard garbage truck as per Council's DCP 2013 – Appendix D Section 5.

The location of the waste & recycling bin storage room is to be equally accessible from the five buildings. The waste and recycling bin storage room must be capable of accommodating and manoeuvring the required number of waste and recycling bins based on Council's generation rates as below. Total area required per 240 litre bin is 0.86 m² for storage and manoeuvrability

The number of waste and recycling bins shown / accommodated is insufficient. Calculations are based on 80 litres of garbage and 40 litres of recycling per unit per week. Bin capacity of 120 litres for domestic garbage and 60 litres for recycling per week per unit is required (sharing 240 litre bins).

Council will require a bin storage room on each residential floor for garbage, food waste and recycling and a documented system for transportation to the main waste and recycling storage room for collection.

Council does not require each unit to have a 120 litre service per week for garden organics. The proposal for 2 x 240 litre bins collected per week is inadequate to accommodate the open space / landscaped areas.

Council provides 2 scheduled general household (bulky goods) collections per annum. The proposed 4 m² per building for storage of discarded bulky goods is inadequate. The required separate waste storage room / cage for discarded bulky goods is to be based on 0.63m² per unit. The bulky goods area is to be located close to the main waste storage room / area for collection.

The waste generation for the commercial tenancy is adequate. The recycling generation is inadequate. The generation is to be based on 120Litres / 100m² of floor space.

Environmental Health Officer

The following issues are raised in response to the proposal:

- Hazardous Materials Survey i.e. asbestos and lead – considered satisfactory subject to management recommendations being implemented such as all removal works are to be carried out by suitably licensed contractors, air monitoring to be undertaken during removal works and validation/clearance reports.
- Acoustics - report satisfies interior acoustic amenity concerns in relation to aircraft noise and noise from proposed plant and equipment. The report does not address noise associated with construction, a Construction Noise and Vibration Management Plan is to be provided as per acoustic consultant's recommendation. The report also recommends that those speed limits on Upward and George Streets be restricted to 40km/h to manage increased traffic noise in the area as a result of the proposed development.

Details are required in relation to managing the noise impact from plant and equipment associated with the swimming pool and car park exhaust ventilation systems on neighbouring residential properties.

An acoustic compliance report will be required prior to an occupation certificate being issued.

- Contamination/RAP - Council is of the opinion that the conclusion does not satisfy the requirements of SEPP 55 and NSW EPA Guidelines for Consultants Reporting on Contaminated Sites by clearly stating that the remediated site will be suitable for the proposed use and will pose no unacceptable risk to human health or to the environment.

The RAP makes mention of and concludes that additional investigations and reports are required to be prepared prior to remediation commencing i.e. groundwater sampling management plan, an additional groundwater investigation, SAQP and potential soil vapour assessment.

In saying this, Environmental Strategies may mean that the site's suitability is contingent on further testing and analysis which is yet to occur. Clarification is sought as to at what stages each of these additional plans/assessments are required to be completed by and the preferred method/s of groundwater remediation for chlorinated solvents, petroleum hydrocarbons and any other groundwater contaminants identified

7. EXTERNAL REFERRALS

The Development Application was referred to the RMS, Sydney Water and Ausgrid for comment. Responses follow:

Ausgrid – No objections – conditions advised for inclusion in the event of an approval.

RMS - Roads and Maritime has reviewed the subject application and provides the following comments to Council for its consideration:

1. The swept path of the longest vehicle (to service the site) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with

AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

2. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004.

3. All works/regulatory signposting associated with the proposed development are to be at no cost Roads and Maritime.

Sydney Water

Water

- To serve the proposed development the developer is required to link the two 150mm drinking water mains located in George Street by upsizing the existing 100mm mains between them
- All works are to be constructed in accordance with the Water Supply Code of Australia WSA 03-2011-3.1 (Sydney Water Edition - 2012).
- Wastewater
- The wastewater main available for connection is the 225mm main traversing the property constructed under SO 42717
- The proposed development site is traversed by 225mm & 150mm wastewater mains.
- Where proposed works are in close proximity to a Sydney Water asset, the developer may be required to carry out additional works to facilitate their development and protect the wastewater main. Subject to the scope of development, servicing options may involve adjustment/deviation and or compliance with the Guidelines for building over/adjacent to Sydney Water assets. Refer to your WSC for details of requirements.

Stormwater- Building Adjacent to Stormwater Channel

- No buildings or permanent structures are allowed over the stormwater asset or within 1 m of the outside edge of the asset. Permanent structures include, but are not limited to, roof eaves, balconies / overhangs, on-site detention systems, stormwater pits and pipes etc
- Sydney Water notes the proposed stormwater deviation (Engineering Design Brief dated 18 June 2014) which seeks to meet Sydney Water's building adjacent to stormwater assets requirements. Sydney Water is willing to liaise with the proponent to work towards the proposed concept plan subject to the following key concepts be incorporated in any future proposal:
- 90 degree bends are not permitted. A minimum 6 metre internal radius is to be provided for any changes in direction
- The capacity of the new pipe is to be minimum 20 year ARI.

Comment: Sydney Water's agreement to the stormwater deviation is subject to the completion of sufficient investigations to confirm its feasibility. This includes locating utility services along McAleer and Upward Streets.

Overland Flow Path

- Sydney Water's clearance requirements also provide for an overland flow path over the stormwater asset. The proposed new path of the storm water deviation does not provide the required overland flow path. Specifically, the current building configuration in the DA precludes the provision of an overland flow path
- The proponent will need to complete a detailed flood study to identify and confirm the location and width of the overland flow path across the site. The flow path will need to meet contemporary standards in terms of safety (depth and velocity product) unless specified otherwise by council.

Water Quality Improvement Device I On Site Detention

- The development is required to meet stormwater quality and on-site detention targets. Sydney Water's requirements will prevail in the absence of any such targets being specified by council.

8. SUMMARY/CONCLUSION

The Development has been assessed in accordance with Section 79C(1) of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies.

Assessment of this proposal has been complicated by the identification during assessment by Council staff of numerous non-compliances and errors in submitted documentation. These include: inaccurate solar access to units diagrams, incomplete Remediation Action Plan (and testing), incomplete groundwater contamination assessment, non-submission of Basix certificate, discrepancies between submitted floor plans, inaccurate traffic management documentation, inaccurate shadow diagrams, insufficient detail on survey, and the insertion of additional dwellings. A number of these deficiencies went to matters of fundamental compliance with critical planning controls.

Identification of these various deficiencies by staff resulted in the applicant lodging, at different times, additional and amended documentation and plans, some of which were not received within a timeframe appropriate to reporting commitments.

Critical information essential to achieving a recommendation for approval was either not received at the time of writing this report, or was received at the last moment with only a handful of business days before reporting was due. Other matters, notably flood risk minimisation, have not been addressed to Council's satisfaction.

Regrettably, some of the information which was submitted days before reporting was due to be finalised has, on the basis of a necessarily limited review, gone some way to addressing some of the concerns and deficiencies pertinent to the original application. Had the original documents encompassed all these changes and requirements (including but not limited to SEPP 55 and 65 compliance) then a recommendation for approval may have been more likely.

Complicating that possibility are two remaining factors. Firstly, the application has not proposed a solution which would achieve flood risk minimisation, as required by the LEP.

Secondly, prior to any consent being issued for either Revision B or Revision C of the proposal it is Council's opinion that the application would need to be once more publicly notified. This is due to a number of factors, as follows:

- Design solutions, including floor layouts, have changed to an extent which raises the likelihood of other amenity implications for neighbouring properties which did not exist or did not exist to the same degree in the publicly exhibited documentation. It is Council's view that those neighbours are entitled to be aware of these, to seek their own advice and to respond formally in accordance with normal Council policy and practice.
- Elements of the application which were put to the public for consideration at the initial notification stage were misleading, and potentially inaccurate. Corrected information, some of which was only lodged on 2nd October, should be publicly exhibited in order that neighbours have the chance to assess and respond.
- Additional information, such as the comprehensive and compliant Remediation Action Plan, are matters of essential interest to surrounding landowners. The exhibited RAP was incomplete and unsatisfactory. In the interests of transparency and due process re-notification must include a peer reviewed RAP which has been independently assessed as compliant.

Even if the applicant's flood risk mitigation strategy was held to be preferable to Council's risk minimisation requirements, re-notification is necessary due to the above mentioned factors. Re-notification cannot, however, proceed until all the outstanding information essential to full and comprehensive assessment of this proposal has been submitted. In that regard it is noted that at the time of writing this report a corrected RAP has been neither lodged, nor reviewed.

Under these circumstances, and in the interests of bringing about a timely and conclusive resolution of the assessment process, Council recommends the application be refused.

Options remain for the applicant to resolve those matters identified above and pursue approval of the project via alternate avenues, and it is anticipated that this would involve all those changes and corrections which have progressively been admitted by the applicant as being necessary to achieve a proposal consistent with applicable planning controls.

9. RECOMMENDATION

That the Joint Regional Planning Panel, as the consent authority pursuant to s80 of the *Environmental Planning and Assessment Act 1979*, refuse the Development Application No. D/2014/312 for site preparation works (including diversion of services, remediation, demolition of existing structures and excavation) and construction of a mixed use development of 290 dwelling units and two retail tenancies in 5 buildings of 4 to 9 storeys in height above a basement car park plus associated landscaping and public domain works at 22 George Street (Kolotex), LEICHHARDT NSW 2040 for the following reasons.

1. The application has not satisfied the requirements of Clause 7 of *State Environmental Planning Policy 55 - Remediation of Land*, insofar as a Remediation Action Plan consistent with the relevant guidelines, has not been submitted for assessment, and it remains uncertain, therefore, how or whether

land and groundwater contamination would be addressed and whether the site could consequently be made suitable for the intended use.

1. The proposal, the subject of this assessment, has failed to satisfy relevant provisions of *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development*, having particular regard to the failure to achieve satisfactory solar access to units, inadequate building separation, unacceptable building depth and appropriate storage provisions.
2. The proposal has failed to provide an appropriate mix of non-residential development and does not meet the underlying objectives of the B4- Mixed Use zoning under *Leichhardt Local Environmental Plan 2013*.
3. The proposal has not been accompanied by a relevant BASIX Certificate, which is a mandatory requirement under *State Environmental Planning Policy (Building Sustainability Index: BASIX)*.
4. The flood risk strategy has failed to satisfy Clause 6.3-Flood Planning of *Leichhardt Local Environmental Plan 2013*, having particular reference to Clause 6.3(1)(a); and Section 1.3.1 of *Leichhardt Development Control Plan 2013* in that the development has not minimised flood risk nor has it provided an evacuation route clear of the floodway.
5. The application has not effectively demonstrated that the solar access and privacy objectives of *Development Control Plan (George and Upward Streets 2014)* have been satisfied.
6. Documentation submitted with the application has not established that the site is suitable for the proposed development, as required pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*.