

<b>ITEM</b>	<p>2-12 Harp Street &amp; 1-5 Alfred Street, Clemton Park (LOT 1, DP 124196, LOT 4, DP 345913, LOTS A &amp; B, DP 379354, LOT 1, DP 8240, LOT 7, DP 20173, LOT 3 DP 8240, LOT 1, DP 20173, LOTS A &amp; B, DP 432872)</p> <p>Demolition of existing structures, construction of two, four to five storey residential flat buildings providing a total of 100 apartments with associated landscaping, basement car parking and strata subdivision</p>
<b>FILE</b>	DA-516/2015
<b>ZONING</b>	R4 – High Density Residential and IN2 – Light Industrial under Canterbury Local Environmental Plan 2012
<b>DATE OF LODGEMENT</b>	28 October 2015
<b>APPLICANT</b>	Tony Jreige, C/- Urban Link Pty Limited
<b>OWNERS</b>	<p>NPG Investments Pty Limited</p> <p>Bunny Pty Limited</p> <p>PJP Holdings Pty Limited</p> <p>PYG Investments Pty Limited</p> <p>Nicret Pty Limited</p> <p>Genive Pty Limited</p> <p>Petessa Superannuation Pty Limited</p>
<b>ESTIMATED COST</b>	\$27,052,020
<b>AUTHOR</b>	Development Services (Zena Ayache)

### **SUMMARY REPORT**

- Council has received Development Application DA-516/2016 for demolition of existing structures and construction of two, four to five storey residential flat buildings providing a total of 100 apartments with associated landscaping, basement car parking and strata subdivision.
- The development application has a capital investment value in excess of \$20 million and in accordance with Clause 13B(1)(a) of State Environmental Planning Policy (Major Development) 2005, the development application is referred to the Sydney South Planning Panel for determination.
- The subject site is zoned R4 – High Density Residential and IN2 – Light Industrial under Canterbury Local Environmental Plan 2012 (CLEP 2012). The development falls within the definition of ‘residential flat building’ and is permissible within the R4 – High Density Residential zone.

- The proposal fails to comply with a number of requirements of the ADG, CLEP 2012 and CDCP 2012. These include as follows:
  - The proposal fails to demonstrate compliance with the building separation requirements of Part 2F of the ADG.
  - The proposal fails to provide a communal open space area equal to minimum 25% of the site with a minimum dimension of 3 metres, as required per Part 3D of the ADG.
  - The proposal incorporates only 33m<sup>2</sup> of deep soil area which equates to 0.5% of the total site area. In accordance with Part 3E-1 of the ADG, a minimum 405.7m<sup>2</sup> of deep soil is required to be provided on-site.
  - The submitted shadow diagrams are insufficient as they fail to demonstrate that at least 70% of apartment's living rooms and private open space areas will receive a minimum 2 hours of sunlight on 21 June, between 9am and 3pm, in accordance with Part 4A of the ADG.
  - The proposal fails to demonstrate that a maximum of 15% of apartments will receive no direct sunlight between 9am and 3pm on 21 June, in accordance with Part 4A of the ADG.
  - The proposal fails to demonstrate that at least 60% of the apartments will be naturally cross-ventilated, in accordance with Part 4B-3 of the ADG.
  - The proposal fails to meet the minimum internal dwelling area requirements of Part 4D-1 of the ADG.
  - Several apartments private open space areas/balconies fail to meet the minimum area and dimension requirements outlined within Part 4E-1 of the ADG.
  - 'Building A' fails to comply with the circulation core requirements of Part 4F-1 of the ADG.
  - Clause 4.3 of CLEP 2012 permits a maximum building height of 13.5 metre for the site. The proposal fails to comply with this requirement as a maximum building height of 16.81 metres is provided. This represents a 24.5% variation of the maximum permitted building height.
  - The development is visually incompatible with the intended character of the zone.
  - Part 2.1.3(iii) of CDCP 2012 states that rooftop terraces are not permitted within residential zones. Each building's communal open space area is proposed to be accommodated on-site via a rooftop terrace.
  - CDCP 2012 requires the proposal provide a maximum building depth of 25 metres. The proposal provides a maximum building depth of 32 metres which equates to a 28% variation to the maximum permitted building depth.
  - The proposal fails to meet the front and rear building setback requirements of the ADG and CDCP 2012.
  - The proposal fails to meet the Crime Prevention Through Environmental Design requirements of Part 6.3 of CDCP 2012.
  - The submitted Flood Impact Study Report is inadequate as it contains multiple references and figures that do not exist and are not relevant to the site. Also, the flood levels shown in the Appendix are vague and the colour coding is not referenced.
  - Insufficient information has been submitted to demonstrate compliance with Part 6.4 – Development Engineering, Flood and Stormwater of CDCP 2012.
  - The proposal fails to comply with the requirements of Part 6.7 - Landscape

- of CDCP 2012.
- The proposal fails to comply with the requirements of Part 6.9 – Waste Management of CDCP 2012.
  - The application fails to sufficiently demonstrate as to whether the proposal is integrated development.
- The development application was publicly exhibited and adjoining land owners were notified on two (2) separate occasions in accordance with the requirements of Part 7 of Canterbury Development Control Plan 2012 (CDCP 2012). Four (4) submissions were received, raising the following concerns:
- Lot Isolation
  - Overshadowing/loss of solar access
  - Excessive building height
  - Depth of basement car park levels interfering with water table below
  - Insufficient provision of open space
  - Roof terraces will create unreasonable noise disturbance for occupants of adjoining and surrounding properties
  - Inadequate basement car park configuration
  - The materials to be used are not of high quality standard
  - The submitted Traffic Study is for another site in Homebush
  - Car parking and traffic congestion
  - Overdevelopment of the site
  - Increase of pollution for the locality
- The development application is recommended for refusal due to the non-compliances with the ADG, CLEP 2012 and CDCP 2012.

### **POLICY IMPACT**

This matter has no direct policy implications.

### **FINANCIAL IMPACT**

This matter has no direct financial implications.

### **RECOMMENDATION**

It is recommended that the application be refused.

## **DA-559/2016 SECTION 79C ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is largely a regular shaped parcel of land with the exception of No. 7 and 9 Alfred Street which is not included within the development site and therefore contributes to an irregular shape at the south-east corner of the site. The site has a northern frontage length to Harp Street of 76.07 metres with a corner splay of 5.46 metres, a combined eastern boundary length to Alfred Street of 40.716 metres, a southern boundary length of 109.297 metres and a western boundary length of 85.56 metres. The site has a total area of 5,795.9m<sup>2</sup>.

The site has a slight fall of approximately 2 metres from the western boundary east towards Alfred Street and south towards the drainage canal at the rear of the site. The site is flood affected with a finished floor level of 21.08 metre AHD (including 500mm freeboard) required for the lowest habitable level on the site. The drainage canal at the rear of the site forms part of the development site and is covered by a 6.095 metre wide drainage easement.

The properties along Harp Street contain industrial buildings with offices and showrooms built up to the street frontage. No. 12 Harp Street is currently occupied by a large office/showroom building and warehouse to the rear while No's 4-10 Harp Street contains a two storey brick office building close to the Harp Street frontage with a saw tooth roof factory building situated to the rear. Car parking is provided to the east of the building with some mature vegetation to the rear of the offices.

A single storey red brick dwelling is located at No. 2 Harp Street which is currently in residential use and is surrounded to the side and rear boundary by the larger industrial premises to the west. The dwelling at No. 2 Harp Street is of a similar appearance to the neighbouring residential properties fronting Alfred Street.

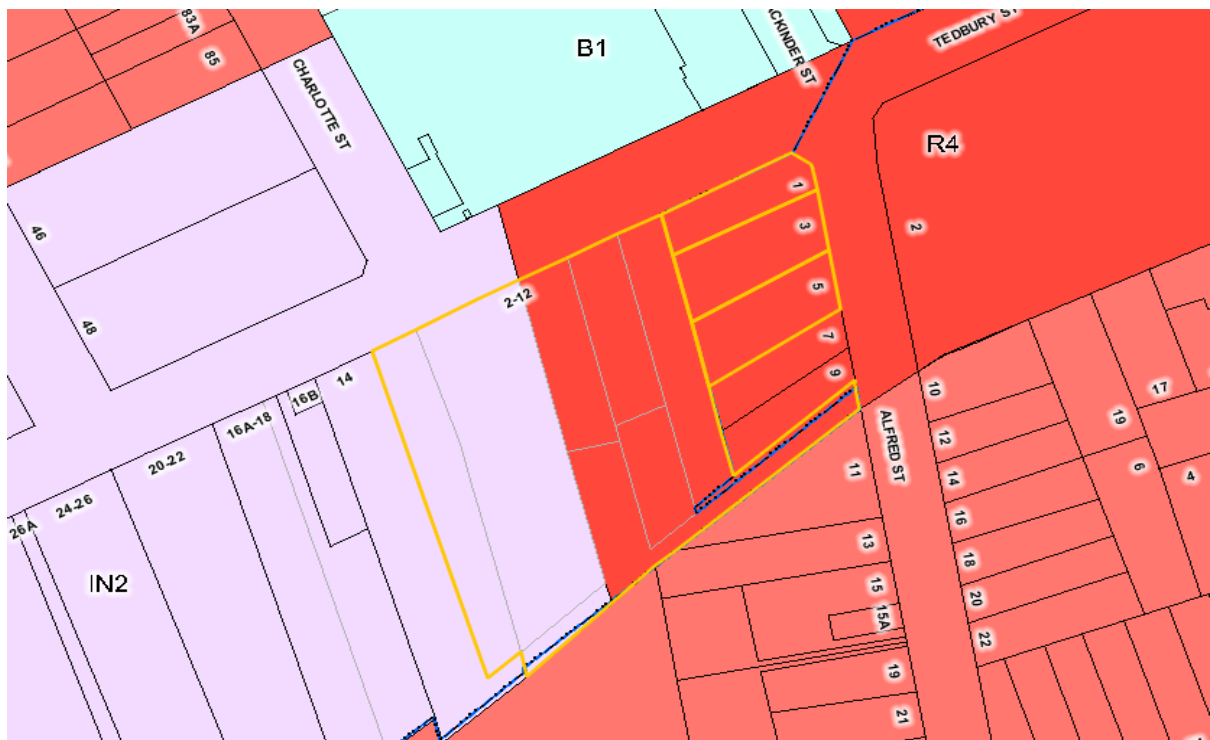
The eastern side of the subject site has a frontage to Alfred Street. The three dwellings closest to the corner (No's. 1, 3 and 5) include three single storey brick dwellings with red tile roofs which are built to a similar alignment and orientation. These dwellings are proposed to be demolished and included as part of the redevelopment. The existing residential dwellings at No's 7 and 9 Alfred Street are to be retained and are excluded from the proposed development.

The wider surrounding locality is undergoing significant change and redevelopment. To the north and east of the subject site is Clemton Park Village which comprises a shopping village, supermarket, children's play area, community centre, open air piazza, childcare centre, residential apartments and a 'bupa' aged care facility.

The sites to the south of the subject site comprise single storey detached dwellings which fall within an adjoining R3 'Medium Density Residential' zone and are separated from the subject site by an existing 4.5 metre wide drainage canal which runs along the southern site boundary. Located to the west of the site are remaining industrial premises which form part of the IN2 – Light Industrial zone.



**Figure 1:** Aerial view of the site (yellow outline) and surrounding locality.



**Figure 2:** Zoning of subject site in accordance with Canterbury Local Environmental Plan 2012.





Figure 3: The existing office and showroom building located at No. 12 Harp Street.



Figure 4: The existing two storey office and factory building located at No. 4-10 Harp Street.



Figure 5: Existing single storey dwelling located at No. 1 Alfred Street, Clemton Park.



Figure 6: Existing single storey dwellings located at No's. 3 & 5 Clemton Park.



Figure 7: Existing single storey dwellings located at No's. 7 & 8 Alfred Street, Clemton Park.



Figure 8: The existing drainage canal adjoining the rear of the subject site.

## **PROPOSED DEVELOPMENT**

The proposed development seeks approval for the demolition of existing dwellings and industrial buildings and the construction of two, 4-5 storey buildings accommodating a total of 100 units over two levels of basement car parking, including the strata subdivision.

### **Building A**

Building A is located on the corner of Harp Street and Alfred Street and comprises a 4-5 storey building. The building is orientated to each street frontage and returns along the southern boundary providing a central communal open space and lift and stair core access to the rear of the units.

Building A provides a total of 39 units comprising of 7 x 1 bedrooms and 32 x 2 bedrooms. A rooftop communal open space of 329m<sup>2</sup> is provided in the southern portion of the building with a 1 metre wide landscaping planter provided around the perimeter of the rooftop terrace.

Vehicular access into the building's two basement car parking levels is provided from Alfred Street. A total of 67 car parking spaces are to be accommodated on-site and allocated solely for residents and visitors of this building. The building's waste storage area is situated adjacent to the residential lobby and accessed via the Alfred Street entryway.

### **Building B**

Building B is to be located over the former industrial sites and extends from Harp Street through to the drainage canal to the south. It is the larger of the two buildings proposed and is also 4-5 storeys in height.

Building B provides a total of 61 units comprising of 15 x 1 bedrooms, 42 x 2 bedrooms and 4 x 3 bedrooms. All units have access to a private balcony or terrace accessible from the internal living areas and pedestrian access to the building is provided from Harp Street. A communal open space area of 392m<sup>2</sup> is provided on the rooftop of this building.

Vehicular access into the building's two basement car parking levels is provided via a driveway accessed from Harp Street. A total of 87 car parking spaces are to be provided on-site and allocated for the sole use of Building B. The building's waste storage area is to be located adjacent to the building's entry lobby area and accessed from Harp Street.

The development is proposed to be constructed wholly within the R4 – High Density zone. The remaining industrial component of the site zoned IN2 – Light Industrial is subject to a separate future DA.

## **STATUTORY CONSIDERATIONS**

When determining this application, the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans and (DCPs), codes and policies are relevant:

- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development
- Canterbury Local Environmental Plan 2012
- Canterbury Development Control Plan 2012
- Canterbury Development Contributions Plan 2013

## **ASSESSMENT**

The development application has been assessed with regard to s79C of the Environmental Planning & Assessment Act 1979, as detailed below:

- **State Environmental Planning Policy 55 – Contaminated Land**  
 Clause 7 of SEPP 55 – Remediation of Land requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, we must be satisfied that the land is suitable in a contaminated state for the proposed use. A Geotechnical Assessment Report (prepared by Fernside Developments Pty Limited, Project No. E22694, dated 22 September 2015) and a Remediation Action Plan (prepared by EI Australia, Report No. E22694AN\_Rev 0, dated: 29 June 2016) accompanied the application. The Remediation Action Plan (RAP) concluded that the site can be made suitable for the proposed land use following the implementation of the Remediation Action Plan and more specifically, completion of the following stages:
  - Selection of a suitably qualified and licensed excavation contractor;
  - Preliminaries including approvals;
  - Demolition of the site buildings and infrastructure;
  - Contamination delineation assessment;
  - Implementation of the remedial measures identified in the RAP;
  - Validation sampling in accordance to the approved RAP; and
  - Validation reporting.

Therefore, the proposal complies with the requirements of SEPP 55. Should the application be supported, any recommendations outlined within the Geotechnical Assessment Report and RAP shall be included as conditions of consent.

- **Integrated Development**  
 The submitted Geotechnical Assessment Report reveals that the provision of the two basement car park levels will impinge onto the sites water table. On 3 February 2016, Council forwarded a letter to the Applicant advising that the application fails to demonstrate that the proposal is not an integrated development. It was requested that an amended Statement of Environmental Effects be submitted demonstrating that the proposal is not integrated development. Alternatively, should the proposal be integrated development, it was requested additional information in accordance with the Environmental Planning and Assessment Act 1979 be submitted so that the application can be referred to the Office of Water, re-advertised for a period of 28 days and



reviewed by Council. To date, the applicant has failed to address this matter. Therefore, confirmation as to whether the proposal is an integrated development has not been demonstrated.

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

BASIX Certificate No. 676889M\_02 dated 8 August 2016 accompanies this application. The Certificate makes a number of energy and resource commitments in regard to ventilation, natural lighting and thermal comfort. These commitments have been shown on the DA plans, where appropriate, and satisfy the requirements of the SEPP.

- **State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development**

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing good design. Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses the design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the ADG have been achieved. This has been provided by the applicant.

In addition, SEPP 65 requires the assessment of any DA for residential apartment development against the nine design quality principles and to consider the matters contained in the ADG.

Principle 1: Context and Neighbourhood Character

The proposed development is inconsistent with the maximum permitted 13.5 metre building height control and is therefore not aligned with the desired future character of the locality. The bulk and scale of the part 4 and 5 storey development is excessive and fails to provide a built form that suitably transitions into the adjoining R3 – Medium Density zone, particularly along the Alfred Street frontage.

Principle 2: Built Form and Scale

The development is inconsistent with Council's height controls and is not aligned with the desired future character of the locality. The bulk, scale and overall mass of the development is excessive and fails to complement the existing and desired future character of the locality.

Principle 3: Density

Although the proposal complies with the maximum 1.4:1 FSR, it fails to meet the aims and objectives of the sites maximum 13.5 metre building height provision as outlined within Canterbury Local Environmental Plan 2012 (CLEP 2012) and the building envelope requirements of Canterbury Development Control Plan 2012.

#### Principle 4: Sustainability

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

#### Principle 5: Landscape

The proposal provides landscape areas within all setbacks of the site as well as within the communal open space areas of each building. However, these landscape areas are inadequate as the proposal fails to achieve the minimum deep soil and communal open space area requirements of the Apartment Design Guide (ADG).

Part 3E-1 of the ADG requires a minimum of 7% of site area with a minimum dimension of 6 metres be provided as deep soil. A minimum 405.7m<sup>2</sup> of deep soil is required to be provided on-site. The proposal fails to comply with this requirement as only 33m<sup>2</sup> (0.5%) of deep soil is provided. Part 3D-1 of the ADG also requires a minimum area of 25% of the site with a minimum dimension of 3 metres be provided. As such, a total communal open space area of 1,448.9m<sup>2</sup> is required to be provided. The proposal fails to comply with this requirement as only 721m<sup>2</sup> (49.8%) of communal open space area is provided.

Our Landscape Architect has reviewed the application and does not support the proposal due to the significant non-compliances with Part 3D-1 and 3E-1 of the ADG.

#### Principle 6: Amenity

The proposal fails to demonstrate compliance with the relevant solar access and ventilation requirements of the ADG. Also, several apartments do not comply with the minimum apartment size requirements and minimum area and dimension requirements for the private open spaces as stipulated within the ADG.

The proposed scheme fails to demonstrate that acceptable levels of amenity is provided for future occupants.

#### Principle 7: Safety

The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The proposal provides increased activation and passive surveillance of the surrounding streets and private open space areas on the site. Residential entry and lobby areas are to be secured and well lit.

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

The proposed design incorporates various dwelling sizes. The proposed design also includes adaptable apartments which, in conjunction with various dwelling sizes, promotes diversity, affordability and access to housing choice.

### Principle 9: Aesthetics

The application is accompanied by a Design Verification Statement and confirms that the development satisfies the general design principles contained within SEPP 65.

The above matters are further assessed later in the report under the CLEP 2012 and CDCP 2012 sections.

#### ▪ **Apartment Design Guide**

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

An assessment of the proposed development in regards to the following Design Criteria controls of the ADG is demonstrated in the table below:

Section	Design Criteria	Proposed	Complies
Part 2 Developing the Controls			
2F Building Separation	Up to 4 storeys, a building separation of: <ul style="list-style-type: none"><li>▪ 12 metres between habitable rooms/balconies;</li><li>▪ 9 metres between habitable rooms and non-habitable rooms;</li><li>▪ 6 metres between non-habitable rooms</li></ul>	The proposal provides a minimum building separation of approximately 8.5 metres between the proposal and adjoining property No. 7 Alfred Street. Non-habitable room windows of the proposed development are located within close proximity to 7 Alfred Street. The application fails to provide details as to the location of all doors, windows and opening and the use of each of the rooms located along the northern side elevation of 7 Alfred Street. Thus, compliance with the building separation requirements of Part 2F of the ADG have not been demonstrated.	No – refer to comment below
Part 3 Siting the Development			
3D Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site with a minimum dimension of 3 metres.	The proposal comprises 721m <sup>2</sup> (12% of the site area) of communal open space.	No – refer to comment below

Section	Design Criteria	Proposed	Complies												
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The proposal achieves a minimum of 50% of direct sunlight to the useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June.	Yes												
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions:	The proposal incorporates 33m <sup>2</sup> of deep soil area, which equates to 0.5% of the total site area required to be provided on-site.	No – refer to comment below												
	<table><tr><th>Site Area</th><th>Minimum Dimensions</th><th>Deep Soil Zone (% of site area)</th></tr><tr><td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m<sup>2</sup> - 1,500m<sup>2</sup></td><td>3m</td></tr><tr><td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr><tr><td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr></table>			Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m
	Site Area			Minimum Dimensions	Deep Soil Zone (% of site area)										
	Less than 650m <sup>2</sup>			-	7%										
	650m <sup>2</sup> - 1,500m <sup>2</sup>			3m											
	Greater than 1,500m <sup>2</sup>			6m											
	Greater than 1,500m <sup>2</sup> with significant existing tree cover			6m											
3F Visual Privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	Both proposed Building A and B provide a building separation of greater than 9 metres along the side and rear boundaries. A building separation in excess of 6 metres is provided between the two buildings for 1-4 storeys and a building separation distance in excess of 9 metres is provided on the 5 <sup>th</sup> storey.	Yes												
	<table><tr><th>Building Height</th><th>Habitable Rooms &amp; Balconies</th><th>Non-habitable Rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25 metres (5-8 storeys)</td><td>9 metres</td><td>4.5 metres</td></tr></table>			Building Height	Habitable Rooms & Balconies	Non-habitable Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25 metres (5-8 storeys)	9 metres	4.5 metres			
	Building Height			Habitable Rooms & Balconies	Non-habitable Rooms										
	Up to 12m (4 storeys)			6m	3m										
Up to 25 metres (5-8 storeys)	9 metres	4.5 metres													

Section	Design Criteria	Proposed	Complies				
3J Bicycle and Car Parking	For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements as set out in the table below. <table border="1"><tr><th>Development Type</th><th>Parking Requirement</th></tr><tr><td>High Density Residential Flat Buildings (20 or more dwellings).</td><td>Metropolitan sub-regional centres ▪0.6 spaces per 1 bedroom unit ▪0.9 spaces per 2 bedroom unit ▪+1 space per 5 units (visitor parking)</td></tr></table>	Development Type	Parking Requirement	High Density Residential Flat Buildings (20 or more dwellings).	Metropolitan sub-regional centres ▪0.6 spaces per 1 bedroom unit ▪0.9 spaces per 2 bedroom unit ▪+1 space per 5 units (visitor parking)	The site is located more than 800 metres from a railway station. Therefore, the car parking provisions of CDCP 2012 apply. Compliance with the car parking rates of CDCP 2012 is discussed below under the CDCP 2012 section.	Yes
	Development Type	Parking Requirement					
	High Density Residential Flat Buildings (20 or more dwellings).	Metropolitan sub-regional centres ▪0.6 spaces per 1 bedroom unit ▪0.9 spaces per 2 bedroom unit ▪+1 space per 5 units (visitor parking)					
The car parking needs for a development must be provided off street.	Each building's car parking is to be accommodated within two basement levels. Vehicular access into 'Building A' is provided via Alfred Street while access into 'Building B' is provided via Harp Street.	Yes					
Part 4 Designing the Building							
4A Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	The submitted shadow diagrams fail to demonstrate that the living rooms and private open space areas of at least 70% of apartments will receive a minimum 2 hours of sunlight between 9am and 3pm.	No – refer to comment below				
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	The submitted shadow diagrams fail to demonstrate that a maximum of 15% of apartments in each building will receive no direct sunlight between 9am and 3pm at mid-winter.	No – refer to comment below				



Section	Design Criteria	Proposed	Complies										
4B Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	The proposal fails to demonstrate that at least 60% of apartments are naturally cross-ventilated.	No – refer to comment below										
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Each apartment comprises a depth of less than 18m.	Yes										
4C Ceiling Heights	<div>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</div> <table><tr><th colspan="2">Minimum Ceiling Height for Apartment and Mixed Use Buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>- 2.7m main living area floor - 2.4 for second floor, where its area does not exceed 50% of the apartment area</td></tr></table> <div>These minimums do not preclude higher ceilings if desired.</div>	Minimum Ceiling Height for Apartment and Mixed Use Buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	- 2.7m main living area floor - 2.4 for second floor, where its area does not exceed 50% of the apartment area	The finished floor-to-ceiling heights of all residential floors are at least 2.7m. All non-habitable floors have a finished floor to ceiling height of at least 2.4 metres.	Yes		
Minimum Ceiling Height for Apartment and Mixed Use Buildings													
Habitable rooms	2.7m												
Non-habitable	2.4m												
For 2 storey apartments	- 2.7m main living area floor - 2.4 for second floor, where its area does not exceed 50% of the apartment area												
4D Apartment Size and Layout	<div>Apartment are required to have the following minimum internal areas:</div> <table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <div>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</div>	Apartment Type	Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<div>All one bedroom apartments comprise one bathroom and are at least 50sqm in size.</div> <div>All two bedrooms apartments with one bathroom are at least 70m<sup>2</sup> in size. All two bedroom apartments with two bathrooms are at least 75sqm in size.</div> <div>All three bedroom apartments comprise two bathrooms and are 92m<sup>2</sup> in size.</div>	<div>Yes</div> <div>Yes</div> <div>No – refer to comment below</div>
	Apartment Type	Minimum Internal Area											
	Studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>												
2 bedroom	70m <sup>2</sup>												
3 bedroom	90m <sup>2</sup>												
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms have windows of acceptable size to facilitate acceptable solar access and natural ventilation.	Yes										

Section	Design Criteria	Proposed	Complies												
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Apartments with an open plan layout do not exceed an 8m depth from a window.	Yes												
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	All master bedrooms have a minimum area of 10m <sup>2</sup> (excluding wardrobe space).  All other bedrooms have a minimum area of 9m <sup>2</sup> (excluding wardrobe space).	Yes  Yes												
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	The bedrooms have a minimum dimension of 2.8 metres.	No – refer to comment below												
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul>	The principle living rooms comply with the minimum width stipulated within ADG.	Yes												
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	The proposed cross-through apartments are at least 4m wide.	Yes												
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m.	Dwelling type	Minimum Area	Minimum Depth	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	All one bedroom apartments have a balcony with a minimum area of 8m <sup>2</sup> in size and at least a 2m depth.  All two bedroom apartments have a balcony with a minimum area of 10m <sup>2</sup> in size and at least a 2m depth.  All three bedroom apartments have a balcony with a minimum area of 26m <sup>2</sup> and a minimum dimension of 2.4 metres.	Yes
	Dwelling type	Minimum Area	Minimum Depth												
	1 bedroom apartments	8m <sup>2</sup>	2m												
2 bedroom apartments	10m <sup>2</sup>	2m													
3+ bedroom apartments	12m <sup>2</sup>	2.4m													
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Units BG03, AG02, AG05 and AG07 do not provide a minimum depth of 3m and/or provide a minimum depth of 15m <sup>2</sup> .	No – refer to comment below												

Section	Design Criteria	Proposed	Complies								
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	'Building A' comprises one lift core for 9 units on levels 1-3 while 'Building B' comprises a double lift for a maximum of 15 apartments.	No – refer to comment below								
4G Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>1 bedroom apartments</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>3</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom apartments	6m <sup>3</sup>	2 bedroom apartments	8m <sup>3</sup>	3+ bedroom apartments	10m <sup>3</sup>	<p>Each apartment comprises storage in excess of the minimum controls. At least 50% of the required storage area is located within the apartment. However, the storage areas within each building's basement level fail to show how the total storage areas are to be distributed to each unit. In addressing this issue, should the application be supported, a condition shall be imposed to ensure compliance with the storage requirements of Part 4G of the ADG.</p>	Yes
Dwelling type	Storage size volume										
1 bedroom apartments	6m <sup>3</sup>										
2 bedroom apartments	8m <sup>3</sup>										
3+ bedroom apartments	10m <sup>3</sup>										

### Building Separation

Part 2F of the ADG requires a building separation of 12 metres between habitable rooms/balconies, 9 metres between habitable rooms and non-habitable rooms and 6 metres between non-habitable rooms be provided between the proposal and adjoining properties. The proposal provides a minimum building separation of approximately 8.5 metres between the development and adjoining property No. 7 Alfred Street. Non-habitable room windows of 'Building A' are located within close proximity to 7 Alfred Street. The submitted plans fail to show and detail the location of all doors, windows and opening and the use of each of the rooms located along the northern side elevation of 7 Alfred Street. Thus, confirmation as to which building separation distances must be applied cannot be determined and compliance with the building separation requirements of Part 2F of the ADG have not been demonstrated.

### Communal Open Space

Part 3D-1 of the ADG requires a minimum area of 25% of the site with a minimum dimension of 3 metres be provided. As the subject site provides a total site area of 5,795.6m<sup>2</sup>, a communal open space area of 1,448.9m<sup>2</sup> is required to be provided. The proposal fails to comply with this requirement as only 721m<sup>2</sup> of the required communal open space area is provided, comprising of 329m<sup>2</sup> for 'Building A' and 392m<sup>2</sup> for 'Building B', on the rooftop of each building. This equates to a 50.24% variation of the required communal open space area. The objective of the communal open space criteria within the ADG is to ensure an adequate area of communal open

space is provided to enhance residential amenity and to provide opportunities for landscaping. A communal open space area of only 721m<sup>2</sup> for a site of 5,795.6m<sup>2</sup> that seeks to accommodate two large residential flat buildings with a total of 100 units is not considered suitable or worthy of support. Given the significantly large site area, there is no justifiable reasoning as to why compliance with the communal open space requirements cannot be achieved and provided on-site. Further to this, the proposal fails to meet the objectives of Part 3D-1 of the ADG as the provision of 721m<sup>2</sup> of communal open space will not enhance the level of residential amenity and will limit landscape opportunities for the site. It also fails to provide future occupants with adequate passive recreational or entertainment opportunities and promote enjoyment of outdoor living. On this basis, a variation of 50.24% is considered to be too excessive and should not be supported.

#### Deep Soil Zones

Part 3E-1 of the ADG requires a minimum of 7% of site area with a minimum dimension of 6 metres be provided as deep soil. A minimum 405.7m<sup>2</sup> of deep soil is required to be provided on-site. The proposal fails to comply with this requirement as only 33m<sup>2</sup> (8%) of deep soil with a minimum dimension of 6 metres is provided on-site. The objective of the deep soil area criteria within the ADG is to provide areas of the site that allow for and support healthy plant and tree growth, improve residential amenity and promote management and air quality. As the proposal fails to wholly comply with the building setback requirements of Canterbury Development Control Plan 2012 (CDCP 2012) and no other significant areas of the site have been allocated for the provision of deep soil, the proposal fails to meet the requirements, aims and objectives of Part 3E-1 of the ADG.

#### Solar and Daylight Access

Part 4A of the ADG requires all living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter and at least 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter. The objective of these requirements is “to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space”. The submitted shadow diagrams are inadequate as they fail to demonstrate that at least 70% of apartment’s living rooms and private open space areas will receive a minimum of 2 hours of sunlight and a maximum of 15% of apartments receive no direct sunlight on 21 June between 9am and 3pm. The proposal therefore fails to meet the aims, objectives and requirements of Part 4A of the ADG.

#### Natural Ventilation

Part 4B-3 of the ADG requires at least 60% of the apartments proposed be naturally cross ventilated and that the overall depth of a cross-over or cross-through apartments does not exceed 18 metres, measured glass line to glass line. The objective of these requirements is to ensure that the number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents. The subject application fails to demonstrate that the proposal fulfils these requirements and therefore fails to meet the objective of Part 4B-3 of the ADG.

### Apartment Size and Layout

Part 4D-1 of the ADG requires all three bedroom apartments provide a minimum internal area of 90m<sup>2</sup> whereby the minimum internal areas include only one bathroom and any additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. All three bedroom apartments comprise two bathrooms and are 92m<sup>2</sup> in size. To comply with the requirements of Part 4D-1 of the ADG, all three bedroom apartments proposed must have a minimum internal area of 95m<sup>2</sup>.

Part 4D-3 of the ADG also requires all bedrooms have a minimum dimension of 3m (excluding wardrobe space). The objective of this requirement is so that each apartment is designed to accommodate a variety of household activities and needs. The proposed development provides a minimum bedroom dimension of 2.8 metres and therefore fails to meet the objective and requirements of Part 4D-3.

### Private Open Space and Balconies

Part 4E-1 of the ADG states that for apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m. The objective of Part 4E-1 is to ensure apartments provide appropriately sized private open space and balconies to enhance residential amenity. Units BG03, AG02, AG05 and AG07 do not provide a minimum depth of 3m and/or provide a minimum area of 15m<sup>2</sup>. As such, these units are not considered to be reasonable and provide an unacceptable poor level of residential amenity.

### Common Circulation and Spaces

Part 4F-1 of the ADG states that the maximum number of apartments off a circulation core on a single level must be eight. 'Building A' comprises one lift core for 9 units on levels 1-3. The objective of this requirement is so that the common circulation spaces achieve good amenity and properly service the number of apartments. Given that levels 1-3 of 'Building A' provide one additional apartment to that permitted in accordance with Part 4F-1, the proposal fails to satisfy the aims, objective and common circulation requirements of the ADG.

## ▪ **Canterbury Local Environmental Plan 2012**

This site is zoned R4 High Density Residential and IN2 – Light Industrial under CLEP 2012. The controls applicable to this application are:

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 2 Permitted or Prohibited Development</b>			
2.1-2.8 Zoning	R4 – High Density Residential and IN2 – Light Industrial	The proposed development is defined as a 'residential flat building' and the development is proposed to be constructed wholly within the R4 – High Density zone. Residential flat buildings are permissible with development consent in the R4 zone.	Yes



Provision/ Standard	Requirement	Proposal	Complies
<b>Part 4 Principal Development Standards</b>			
4.3 Height of Buildings	Maximum 13.5m	Maximum 16.81m to the lift overrun	No – refer to comment below
4.4 Floor Space Ratio	Maximum 1.4:1	1.4:1	Yes

### **The Proposed Variation**

The proposed development does not comply with the relevant standards of the CLEP 2012. The proposal exceeds the maximum 13.5 metre building height by 3.31 metres, which equates to a 24.5% variation of the permitted building height. The proposed scheme is accompanied by a Clause 4.6 objection to Clause 4.3, Height of buildings. An assessment of the Clause 4.6 objection is found below:

### **Circumstances of the case**

The maximum building height standard applied to the site is 13.5m above natural (existing) ground level. A maximum building height of 16.81m is proposed, measured from the existing FFL to the top of the lift. The extent of the variation includes the lift, part of the ceiling/roof of the fourth storey, communal open space and associated amenities and structures.

### **Applicant's request to contravene the development standard**

The applicant's submission states that "compliance with the maximum building height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard, the zone objectives and is required to accommodate flood planning levels.

Additionally, in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 Court of Appeal said that a requirement may be unreasonable when the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development.

Having regard to all of the above, it is considered that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of this case as:

- As indicated on the amended architectural plans, the height non-compliance only affects a small portion of the front building (Building A) at the corner of Harp Street and Alfred Street once the 500mm freeboard is applied to the site;
- The minor increase building height would not be incompatible within the locality or in relation to nearby and adjoining development;
- Requiring strict compliance with the height limit would undermine or thwart the objective of the height standard and zone objectives, as outlined previously; and
- The proposed development meets the objectives of the height control and strict compliance with the height control would undermine its objectives, or the zone's objectives
- Surrounding residential and commercial buildings will not be materially impacted in terms of overshadowing;
- The design is of a high quality;

- The additional building height is minor and located wholly along the Harp Street and Alfred Street frontage;
- The development will substantially improve the streetscape;
- The development is able to support additional height whilst preserving amenity to surrounding properties; and
- The development is appropriately articulated through a variety of materials”.

### **Consideration of Proposed Contravention**

#### Consistency with objectives of the development standard

The applicant’s written request to vary the standard submits that the additional height is consistent with the standard’s objectives and is therefore in the public interest, as outlined below:

#### *Objective (a): to establish and maintain the desirable attributes and character of an area*

“This objective seeks to establish and maintain the desirable attributes and character of an area. Observation of the local area indicate that it is in transition from single dwellings and industrial sites to multi-storey residential flat buildings. While some single dwellings remain along Alfred Street the area to the north and east is characterised by similar scale development to that proposed and consequently the proposal will maintain the desirable attributes and character of the area and recognises the emerging built form permitted by the increased height and density controls in the area”.

#### *Objective (b): to minimise overshadowing and ensure there is a desired level of solar access and public open space*

“Objective (b) relates to impacts arising from overshadowing on private and public property. As indicated in the submitted shadow diagrams, the most vulnerable properties to overshadowing area the dwellings that are located to the south of the site and the proposal does not overshadow public open space. The shadow diagrams indicate that there will be increased shadow over the rear yards of the dwellings at No’s. 7 and 9 Alfred Street as expected with the change in built form from single dwellings to a multi storey residential flat building. However, the diagrams demonstrate that the two remaining dwellings will retain a minimum 2 hours of solar access to the living rooms and private open spaces in mid-winter in accordance with Council’s minimum requirements”.

#### *Objective (c): to support building design that contributes positively to the streetscape and visual amenity of an area*

“Objective (c) seeks to support building design that contributes positively to the streetscape and visual amenity of an area. As discussed in objective (a), the proposal will relate well to the newly emerging character of the area which is characterised by modern, architecturally designed multi-storey residential flat buildings and mixed use buildings. The proposed buildings address the Harp Street frontage and corner giving an appropriate building height and form that relates to the neighbouring development under construction. The building height and form also transitions well to the remaining single storey dwellings to the south and east along Alfred Street which do not form part of the redevelopment. The building design is modern and the upper levels of the building area recessive in that they are stepped back from the street and are treated with lighter materials that ensure the

predominant contribution to the street is the lower portion. As such, despite the proposal containing a small portion of roof line that exceeds the maximum height limit, the building maintains a positive contribution to the streetscape”.

*Objective (d): to reinforce important road frontages in specific localities.*

“Objective (d) seeks to reinforce important road frontages in specific localities. While the road frontage is not specifically important in the locality, the design addresses the street frontages and wraps around the corner of Harp Street and Alfred Street ensuring the street frontages are addressed and an appropriate relationship of the building is achieved”.

Comment:

The applicant’s request to vary the height standard can be summarised as based on a lack of environmental harm (be it from overshadowing, visual impacts and provision of communal space), positive rejuvenation of the area and prominence of the subject site on the corner of Harp Street and Alfred Street.

In short, it is suggested that the majority of the above benefits could and should be achieved by a smaller, compliant development with respect to lack of environmental harm and positive rejuvenation of the area. However the proposed development, as discussed throughout the report, does not comply with the minimum solar access requirements and minimum ventilation requirements. The breach of height has not been used to provide additional solar access or ventilation to any of the deficient units, nor provides any additional benefits to future occupants. Further, the court found in *Hooker Corporation Pty Ltd v Hornsby Shire Council*, that the absence of any environmental harm is not a valid reason to support a variation to a development standard. This was reiterated in *Wehbe v Pittwater Council [2007]* and reinforced consistently by the LEC.

With respect to the applicant’s submission regarding the prominence of the subject site, the site has not been identified by any planning document as a site of particular importance. Accordingly, as the applicant’s response is steeped in the absence of environmental harm (though not accounting for the additional storey achieved on the site), the proposal is inconsistent with objectives of the standard. As a result of this inconsistency, the proposed variation to the height standard is unable to be supported. Development consent must not be granted, in accordance with Clause 4.6 (4) (a) (ii) of the CLEP 2012.

### **Consistency with objectives of the zone**

The proposed development is inconsistent with relevant zone objectives, as discussed below:

- (a) To provide for the housing needs of the community within a high density residential environment;
- (b) To provide a variety of housing types within a high density residential environment; and
- (c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

### Comment

The proposed development meets the objectives of the zone as it provides a mix of 1, 2 and 3 bedroom residential apartments, including a total of ten (10) adaptable apartments, across two separate residential flat buildings to meet the needs of various people and family units. Notwithstanding this, inadequate facilities such as waste storage areas, private and communal open space areas that fail to comply with the relevant requirements are provided on-site.

### **Is compliance unnecessary or unreasonable in the circumstances of the case?**

The applicant has not demonstrated that strict compliance with the maximum building height standard is unnecessary or unreasonable in the circumstances of the case. In accordance with Clause 4.6 (3)(a) of the Canterbury Local Environmental Plan 2012, consent cannot be granted.

### **Have sufficient environmental planning grounds been demonstrated, to vary the development standard?**

Whilst the applicant has argued that the breach in building height should be supported due to its excess bulk and scale being located along the Harp Street and Alfred Street elevations and the minimal amenity impacts the proposal will impose upon adjoining and surrounding properties, the standard instrument is clear on what must be considered under “building height”. Council’s nominated height limit of 13.5m sets a clear building framework for future residential flat building development to achieve a maximum of four storeys. The applicant has therefore obtained a fifth storey element that would not otherwise be achieved without breaching the maximum building height. As a result, the applicant has created additional visual bulk perceptible to the public domain. Further to this, no benefits are obtained for future residents as a result of the breach as the proposal fails to demonstrate that it meets the minimum solar access, ventilation and building separation requirements of the ADG.

The contention that the development is of a high quality design is a requirement under the ADG and the CDCP 2012, and is expected for any residential flat building development of this scope and nature. The written Clause 4.6 Statement submission is silent on the environmental impacts created by the additional storey. Accordingly, the applicant has not demonstrated sufficient environmental planning grounds to justify variation of the maximum building height standard. In accordance with Clause 4.6 (3) (b) of the Canterbury Local Environmental Plan 2012, consent must not be granted.

### **Would better outcomes be achieved by allowing the proposed variation, in circumstances particular to the proposed development?**

With respect to the proposal being high quality, any similar development would be required to meet the design quality guidelines as per SEPP 65 and ADG. As provided in the objection, the better outcome of the height increase turns on the ability of the development to sustain a fourth storey through lack of environmental harm and design excellence. As discussed previously, the other better planning outcomes submitted by the applicant revolve around the lack of environmental impacts, recognised by the Land and Environment Court as deficient reasons to breach a development standard.

Accordingly, the non-compliant proposal does not represent a “better outcome” compared to a compliant development and does not satisfy this objective of clause 4.6.

**Would an appropriate degree of flexibility be applied by approving the proposed variation?**

The applicant’s submission did not address this question.

**Has concurrence of the Director-General been obtained?**

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Infrastructure in Circular PS-08-003.

Having regard to the above commentary, it is considered appropriate in this instance to refuse the submission under Clause 4.6 of LEP 2012.

**Conclusion**

The applicant’s submission to vary the maximum building height standard is not supported, as demonstrated by the above detailed assessment. Accordingly, consent must not be granted to the application, as all of Clause 4.6’s preconditions for granting consent have not been satisfied.

Notwithstanding the other substantial issues with the subject application, on this basis alone the application is recommended for refusal.

▪ **Canterbury Development Control Plan 2012**

The proposed development has been assessed against the relevant requirements of the Canterbury Development Control Plan 2012 (CDCP 2012) as follows:

Control	Requirement	Proposed	Complies
Avoid Isolating Under-developed Sites	No isolation of neighbouring properties so that it is incapable of being reasonably redeveloped.	No’s. 7 and 9 Alfred Street do not form part of the proposed development and provide a combined street frontage of 20.55 metres which allows for the accommodation of a multi-dwelling housing development or residential flat building development. Thus, development of the subject site will not create or result in lot isolation.	Yes
Site Requirements	Minimum 30 metre site width measured across the street boundary	76 metres – Harp Street 46.2 metres – Alfred Street	Yes
Height	New buildings have a scale that is visually compatible with adjacent buildings and the intended character of the zone.	The proposal is incompatible with the intended character of the zone.	No – refer to comment below



Control	Requirement	Proposed	Complies
	Basement parking is permitted.	Proposed vehicle-parking and access arrangements, including a basement and access ramp, are acceptable in terms of streetscape impact.	Yes
	Any parts of a basement or sub-floor area that project more than 1 metre above ground level comprise a storey.	The basement level projects more than 1 metre above the ground level and caters for site flooding	No – refer to comment below
	Roof top terraces are not acceptable on any building or outbuilding in any residential zone.	Each proposed building provides a rooftop terrace. 'Building A' provides a rooftop terrace with a total area of 329m <sup>2</sup> and 'Building B' provides a rooftop terrace with a total floor area of 392m <sup>2</sup> .	No – refer to comment below
Depth/Footprint	Maximum 25 metre building depth	Maximum 32 metres	No – refer to comment below
Minimum Setbacks	A minimum of 6 metres from front and rear boundary	The proposal provides a 4 metre building setback along the Harp Street frontage and a minimum rear building setback of 6 metres. However, given that there is a change in zone from apartment buildings to a lower density at the rear of the site, in accordance with Part 2F of the ADG, the required building setback must be increased by 3 metres. In this regard, a minimum rear building setback of 9 metres is required to be provided.	No – refer to comment below
	A minimum of 4 metres from the side boundary	A minimum side setback of 4.4 metres is provided.	Yes
	Step back upper storey elements (4 or more storey residential flat building) 3 metres from the outermost walls of the base element of the building	The upper 4 <sup>th</sup> storey is stepped back 3 metres from the outermost walls of the base element of the building.	Yes
	Provide a minimum 2 metre width of deep soil along the side boundaries and minimum of 5 metre wide along the front and rear boundaries	The proposal fails to provide a minimum 2 metre width of deep soil along the side boundaries and minimum 5 metres of deep soil along the front and rear boundaries of the property.	No – refer to comment below

Control	Requirement	Proposed	Complies
Car Parking	<p><u>Vehicle Spaces</u>  1 bedroom – 1 car space per dwelling  (22 x 1=22 spaces)  2 bedrooms – 1 space plus 0.2 as common property per dwelling  (74 x 1.2 = 89 spaces, comprising of 74 spaces and 15 common spaces)  3 bedrooms – 2 car spaces per dwelling  (4 x 2 = 8 spaces )</p> <p>Total Residential Spaces required = 119 spaces</p> <p><u>Visitor Spaces</u>  1 car space per 5 dwellings  (100/5=20 spaces)</p> <p><u>Service/Delivery Vehicles</u>  Any development containing 10 dwellings or more is to provide at least 1 car wash bay</p> <p><u>Bicycle Spaces</u>  Residents – 1 space per 5 dwellings  (20 bicycle spaces)  Visitors – 1 space per 10 dwellings  (10 bicycle spaces)</p> <p>Total Bicycle Spaces required = 30 bicycle spaces</p>	<p>The proposed development provides a total of 142 spaces, comprising of:</p> <p><u>Residential spaces</u>  120 residential car parking spaces ('Building A' provides 46 spaces and 'Building B' provides 74 spaces).</p> <p><u>Visitor Spaces</u>  20 visitor spaces ('Building A' provides 8 visitor spaces and 'Building B' provides 12 spaces).</p> <p><u>Service/Delivery Vehicles</u>  1 car wash bay provided within 'Building B'.</p> <p><u>Bicycle Spaces</u>  30 bicycle spaces (12 spaces within 'Building A' and 18 spaces within 'Building B').</p>	Yes
Context	New building forms and design features do not have to mimic traditional features but should reflect these in a contemporary design.	The proposed development reflects traditional features in a contemporary design	Yes
Street Address	Design entries to residential buildings so they are clearly identifiable.	Entries to each building are clearly identifiable from the streetscape	Yes
	Provide main common entry and separate private ground floor apartment entries.	Separate ground level entries are provided to each dwelling.	Yes

Control	Requirement	Proposed	Complies
	Face at least one habitable room window(s) towards the street, and face at least one habitable room's window(s) or private open space, towards a communal space, internal driveway or pedestrian way.	Habitable rooms face the street and internal footpaths.	Yes
	Do not obstruct sight lines to the street or internal spaces, from habitable rooms or entrances.	Sight lines between dwellings and the street are not obstructed.	Yes
Façade Design and Articulation	Avoid long flat walls along street frontages and with façade treatment, and articulation of elevation on corner sites by stagger the wall alignment with a step of at least 1m.	No long flat walls face the street.	Yes
	Use non-reflective materials, do not randomly mix light and dark coloured bricks, and treat publicly accessible wall surfaces with anti-graffiti coating.	No reflective materials are used. Should the application be approved, this can be imposed as a condition of consent.	Yes
	Design facades to reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows.	Orientation addresses the street and climate control is suitably provided for.	Yes
	Visible facades should be designed as a series of panels modulated to be consistent with the scale and rhythmic design character of buildings:	Modulation of street-facing facades is sufficient to reflect the scale of nearby buildings.	Yes
	Locate and proportion windows to minimise scale and bulk	Glazing is used to optimise solar access facing the street. Windows are in proportion with the wall in which they are located.	Yes

Control	Requirement	Proposed	Complies
Roof Design	<p>Do not use steeply pitched roofs that accentuate the bulk of the building – use roof pitch of 10° or less.</p> <p>Emphasise building articulation with the shape and alignment of the roof.</p> <p>Integrate service elements into the design of the roof – including lift overruns, service plant, chimneys, vent stacks, telecommunication infrastructure, gutters, downpipes and signage.</p>	Roof design is consistent with these requirements. A flat roof is used which is less than 10° and in character of existing developments situated within the immediate locality. Service elements, including the lift overrun, have been integrated as part of the roof design.	Yes
Fences	<p>Provide boundary definition by construction of an open fence or hedge to the street boundary.</p> <p>Fences within the front boundaries or around courtyards or where the façade of building present to two street frontages on corner sites are no higher than 1.2m.</p> <p>Side fences may be 1.8m high to the predominant building line.</p>	<p>The subject site is to be bounded by an open masonry fence to the street boundary (Harp and Alfred Street).</p> <p>Side fencing is proposed, which is consistent with existing 1.8m high side fences.</p> <p>Should the application be approved, these requirements should be imposed and included as conditions of consent.</p>	Yes
Services and Utility Areas	Integrate services and utilities through their integration with the design of buildings and landscaped areas so they are not visually obtrusive.	Services and utilities are or are capable of being integrated into the development and screened from view from the street.	Yes
Mailboxes	Design and provide discretely located mailboxes at the front of the property. All letterboxes be installed to meet Australia Post standards.	Discretely located mailboxes are provided within the common lobby area of each proposed building.	Yes

Control	Requirement	Proposed	Complies
Visual Privacy	<p>Provide adequate building separation, and side and rear setbacks.</p> <p>Orient windows towards the street and the rear of the lot and vary window levels to avoid or minimise direct views between dwellings</p> <p>Use suitable screening when required.</p>	<p>Acceptable privacy is achieved by different floor levels of the buildings and appropriate window design and placement for habitable and non-habitable rooms.</p> <p>Adequate design mechanisms have been incorporated with the design to ensure overlooking and loss of privacy is minimised.</p>	Yes
Acoustic Privacy	<p>Protect sensitive rooms, such as bedrooms, from likely sources of noise of roads, railway, neighbours' living areas and building lobbies.</p> <p>Aboveground access to new dwellings does not include communal balconies that would be located close to a bedroom window.</p> <p>Bedroom windows in new dwellings that would be located at or close to ground level are to be raised above, or screened from any shared pedestrian pathway.</p> <p>Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp.</p>	<p>Acoustic privacy is adequate noting the site's location not being near any significant noise generating sources. All bedrooms are adequately recessed away from shared pedestrian pathways. However, should the application be supported, adequate screening should be provided for all balconies and windows facing the development's driveways or basement ramp, particularly those affected apartments within 'Building A'.</p>	Yes
Open Space and Balconies	Provide privacy to the principal area of private open space – locate or screen to prevent direct overlooking from a public or communal place, or from neighbouring buildings	All principal private open space areas are adequately screened to prevent direct overlooking.	Yes
	Locate the principal open space adjacent to the main living areas, such as living room, dining room or kitchen, to extend the living space of the dwelling	All principal private open space areas are situated adjacent to main living areas.	Yes

Control	Requirement	Proposed	Complies
	Indoor areas must not be elevated more than 300mm above the principal open space	All indoor living areas are not elevated more than 300mm above the principal open space. Notwithstanding this, should the proposal be supported, this shall be imposed and included as a condition of consent.	Yes
	One area at least 2.5m by 2.5m that is suitable for outdoor dining and can accommodate a dining table and two to four chairs	Several apartments fail to provide an open space area of at least 2.5 metres by 2.5 metres. However, given that the ADG takes precedence and requires a minimum depth of 2 metres be provided for all 1 and 2 bedroom dwellings private open space areas and minimum 2.4 metre depth of all 3 bedroom dwellings private open space areas, the subject DCP requirement is not applicable.	Yes
	Screen walls surrounding any communal area are no higher than 1.2 metres, although screens with 50% transparency may be up to 1.8 metres high	Each building provides its communal open space area on the rooftop which is to be screened by a solid 1.2 metre high wall and associated landscaping.	Yes
Housing Choice	Provide at least 10% of dwellings in any new development as accessible or adaptable to suit residents with special needs	As 100 apartments are proposed to be provided on-site, at least 10 apartments are required to be provided as accessible or adaptable. The submitted Access Compliance Report prepared by Vista Access Architects (Project No. 15130D) states that the following apartments are to be provided as adaptable: <u>'Building A'</u> : AG02, AG03, AG07 and AG08. <u>'Building B'</u> : BG06, B102, B107, B202, B207 and B302.	Yes

## Variations to the CDCP 2012

### Building Height

Part 2.1.3 of CDCP 2012 provides a building height objective which states that “new buildings have a scale that is visually compatible with adjacent buildings, and intended character of the zone”. While the height of the development along the Harp Street elevation is visually compatible with the existing ‘Clemton Park Village’ development situated immediately across the road, the excessive building height is proposed along the entire eastern (Alfred Street) elevation which will grossly affect the amenity of the adjoining single storey dwelling’s located at No’s. 7 and 9 Alfred Street and result in a development with a height and scale that is incompatible with the intended character of the zone. In ensuring a better planning outcome is

achieved for the subject site, any development to be constructed on-site should provide a compliant building height that adequately transitions into the adjoining lower R3 – Medium Density zone. The development must also comply with all relevant controls relating to building separation, building setbacks, solar access and ventilation to ensure all potential amenity issues for occupants of the adjoining R3 – Medium Density zone are minimized.

Overall, the proposal is incompatible with the intended character of the zone and is inconsistent with this DCP objective.

#### Roof Terraces

Part 2.1.3(iii) of CDCP 2012 states that “roof top terraces are not acceptable on any building or outbuilding in any residential zone”. The proposed development fails to comply with this control as it provides two (2) communal rooftop terraces, comprising of 329m<sup>2</sup> for ‘Building A’ and 392m<sup>2</sup> for ‘Building B’. Provision of these rooftop terraces contribute to the additional building height proposed. In order to comply with CDCP 2012 requirements and to assist with providing a more compliant building height, the communal open space areas should be provided elsewhere on-site.

#### Building depth/footprint

Part 2.1.5 of CDCP 2012 states that the proposal requires a maximum building depth of 25 metres. ‘Building A’ fails to comply with this requirement as it provides a maximum building depth of 32 metres. The objective of this requirement is to “promote improved levels of residential amenity for new developments as well as existing, and preserve sunlight, privacy and general amenity for existing dwellings” and “ensure that new buildings have a scale and mass which would be visually compatible with the residential zone’s desired character”. This non-compliance issue exceeds the maximum permitted building depth by 28% and is not considered to be suitable or worthy of support as it limits each dwelling’s access to natural sunlight and ventilation. Thus, reducing the optimal level of internal and external amenity of the development as a whole.

#### Setbacks/Deep Soil

Part 2.1.7 of CDCP 2012 requires the proposal provide a minimum 6 metre setback from the front and rear boundary. Part 2F of the ADG states that “at the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3 metres”. In this regard, given that the site adjoins a lower R3- Medium Density zone to the rear of the site, a rear building setback of 9 metres is required to be provided. The proposal fails to comply with the building setback requirements of CDCP 2012 and the ADG as a 4 metre front boundary setback is provided along the Harp Street frontage and a minimum rear boundary setback of 7.974 metre setback is provided along the rear of the site, adjoining the R3 – Medium Density zone.

The two buildings are inconsistent with several objectives of the clause, in that:

- *O1. Establish the desired spatial proportions of the street and define the street edge.*

Comment: The limited 4 metre front building setback do not establish the desired spatial proportions of the street.

- *O2. Limit the scale and bulk of new building, appropriate to the location and use, by retaining landscaped open space around.*

Comment: The setbacks do not limit (reduce the impact of) the bulk and scale of the proposed buildings.

- *O3. Contribute to the green landscape by retaining adequate space for new trees and conserving any existing trees that are visually prominent.*

Comment: The setbacks do not provide for sufficient landscaping by retaining space for large trees/plantings.

- *O4. Provide sufficient separation between buildings and adjacent land to limit the visual, environmental and likely impacts of new development.*

Comment: The setbacks do not provide sufficient space between buildings and adjacent land to limit their likely visual and environmental impacts.

- *O5. Minimise stormwater run-off by retaining deep soil that allows rainwater infiltration.*

Comment: Greater deep soil areas would be capable of being accommodated on-site if compliant building setbacks were provided.

These non-compliances are not supported.

### **Part 6.3 Crime Prevention Through Environmental Design**

Our Community Safety Officer together with a representative from the NSW Police Local Area Command reviewed the application and advised that they are unable to support the proposal in its current as the design fails to comply with all relevant requirements outlined within Part 6.3 of CDCP 2012, particularly those relating to natural surveillance and safety.

### **Part 6.4 Development Engineering, Flood and Stormwater**

Our Development Engineer has reviewed the proposal and advised that the proposal cannot be supported due to the following issues:

- The flood impact study report is not accurate and contains multiple references and levels that do not exist in the report or are not relevant to the site;
- The flood levels shown in the appendix are vague and the colour coding is not referenced;
- No cross sections have been shown to demonstrate where the flow will run between the slabs. In addition, the study does not include the staircase encroachments and columns in the flood assessment;
- The proposal does not clearly indicate how the flood void will be managed, particularly with its appearance and maintenance;
- The flood assessment report clearly indicates that No's 7 and 9 Alfred Street will be affected by the development proposal;



- No swept path analysis for internal roadway intersections has been submitted to demonstrate feasibility and compliance. Also, the only intersection swept path shown is not compliant as it encroaches into a parking spaces;
- No stormwater roof plans have been provided;
- The stormwater plans provided fail to provide sufficient details regarding basement pump system and capacity. Also, additional stormwater pits are required to collect run-off from paved areas and stormwater pipes longer than 30 metres require junction pits.

Given the proposal's failure to comply with the engineering, flood and stormwater requirements of Part 6.4 of CDCP 2012, the proposal cannot be supported.

#### **Part 6.6 Landscaping & Part 6.7 Preservation of Trees or Vegetation**

Our Landscape Architect reviewed the application and does not support the proposal as it fails to meet the landscaping requirements of the ADG and CDCP 2012. Also, the submitted Arboricultural Assessment Report (prepared by Peter Richards of TALC) provides several inaccurate details regarding the potency of several existing trees located on-site. Existing property trees 10, 27 and 28 as identified in the Arboricultural Assessment Report should be retained and protected during demolition and construction.

Given these compliance issues, the proposal cannot be supported.

#### **Part 6.9 Waste Management**

Our Waste Contracts Co-ordinator has reviewed the application and advised that the application cannot be supported as the waste storage areas have not been designed in accordance with the requirements of Clause 6.9.4.1 of CDCP 2012. The proposal's waste storage areas must be redesigned to comply with all waste management requirements of CDCP 2012.

#### **Part 7 Notification**

The application was publicly exhibited and adjoining land owners were notified on two (2) separate occasions in accordance with the requirements of Part 7 of Canterbury Development Control Plan 2012 (CDCP 2012). Four (4) submissions were received and the issues raised are summarised below:

Four (4) submissions were received, raising the following concerns:

- Lot Isolation
- Overshadowing/loss of solar access
- Excessive building height
- Depth of basement car park levels interfering with watertable below
- Insufficient provision of open space
- Roof terraces will create unreasonable noise disturbance for occupants of adjoining and surrounding properties
- Inadequate basement car park configuration
- The materials to be used are not of high quality standard
- The submitted Traffic Study is for another site in Homebush
- Car parking and traffic congestion
- Overdevelopment of the site
- Increase of pollution for the locality

### Comment on issues raised by submissions

A number of matters raised by the four submissions have been addressed in the assessment, with regard to:

- Overshadowing/loss of solar access
- Excessive building height
- Building depth
- Car park levels interfering with watertable below
- Insufficient provision of open space
- Roof terraces
- Car parking
- Overdevelopment of the site

The remaining issues raised by submissions are noted, while acknowledging that the traffic and parking study that accompanied the application found the proposal's impacts to be satisfactory, despite the observations made in these submissions, regarding car parking and traffic congestion.

The amenity impacts for both future and adjoining residents as a result of the proposed development is unacceptable and cannot be supported in its current form.

### **Canterbury Development Contributions Plan 2013**

Our development contributions plan would require payment of a contribution, were consent recommended and subsequently granted.

### **Other considerations under s79C, Environmental Planning & Assessment Act**

To complete this evaluation, remaining applicable provisions of s79C (1) are now addressed.

### **Likely environmental impacts**

Apart from those matters already addressed, there are no other likely environmental impacts to arise from the proposed development.

### **Suitability of the site for the development**

In view of the non-compliances with provisions of applicable environmental planning instruments and the environmental impacts summarised above, the site is inherently and fundamentally unsuitable for the development for which consent is sought.

### **Submissions**

Discussed above under Part 7 of the CDCP 2012.

### **The public interest**

The proposed development does not satisfactorily comply with the relevant requirements contained within the ADG, CLEP 2012 and CDCP 2012 as discussed in earlier sections of this report. The proposed development is not considered to be the most appropriate, orderly and economic use of the land and is expected to have an unreasonable impacts for future occupants of the subject site and occupants of adjoining properties. Refusal of the application is therefore considered to be in the public interest.

## **CONCLUSION**

The development application has been assessed pursuant to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 and all relevant environmental planning instruments, and CDCP 2012.

The proposal is unsatisfactory, failing to satisfy the requirements of the ADG, CLEP 2012 and CDCP 2012, which must be satisfied to enable consent to be granted.

Refusal of the development application is accordingly recommended.

## **RECOMMENDATION**

THAT the Sydney South Planning Panel refuse Development Application DA-516/2015, for demolition of existing structures and construction of two, four to five storey residential flat buildings providing a total of 100 apartments with associated landscaping, basement car parking and strata subdivision, for the following reasons:

1. The proposed development exceeds the maximum permitted 13.5 metre building height standard of Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012. The applicant has not demonstrated sufficient environmental planning grounds to justify the variation to the maximum building height standard [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979];
2. The proposed additional height is inconsistent with Clause 4.3(1), (a) and (b) of Canterbury Local Environmental Plan 2012 [Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979];
3. The proposed development fails to meet the R4 - High Density Residential zone objectives in that the proposed density is not in character with the anticipated high density environment as per Clause 2.3 (2) of the Canterbury Local Environmental Plan 2012.
4. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development with respect to the Apartment Design Guide.
5. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(a)(iii) of the Environmental Planning and Assessment Act 1979, as it fails to comply with the objectives of Part 2.1.3 – Building Height of Canterbury Development Control Plan 2012.
6. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(a)(iii) of the Environmental Planning and Assessment Act 1979, as it fails to comply with the objectives of Part 2.1.5 – Building Depth/Footprint of Canterbury Development Control Plan 2012.
7. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(a)(iii) of the Environmental Planning and Assessment Act 1979, as it fails to comply with the objectives of Part 2.1.6 – Setbacks of Canterbury Development Control Plan 2012.
8. The proposed development does not satisfy the requirements of Clause 6.3 – Flood Planning of the Canterbury Local Environmental Plan 2012.

9. The proposed development does not satisfy the requirements of Clause 6.4 – Stormwater Management of the Canterbury Local Environmental Plan 2012.
10. The proposed development does not comply with the following provisions of the Canterbury Development Control Plan 2012:
  - a) Clause 2.1.3 Height, Objective 1, in that the scale of the proposed development is incompatible with the intended character of the zone.
  - b) Clause 2.1.3 Roof Terraces – The proposal provides two (2) rooftop terraces, one for each building. Rooftop terraces are not acceptable on any building in any residential area.
  - c) Clause 2.1.5 Depth/Footprint – the maximum building footprint/depth of 25m is exceeded by the building located on the corner of Harp Street and Alfred Street, which has a building footprint/depth of 32m.
  - d) Clause 2.1.6 Minimum Setbacks – the minimum 6 metre front setback is not complied with as the proposal provides a 4 metres building setback along Harp Street.
  - e) Clause 2.1.6 Minimum Setbacks – the proposal fails to provide a minimum of 2 metre width of deep soil along the side boundaries and minimum of 5 metre wide along the front and rear boundaries.
11. Pursuant to the provisions of Section 79C(1)(b) and Section 79(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development in terms of meeting the requirements of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development with respect to the Apartment Design Guide. Specifically, the ADG requirements relating to solar access, ventilation and building separation.
12. Pursuant to the provisions of Section 79C(1)(b) and Section 79(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment in determining whether the proposed development is Integrated Development.
13. For the reasons above, the design will result in adverse environmental impact and therefore the site is not suitable for the proposed development [Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979]; and
14. Having regard to the reasons above, pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the application is not in the public interest.

**WE ALSO ADVISE**

15. Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
16. If you are not satisfied with this determination, you may:
  - 16.1 Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination; or

- 16.2 Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 of the Environmental Planning and Assessment Act 1979.