

SYDNEY SOUTH PLANNING PANEL

Panel Ref No.	2016SYE070
DA Number	DA-104/2016
Local Government Area	City of Canterbury-Bankstown
Proposed Development	Demolition of all existing structures and construction of an Infill Affordable Housing development totalling 19 multi dwellings with associated landscaping and basement parking.
Street Address	47, 49 & 51 Chapel Street, Roselands (Lot 30 DP 555773, Lot 40 DP 561045 & Lot 5 DP 37301)
Applicant / Owner	Mssrs J & P Katerinis, C/- Minto Planning Pty Ltd V & M Halias
Number of Submissions	2 submissions received
Recommendation	Refusal
Report by	Shona Porter – Development Assessment Officer

Supplementary Assessment Report

EXECUTIVE SUMMARY

The application, currently the subject of a Class 1 Appeal, was deferred at the 20 October 2016 Sydney East JRPP meeting. The Panel deferred the application in order to determine if the subject site was eligible for the Infill Affordable Housing incentives under State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). Other design amendments were also requested as detailed further below under 'Part 1 - Background'.

The JRPP noted that Council and the Applicant had provided conflicting legal advice. Council and the applicant were instructed to review each other's legal advice and provide additional legal advice to the JRPP after review.

In response to the decision of the JRPP, Council obtained further legal advice from Lindsay Taylor Lawyers. Additionally, as part of the Class 1 Appeal, Council has obtained legal advice from Ian Hemmings SC. Both Ian Hemmings SC and Lindsay Taylor Lawyers, after reviewing the Applicant's legal advice and relevant case law authorities, consider that the subject site does not trigger the ARH SEPP as the accessible area requirement is a criterion that enlivens the Infill Housing provisions of Division 1. As such, the Division does not apply and cannot be varied by a Clause 4.6 or SEPP 1 objection.

The applicant's senior counsel, Adrian Galasso SC, has reviewed Council's advice and reiterates his opinion that the accessible area provision of the ARH SEPP is a development standard and not a precondition. A copy of Council's further advice from Ian Hemmings SC was also provided to the Applicant on receipt. Further discussion on the first point of law is provided in Part 3 of this report. A full copy of all legal advices has been provided to the Panel under separate cover.

Further to this legal matter, the former JRPP requested an assessment of the proposal under State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65). Council has obtained legal advice as part of the Class 1 Appeal

that states SEPP 65 does not apply to the proposed development. This is discussed further in 'Part 5 – SEPP 65' of this report.

Notwithstanding the above points of law which would warrant refusal, the proposal before the South Sydney Planning Panel would lead to a poor planning outcome for future occupants and the local area. The proposed scheme fails to provide reasonable levels of amenity to future occupants, is contrary to the character of the area and is unlikely to create effective affordable housing due to its location and the significant car parking provided.

A summary of the extensive planning issues is provided directly below under 'Assessment Summary' and discussed in detail further in the body of the report.

ASSESSMENT SUMMARY

The following planning instruments and policies have been considered in this report and the original assessment report, though the applicability of several policies is in contention:

- State Environmental Planning Policy No 55 – Remediation of Land
- State Environmental Planning Policy (Affordable Rental Housing) 2009
 - Seniors Living Policy: Urban Design Guidelines for Infill Development
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
 - Apartment Design Guide
- State Environmental Planning Policy (Building Sustainability Index - BASIX) 2004
- Canterbury Local Environmental Plan 2012
- Canterbury Development Control Plan 2012

An assessment of the proposal with regard to Part 2, Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) has revealed the following issues:

- The site is not in an 'accessible area' as defined by Clause 4 and a precondition of Clause 10(2) of the ARH SEPP. The proposal therefore does not trigger Division 1 of the ARH SEPP;
- Clause 10(2) cannot be varied by a Clause 4.6 or SEPP 1 submission;
- An assessment against the ARH SEPP has only been undertaken for completeness with the proposal failing to meet the requirements relating to solar access, deep soil, the Seniors Living Policy and local character;
- Less than the required 70% (47%) of the proposed dwellings' living areas and private open space areas receive the minimum three hours solar access in mid-winter as per Clause 14;
- Insufficient deep soil is provided to the rear of the proposal as per Clause 14;
- The proposal has not had regard to the Seniors Living Policy as per Clause 15;
- The scheme does not meet the requirements of SEPP 65 as per Clause 16 of the ARH SEPP. However it is Council's contention that the subject site does not trigger SEPP 65;
- The proposed scheme is incompatible with the envisaged character of the local area, as per Clause 16A

The proposal fails to comply with the following objectives of the Canterbury Local Environmental Plan 2012 as follows:

- The objectives for the medium density zone have not been met in that the scheme does not appropriately consider its surrounding environment and envisaged planning framework;
- The extent of excavation and three storey dwellings are inconsistent with Clause 4.3 height of buildings. The applicable 8.5m height limit directs future development to a two storey built form and the proposed three storey scheme is antipathetic to both the established and future characteristics of the area;
- The proposal does not comply with Clause 4.4 FSR as a result of Division 1 of the ARH SEPP not applying to the site. The scheme also fails to meet the objectives for FSR with respect to minimising overshadowing within the development, poor interaction between the private and public domain and undesirable visual bulk to adjoining residences;
- The proposed two storey buildings fronting Chapel Street are not in the spirit of the definition of 'multi dwelling housing', as recognised in the Draft Medium Density Housing Code under exhibition. The definition is set to be altered in the Standard Instrument to preclude dwellings above or below each other as sought in this proposal;
- Adequate stormwater management plans have not been provided as per Clause 6.4.

The proposal fails to comply with a number of requirements of the Canterbury Development Control Plan 2012 as follows:

- The development is visually incompatible with the intended character of the zone.
- The scheme intrudes into the side and rear setbacks;
- The maximum building height of two storeys in the front 65% of the site are exceeded;
- The maximum building height of one storey in the rear 35% of the site is exceeded;
- The building depth of the rows of dwellings is 34.5m, in excess of the maximum of 20m;
- 0.7m deep soil is provided on the northern boundary, instead of the 1m minimum.
- Only 3.8m separates the buildings adjacent Chapel Street and the southern row of three storey townhouses towards the site's rear, failing to comply with the minimum 5m building separation requirement.
- Visual privacy is compromised between the two rows of three storey dwellings with kitchens directly viewing into internal adjoining resident's private open space;
- The scheme fails to provide safe ingress into the site including passive surveillance for entries, indirect access and provision of numerous concealment opportunity areas;
- The primary front entry into the development as a whole is obscured and no attempt has been made to define the main entry point;
- There is no interaction between the development and the streetscape, segregating the development from the streetscape. The dwellings facing the street do not have direct access from the street;
- The scheme has not been designed with consideration of the Crime Prevention Through Environmental Design principles;
- 13 of 19 dwellings' private open space is inadequate, none of these satisfying the 40m² minimum area requirement.
- Communal open space receives insufficient solar access in mid-winter (less than one hour);
- The second bedrooms of dwellings 13, 15, 16, 18, 19 and 20 and third bedrooms of units 1-5 do not satisfy the minimum dimension control of 3m;
- Units 13-20 do not have allocated storage;
- Adequate stormwater management and landscaping plans have not been provided

- as per part 6.4 and part 6.6;
- Adequate waste storage facilities have not been provided as per part 6.9;
- Identical facades are proposed to the streetscape contrary to the DCP façade controls;
- Outdoor clothes drying facilities have not been indicated.

Accordingly, the amended proposal is recommended for refusal.

1. BACKGROUND

On 1 July 2016 an email with attached letter was sent to the applicant. The eight page issues letter outlined some 24 non-compliances.

On 3 August 2016 the former JRPP was briefed on the subject application. Concerns were primarily raised with the JRPP around whether the proposal could be considered under the provisions of Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

On 21 September 2016, a Class 1 Appeal was lodged against the deemed refusal of the subject application; however the former JRPP elected to continue with the determination of the application.

On 20 October 2016 the proposal was reported to the Sydney East JRPP recommending the application be refused. The Panel deferred the determination of the application and requested the following:

- *The Panel agreed to defer the determination of the application in order to allow for the question of permissibility to be clarified and for the applicant to submit amended drawings that comply with the requirements of SEPP 65 and the Apartment Design Guide and therefore provide better amenity for the proposed apartments.*
- *The Panel notes that the council and the applicant have obtained legal opinions, which are inconsistent with each other. In order to clarify the question of permissibility, the council and the applicant are requested to obtain supplementary legal opinions after each party has seen the legal opinion of the other;*
- *The Panel considers that SEPP 65 applies to the application and notes that the applicant agrees with this. Therefore the Panel requests the applicant to submit an amended proposal that provides for the following:*
 - *Achieves building separation between the units, in particular between their bedrooms and between the bedrooms and the communal open space;*
 - *Achieve the solar access required by the ADG taking into account the impact of the adjoining four storey building;*
 - *Provides a view into the communal open space from the street that is not obscured by the lift tower.*
- *The Panel expects that the above alterations will result in a reduction of the number of apartments.*
- *The Panel requests the applicant to submit the amended drawings by 17 November 2016. The Panel notes that this means the amended application will be considered by one of the future Sydney Planning Panels.*

On 17 November 2016 the applicant's solicitor provided amended plans including architectural plans, shadow diagrams and solar studies in response to the former JRPP's deferral.

On 18 November 2016, the applicant provided a further supplementary memorandum of opinion from senior counsel (Adrian Galasso SC), responding to council's legal opinion about the applicability of the ARH SEPP.

On 22 November 2016, Council briefed the Sydney South Planning Panel on the issues concerning the proposed development. The Panel requested further discussion of the planning issues in addition to the points of law.

On 25 November 2016, Council received senior counsel's (Ian Hemmings SC) legal opinion. Mr Hemmings supports Council's position; in that Part 2, Division 1 of the ARH SEPP only applies to land located within an 'accessible area' as defined and is not a development standard.

2. AMENDED PROPOSAL

The proposal, as amended at the request of the former JRPP, seeks approval for the demolition of existing structures and construction of 19 Multi Dwelling Housing units. The amended plans make the following changes to the proposal:

- Deletion of dwelling 6,
- New BBQ area where dwelling 6 was located;
- Additional deep soil area between the northern boundary and new communal open space area;
- Deletion of the second floor to dwellings 7 and 8;
- Reconfiguration of the lift and entry stairs;
- Reduction of the southern wall for dwellings 1-5 by 1m on the first and second floors;
- Amended basement layout to incorporate storage and visitor parking;
- Increased internal separation;
- Planting strip outside dwelling 17 shortened in line with the retaining wall;
- Affordable housing comprising dwellings 1-5 (three storey dwellings located along the north boundary) and dwellings 13, 15 and 16 (fronting Chapel Street);
- Each dwelling is serviced by 2 car parking spaces with the exception of dwelling 14, which is serviced by a single accessible car space. Three visitors spaces are provided in the basement.

3. LEGAL OPINIONS REGARDING THE APPLICABILITY OF THE STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

The Panel deferred the determination of the application to obtain further clarification on the following:

- *The Panel notes that the council and the applicant have obtained legal opinions which are inconsistent with each other. In order to clarify the question of permissibility, the council and the applicant are requested to obtain supplementary legal opinions after each party has seen the legal opinion of the other;*

In contention is Clause 10 of Division 1 In-fill Affordable Housing of the ARH SEPP. Clause 10 states the following:

'10 Development to which Division applies

(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:

(a) the development concerned is permitted with consent under another environmental planning instrument, and

...

(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.

...’ (emphasis added)

‘Accessible area’, as per the ARH SEPP, forms part of Clause 4 Interpretation – general. The definition provides:

(1) In this Policy:

accessible area means land that is within:

(a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or

(b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or

(c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the [Passenger Transport Act 1990](#)) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

It is accepted by both Council and the Applicant that the subject site does not fall within an accessible area as specified. Please refer to the original report for a full analysis of the bus timetable and the number of deficient daily services. A Clause 4.6 request has been submitted as part of the application in addition to two pieces of legal advice from Adrian Galasso SC.

As requested by the former South East JRPP, the Applicant’s senior counsel reviewed Council’s initial legal advice and provided a third piece of legal advice in response. The key components of the advice are summarised below (also provided separately in full to the Panel for review).

Applicant’s advice: Adrian Galasso SC

The initial and supplementary Memorandum of Opinion’s from Adrian Galasso SC revolve around the two stage test as per *Strathfield Municipal Council v Poynting*. The Opinion cites various cases such as *Huang v Hurstville [2011]*, *Wilson Parking Australia v Council of the City of Sydney (2014)*, *Residents Against Improper Development Inc v Chase Property Investments Pty Ltd (2006)*, *Laurence Browning v Blue Mountains City Council [2006]*, *Agostino v Penrith City Council (2010)*, *Georgakis v North Sydney Council (2004)* (amongst others).

The Opinion proceeds to ruminate through the selected cases to conclude that Clause 10 does not prohibit the development and as such, operates as a development standard:

‘...Division 1 of Part 2 is not at all concerned with the concept of permissibility...in my opinion the proper construction is that it is a development standard...’

Upon review of Council’s advice from Lindsay Taylor Lawyers, Mr Galasso provides in his third advice that the Lindsay Taylor Lawyers advice fails to analyse the pathways to accessing SEPP 1 or Clause 4.6. In his view, this is fundamental to identifying a development standard. The third supplementary advice summarises that Council’s advice does not sufficiently grapple with the issue through references to established caselaw/authorities. Mr Galasso states that the Lindsay Taylor Lawyer’s advice focuses on form rather than the substance of the issue at hand. The Opinion concludes that the author has *‘no reason to revisit nor alter in any way the opinion that I have previously expressed’*.

Council’s advice: Lindsay Taylor Lawyers, Ian Hemmings SC (through Marsdens Law Group)

As requested by the Panel, Council’s solicitors also reviewed the initial two advices from Adrian Galasso SC.

Further, as part of the ongoing Class 1 Appeal, Council has obtained legal advice from senior counsel, Ian Hemmings SC (through Marsdens Law Group, Council’s representatives for the Appeal). The advice provided by Ian Hemmings SC has had regard to all advice received from Adrian Galasso SC.

The key components of the legal advice from both Lindsay Taylor Lawyers and Ian Hemmings SC are as follows (also provided separately in full for the Panel to review).

- Lindsay Taylor Lawyers (Carlo Zoppo)
Both the original advice and advice received after review of senior counsel (Adrian Galasso SC) maintain the same legal opinion. After review of Mr Galasso’s advice, Mr Zoppo provides that he does not share the view that clause 10 is a development standard for the following reasons:

‘...5. As I explained in my earlier advice, cl10 does not contain requirements that are specified or standards fixed in relation to the development, rather the clause limits or restricts the application of the bonuses or incentives found in Division 1 Part 2 of the SEPP ARH in this case to development within an ‘accessible area’.

*6. The authorities set out by senior counsel consider provision which properly construed could be a prohibition or a development standard. **None of the provisions considered by the cases cited by senior counsel operate in (the) same way as cl10.***

7. In my opinion if all or part of the development is not within an ‘accessible area’ as defined for the purposes of SEPP ARH, Division 1, Part 2 of the SEPP will not apply to the particular development.’ (emphasis added).

- Ian Hemmings SC

The advice from Mr Hemmings is made in view of the three advices from the applicant's senior counsel to be provided to the Panel. This advice has also been provided to the applicant.

The advice provides that the question before the Panel has been subject to extensive debate in the Land and Environment Court and Court of Appeal. In this respect, Mr Hemmings references the following cases; *Agostino v Penrith City Council [2010]*, *Blue Mountains City Council v Laurence Browning*, *Strathfield Municipal Council v Poynting*, *North Sydney Municipal Council v Mayoh (No.2)*, *Lowy v The Land and Environment Court* and *Georgakis v North Sydney Council*.

The Opinion goes further than the two step analysis of *Poynting* or identifying a particular example listed in the definition of 'development standard'. Instead, Council's senior counsel relies of *Mayoh* and *Lowy* in that 'a development standard must be a provision "in relation to the carrying out of development"'.

Clause 10(2) of the ARH SEPP does not contain provisions in relation to the carrying out of development, as described by senior counsel below:

'...18. There can be no doubt that within Division 2 itself, there are provisions that may properly be described as provisions in relation to the carrying out of development. For example: cl 13 provides a floor space ratio bonus.

19. Clause 14 of the Division then provides a number of beneficial provisions expressed in the language of "must not refuse consent".

20. However, those benefits (amongst others) to be obtained from the Division only arise if the Division applies. As stated above, the Division applies only in limited circumstances...

*...25. In order to be a development standard, that clause –cl 10(2) – must be a provision in relation to the **carrying out** of development. In my opinion, it is not.*

26. Rather, it is a provision that relates solely to the question of whether the beneficial provisions in that balance of Division 2 will apply to any Development Application. The clause has nothing to do with the carrying out of development...'

The Opinion also echoes the earlier advice from Carlo Zoppo:

'...28. As can be seen from the other examples...where a provision has been held to a development standard they are frequently expressed in the form: "consent must not be granted unless..."

*29. That drafting convention has **not** been adopted in SEPP Affordable Rental Housing. Rather, a relevantly different approach has been adopted. That is one which means that unless a site is able to satisfy identified criteria, the Division simply does not apply...'*

The Advice also speaks hypothetically to the argument of permissibility as per the Applicant's senior counsel opinion. Whilst clear that Mr Hemmings does not consider that cl 10(2) contains a provision in relation to the carrying out of a development, he hypothetically submits that this permissibility position does not assist the Applicant.

Mr Hemmings provides that if cl 10(2) is construed (incorrectly) in this manner, the *'development is properly defined as: "in-fill affordable housing on land within 400m of a compliant bus stop".'* Accordingly, this does not aid the Applicant as the above description adopts the form of the permissible development. As per *Agostino*, the description is not a form of carrying out of development and cannot be modified either.

Mr Hemmings concludes the advice by providing that Part 2, Division 1 of the ARH SEPP only applies to infill affordable housing if it is located on land within an accessible area. Further:

'...The land the subject of the current Development Application does not satisfy that criteria.'

37. Consent may only be granted to the current Development Application if cl10(2) contains a development standard... Clause 10(2) does not contain a development standard.' (emphasis added)

As per the legal advice obtained by Council, the subject site fails to trigger the incentives of the In-fill affordable housing subdivision of the ARH SEPP. Further, it is noted that the Department of Planning and Environment's *Affordable Rental Housing SEPP Review – Technical Paper December 2010* suggests as part of it's review that 'variations to the public transport criteria of up to 10% (should) be considered on their merits under SEPP No. 1 – Development Standards'. Whilst this 'suggested response' was not adopted; the inference from the NSW Department of Planning and Environment is that a variation to the accessible criteria cannot be considered under SEPP 1 or Clause 4.6.

Based on the extensive legal advice of Council, the submitted Clause 4.6 request seeking to vary Clause 10 of the ARH SEPP cannot be relied upon by the applicant. The subject application is therefore recommended for refusal.

4. STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

For completeness, the amended application has been assessed against the provisions within Division 1 In-Fill Affordable Housing of the ARH SEPP.

The proposed development is assessed having regard to the standards of Clause 14 set out in the table below:

Standard	Requirement	Proposal	Complies
Clause 10 – Development to which Division applies	This Division applies to development for the purposes of multi dwelling housing. Division 1 does not apply to development on land in the Sydney Region unless all or part of the development is within an accessible area.	As discussed above in Part 3 of this report, the subject site is not located in an accessible area and Division 1 therefore does not apply.	No, as per legal advice discussed in Part 3 of this report.
Clause 11 and 12	Repealed	-	-

Standard	Requirement	Proposal	Complies
Clause 13 – Floor Space Ratios	This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent. The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus: (a) if the existing maximum floor space ratio is 2.5:1 or less: (i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or (ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where: AH is the percentage of the gross floor area of the development that is used for affordable housing. Y = $AH \div 100$	Based on the amended plans submitted, the following dwellings are nominated for affordable rental housing: Dwellings 1-5 (three storey dwellings located along the northern boundary) and dwellings 13, 15 and 16 (fronting Chapel Street). The proposed affordable housing GFA = 998sqm The proposed non-affordable GFA = 1,368sqm Total GFA = 2,366sqm or 0.89:1 % of affordable GFA to overall GFA = 42% Total overall FSR allowable = 0.5:1 + 0.42:1 = 0.92:1.	Yes, however please refer to comment [1] below table.
Clause 14(1)(b) Site Area	Minimum 450m ² .	2,651m ² .	Yes.
Clause 14(1)(c) Landscaped Area	Min 30% of the site area (795m ²).	32% of site area (842.9m ²).	Yes
Clause 14(1)(d) Deep Soil Zone	15% of the site area (397.5m²). 3m min. dimension. Min two-thirds (10% of site area, 265m²) is located at the rear of the site, when practical.	430.1m² (16.2% of site area) 3m min. dimension. 184m² (7% of site area).	Yes. Yes. No.

Standard	Requirement	Proposal	Complies
Clause 14(1)(e) Solar Access	Living rooms and private open space areas for a minimum of 70% of the dwellings are to receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.	Amended solar access diagrams were provided. 9 of 19 (47%) dwellings (dwellings 11, 13-20) will have 3 hours of direct sunlight in mid-winter, into their living rooms and private open spaces. Dwellings that do not receive 3 hours to the living room or POS: 1, 2, 3, 4, 5, 7, 8, 9, 10, 12. Note: Dwelling 6 has been deleted. For consistency, dwellings have not been renumbered.	No. The amended plans fails to demonstrate significant improvement to solar access. The solar access obtained by each dwelling was assessed in accordance with the principles provided by the Land and Environment Court, in The Benevolent Society v Waverley Council [2010] NSW LEC 1082. Refer to original report for full discussion around solar access.
Clause 14(2)(a) Car Parking	0.5 spaces per 1 bedroom unit. 1 space per 2 bedroom unit. 1.5 spaces per 3 bedroom unit. 2 x 1 bed = 1 space. 8 x 2 bed = 8 spaces. 9 x 3 bed = 13.5 spaces. Total required = 22.5 spaces.	40 spaces. 37 resident spaces and 3 visitor spaces (incl. 7 stacked and 2 accessible spaces)	Yes, however please refer to comment [4] below table.
Clause 14(2)(b) Minimum Dwelling Size	Min unit sizes: Bedsit/studio - 35m ² 1 bed – 50m ² 2 bed – 70m ² 3 bed – 95m ²	Min. proposed unit sizes: 1 bed – 70m ² 2 bed – 74m ² 3 bed – 170.3m ²	Yes.

Standard	Requirement	Proposal	Complies
Clause 15 – Design Requirements	(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the <i>Seniors Living Policy: Urban Design Guidelines for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy. (2) This clause does not apply to development to which clause 4 of <u>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</u> applies.	The applicant contends the development triggers SEPP 65, which was supported by the former JRPP. Legal advice received by Council as part of the Class 1 appeal details that SEPP 65 does not apply to the development. This is discussed in detail in Part 5 of this report under SEPP 65. However, had SEPP 65 been applicable, it would only apply to the three storey dwellings. All other dwellings (being dwellings 7, 8, 13, 14, 15, 16, 17, 18, 19 and 20) would be subject to the Seniors Living Policy. An assessment has been undertaken further below this table.	No, however please refer to comment [2] below table.

Standard	Requirement	Proposal	Complies
Clause 16 – Continued application of SEPP 65	Nothing in this Policy affects the application of <u>State Environmental Planning Policy No 65—Design Quality of Residential Flat Development</u> to any development to which this Division applies.	As detailed below, legal advice has been received by Council that SEPP 65 does not apply to the proposed development. However in accordance with Clause 4 of SEPP 65, had the SEPP been applicable it would only be applied to the part of development that triggered SEPP 65 (being dwellings 1-5 and 9-12). Clause 4(2) provides that other components not triggered by the policy are not to be assessed against SEPP 65.	No, as demonstrated in Part 5 of this report.
Clause 16A – Character of Local Area	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	The proposal's failure to comply with any one of the numerous planning policies that apply or are contended to apply to the site demonstrates that the proposed scheme is uncharacteristic and inappropriate for the local area.	No, please refer to comment [3] below table.

Standard	Requirement	Proposal	Complies
Clause 17 – Must be used for affordable housing for 10 years	A consent authority must be satisfied that the dwellings proposed will be used for the purposes of affordable housing and managed by a registered housing provider for 10 years from the date of the occupation certificate. A restriction must be registered before the date of the occupation certificate in accordance with section 88E of the <i>Conveyancing Act 1919</i> .	Were consent recommended, a condition would have been imposed to ensure compliance with these provisions.	Yes.
Clause 18 – Subdivision	Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.	No subdivision is sought.	N/A

[1] Clause 13 – Floor Space Ratios

Had the site been eligible for Division 1, the ARH SEPP provides an FSR incentive for in fill development comprising at least 20% floor area for the purposes of providing affordable rental housing. The FSR incentive is applied in addition to the existing FSR allowed by an LEP.

The CLEP 2012 permits a maximum FSR of 0.5:1 for the subject site. The original proposal sought an FSR of 0.96:1, 0.47:1 for 10 affordable dwellings from a total of 20 dwellings.

The amended proposal provides the following affordable housing components:

- Dwellings 1-5 (three storey dwellings located along the north boundary);
- Dwellings 13, 15 and 16 (fronting Chapel Street).

The applicant's amended Statement of Environmental Effects provides that the overall gross floor area sought is 2,289sqm with an FSR of 0.86:1. The affordable housing component of the proposal totals 824sqm or 36%. The total FSR allowable under the ARH SEPP would therefore be 0.86:1.

However Council's calculations, based on the amended GFA calculations shown on the Site Analysis Plan Dwg A002 Revision H by McCullum Ashby Architects, demonstrates the following:

- Affordable housing GFA = 998sqm
- Non-affordable component = 1,368sqm
- Total GFA = 2,366sqm (0.89:1)
- % of affordable GFA to overall GFA = $(998/2,366 \times 100) = 42\%$
- Total overall FSR allowable = $0.5:1 + 0.42:1 = 0.92:1$

Despite the different numerical values, both figures comply with the floor space incentives provided under the ARH SEPP. The proposal would have complied in this

regard, had Division 1 of the ARH SEPP been applicable to the subject site.

[2] Clause 15 – Seniors Living Policy

Clause 15 of the ARH SEPP provides that a consent authority must not consent to development unless it has taken into account the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development*. This clause does not apply to development of which SEPP 65 applies.

The Applicant contends that the development triggers SEPP 65, as well as the former JRPP. Council has obtained legal advice stating that the proposed development, not being a Residential Flat Building, shop top housing or mixed use development, falls outside of the parameters of SEPP 65. Further discussion around this issue is found in 'Part 5 – SEPP 65' of this report.

However, in the event that SEPP 65 did apply, Clause 4(2) of SEPP 65 provides the following:

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
 - (a) the development consists of any of the following:*
 - (i) the erection of a new building,*
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) the conversion of an existing building, and*
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
 - (c) the building concerned contains at least 4 or more dwellings.**
- (2) If particular development comprises development to which subclause (1) applies and other development, **this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.*** (emphasis added).

SEPP 65 would therefore apply to only the three storey dwellings and not any single or two storey dwellings. Dwellings 1-5 and 9-12 would therefore trigger assessment under SEPP 65 and the Apartment Design Guide (ADG) whilst dwellings 7, 8 and 13-20 would trigger assessment under the Seniors Living Policy.

The Applicant considers that the Seniors Living Policy does not apply based on the contention that SEPP 65 applies. However as per SEPP 65 clause 4(2), only part of the development would trigger SEPP 65. The remaining ten dwellings (from 19 dwellings) therefore need to be assessed against the Seniors Living Policy.

In this respect, a consent authority must not consent to development under Division 1 unless the provisions of the Seniors Living Policy have been considered. The Seniors Living Policy has not been considered.

[3] 16A - Character of Local Area

For consent to be granted, the consent authority must be satisfied that the design of the proposal is compatible with the character of the local area. An analysis of the existing local area and potential future character is detailed below.

The existing streetscape is a mix of development, including detached dwellings, dual occupancies and residential flat buildings. The visual catchment is predominately dual occupancies and single detached dwellings, though a historical four storey development (comprising two buildings) is located directly to the north. However other residential flat buildings and multi dwelling developments are located in the visual catchment.

The future desired character, as set by the height and FSR development standards, is for two storey development within a medium density environment. With a maximum FSR of 0.5:1, generous landscaping is anticipated, primarily in the front and rear setbacks.

Any potential future redevelopment to the south and east of the subject site is likely to be predominately dual occupancy development, with some multi dwelling developments, based on the current lot size and frontage controls under the CLEP 2012.

The subject proposal seeks eight dwellings fronting the street, presenting as two storey developments. The rear rows of dwellings are primarily three storey dwellings.

As described above, Council's planning framework establishes a certain character for residential development. These controls are clearly not reflected in the older four storey development to the north. The planning framework firmly guides new designs away from this form of historical development, instead promoting two storey residential buildings addressing the street, with smaller, single storey development at the rear of sites. The intent underpinning this built form is complemented by other controls to ensure adequate building separation, setbacks, deep soil areas and landscaping is provided to maintain a degree of openness and the leafy backyard character of Canterbury's residential areas.

Whilst the two storey buildings fronting Chapel Street are generally more compatible with the existing and future character of the locality, the overall development is not. The failure of the proposed scheme to meet the required setbacks, private open space areas, communal open space, rear deep soil areas, minimum building separation and building height to the rear of the site is visually incompatible with that envisaged for the locality.

Further, the intrusion of the building depth and height of the development into the rear of the property is visually uncharacteristic and minimises the anticipated 'green zone' strip along the rear. The extent of excavation to accommodate the three storey built form is a deviation from the envisaged two storey character for the area and tapered single storey element at the rear.

Consideration of these elements of the proposal demonstrates that the scheme is incompatible with the intended character of the local area and fails to meet Clause 16A of the ARH SEPP.

[4] Clause 14(2)(a) Parking exceeds SEPP's minimum requirements: impact on housing affordability

Forty (40) car spaces are proposed (7 spaces are in a 'stacked' arrangement) where the SEPP only requires 22.5 spaces in total. A surplus of 17.5 spaces have been provided, which also exceeds the CDCP 2012 requirements for this type of development, being 33.4 spaces. The inclusion of these spaces in FSR is arguable.

However, two primary issues arise from the provision of additional car parking. Firstly, the purpose of the ARH SEPP's minimum parking requirements is to increase affordable housing stock for development that can access frequent public transport. The provision of car parking can generally impact both the purchase price and rental price of a property, thereby potentially impacting on the affordability of a property.

The accessible requirements of the ARH SEPP are an integral component of providing affordable housing, iterated as both a definition for 'accessible area' and as an aim of the ARH SEPP, as per Clause 3:

'3 Aims of Policy

...

(f) to support local business centres by providing affordable rental housing for workers close to places of work, ...'

The aims of the ARH SEPP accord with the principles established in the Affordable Housing Taskforce's Interim Report (March 2012), initiated by the then Minister for Planning and Infrastructure. Principle 6 of the Report speaks to poor design quality undermining the intent of affordable housing where the design of a development leads to higher living costs for occupants. Of relevance to this application is Principle 6(a):

'...

Location: *Locations that are poorly connected or inaccessible to public transport and a range of everyday services may mean households are highly car-dependent. This may lead to issues of isolation or inability to access jobs if occupants are unable to afford the cost of buying and maintaining a car...'*

It is reasonable to conclude then, that the inclusion of two car spaces for the majority of dwellings encourages two car ownership or at best, does not discourage car ownership and therefore increases the overall cost of living. The maintenance costs of buying and maintaining two cars, which may occur for the three bedroom dwellings with various work, child care and other lifestyle commitments, would undermine the financial benefits of decreased rental payments. The aims of the ARH SEPP would therefore be defeated.

Secondly, the provision of excess parking indicates that the subject site is not located in a truly accessible area (in addition to failing to meet the criteria for 'accessible area'). All affordable housing dwellings are provided with two parking spaces, instead of one space per two bedrooms and 1.5 spaces per three bedrooms. The car parking provided, well in excess of both the SEPP and CDGP 2012, demonstrates that the area is reliant on private transportation.

Either way, the purpose of facilitating affordable housing through reduced parking incentives is to take the fullest-possible advantage of lower private travel demand that being in a genuinely accessible area offers.

Accordingly, whether the overall price point and/or rents of the 'affordable' dwellings will be any less than that of the 'non-affordable' dwellings is questionable when viewed in light of the parking provided. The accessibility of the site's location, by means other than private vehicle, is therefore considered to be low as demonstrated by the proposed excess car parking and reliance on Clause 4.6 in order to meet the public transport requirements.

ARH SEPP Conclusion

The legal advice from Ian Hemmings SC and Lindsay Taylor Lawyers supports Council's position that the development does not trigger Division 1 of the ARH SEPP through failure to meet the accessible area requirements. On this basis, 'Division 1 In-Fill Affordable Rental Housing' of the ARH SEPP does not apply to the subject site and approval cannot be granted to the proposed in-fill housing development.

For completeness, an assessment has been undertaken against the ARH SEPP. As shown above, the modifications have failed to remedy Council's concerns as raised in the original report and are repeated below:

- The development fails to meet the three hours of solar access required;
- The development fails to meet the deep soil landscaping requirements in the rear setback;
- The development has failed to consider the provisions of the Seniors Living Policy;
- The development fails to satisfy SEPP 65, despite Council's contention that SEPP 65 does not apply;
- The development fails to respond to the current and envisaged character of the local area.

Notwithstanding the fundamental failure of the site to trigger the ARH SEPP, the proposal fails to achieve a reasonable level of amenity for future occupants with respect to solar access, deep soil, the Seniors Living Policy and SEPP 65. The proposal also fails to meet the character requirements of the ARH SEPP and is antipathetic with the existing and future character of the area.

As shown throughout the original and supplementary report, the proposed development does not fully satisfy any EPI or planning policy. On this basis, the current scheme is inappropriate for the subject site, regardless of the applicability of the ARH SEPP; and a major redesign of any future multi dwelling development is required.

5. STATE ENVIRONMENTAL PLANNING POLICY NO. 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

The former JRPP requested an assessment against SEPP 65 based on the three storey attached dwelling element of the scheme. The JRPP deferral is provided below:

The Panel considers that SEPP 65 applies to the application and notes that the applicant agrees with this. Therefore the Panel requests the applicant to submit an amended proposal that provides for the following:

- *Achieves building separation between the units, in particular between their bedrooms and between the bedrooms and the communal open space;*
- *Achieve the solar access required by the ADG taking into account the impact of the adjoining four storey building;*
- *Provides a view into the communal open space from the street that is not obscured by the lift tower.*

As part of the Class 1 appeal, Council has sought legal advice from Marsdens Law Group about the applicability of SEPP 65. The following excerpts are provided for consideration of the Sydney South Planning Panel:

'State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) applies to "development for the purposes of a

residential flat building, shop top housing or mixed use development with a residential component if... (Clause 4)

Clause 3 of SEPP 65 states that:

“(2) Words and expressions used in this Policy have the same meaning as they have in the standard local environmental planning instrument prescribed by the Standard Instrument (Local Environmental Plans) Order 2006, unless otherwise defined in this Policy.”

The Standard Instrument ... Order 2006 contains definitions of “multi dwellings housing” and residential flat building” that are identical to the definitions of those uses in the CLEP 2012... The subject application proposes multi dwelling housing...It follows that because SEPP 65 only applies to development for the purposes of a residential flat building, shop top housing or mixed use development, it does not apply to the development application the subject of these proceedings because it is characterised as a multi dwelling housing.

Based on the above advice SEPP 65 does not contain a new definition for residential flat building. Clause 4 of SEPP 65 provides the threshold for the application of the policy, and not a new definition for development characterised in accordance with the Standard Instrument.

Notwithstanding, in accordance with the request from the former JRPP, an assessment against SEPP 65 and the Apartment Design Guide (ADG) has been undertaken for completeness. As described above under the Seniors Living Policy discussion, SEPP 65 is only applicable to the parts of the development triggered, and not the development as a whole.

Accordingly only the three storey dwellings (1-5 and 9-12) are to be assessed under SEPP 65 and the ADG.

Principle 1: Context and Neighbourhood Character

The development is antipathetic with Council's height controls and seeks to deviate from the anticipated two storey built form. The proposal has only had regard to the four storey development to the north and refuses to consider the low-medium density environment around it. Any redevelopment of the properties to the south and east is likely to be dual occupancy development, whilst some sites that cannot meet the current dual occupancy frontage requirements may consolidate and redevelop as multi dwellings. However it is unlikely that future development in the vicinity will reach the three storey scale proposed by the development and it is inappropriate to justify the proposal based on the historical, now prohibited RFB.

Principle 2: Built Form and Scale

The scheme in its current form is inappropriate in terms of scale and bulk. As described above, the proposal extensively justifies its density by reference to the four storey RFB to the north. In this regard, RFBs are now prohibited and the northern neighbour is not a recent construction.

The built form anticipated in the area is that of two storey development. The proposed three storey development fails to enliven the desired future character of the area.

Principle 3: Density

An appropriate density provides acceptable levels of amenity to future occupants and adjoining residents. The proposed density is an overdevelopment of the site, evidenced by the development's inability to provide sufficient solar access, deep soil, communal open space, setbacks, building separation/visual privacy and private open space.

Principle 4: Sustainability

An amended BASIX Certificate has not been submitted to Council reflecting the amended plans provided 17 November 2016.

Principle 5: Landscape

The proposal fails to incorporate sufficient deep soil landscaping to the rear of the site and along the side setbacks as per the CDCP 2012. The communal open space area, which is undersized, has not been co-located with sufficient deep soil landscaping. Council's landscape architect has also raised concerns with the proposed landscaping plan.

Principle 6: Amenity

The proposed development has been designed with little regard to achieving maximum solar access in light of the overshadowing contributed by the northern four storey residential flat building. The proposal is unable to demonstrate solar access compliance with either ARH SEPP or SEPP 65. As a result, the proposed dwellings, private open space and communal open space receive negligible direct solar access.

Further, dwellings 1-5 contain undersized bedrooms and room dimensions, impacting the amenity afforded to these bedrooms.

Principle 7: Safety

The applicant has failed to incorporate the Crime Prevention Through Environmental Design (CPTED) principles as outlined below in the CDCP 2012. The numerous entry points into the development, concealment opportunities and illegible entrances fail to satisfy the design principles of both SEPP 65 and the CDCP 2012. Refer to further discussion in Part 6.3 of the CDCP 2012 below.

Principle 8: Housing Diversity and Social Interaction

The proposed design incorporates various dwelling sizes and includes adaptable units promoting diversity, affordability and access to housing choice. However social interaction between residents is poor, based on the minimal communal open space area proposed in a heavily overshadowed area.

Principle 9: Aesthetics

The proposed use of pattern, texture, form and colour is generally acceptable. The two buildings fronting Chapel Street require some redesign so that they are not identical as

required under the CDCP 2012. Further design changes are required to ensure public private interface interaction. This is discussed further below in the CDCP 2012 section of this report.

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. This consideration includes an assessment of the objectives of Parts 3 and 4 of the ADG. On review of the proposed development against the objectives of Part 3 and 4 of the ADG, it considered that the objectives have not been met despite comments provided by the applicant's designer in the design verification statement.

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 3 Siting the Development			
3A Site Analysis	Plans provided demonstrating an analysis of the visual catchment, local architectural character and site conditions/ constraints.	The application has been accompanied by a site analysis plan.	Yes.
3B Orientation	Buildings along the frontage define the street by facing it and incorporating direct access from the street.	The proposed development fails to consider both the orientation and the constraints imposed by the historical northern four storey development.	No.
	Responsive to streetscape, optimises solar access within the development, including communal open space, and minimises overshadowing to adjoining sites during mid winter.	Clear, defined, direct access is not provided from the street to the proposed dwellings.	No.
		The development fails to consider its surrounds and provides unreasonable levels of solar access within the development. Solar access to the communal open space is not received for more than an hour mid-winter.	No.

Section	Design Criteria	Proposed	Complies
3C Public Domain Interface	• Ground floor unit raised by up to 1m allowing increased privacy and surveillance of the public domain. • Variety of plantings to enhance quality of public domain, privacy and amenity • Ground floor terraces • In developments with multiple buildings and entries, these should be differentiated to improve legibility for residents utilising a number of design solutions including architectural detailing, changes in materials, plant species and colours.	The proposed ground floor dwellings fail to balance the privacy of the dwellings with appropriate interaction with the streetscape. The elevated nature of the site, coupled with the elevated front courtyard and privacy screening fails to establish any interaction with the public domain. The proposal does not provide direct access from the street to the ground floor dwellings; thereby impacting on the passive surveillance of occupants and social interaction between the private and public domain. The proposal fails to create legible, direct or safe entries into the numerous entry points through the development. No attempt has been made to incorporate any of the design solutions in the ADG. Further, numerous entries provide opportunities for people to be concealed due to their location behind the lift overrun, stairs and rear/corner location.	No.

Section	Design Criteria	Proposed	Complies
3D Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site. Deep soil and communal open space should be co-located.	Site area = 2,651sqm 25% = 662.75sqm Proposed = 105sqm (3.9%) Based on the proposed size of the space compared to the size of the site, minimal interaction between residents is provided. The space is predominately situated over the basement car park and not co-located with deep soil areas.	No
	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).	Not achieved, at best, one hour of solar access is provided.	No
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions: Greater than 1,500sqm 7-15% deep soil with minimum dimensions of 6m.	Required: 7% = 184sqm Provided = 184sqm	Yes, though minimum 6m dimension not met for all areas.

Section	Design Criteria			Proposed	Complies
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:			The proposal fails to provide the required 6m building separation to adjoining neighbours to the north, south and west.	No.
				Internal separation between the rear rows of dwellings is 6m on the ground floor and 10m on the first floor. The ADG requires 12m.	No.
	Building Height	Habitable Rooms & Balconies	Non-habitable Rooms		
	Up to 12m (4 storeys)	6m	3m		
	Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (See Figure 3F.2 of ADG). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.			The second floor blank wall conditions to habitable rooms comply, proposed at greater than 6m (11.3m). The proposed 3.8m separation between the southern row of dwellings and street facing building fails to meet the 6m blank wall to habitable room control. The northern row of dwellings and street facing building meets the required 6m (10.6m).	Yes. No. Yes.
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. Otherwise, the CDCP controls apply (See table below).			ARH SEPP prevails.	ARH SEPP prevails.

Section	Design Criteria	Proposed	Complies
	The car parking needs for a development must be provided off street.	Access provided off Chapel 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.	Dwellings 1-5 do not receive two hours solar access. Dwelling 9 receives two hours living room but not POS. Dwellings 10,11,12 receive 2 hours. The other proposed dwellings are not SEPP 65 triggered development. Solar access is achieved to 33% of dwellings for two hours (3 of 9).	No.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Dwellings 1 and 5 receive no direct sunlight between 9am and 3pm. Totalling = 22% (2 of 9).	No.
4B Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartment at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	All dwellings are naturally cross ventilated.	Yes.
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Dwellings do not exceed 18m.	Yes.

Section	Design Criteria	Proposed	Complies										
4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum Ceiling Height for Apartment and Mixed Use Buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>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> These minimums do not preclude higher ceilings if desired.	Minimum Ceiling Height for Apartment and Mixed Use Buildings		Habitable rooms	2.7m	Non-habitable	2.4m	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	Dwellings 1-5 and 9-12 fail to achieve the required minimum ceiling heights. The living rooms are proposed at 2.6m floor to ceiling whilst the bedrooms (which exceed 50% of their allocated level) range from 2.4-2.585m.	No.		
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	Apartment are required to have the following minimum internal areas: <table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Apartment Type	Minimum Internal Area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Overridden by the ARH SEPP, however dwellings comply.	Overridden by ARH SEPP.
Apartment Type	Minimum Internal Area												
Studio	35m ²												
1 bedroom	50m ²												
2 bedroom	70m ²												
3 bedroom	90m ²												

Section	Design Criteria	Proposed	Complies
	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.	The proposal contains compliant windows that are more than 10% of the floor area of each room.	Yes.
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	2.6m x 2.5m = 6.5m Habitable room depths are 6.5m from each window.	Yes.
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	10m total depth however windows are located at each end of the dwellings, providing compliance with the 8m control.	Yes.
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	The master bedrooms comply with 10sqm. Bedroom 3 in dwellings 1-5 do not meet the 9sqm required. Bedrooms 3 in dwellings 9-12 meet the 9sqm.	Yes. No. Yes.
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Bedroom 3 in dwellings 1-5 do not meet the 3m dimension required.	No.
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	The living rooms fail to achieve the minimum 4m width.	No.
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	All SEPP 65 affected dwellings are 4m wide.	Yes.

Section	Design Criteria	Proposed	Complies						
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Refer to below.	Yes.						
	<table><tr><th>Dwelling type</th><th>Min Area</th><th>Min Depth</th></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>			Dwelling type	Min Area	Min Depth	3+ bedroom apartments	12m ²	2.4m
	Dwelling type			Min Area	Min Depth				
	3+ bedroom apartments	12m ²	2.4m						
The minimum balcony depth to be counted as contributing to the balcony area is 1m.									
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.	All private open space areas are over 15sqm and more than 3m in depth in SEPP 65 affected dwellings.	Yes.							
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	N/A	N/A						
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A	N/A						
4G Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> At least 50% of the required storage is to be located within the apartment.	Dwelling type	Storage size volume	3+ bedroom apartments	10m ³	Adequate storage is provided for SEPP 65 affected dwellings.	Yes.		
Dwelling type	Storage size volume								
3+ bedroom apartments	10m ³								

6. STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

The provisions of SEPP 55 were considered to be satisfied as detailed in the original report. The amended plans do not change the assessment under SEPP 55.

7. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX - BASIX) 2004

An amended BASIX Certificate has not been lodged with the revised scheme.

8. CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012

An assessment of the amended plans submitted has not substantially changed the previous issues raised in the original report. The following issues are highlighted with respect to additional matters as a result of the amended plans or remaining unresolved CLEP 2012 non-compliances. Refer to original report for the full compliance table.

'Multi Dwelling Housing' Development

Whilst the current definition lacks specificity between the definition of a 'residential flat building' and 'multi dwelling housing', the NSW Department of Planning and Environment's Draft Medium Density Housing Code deliberately alters the definition in order to preclude the proposed stacked arrangement:

'The existing standard instrument definition for multi dwelling housing is to be amended...

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with direct access at ground, and no other dwellings are above or below' (emphasis added)

It is considered that whilst the proposal is technically compliant with the current multi dwelling housing definition, the stacked 'apartment like' built form is contrary to the spirit of the definition. This is clear in the Draft Housing Code:

*'...The amended definition of multi-dwelling is to be amended to ensure that it does not include dwellings above or below another dwelling **as is characteristic of a residential flat dwelling...**'* (emphasis added)

The anticipated changes to the definition of 'multi dwelling housing' is raised for consideration by the Panel as the stacked arrangement contributes to several amenity issues with the proposal. These include lack of interaction with the public domain through rear entry, insufficient private open space, insufficient setbacks, lack of building separation, unarticulated central entry point from the street and concealed dwelling entries.

Clause 2.3 Zone Objectives

This site is zoned R3 Medium Density Housing under the CLEP 2012.

As discussed in relation to the ARH SEPP, the proposal is inconsistent with the zone objective: *"To provide a variety of housing types within a medium density residential environment."* The proposed development fails to respond to the medium density residential environment based on the visual imposition on adjoining residences, proposed density and lack of interaction with the streetscape. The proposal therefore fails to meet this objective of the zoning.

Clause 4.3 Building height

The subject site has a nominated maximum building height of 8.5m as per Clause 4.3 of the CLEP 2012. The amended plans submitted 17 November 2016 generally show that the proposed building height is compliant. Though the amended plans should ideally provide existing spot levels and roof RL's for those areas shown abutting the 8.5m height limit, calculations undertaken by Council from the survey would indicate compliance.

Notwithstanding, the development only achieves compliance through reduced floor to ceiling heights for living rooms and bedrooms as well as extensive excavation of the floor plate into the ground.

The proposed scheme seeks extensive excavation of the site, particularly the northern row of three storey dwellings. Irrespective of the basement level with associated laundry/storage/gym areas as nominated on the plans, the ground floor living areas have been buried into the ground to accommodate over half the room. This is highlighted as per the North Elevation Plan Dwg A015 Revision H shown below:

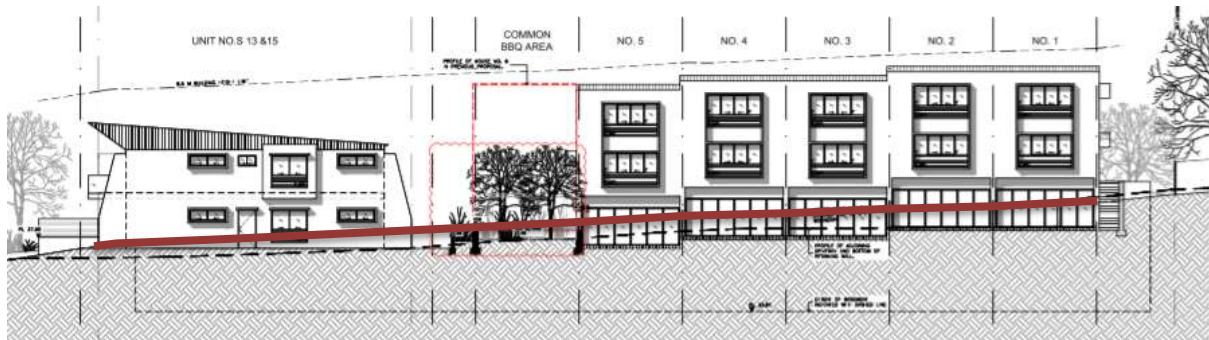


Figure 1: Extent of excavation shown bolded **Source:** McCullum Ashby Architects

A third storey cannot be accommodated without burying the development. Instead, the applicable 8.5m height limit accommodates a two storey built form. The immediate impacts of such extensive excavation of living areas (and the associated private open space), is poor amenity from cold and dark rooms and restricted outlook from the living areas and open space.

Dwellings 1-5, already extensively overshadowed from the adjoining building, will generally not receive any sunlight in winter (apart from one dwelling for under one hour). These conditions will be further exacerbated by both the living areas and private open spaces being effectively located underground. The northern aspect of these primary living areas (with undersized private open spaces) will also be facing a nearly 3m high wall (comprising the required retaining wall and 1.8m boundary fence). These conditions create substandard living areas for future occupants and increase the risk of mould and damp areas in the building.

As discussed above, the subject site is constrained as a result of the northern adjoining residential flat building, impacting on solar access to the proposed development. The applicable 8.5m building height maximum facilitates more generous floor to ceiling heights, which can be utilised by constrained sites to provide increased solar access.

However instead of increasing the floor to ceiling heights to improve solar access, the heights of the living rooms and bedrooms have been reduced from the recognised industry standard of 2.7m (and SEPP 65, of which the Applicant has indicated full compliance has been achieved). The living rooms are generally reduced from the minimum 2.7m to 2.6m floor to ceiling (particularly for the southern row of two-three storey dwellings); whilst the bedrooms range from 2.4m – 2.585m.

Based on the development's tight compliance with the allowable maximum building height, it can be assumed that the floor to ceiling heights have been compressed to help accommodate the three storey elements.

As a result of the above discussed extensive ground floor excavation, failure to meet the minimum floor to ceiling heights and resultant three storey built form; the proposal fails to meet the following objectives for Clause 4.3 height of buildings:

‘ ...

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

The 8.5m height limit clearly establishes a desirable two storey built form character for the area; of which the proposed scheme ignores. The three storey elements, despite the buried floor plate, fail to provide reasonable solar access within the development that could be achieved through a two storey scheme and increased floor to ceiling heights.

The scheme also fails to positively contribute to the streetscape and visual amenity of the area due to the poor interaction between the development and streetscape interface. Additionally, the visual amenity to adjoining neighbours is compromised as a result of both the three storey elements, variations to the side and rear setbacks and location of two to three storey elements to the rear of the site, contrary to the single storey element required under the CDCP 2012.

In view of the above, the stipulated development height is misleading and only achieved through the poor planning practices described above. As a result, the proposed scheme fails to meet the objectives of Clause 4.3 height of building.

Critically, a ‘corrected’ building height would significantly exceed the 8.5m development standard. Both a non-compliant building height and the proposed buried development are not supported.

Clause 4.4 Floor space ratio

The proposed development exceeds the 0.5:1 floor space ratio development standard by 78%, seeking an FSR of 0.89:1. The breach to the FSR standard occurs as a result of the subject site being ineligible for the relevant development incentives of the ARH SEPP.

The proposed breach is not supported and has not been accompanied with a Clause 4.6 variation as the applicant has relied upon the incentives of the ARH SEPP.

Clause 6.4 Stormwater drainage

The proposed method of stormwater drainage proposed is unsatisfactory. The applicant was made aware of these shortcomings and this issue was raised in the original report. A revised stormwater management plan has not been received.

9. CANTERBURY DEVELOPMENT CONTROL PLAN 2012

The amended plans submitted have triggered a revised assessment against the relevant controls in the Canterbury Development Control Plan 2012 (CDCP 2012).

The Applicant contends that the provisions of the DCP would prevent redevelopment of the site in accordance with the aims and objectives of the ARH SEPP. The Statement of Environmental Effects states that the ‘...provisions of the DCP would be at odds with the requirements of Clause 8 of the SEPP and which details that:

*If there is **any inconsistency** between this Policy and any other environmental planning instrument whether made before or after the commencement of this Policy, **this Policy prevails** to the extent of the inconsistency’ (emphasis added by author of this supplementary report)*

Strictly speaking, a DCP is not an environmental planning instrument. The definition of ‘environmental planning instrument’ in the *Environmental Planning and Assessment Act 1979* specifically excludes DCP’s as an environmental planning instrument.

Further, the NSW Department of Planning and Environment’s Planning Advice dated August 2014 *Supporting infill affordable rental housing* details, amongst other things, the assessment process for Infill proposals. Specifically, the Department of Planning and Environment Circular states:

‘...Infill proposals must also take into account relevant provisions of any local environmental plans and development control plans applicable to the area. In this way, the assessment of proposals is required to consider appropriate design and environmental factors...’ (emphasis added).

Accordingly, where the ARHSEPP does not explicitly override a DCP control, the control continues to comply. To this end, the proposal does not comply with a suite of the CDCP 2012 controls for multi dwelling development

Assessment Table: CDCP 2012 Part 2 - Residential Neighbourhoods

Control	Requirement	Proposed	Complies
2.1.1 Avoid Isolating Under-developed Sites	No isolation of neighbouring properties so that it is incapable of being reasonably redeveloped.	Development of the site would not prevent development of adjoining land.	Yes.
2.1.2 Site Requirements	20m min site frontage, Chapel Street not being a main road.	37.49m.	Yes.
2.1.3 Height	O1 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 visual character of the zone.	No. See Comment [1] below.
	Basement parking is permitted.	Proposed vehicle parking and access arrangements, including a basement and access ramp, are acceptable in terms of streetscape impact.	Yes.
	1m max retaining wall height.	1.5m max.	No.

Control	Requirement	Proposed	Complies
2.1.4 Maximum Heights	Maximum overall height of two storey in first 65% of the site.	Range from 2-3 storeys in height.	No. See Comment [2] below.
	One storey maximum height where a building is located more than 20m (in addition to front setback) or 65% of the site's depth, measured from the front boundary, whichever is the greater.	2-3 storeys, in the rear 35% of the site's depth.	No. See Comment [2] below.
	3.8m maximum wall height, where the one storey restriction applies. Maximum external wall height of 7m where two storeys are permitted where height of buildings is 8.5m	8.2m maximum wall height.	No. See comment [3] below.
2.1.5 Depth/ Footprint	O1 Promote improved residential amenity for new and existing development and to preserve sunlight, privacy and general amenity for existing dwellings O2 Ensure buildings have a scale and mass that would be visually compatible with the zone's desired character. 20m maximum building depth.	The proposal is inconsistent with these objectives, as discussed below. 33.1m (south) 30.8m (north)	No. See comment [4] below. No. See comment [4] below.
2.1.7 Minimum Setbacks	6m min from street. Rear: Single storey 3m min Attic 5m min Two storey not permitted to the rear except for sites adjoining industrial, open space or roadways.	6.8m (southern building) 5.5m (northern building) 3m at the worst point to the north west, up to 8m to the south east.	No. No. See comment [5] below.
	Side setbacks: 2.5m min when building behind building adjacent street.	Generally 3m except: Front northern building 1.4m-1.8m.	No. See comment [5] below.

Control	Requirement	Proposed	Complies
	Deep soil zones: 5m min at front.	5.8m	Yes.
	3m min at rear.	3m	Yes.
	1m on sides.	0.7m on north western side.	No. See comment [5] below.
2.1.9 Building Separation	5m min between buildings on one lot.	3.8m (southern buildings) and 8.9m (northern buildings) 6m between the rear two rows of dwellings.	No. See comment [6] below.
2.1.11 Car Parking	Minimum parking is required by the ARHSEPP.	Addressed in relation to the SEPP.	Specifically overridden by the ARH SEPP
2.2.1 Context	Facades should be layered and stepped to avoid building forms that are bland, bulky and overcalled. Stepping of facades should be provided by balconies, staggered alignments for exterior walls and by contrasting design elements.	Facades are designed in accordance with this requirement.	Yes.
2.2.2 Street Address	Design entries to residential buildings so they are clearly identifiable by a porch or awning and pathways.	Entries to dwellings facing the street are not clearly identifiable from the street.	No. See comment [7] below.
	Provide main common entry and separate private ground floor apartment entries.	Separate ground level entries are provided to each dwelling.	Yes.
	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. However the proposal does not provide sufficient surveillance of pedestrian ways.	No, refer to Part 6.3 Crime Prevention Through Environmental Design
	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.

Control	Requirement	Proposed	Complies
	Courtyards that would be located within the front setback should be setback at least 1m from the street boundary to accommodate a landscape strip which should remain in communal ownership	Terraces of dwellings facing the street are setback 5.4m from the street.	Yes.
	Screen walls around private open space shall not be taller than 1.2m, although screens with 50% transparency may be up to 1.8m in height.	Privacy screens to 1.6m are provided around to the front and rear POS for the front two developments. The POS's of the street-facing units are elevated between 1.2m and 2.0m above street level.	No.
	The combined width of front fencing is not to occupy more than 50% of the frontage of the site.	No fence is provided on the street frontage, although the bin enclosure is centrally sited on the boundary.	Yes.
	Dwellings which face the street should have private entrances direct from the street footpath	Dwellings facing the street do not have paths providing direct access to the street.	No. See comment [7] below.
2.2.3 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.	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, despite sub-standard solar access for units 1-12.	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.

Control	Requirement			Proposed	Complies
	Do not use identical facades for each dwelling			The two buildings fronting Chapel Street are identical. The proposed development must integrate contrasting elements into the front façade in order to comply.	No.
	Building	Facades that face the street	Side elevations	Glazing elements facing the street and integrated with the physical separation of the dwellings in the front façade by masonry columns and beams gives effect to the desired 'panelling' dimensions. Panelling has been achieved along the side elevations through individual punctuation of each 'townhouse form' by the interface treatment between the POS and dining areas.	Yes.
	Up to 3 storeys	4—8m	10-15m		
	4 or more storeys	6-8m	10-15m		
	Layer or step facades in order to avoid building forms that are bland, bulky, or over-scaled by complying with setback control and incorporating architectural elements for external walls.			The three storey elements impose unacceptable visual bulk to adjoining residences.	No.
	Locate and proportion windows to minimise scale and bulk			Glazing is used to optimise solar access facing the street (north-east orientation). Windows are in proportion with the wall in which they are located.	Yes.

Control	Requirement	Proposed	Complies
2.2.4 Roof Design	Use a simple pitched roof that accentuates the shape of external walls, the size and scale of building with a pitch of 30° or less in up to 3 storey buildings and 10° or less for 4 or more storey buildings. Respond to the orientation of the site by using eaves and skillion roof to respond to solar access. Integrate service elements into the design of the roof including lift over-runs, service plant, chimneys, vent stacks, telecommunication infrastructure, gutters, downpipes and signage.	Roof design is consistent with these requirements. Skillion roofs are used, with a low pitch of 5 degrees.	Yes.
2.2.5 Fences	Provide boundary definition by construction of an open fence or hedge to the street boundary. 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. Side fences may be 1.8m high to the predominant building line.	A hedge is proposed to the street. No fencing is proposed along the street, however privacy screen around the courtyards are 1.6m but setback from the street. Side fencing is proposed, which is consistent with existing 1.8m high side fences.	Yes.
2.2.6 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.

Control	Requirement	Proposed	Complies
2.3.1 Visual Privacy	Provide adequate building separation, and side and rear setbacks. Orient windows towards the street and the rear of the lot and vary window levels to avoid or minimise direct views between dwellings Use suitable screening when required.	The rear rows of dwellings fail to provide suitable privacy between the northern dwellings kitchens and southern dwellings private open spaces. The two high use areas directly view into each other.	No. See comment [8] below.
2.3.2 Acoustic Privacy	Protect sensitive rooms, such as bedrooms, from likely sources of noise of roads, railway, neighbours' living areas and building lobbies. Aboveground access to new dwellings does not include communal balconies that would be located close to a bedroom window. 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. Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp.	Acoustic privacy is adequate noting the site's location not being near a significant noise-source and bedrooms being above ground level, or screened when at ground level.	Yes.
2.3.3 & 2.3.4 Open Space and Balconies	40m ² min. private open space for each dwelling.	Individual courtyards for each dwelling range between 8.6m ² and 26m ² . Units 7-12 have two courtyards, of 24m ² and 26m ² . All other units have one courtyard each.	No. See comment [8] below.
	5m min. dimension for private courtyards.	No. The POS for the top four dwellings of the two storey developments do not meet the 5m minimum.	No. See comment [8] below

Control	Requirement	Proposed	Complies
	Courtyards may be partly covered by a balcony, verandah or pergola.	Covered decks are provided directly from each living room.	Yes.
	Ensure private open space is private.	The centrally located POS for units 7-12 is directly viewed by the kitchens of 1-5.	No. See comment [8] below
	Locate private open space adjacent indoor living areas.	Each deck is directly outside the main indoor living area of each unit.	Yes.
	Allow an area 2.5m x 2.5 for a table and chairs.	Decks or paved areas are provided, with a depth of between 1.5m and 2.3m.	No. See comment [8] below.
	Provide a screened/separate area for clothes drying.	Outdoor laundry drying is not made available. Laundries are provided in the basement of units 1-12 and within units 13-20.	No. See comment [8] below.
6.2.6 Daylight Access and Sun Access	Min. 2 hours sunlight on 21 June from 9am till 3pm, for main living rooms and principal open spaces.	Addressed in relation to the SEPP.	Specifically overridden by the ARH SEPP.
	Min. 2 hours sunlight on 21 June from 9am till 3pm, for main living rooms and principal open space of neighbouring dwellings.	The amended plans of November 2016 demonstrate compliance in this regard.	Yes.
2.3.5 Internal dwelling space and design	3.5m min width of primary living rooms and main bedrooms.	All principle living areas and bedrooms comply.	Yes.
	3m min width other bedrooms	2.7m or 2.8m min width in second bedrooms of dwellings 13, 15, 16, 18, 19 & 20. 2.8m in bedroom 3 for dwellings 1-5. Accessible laundries are not large enough for accessible access.	No. See comment [9].
	Storage: 6m ³ for 1 bedroom dwellings 8m ³ for 2 bedroom dwellings 10m ³ for 3 bedroom dwellings	Dwellings 13-20 have no dedicated storage apart from wardrobes and kitchen cupboards.	No. See comment [9].

6.2.7 Ventilation	60% of dwelling to have cross-ventilation. 25% of kitchens to have natural ventilation.	All dwellings and their kitchens have adequate ventilation, due to building siting and dwelling layout.	Yes.
6.8 Vehicle Access & Parking	Only matters not addressed by the SEPP are considered: 4 visitor spaces 1 car wash bay required 2 x bike spaces.	Visitor parking is stacked with resident parking. Car wash bay too narrow and obstructed by visitor parking space. Storage for 3 bikes.	N/A – ARHSEPP prevails.

Variations to the CDCP 2012

[1] Height and Character

While the height of the two proposed buildings is visually compatible with the adjoining unit complex and dwelling-house at the front of the site, the height and scale of the other two buildings at the rear of the site is incompatible with the intended character of the zone.

Council's planning framework clearly establishes a certain character for residential development, axiomatically not reflected in the older development to the north. The planning framework firmly guides new designs away from this form of historical development, instead promoting two storey residential buildings addressing the street, with smaller, single storey development at the rear of sites. The intent underpinning this built form is complemented by other controls to ensure adequate building separation, setbacks, deep soil areas and landscaping, to maintain a degree of openness and the leafy backyard character of Canterbury's residential areas.

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

[2] Building height

Clause 2.1.4 vii allows two storey buildings to occupy the site for up to 65% of the site, in this instance allowing approximately 45.9m (the two side boundaries are unequal). Beyond this measurement, buildings are only to be single storey.

The proposal has six two-three storey townhouses beyond this measurement, which are out of character and incompatible with the type of built form envisaged by the DCP. This excessive bulk at the rear of the property has unacceptable impacts on the southern neighbour, due to unacceptable overshadowing, and unacceptable visual bulk impacts to the rear western neighbour.

The proposed variation to this standard is unacceptable.

[3] Wall height

The maximum wall height proposed is 8.2m rather than the required 3.8m, a result of the proposed three storey buildings at the rear of the site to the north (as modified).

This is unacceptable for the same reasons as discussed above in relation to building height and envisaged character of the area.

[4] Building depth/footprint

Whilst two of the rear dwellings to the south have been reduced to two storeys in height, the following issues still apply to the proposed development which have not been addressed nor mitigated by the Applicant.

The non-compliance with several DCP requirements indicates the three-storey townhouse buildings are not of a form envisaged by the DCP. To reiterate, the amenity problems caused by the two rows of dwellings (especially poor solar access and sub-standard open space) stem from their dimensions, siting and overall density.

The proposed rear building's depth is 34.5m, in excess of the maximum 20m depth, another contributing factor of the proposal's poor performance in terms of amenity and being incompatible with the intended character of residential development in the locality and more broadly in the R3 Medium Density zone.

[5] Setbacks and deep soil zones

The proposal fails to comply with the required 5m rear setback for single storey dwellings with roof attics. The northern dwellings are setback 3m-5.8m and the southern row of dwellings are setback 6.5m-8m to the rear. The dwellings are generally compliant with the minimum 2.5m side setback except for the northern building facing Chapel Street, at 1.4-1.8m.

However, these setbacks are predicated on single-storey buildings (based on the above maximum building height for single storey within the rear 35% of the site). The non-compliant rear setback and proposed side setbacks are clearly inadequate, evidenced by the non-compliant solar access (of the ARH SEPP), inadequate private open space and inadequate deep soil landscaping to the rear of site. The two buildings are therefore inconsistent with several objectives of the Part, as follows:

- *O2. Limit the scale and bulk of new buildings, 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. The two-three storey dwellings will impose unreasonable visual bulk to the rear detached dwelling at 2b Phillip Street as well as the adjoining detached dwelling resident to the south at 53 Chapel Street. The 1.4m-1.8m side setback to the northern street facing building is visually imposing on the northern site.

- *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 or deep soil areas through inadequate space for large trees and reduced private open space areas.

- *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 dwellings. The proposed side and rear setbacks, based on single storey development, does not enliven two to three storey development.

Increased setbacks would therefore be required in order to limit the visual and environmental impacts of the non-compliant multi dwellings.

The deep soil zone along the northern boundary is only 0.7m adjacent to dwellings 1-5, which is inadequate to plant canopy trees to screen the development from the adjoining four-storey residential building.

For the two-three storey buildings proposed at the rear of the site, the side and rear (rear to the north) setbacks are inadequate, as outlined in respect of the part's relevant objectives.

[6] Building separation

Despite the applicant seeking to apply the greater visual privacy separation controls of SEPP 65/ADG, the space between the southern front and rear buildings fails to meet the minimum 5m building separation, at 3.7m.

The CDCP 2012 also encourages communal open space within the building separation spaces. The amended plans show the deletion of dwelling 6 and a new communal area with bbq area provided between the northern front and rear buildings. However, the undersized communal area is still proposed over the basement and does not provide a genuine deep soil area, both required in Part 2.1.9 of the CDCP 2012 and the ADG. Further, the communal open space continues to offer poor amenity through less than one hour of solar access in mid-winter. These factors, on a site already suffering from poor solar access and cold, small private open space areas, will discourage use of the area.

[7] Street address

Minimal changes have been made to address these concerns. The following issues still apply to the proposed scheme.

The proposal fails to comply with three requirements of Part 2.2.2:

- i) Building entries are clearly identifiable by a porch or awning and pathways.*
- ii) Front doors to dwellings are clearly identifiable.*
- iii) Provide common and individual-dwelling entries to activate a street or reinforce a rhythm along a street.*

When considered together, these variations compromise the performance of the two buildings' fronting Chapel Street.

Specifically, front doors are at the rear of these buildings and their entries are not visible or identifiable from the street. Pedestrian accessibility and promoting social interaction between residents and other members of the community on the street are also compromised.

This issue is discussed in further detail below in Part 6.3 Crime Prevention Through Environmental Design. These variations to the DCP are unacceptable.

[8] Private open space

As noted in the table, each dwelling's private open space has an area between 8.6m² and 26m², well short of the minimum required of 40m². Dwellings 7-12 have two courtyards at their front and rear, which exceed 40m² when combined.

Within the courtyards of the three storey dwellings (dwellings 1-5 and 7-12) and the terraces/courtyards of dwellings in the buildings facing Chapel Street (dwellings 13-

20), the required paved area of 2.5m x 2.5m has not been provided to accommodate tables and chairs.

The balconies attached to the Chapel Street first floor dwellings, at 8.6m², do not have access to ground floor private open space, as a result of their stacked arrangement, which is similar to a residential flat building.

Accordingly, the residential flat building characteristics of the buildings fronting Chapel Street result in the dwellings being unable to provide sufficient private open space of 40m². In this case, being a shortfall of 30.4m² and providing a balcony of 8.6m².

The rear rows of two-three storey dwellings propose between 24m²-26m² of private open space. Dwellings 7-12 provide 40m², through split either side of the dwellings. As noted above, they also do not provide sufficient hardstand/patio area for table and chairs nor any areas for clothes drying for future occupants.

Further, the private open space for dwellings 7-12 are located directly opposite the kitchens and entry ways of dwellings 1-5. The visual privacy afforded to these private open space areas is therefore minimal as a result of the proposed layout.

In light of the above, the proposed private open space areas are unsatisfactory, exacerbated by poor solar access to these courtyards, privacy impacts within the development (dwellings 7-12) and poor visual amenity due to the extent of excavation (dwellings 1-5). Further, the deviation from the required 40m² to the proposed 24-26m² is inappropriate for the subject area, in view of the likely occupation by families and younger occupants who would seek to fully utilise a larger space.

[9] Room sizes and storage

As the table notes, several of the proposed second and third bedrooms are too small. Despite the applicant being advised of this, no alteration has been made to correct this non-compliance. The case is the same with respect to the units without storage in the basement.

It is also noted that the accessible/adaptable units nominated (dwellings 17 and 14) do not appear to provide sufficient access into the laundry. The entryway and room width of the laundry is inconsistent with the measurements shown to the bathroom and living areas; thereby indicating insufficient widths are proposed for accessible users.

These non-compliances are not supported.

Part 6.3 Crime Prevention Through Environmental Design

A CPTED assessment was not submitted with the development application. The proposal fails to comply with the principles of the control and the following issues are raised:

- Indirect entry points

The proposal as a whole lacks a clearly defined central entryway into the development for both the front dwellings and rear rows of dwellings.

The entry points for the dwellings fronting Chapel Street vary, with access obtained either through cutting across the front setback to the respective side setbacks; or through a stairway between the front built forms and circling around the rear of the buildings and through to the side setback. Entry to the first floor front facing dwellings, at the rear, is also convoluted through the central or side entrance. When

accessing these front dwellings from the basement, occupants are delivered to the very front of the development (either by the lift or fire stairs) and would need to navigate through the development as though entering from Chapel Street.

Similarly, the narrow stairway at the front of the building that provides the through link to the rear rows of dwellings fails to distinguish itself as a legible entry into the development. It is acknowledged that basement car parking provided for these occupants feeds directly into each of the rear dwellings; however the key genesis for any infill affordable housing development is a site's proximity to good public transport. In this respect, it is highly anticipated (as demonstrated by the ARH SEPP through reduced car parking rates) that public transport would be regularly utilised by occupants. Accordingly, it is reasonable to expect most users will take advantage of the public transport available to them and frequently access the development from Chapel Street.

With this in mind, the proposed stairway access into the site from the street is poorly designed and provides no architectural elements to define an entrance into the development. The design does nothing to promote the entryway into the development and is overwhelmed by its surrounds. The proposed entryway does nothing to promote natural surveillance from the street, create a perception of safety or assist visitors or emergency services when required to access the property rapidly.

The various entrance points for both the front and rear dwellings into the development are therefore unacceptable with respect to the crime sensitive principles of Part CDCP 2012.

- Poor interface

The proposal fails to facilitate safe and visible egress into the ground floor and first floor dwellings fronting Chapel Street. The ground floor entries are all located midway along the side of the dwellings, instead of opening directly onto Chapel Street. The front courtyards of the ground floor dwellings appear significantly raised, as a result of the sloping site conditions to the street. In this respect, the FFL of the courtyard is 36.7 whilst the street kerb is approximately 35.39. The respective elevation of the courtyard is 1.31m, however the effective impact to the street is 2.91m due to the proposed 1.6m privacy screen on the street elevation. The development offers little interaction with the streetscape as should be facilitated by front courtyards. Coupled with the side location of the ground floor entries, the proposal fails to facilitate an effective interface between the private and public domain and creates a sense of separation from the streetscape.

The lack of interaction between the proposed development and the streetscape is shown below:

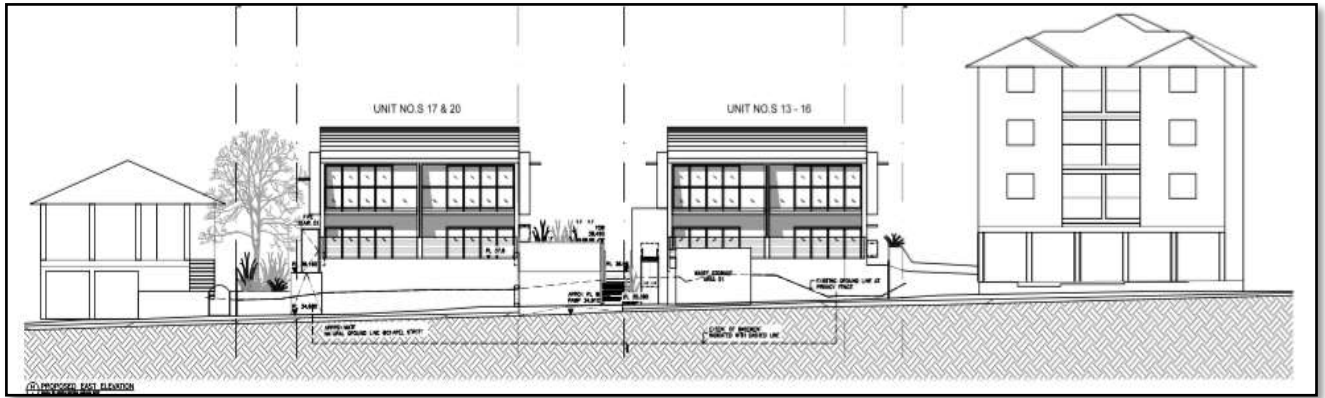


Figure 2: East Elevation of the proposed development from Chapel Street **Source:** McCullum Ashby Architects

- Unsafe entryways

The side location of all ground floor entries (fronting Chapel Street) results in perceived and real safety threats through concealment opportunities. Each entry is concealed by various building elements including fire stairs, the basement car parking entrance or lift. The building elements block site lines to the front doors from both occupants and casual observers from the street. Given the blank wall conditions of the rear row of dwellings, casual surveillance is not available from adjoining internal residents either.

Further, the first floor dwellings (fronting Chapel Street) contain rear entryways and do not obtain any passive surveillance opportunities for future occupants from either the street or rear rows of dwellings as described above. The proposal therefore fails to provide safe access into the dwellings as per Part 6.3.1 of the CDCP 2012.

Part 6.4 Development Engineering, Flood and Stormwater

As noted, the application has not satisfied our DCP or CLEP 2012's requirements with respect to stormwater management. The applicant has been advised of this and has not addressed the issues raised by our Development Engineer. These issues have not been resolved by the amended plans and the comments are provided below:

The stormwater management plans are required to address the following

- *Site area bypassing OSD system must be limited to 25% of the total Site area in accordance with Council DCP 2012 part 6.4;*
- *OSD system size capacity must be designed for the whole site in accordance with Council DCP 2012 part 6.4. The OSD volume provided is undersized;*
- *The Stormwater plans must include a maintenance schedule of the Detention Structure to confirm that the structure is maintainable;*
- *The detention Structure must have an overflow away from the site in accordance with Council DCP 2012 part 6.4;*
- *Additional pit opening is required for the basement pump out system to facilitate maintenance;*
- *Additional pits are required to address trapped areas that cannot be drained;*
- *Subsoil drainage of retaining structures are to be considered in the design.*

Part 6.6 Landscaping & Part 6.7 Preservation of Trees or Vegetation

The Landscape Plan for the proposal illustrates the planting regime for the site, which includes street tree planting, boundary planting and landscaping throughout the site. The landscaping plan has been reviewed by our Landscape Architect who requested

amendments to the proposal. However, due to other matters raised in this assessment, which preclude its approval, these details were not conveyed to the applicant for attention. The referral comments are provided below in the likely event that the application proceeds to appeal:

Please provide an amended landscape plan with the information outlined below:

- *Site Layout including:*
 - a. *ALL Finished surface levels, including tops of retaining walls, raised planters, embankments and grades (indicate extent of cut and fill);*
- *Construction Details including:*
 - a. *Standard constructions and details drawings (eg. Sections through mass planting beds, tree planting and mulching details, paths, steps and retaining walls)*
 - b. *Detailing and location of edge treatments (e.g. Concrete, brick, timber). This is particularly important with carpark areas adjacent to landscape areas. Location and material of Wheel stops must be shown where appropriate.*
- *Maintenance Schedule including:*
 - a. *Replacement strategy for failures in plant materials and built works,*
 - b. *Maintenance schedule for watering, weeding and fertilizing during the establishment period*
 - c. *A maintenance period of a minimum of 12 months.*

Please number the existing trees on the Landscape Plan as per the Arborist Report and the Demolition Plan so that cross referencing can occur.

Part 6.9 Waste Management

The development application was referred to our Waste Services team who advised that several matters would need to be addressed before consent could be granted. In view of the other matters preventing consent being granted, the applicant has not been advised of these requirements. The referral comments are provided below in the likely event that the application proceeds to appeal:

The property will be allocated 10x 240L garbage, 7x 240L recycling bins and 4x green bins. The applicant needs to ensure that the waste bin storage room in the basement can adequately accommodate all 21x bins. Furthermore, the waste bin presentation area on ground floor at front of property also needs to accommodate at least 17x bins so they can be easily collected and returned to this area.

The applicant needs to provide a bulky waste storage area that is at least 4m².

Part 7 Notification

The amended development application was notified and advertised, with public submissions invited in accordance with Part 7 of our DCP. One of the authors of a submission contacted Council during the notification period and advised that on review of the amended plans, the issues raised in the first submission remain relevant. Accordingly the issues raised in the submissions have not been resolved. In summary, the submissions raised:

- Additional density will generate greater traffic volumes, noting several traffic incidents have occurred involving parked cars and vehicles making a right-hand turn from Chapel Street into Phillip Street.
- The proposal does not have access to the bus services (6am - 9pm, weekdays and 8am – 6pm, weekends) and rail services (the site is 1.5km from Belmore Station) as required by the Affordable Rental Housing SEPP.
- The site only provides 7% deep soil zone, not 15%, as required by the SEPP.

- The proposal increases the site's density from 3 to 20 dwellings, an increase of 567% (noting that 19 dwellings are now proposed).
- A minimum of 50 new residents could live on the site, a 733% increase on the approximately 6 people who presently live in the three existing dwellings.
- The development will generate significant traffic from 39 resident spaces and one visitor space proposed, noting the site is not in an accessible area (as defined by the SEPP). Nor is it within walking distance of shops and services. Roselands, the main shopping centre, is 2.8km from the site.
- Traffic would increase from 2.6 vehicle trips/hour to 11.6 vehicle trips/hour, an increase of 346%. This increase may be even greater due to people having more complex family and work related travel requirements; work trips, taking children to school, shopping and so on.
- The number of spaces provided on-site is insufficient to accommodate resident and visitor demand, pressure will be increased for on-street parking, which is already in high demand due to the number of units in the area.
- Noise will increase due to additional population and traffic.
- Additional 2-3 storey "bulky" buildings will reduce views and outlooks in an already "dense and congested neighbourhood." A view of the city skyline was once available from west of the site, which has been built out.
- The proposal will reduce privacy, overlooking neighbouring properties.
- There will be an increase in "public safety impacts", which are a concern.
- The proposal's density maximises floor space and provides for 20 dwellings by developing the whole site (under the SEPP). "Normal" floor space ratios would "equate to 0.5:1 and allow for up to 10 dwellings." 20 dwellings "...is excessive and not conducive to quality residential amenity for residents of the proposal or surrounding the proposal."
- With the proposed 10 affordable dwellings only remaining affordable for 10 years, this is a "relatively short term solution to the affordable housing issue and hardly seems fair and reasonable to existing residents given the area does not have capacity to support such an increase in population and traffic..."

10. CANTERBURY DEVELOPMENT CONTRIBUTIONS PLAN 2013

The Canterbury Development Contributions Plan 2013 would require payment of a contribution, were consent recommended and subsequently granted.

11. 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. In summary, the key impacts include:

- A development which fails to trigger the requirements of the SEPP.
- A development which is out of character with that envisaged in the R3 Medium Density Zone and objectives of the height of buildings and FSR development standards, as per the Canterbury Local Environmental Plan 2012 and relevant provisions of the Canterbury Development Control Plan 2012.
- Unacceptable social impacts, as it would likely accommodate low or middle income or other socially disadvantaged households without adequate access to public transport; thereby limiting employment and opportunities for other forms of economic and social exchange.
- Poor amenity provided to 13 of the proposed 19 dwellings, in terms of solar access and inadequate private open space.
- Unsafe indirect and concealed entry points, both into the site and to individual dwellings.
- Inadequate stormwater drainage, landscaping and waste management details.

Suitability of the site for the development

The amended plans have resulted in little improvement, if any, on the previous scheme. In view of the continuing 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 site is not accessible as defined and the provisions that enable development for the purposes of affordable rental housing and increased floor space ratio do not apply to the site. In view of the above amenity impacts created by the excessive FSR sought for the subject site, contravention of these requirements as proposed is not in the public interest.

12. 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 the Canterbury Development Control Plan 2013.

The proposal is unsatisfactory, failing to satisfy the requirements of the Canterbury LEP 2012 and the SEPP (Affordable Rental Housing) 2009, which must be satisfied to enable consent to be granted.

Refusal of the development application is accordingly recommended.

13. RECOMMENDATION

THAT the Sydney South Planning Panel refuse Development Application DA-104/2016, for the demolition of all existing structures and construction of an affordable infill housing development, comprising 19 dwellings including eight (8) affordable dwellings with associated landscaping and basement parking, for the following reasons:

1. The subject site, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not located within an “accessible area”, as defined by Clause 4 and required by Clause 10(2) of State Environmental Planning Policy (Affordable Rental Housing) 2009. Part 2, Division 1 of the policy therefore does not apply to the site.

2. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is inconsistent with the aims of Clause (3)(f) & (g) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
3. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, fails to meet the minimum deep soil requirements of Clause 14(1)(d) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
4. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, fails to meet the minimum solar access requirements of Clause 14(1)(e) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
5. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, did not address and fails to satisfy the design requirements of Clause 15 of State Environmental Planning Policy (Affordable Rental Housing) 2009.
6. The application does not trigger the design requirements of Clause 16 of State Environmental Planning Policy (Affordable Rental Housing) 2009 relating to State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.
7. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is incompatible with the desired character of the locality, having considered the requirements of Clause 16A of State Environmental Planning Policy (Affordable Rental Housing) 2009.
8. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, has not satisfied the provisions of State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004 by omitting an amended BASIX Certificate.
9. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, fails to meet the R3 Medium Density Residential zone objectives in that the proposed density is uncharacteristic of the anticipated medium density environment as per Clause 2.3 (2) of the Canterbury Local Environmental Plan 2012.
10. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, fails to meet the objectives of Clause 4.3 Height of Building of the Canterbury Local Environmental Plan 2012 in that the proposed density does not maintain the desirable attributes and envisaged character of the area, does not ensure adequate solar access and imposes excessive visual bulk to adjoining residences.
11. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, fails to meet the criteria of State Environmental Planning Policy (Affordable Rental Housing) 2009. The proposed development therefore exceeds the maximum floor space ratio development standard of Clause 4.4 of the Canterbury Local Environmental Plan 2012 without submission of a Clause 4.6 request. The proposal also fails to meet the objectives of the clause as the proposal fails to protect the environmental amenity and desired future character of the area.

12. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, does not satisfy the requirements of Clause 6.4 – Stormwater Management of the Canterbury Local Environmental Plan 2012 through unsatisfactory stormwater disposal.
13. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls of the Canterbury Development Control Plan including:
 - a. Part 2.1.3 Height, Objective 1, in that the scale of the proposed development is incompatible with the intended character of the zone.
 - b. Part 2.1.4 Maximum Heights – the maximum building heights of two storeys for buildings in the front 65% of the site's depth, measured from the street boundary, and one storey for buildings in the rear 35% of the site, are exceeded by the proposed development of three storey buildings in the rear 35% of the site.
 - c. Part 2.1.4 Maximum Heights – the maximum wall height of 3.8m is exceeded with the proposed maximum wall height being 8.2m.
 - d. Part 2.1.5 Depth/Footprint – the maximum building footprint/depth of 20m is exceeded by the two buildings at the rear of the site, which both have a building footprint/depth of 34.5m.
 - e. Part 2.1.7 Minimum Setbacks – The proposed development does not satisfy Objectives 2, 3 and 4 of this part and fails to provide the 2.5m side setback to the north.
 - f. Part 2.1.9 Building Separation – the minimum separation of 5m is not complied with, as the distance between the building fronting the street and the southern building at the rear of the site 3.8m.
 - g. Part 2.2.2 Street Address – the proposed dwellings facing Chapel Street do not have clearly identifiable pedestrian entry-points when viewed from the street and neither do those dwellings have direct access to the street from their main entrances.
 - h. Part 2.2.3 Facades – the proposed dwellings facing Chapel Street present identical facades to the streetscape.
 - i. Part 2.3.1 Visual Privacy - the proposed rows of dwellings fail to provide sufficient privacy between the northern dwellings kitchens and southern dwellings private open spaces.
 - j. Part 2.3.4 Minimum Open Space Requirements – Dwellings 1-6 and 13-20 do not have private open space of 40m² and no dwellings have an area of at least 2.5m x 2.5m suitable for outdoor seating or an additional area suitable for clothes drying.
 - k. Part 2.3.5 Internal Dwelling Space and Design – the second bedrooms of dwellings 13, 15, 16, 18, 19 & 20 and third bedrooms of dwellings 1-5 do not have a minimum dimension of 3.0m. Dwellings 13-20 do not have specified storage in addition to wardrobes, kitchen and bathroom cupboards. Door way entry into the accessible laundries are undersized.
 - l. Part 6.3 Crime Prevention Through Environmental Design – numerous, indirect and concealed entry points are provided into the development and dwelling. The proposed development would result in unacceptable safety impacts to future occupants.

- m. Part 6.9 Waste Management – adequate waste management facilities have not been provided.
- 14. Having regard to the above non-compliances with the Canterbury Development Control Plan and pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site. The proposed development would likely have a detrimental social and economic impact to affordable rental housing occupants due to the sites location and provision of excess car parking.
- 15. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
- 16. In view of the previous reasons noted above, Pursuant to the provisions of Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, site is fundamentally unsuitable for the development for which consent is sought.
- 17. Having regard to the previous reasons noted above, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

WE ALSO ADVISE

- 1. 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.
- 2. If you are not satisfied with this determination, you may:
 - 2.1. 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
 - 2.2. 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.