

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SCL037 DA
DA Number	DA-2017/371
LGA	Bayside
Proposed Development	Construction of a part two and three storey residential flat building comprising 10 residential units fronting New Illawarra Road and a second residential flat building of up to 5 storeys in height and comprising 14 residential units fronting Bexley Road including parking underneath.
Street Address	84 New Illawarra Road (and former 313 Bexley Road), Bexley North
Applicant/Owner	NSW Land and Housing Corporation
Date of DA Lodgement	9 June 2017
Number of Submissions	Submissions for 60 different parties, all in opposition, with one later becoming a letter of support.
Recommendation	Approval, subject to design amendment conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV > \$5M - Crown Development CIV > \$5M – Affordable Housing Development
List of all relevant s4.15(1)(a) matters	<p>State Environmental Planning Policy (State and Regional Development) 2011</p> <p>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</p> <p>State Environmental Planning Policy (Infrastructure) 2007</p> <p>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</p> <p>State Environmental Planning Policy No. 55 – Remediation of Land</p> <p>State Environmental Planning Policy (Affordable Rental Housing) 2009</p> <p>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</p> <p>Rockdale Local Environmental Plan 2011</p> <p>Rockdale Development Control Plan 2011</p>

<p>List all documents submitted with this report for the Panel's considerations</p>	<p>Clause 4.6 request to vary development standards (letter from the applicant)</p> <p>Draft Notice of Determination</p> <p>Survey Plan</p> <p>Architectural Plans</p> <p>Landscape Plans</p> <p>Stormwater Drainage Plans</p> <p>Applicant's response to submissions (First Round)</p> <p>Applicant's response to submissions (Second Round)</p> <p>Activity Determination – Demolition of buildings</p> <p>Report to the Secretary on an application for a Site Compatibility Certificate <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i></p> <p>Plans submitted with Site Compatibility Certificate Application – 6 November 2015</p>
<p>Report prepared by</p>	<p>Brendon Clendenning – Consultant Assessment Planner</p>
<p>Report date</p>	<p>7 March 2019</p>

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent Authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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Clause 4.6 Exceptions to development standards

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

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

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

Council received Development Application No. DA-2017/371 on 9 June 2017 seeking consent for construction of a part two and three storey residential flat building comprising 10 residential units fronting New Illawarra Road and a part three and four storey residential flat building comprising 14 residential units fronting Bexley Road including basement carpark at 84 New Illawarra Road and 313 Bexley Road, Bexley North.

The subject application has been made subject to the provisions of Division 5 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP). Applications made under this Division may only be made by social housing providers, public authorities and joint ventures. This policy permits the carrying out of residential flat buildings, despite not being permitted by any other environmental planning instrument. In this case, the site is zone R2 Low Density Residential under the *Rockdale Local Environmental Plan 2011* (RLEP 2011); however, the site is subject to a site compatibility certificate (SCC) being issued by the Director-General.

A condition of the SCC is that the final built form will be subject to a consent authority undertaking a detailed assessment of the proposals building design and height. An SCC has been issued at this site, and it provides for a maximum building height (in storeys) that could be achieved on the site. However, the basement to one of the proposed buildings would itself meet the definition for a storey as defined by the *Rockdale Local Environmental Plan 2011* (RLEP 2011), and this indicates that additional storeys are proposed beyond that accounted for within the Site Compatibility Certificate, particularly towards the centre of the site. Subsequently, this report recommends deletion of the top floor of the building fronting Bexley Road, which contains two (2) x 2-bedroom units.

The proposal seeks a variation to the floor space ratio and height of buildings development standards, and a combined 4.6 variation request letter accompanies the application. Subject to the recommended design amendment discussed above, these requests are supported by Council.

The SCC also indicates that the consent authority must undertake a detailed assessment of the overshadowing impacts to surrounding residential properties. The proposal will exhibit some non-compliances with Rockdale Development Control Plan 2011 (RDCP 2011) with respect to overshadowing to No.82 New Illawarra Road. However, subject to several design amendments, including a further amendment recommended by conditions of consent, the design will largely have minimised overshadowing to that property and the level of approved overshadowing will not be unreasonable.

Further design amendments are also recommended in relation to the landscape scheme, including for the provision of a principal communal open space area, with other design amendments related streetscape and aesthetic matters. These amendments will address various requirements of the Apartment Design Guide and RDCP 2011.

The most significant environmental constraint facing the subject site relates to the wide overland flow path passing through the centre of the site. Information has been submitted to Council, which has satisfied Council that the proposal will be consistent with the requirements of RLEP 2011, subject to conditions of consent. The site also fronts a classified road and concurrence has been received from the RMS, as required by S138 of the *Roads Act 1993*.

The proposal has been notified three times and numerous submissions have been received in response to each notification period. The issues raised in the submissions are discussed throughout this report.

In summary, the development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to conditions of consent.

Recommendation

1. That the Sydney Eastern City Planning Panel, pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, approve a variation to the height of buildings prescribed by clause 4.3 of the Rockdale Local Environmental Plan 2011, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
2. That Development Application DA-2017/371 for construction of a part two and three storey residential flat building comprising 10 residential units fronting New Illawarra Road and a second residential flat building of up to 5 storeys in height and comprising 14 residential units fronting Bexley Road including parking underneath be APPROVED pursuant to Section 4.16 (1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. That submitters be advised of the Panel's determination.

Background and Application History

Council's involvement with LAHC's intention to redevelop this site, dates back to 2013. The following provides a brief history of this process

- 23 August 2013 – Council Officers met with LAHC to discuss their proposal prior to lodging an application for an SCC with the Director-General.
- 13 September 2013 – Council provided LAHC with a response to the draft proposal.
- 12 November 2015 – DPE received an application for a Site Compatibility Certificate for 84 New Illawarra Road & 313 Bexley Road, Bexley under the ARH SEPP. An extract of the Application is attached (including some plans).
- 24 November 2015 – Letter to Council from DPE including a copy of the Application and seeking Council's written comments pursuant to clause 37(6) of the SEPP.
- 2 December 2015 - Council Officers provide a detailed response to the Department which outlined concerns in relation to the prohibition of residential flat buildings within the R2 zone, and the bulk and scale associated with a development which exceeds the height and floor space ratio limits prescribed by the RLEP 2011.
- 16 March 2016 – Land and Housing submitted a revised scheme for the site. According to an email from DPE, the amended proposal reduced the Bexley Road frontage to three storeys and New Illawarra Road frontage to two storeys, retaining four and three storeys in the centre of the site. The proposed building heights in these plans is similar to the plans currently under assessment with this DA-2017/371, where – in that previous instance - the lower car parking level to Block A was not been considered to be a storey.
- 21 April 2016 – Council sent a further response was sent to the Department, raising the following key issues:
 - *The amended plans still involve a "Residential Flat Building", which is prohibited in the R2 Low Density Residential zone under the Rockdale LEP 2011. Furthermore, the proposal remains inconsistent with the zone objectives and applicable development standards for the subject site and the immediate locality.*

- *The bulk and scale of the proposal are still considered inappropriate for the locality, as the proposal would introduce significant impacts on a low-density residential environment. The amended elevation plans simply involve a "stepping back" in the building form, which is essentially a tokenistic effort to reduce some of the bulk and scale of the proposal, in some minimal fashion. The building height remains well above the development standard for the subject land, and the sites in the immediate locality that are zoned R2 Low Density Residential zone.*
- *The site is located in the centre of the block bounded by Bexley Road, New Illawarra Road and Barnsbury Grove. The proposed development would be conspicuous and sever the consistent character of the block. The resultant development pattern does not represent the orderly development of the locality.*

The proposal has since been further amended, through design amendments which sought to reduce the overall bulk and scale and the NSW Department of Planning and Environment issued a Site Compatibility Certificate for the proposal on 29 April 2016. The Site Compatibility Certificate outlines the following requirements:

- 6 September 2016 – Notice of commencement of demolition works sent to Council, indicating that demolition works would commence on or after 12 September 2016.
- 9 June 2017 – this development application DA-2017/371 lodged with Council.
- 19 June 2017 to 12 July 2017 – first notification/advertising period.
- 2 November 2017 - Additional information letter sent to the LAHC, broadly outlining the following issues:
 - Issued from Design Review Panel comments
 - Other design-related issues
 - Communal open space
 - Presentation to Whitbread Park
 - Setbacks and building separation
 - Solar access
 - Parking
 - Storage
 - Submission of an apartment schedule
 - RMS response issues
 - Issues raised in submissions
 - Landscape Architect comments
 - Issues with architectural plans
- 10 November 2017 – Engineering
- 15 February 2018 – regional panel briefing meeting
- 4 July 2018 - an additional information package was provided to Council from LAHC.
- 18 July 2018 to 1 August 2018 – second notification period.
- 5 September 2018 – a further request for information and design amendments is sent to LAHC, broadly outlining the following issues:
 - Height/depth of basement and associated impacts on height (this was previously raised as a design-related issue)
 - Flooding
 - Overshadowing
 - Balcony location and orientation
 - Landscaping
 - Parking
 - Storage
 - 46 Variation Requests
 - Other matters associated with the responses to the previous letter
 - Issues raised in submissions

- 16 October 2018 – meeting held between Council and LAHC.
- 21 December 2018 – additional information was provided from LAHC to Council, and this included the final set of plan amendments.
- 15 January 2019 – Letter sent to LAHC, broadly outlining the following issues:
 - Height/depth of basement and associated impacts on height (this was previously raised as a design-related issue)
 - Overshadowing
 - Parking
 - Other matters associated with the responses to the previous letters, being:
 - Ground floor entries from Bexley Road
 - Location of services within the street frontages
 - Indication that renotification would be required
- 31 January 2019 – further meeting held between Council and LAHC.
- 13 February to 28 February 2019 – third notification period
- February/March 2019 – final additional information was provided to Council.

It should be noted that since the lodgement of the application, the buildings have been demolished in accordance with an Activity Determination, pursuant to Part 5 of the Act. Refer to attachment. The demolition was not undertaken as part of the application and is therefore excluded from the timeline above.

The site has also been re-addressed since the lodgement of the application, and is now known only as 84 New Illawarra Road; although the site continues to contain two allotments.

Site Description

The site is known as 84 New Illawarra Road, Bexley North (and former 313 Bexley Road) which is legally identified as Lot 38 within DP 1103672 and Lot 40 within DP 8315. The eastern lot fronting Bexley Road is an irregular-shaped lot and is located on the south-western side of Bexley Road. The western lot fronting New Illawarra Road is a regular-shaped lot and is located on the north-eastern side of New Illawarra Road. The two allotments are divided by the boundary at the rear of each lot and the combined area of the development site is 2386.5sqm. The subject site has a frontage to New Illawarra Road of 24.143m and a frontage to Bexley Road of 54.20m, with a total consolidated site depth of 95.085m.

The site is currently vacant and was previously occupied by dilapidated single storey buildings of brick and tile construction comprising of ten (10) self-contained bedsit units. Six of the units were located at 84 New Illawarra Road and the other four (4) at 313 Bexley Road.

The subject site slopes downwards from each street frontage towards an overland flow path which runs across the site in a north-south direction, and with an overall fall of approximately 3.5m. The subject site contains perimeter trees adjacent to each boundary, and large trees are located on the adjoining site to the south, being Whitbread Park.

The block in which the property is located, is primarily characterised by low density residential development within the R2 Low Density Residential zone. However, land lying further to the north contains the suburban commercial precinct surrounding Bexley North Railway Station.

The subject site is located within an established residential area which is characterised by a number of different development types including dual occupancies, multi dwelling housing, apartment buildings and commercial and retail developments. Development to the immediate east and west of the site includes

predominately residential development in the form of single storey dwelling houses. To the north of the subject site, there are commercial, retail and business type developments. Further to the north of the subject site on Bexley Road are residential flat building developments with a height of 5 storeys at 238 Slade Road and 232-234 Slade Road. Development to the rear also consists of residential single and two storey dwelling houses. The site is within close proximity to a range of public transport options including the Bexley North Railway Station and Bus Interchange, as well as employment, retail, educational, health and community services.

Description of Development

The development application seeks consent for the construction of two (2) residential flat buildings containing a total of 24 units, with basement parking for 22 cars, as well as motorcycle and bicycle parking, associated landscaping and consolidation into one single lot.

The key development statistics and details of the proposal are outlined below.

Site area	2386.5sqm (survey)
Site dimensions	<ul style="list-style-type: none"> • Frontage to New Illawarra Road: 24.143m • Frontage to Bexley Road: 54.20m • Length: 95.085m
Gross floor area	1886.2sqm
Floor space ratio	0.79:1
Building Height	<ul style="list-style-type: none"> • Block A: 15.07m • Block B: 9.62m
No. of Apartments	12 x 1-bedroom 12 x 1-bedroom Total of 24 apartments
Apartment sizes	51.29sqm – 87.20sqm
Private Open Space sizes	10.09sqm – 38.47sqm
Communal Areas	729sqm of communal open space
Parking	Car spaces: 24, with additional bicycle and motorcycle parking

The proposed development is for the construction of a part two and three storey residential flat building comprising 10 residential units fronting New Illawarra Road and a second residential flat building of up to 5 storeys in height, comprising 14 residential units fronting Bexley Road including parking underneath. The buildings generally run along the edges of the central overland flow path, which occupies the majority of the area separating the two buildings. running through the site

Block A – Fronting Bexley Road (eastern frontage)

Block A is the taller of the two buildings, which runs in an orientation that follows the Bexley Road boundary (i.e. north-west to south-east). The building has a centrally located common area and has an overall smaller floorplate.

Parking Level

Vehicular Access to Block A of the proposed development is facilitated via a new driveway and crossover from Bexley Road. The driveway leads down to a meshed garage door providing access to the parking level of this building. This level is to include eleven (11) car parking spaces as well as a designated area for bicycle and motorcycle parking. An additional bicycle/motorcycle space has also been located adjacent to the lift and stair core which provides access to the upper levels of the building. This level also includes the garbage bin bay adjacent to the entry. Pedestrian access to the communal open space is available from this level.

Ground Floor, First Floor and Second Floor

Pedestrian access to the ground floor of Block A is via a pedestrian pathway which connects to a separate stepped pathway from Bexley Road that leads toward the lobby area. As indicated above, the common areas are centrally located, with a corridor from the entry leading to the circulation core, containing hallways, lift and stairs, facilitating access to the parking level and the upper levels of the building. Two central 1-bedroom apartments are located with a single aspect towards Bexley Road, on either side of the communal entry area. Two additional 1-bedroom apartments are located on the edges of the building, wrapping around the central apartments. Terraces from all four apartments are located towards Bexley Road, with landscaping provided to screen from them from the street.

The first floor and second floor are provided with generally similar floor plans, with notable exceptions being that the two central units directly adjoining each other, and that a void is located towards the rear, between the lift and stairs.

Third Floor

The third floor contains two x two-bedroom apartments, with a smaller overall floor plate, and larger setbacks from Bexley Road and the northern boundary. Balconies on this level are also oriented towards Bexley Road.

Block B – Fronting New Illawarra Road (western frontage)

Block B is the smaller of the two buildings, runs in an east-west direction, and is provided with two distinct areas across a split-level design. The front area of the building is provided with lesser setbacks to the side boundaries and features two apartments on each of its two storeys. The rear portion is three storeys in height, also with two apartments at each level. Due to the slope of the land, the ground floor in the rear portion steps down from the front portion, with this pattern also followed on the first floor.

Basement

Vehicular access to Block B of the proposed development is facilitated via a new driveway and crossover from New Illawarra Road. The driveway leads down to a meshed garage door providing access to the basement garage. The basement garage is to include eleven (11) car parking spaces as well as an area designated for bicycle and motorcycle parking. The basement also includes a communal garbage bin bay and lift and stair core providing access to each of the levels above.

Ground Floor, Level 1 and Level 2

Pedestrian access to the ground floor of Block B is provided via an access path from New Illawarra Road, located along the southern side boundary and leading to the common area of the ground floor. The common area of the ground floor is situated on the southern edge of the rear portion of the building, adjacent to the internal stairs, and includes the lift and stair core facilitating access to the basement and levels above. The ground floor includes four (4) two-bedroom units. Unit 1 and Unit 2 include private open space terrace areas oriented towards, and receiving direct pedestrian access from, New Illawarra Road, whereas Unit 3 and Unit 4 include private open space areas oriented towards the north or north-east, which are – due to the slope of the land - in the form of elevated balconies.

The ground floor layout is repeated at first floor level, while the second-floor features only two apartments, being a repeat of the two apartments within the rear portion of the building. Note that the balconies of the upper levels are cantilevered above the overland flow path.

Landscaping

New landscaping is proposed along each frontage in the form of boundary screen planting and, small shrub plantings, and turf adjacent to each driveway. The area at the rear of Block A is to include a large open turf area and brick garden edging. Notably the portion of the site affected by the overland flow path is to be treated with flood compatible landscaping materials and finishes.

Trees

This arborist report has identified twenty-seven (27) trees located on the subject site and neighbouring allotments which may be impacted by the proposed development. Of the twenty-seven (27) trees identified, eleven (11) trees located on the subject site are proposed to be removed with all other trees to be retained and protected.

The arborists report has confirmed that trees on adjoining sites will not be affected by the proposal, subject to conditions.

Materials and finishes

The materials and finishes of the development primarily consist of a combination of dark and light toned face brick, cement render, aluminium framed windows and louvres, powder coated colorbond gutters, fascias, and steel balustrades. The proposed roof consists of a colorbond custom orb.



Figure 1. Eastern Elevation (Bexley Road)
(Source: Land and Housing Corporation, 2018)

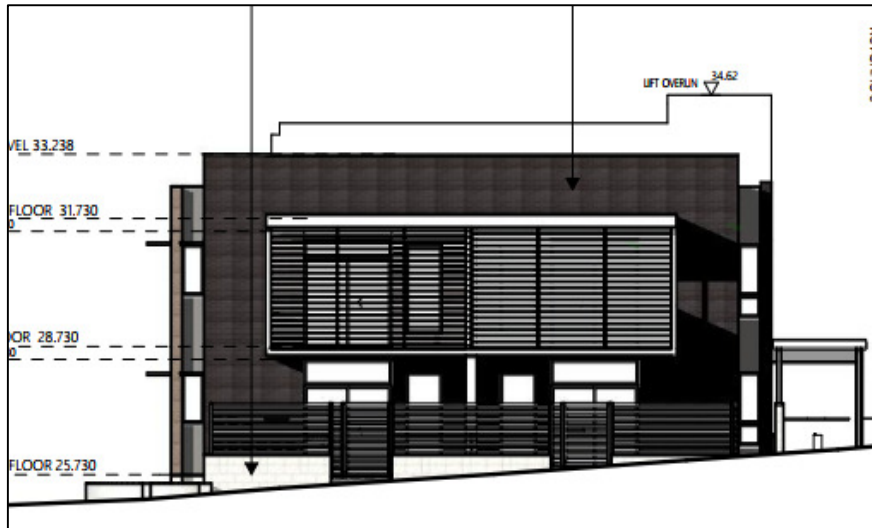


Figure 2 Western Elevation (New Illawarra Road)
(Source: Land and Housing Corporation, 2018)

Reasons for SECPP referral

Pursuant to Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*, the proposal is regionally significant development for the follow reasons:

- It is Crown development that has a capital investment value of more than \$5 million (clause 4).
- It is development for the purposes of affordable housing that has a capital investment value of more than \$5 million (clause 5(b)).

This proposal is therefore referred to the Sydney Eastern City Planning Panel for determination.

Crown Development

Division 4.6 of the Part 4 of the *Environmental Planning and Assessment Act 1979* contains provisions relating to Crown development applications. Section 4.33 prescribes that Council or a regional panel must not:

- (a) *refuse its consent to a Crown development application, except with the approval of the Minister, or*
- (b) *impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.*

The draft conditions of consent have been sent to LAHC.

Section 4.3.4 prescribes that the Minister may direct the regional panel to:

- (a) *to approve the Crown development application, with or without specified conditions, or*
- (b) *to refuse the Crown development application.*

No such direction has been given.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

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

The proposed development includes BASIX affected buildings and therefore requires assessment against the provisions of this SEPP and BASIX certification. A BASIX certificate, associated with the final design, has been submitted with the DA in accordance with the provisions of this SEPP. The BASIX certificate demonstrates the proposal complies with the relevant sustainability targets and will implement those measures required by the certificate.

In this regard, the proposal satisfies the provision and objectives of this SEPP.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - Works within the vicinity of electricity infrastructure

The proposed development is located within 5m of exposed overhead electricity power lines on both New Illawarra Road and Bexley Road and written notice has been given to the electrical supplier (Ausgrid) in accordance with clause 45.

Ausgrid have provided support to the application, subject to recommended conditions of consent.

Clause 101 – Development with a frontage to a classified road

The proposed development is located on land with a frontage to a classified road i.e. Bexley Road. In this regard, clause 101- Development with frontage to a classified road, of the SEPP must be considered before consent can be granted. The consent authority must consider the following matters, as prescribed by subclause (2):

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The site does not currently contain a driveway from either frontage and the proposal seeks to introduce driveways to both frontages. The vehicular crossing from Bexley Road requires the concurrence of the Roads & Maritime Service (RMS), pursuant to S138 of the *Roads Act 1993*.

The application was referred to the RMS who initially raised a number of issues with the impact of the new driveway. Additional information was provided in response to the RMS' concerns, and the RMS subsequently provided concurrence in accordance with S138 of the *Roads Act 1993*. The concurrence from the RMS satisfies clause 101(2)(b).

Furthermore, both the RMS and Council are satisfied that vehicular access need not be provided via another road (i.e. New Illawarra Road), as required by clause 101(2)(a), given the overland flow path would create difficulties in providing a single basement at this site.

Finally, an acoustic report was submitted to satisfy the requirements of clause 101(2)(c), and the proposal is acceptable in this regard, subject to compliance with conditions.

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

As part of the application, 12 trees are to be removed from the site to accommodate the proposed development. The removal of these trees has been documented within the submitted arborist report and the findings of that report have generally been agreed to by Council's Tree Management Officer. It should be noted that the first design amendment sought a reduction in the minimum setback of the basement to Whitbread Park, but with an associated realignment which also simultaneously reduced the incursion on existing trees. Council's Tree Management Officer was satisfied that a further report was not required.

Conditions are recommended in relation to tree protection during construction and subject to compliance with these conditions, the proposal is considered to satisfy this policy.

It should be noted that one of the trees listed within the arborist report is a threatened species. The following commentary is taken from the arborist report:

"Syzygium paniculatum (Magenta Cherry or Lilly Pilly) [T27] is listed as a Vulnerable Species on Schedule 2 of the Threatened Species Conservation Act 1995 (NSW) and a Nationally Vulnerable species under the Environmental Protection and Biodiversity Conservation Act 1999. Whilst this species is listed as vulnerable, it is a commonly planted ornamental tree in residential areas and is not endemic to this area. As such, it does not have any ecological significance in the context of this site".

The tree is not proposed for removal; however, conditions are imposed to ensure its retention.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application. The site has not been identified in Council's records as being contaminated, and the likelihood of encountering contaminated soils on the subject site is considered to be low given the following:

- 1 The site appears to have been continuously used for residential purposes.
- 2 The adjoining and adjacent properties are currently used for residential purposes.
- 3 The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in State Environmental Planning Policy 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The subject application has been made subject to the provisions of Division 5 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP). Applications made under this Division may only be made by social housing providers, public authorities and joint ventures. Division 5 comprises of clause 34 to clause 39, and each of these clauses are discussed individually below:

34 Land to which Division applies

The proposal is within the Sydney region and less than 800 metres (i.e. approximately 350m) from the entrance of Bexley North Railway Station. Development for the purpose of a residential flat building is not permitted on this land under another environmental planning instrument. Therefore, the Division applies to this land.

35 Development to which Division applies

The proposal is for the purposes of a residential flat building and is made by NSW Land and Housing Corporation. Division 1 of the ARH SEPP does not apply to this development.

36 Development may be carried out with consent

The Director-General has certified a in a site compatibility certificate (SCC) that, in the Director-General's opinion, the development is compatible with the surrounding land uses. The development is not within a commercial zone.

The subclauses to this section are each discussed below, as well as elsewhere within this report:

(3) Nothing in this clause prevents a consent authority from:

- (a) consenting to development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or*
- (b) refusing consent to development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or*
- (c) having regard to any other matter in determining a development application.*

(4) Car parking is not required to be provided in relation to development to which this Division applies.

37 Site compatibility certificates

It is understood that the application for the SCC was made in accordance with this clause.

As indicated earlier within this report, Schedule 2 of the SCC imposes the following requirements:

1. The height of the proposed building fronting New Illawarra Road should be limited to 2 storeys, and may transition to 3 storeys at the rear, to reflect a predominantly 2 storey streetscape and utilising the natural contours of the site.
2. The height of the proposed building fronting Bexley Road should be limited to 3 storeys, and may transition to 4 storeys with appropriate setbacks at the rear, to reflect a predominantly 3 storey streetscape and scale.
3. Final dwelling numbers and parking spaces are to the satisfaction of the consent authority in determining the development application.
4. The final built form will be subject to the consent authority undertaking a detailed assessment of the proposals building design and height, and its impact on solar access and overshadowing and the amenity of surrounding residential development as part of the development application process.

As indicated above, condition 4 of the SCC is that the final built form will be subject to a consent authority undertaking a detailed assessment of the proposal's building design and height. The SCC provides a maximum building height (in storeys) that could be achieved on the site. However, the definition for basement within the *Rockdale Local Environmental Plan 2011* indicates that a basement includes only those levels "where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)".

Section A-A (roughly through the centre of the building) shows that the ground floor of Block A adjacent to Bexley Road is approximately 0.9m above natural ground. This plan also shows that the ground floor towards the rear is as much as 2m above natural ground. The section plan below, drawn through the centre of the building, provides a graphic comparison between the natural ground level and the floor levels of the building.

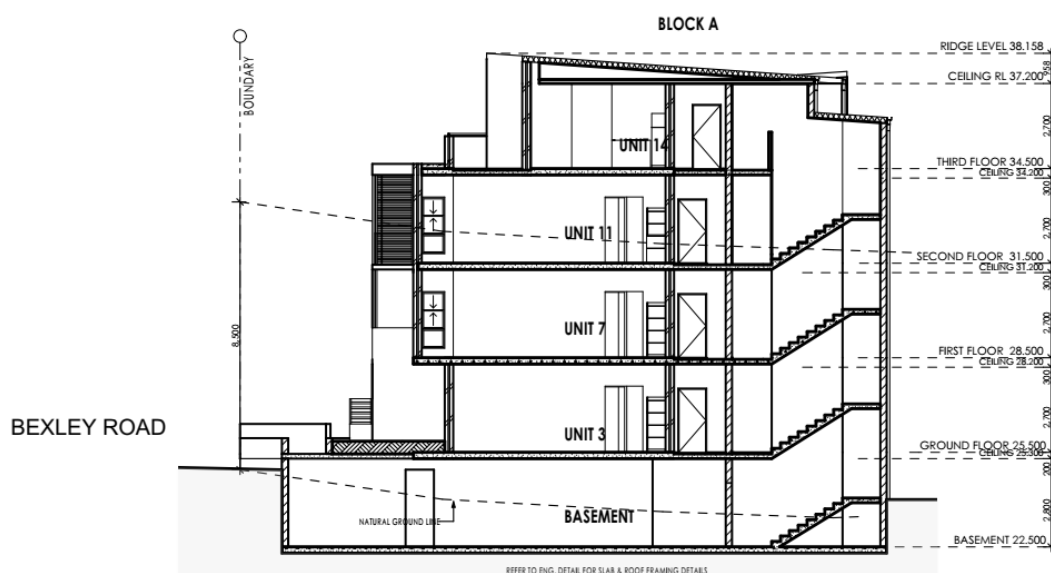


Figure 3 Section A-A showing natural ground line in relation to the basement and ground floor levels
(Source: Land and Housing Corporation, 2018)

The northern part of the site is lower than the southern side and therefore at the northern end of the building, the ground floor sits higher relative to the natural ground level. It is estimated that the ground floor at the northern end of the building may be as much as 2.7m above natural ground, and the extent of the natural ground level variation, in relation to the proposed building, can be understood from the image below.

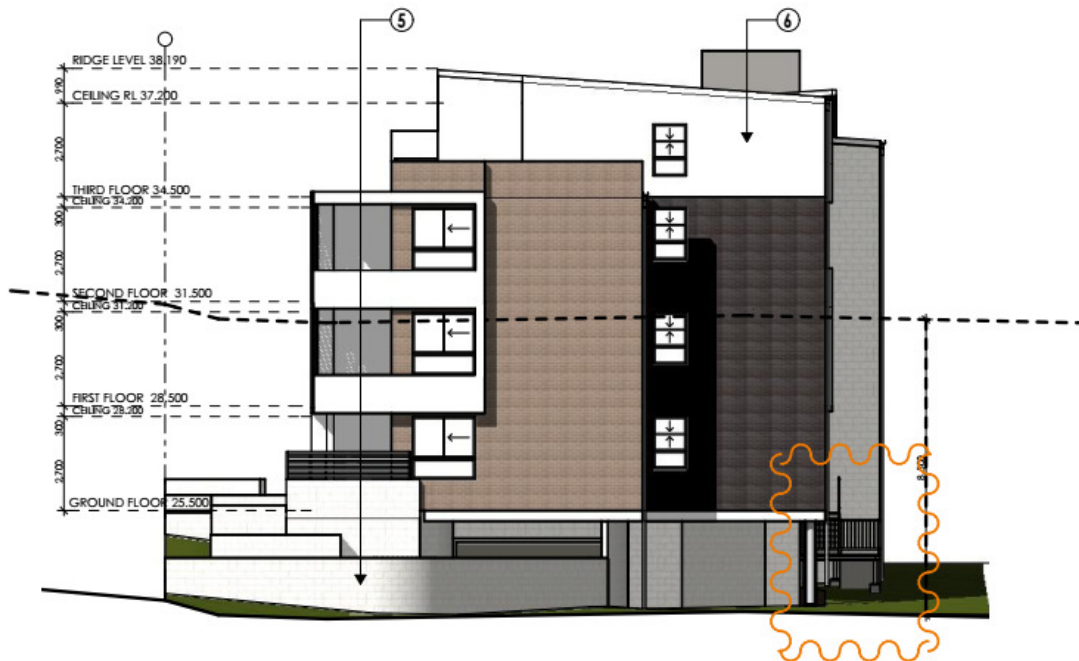


Figure 4 North elevation showing the maximum extent of the basement protrusion above natural ground visible within toward the bottom right of the image (note that the markings on the plan relate to a design amendment and not to the basement protrusion).

(Source: Land and Housing Corporation, 2018)

This would indicate that additional storeys are proposed beyond that accounted for within the Site Compatibility Certificate, particularly towards the centre of the site. LAHC provided a response to Council in relation to this issue, which claimed that references to storeys within the SCC was a reference only to habitable floors.

A later response from LAHC, contained a relayed email send from DPE to LAHC, in relation to their assessment of the initial SCC.

"The conditions of the SCC, as you have alluded to in your email below, limits the number of storeys fronting Bexley Road to 3 storeys, which may transition to 4 storeys, with appropriate setbacks at the rear, to reflect a predominately 3 storey streetscape and scale.

SCC's determine whether a site is suitable for more development. A detailed assessment of the subsequent development application and its merit is a matter for the consent authority. As such, we recommend you continue liaising with Bayside Council regarding the subject development application".

It is evident from plans submitted with the Site Compatibility Certificate Application (see refer to attachment), and from other plans submitted throughout the SCC process between 2013 and 2016, that the Bexley Road building has always had a proposed height of four (4) to five (5) storeys, however the above response from DPE contained within LAHC's letter to Council, appears to indicate that DOPE have not undertaken a thorough consideration of the proposed height. As indicated within the previous correspondence, the residents and regional panel may rightly question whether:

- a. The process for obtaining a revised SCC should have commenced once the height issue was identified; or,
- b. A storey should be deleted (if there are no other design alternatives) in order to maintain consistency with the SCC.

Given the fundamental reliance of this application on the SCC, and based on the amended / additional information provided, Council considers that the application cannot be recommended for approval in its current form. In order to bring this matter to a resolution, this report recommends that the uppermost floor of Building A containing two (2) x two bedroom residential units be deleted from the proposal in order to maintain consistency with the SCC.

It should be noted that:

- The driveway comes in from the lower side of the frontage.
- The driveway is already relatively long (especially considering that the basement floor plate is relatively small).
- The building cannot be relocated further westward as it would block the overland flow path. This would also likely create an inferior urban design outcome, given it would require changes to the relationship with the street, and/or require a larger building when viewed from Whitbread Park.

Therefore, there are limited opportunities to lower the basement. If the recommended design amendment is adopted, then Council further recommends that LAHC seek to obtain an amended or new SCC, so that a modification application may be considered in the future to reinstate the deleted floor. It is noted that Council's Design Review Panel found that *'the design is a reasonable fit for the area notwithstanding its increased height and density compared to adjacent development'*.

The requirements of Part 4 of the SCC are discussed generally at different points throughout this report. The appropriateness of the number of dwellings (Part 3) is determined based on the assessment of the other elements of the proposal. The number of parking spaces is discussed in relation to Part 4.6 of the RDCP 2011.

The SCC is valid for 5 years; that is, until 29 April 2021.

38 Must be used for affordable housing for 10 years

A condition of consent is recommended requiring compliance with this requirement.

39 Continued application of SEPP 65

An assessment of SEPP 65 is contained below.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

SEPP 65 requires Council to consider the design quality of residential flat buildings comprising of three or more storeys and including four or more dwellings. In accordance with SEPP 65, before determining any development application subject to SEPP 65, the consent authority must consider the following:

- (a) the advice (if any) obtained from the design review panel,
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

Advice from Design Review Panel

The proposed development was considered by the Bayside Design Review Panel (DRP) on 20 July 2017.

The DRP recommended several changes be made to the proposal in order to satisfy the nine (9) design quality principles of SEPP 65.

The recommendations of the DRP are outlined and discussed below:

Context and Neighbourhood Character / Density

- **DRP comment:** *The Panel notes the Department of Planning and Environment's site compatibility statement and considers that the design is reasonable fit for the area notwithstanding, its increased height and density compared to adjacent development.*

Council comment: Noted.

Built Form

- **DRP comment:** *The treatment of the overland flow path seems to have dominated the design thinking - consideration of an alternative treatment may allow for an improved built form outcome.*

Council comment: The overland flow path is to be treated with flood compatible landscaping materials and finishes, so as to stabilise soil within that area. Other design amendments, including the reorienting of the rear balconies within Block B, and the removal of the fence between each block, have ensured that a better design response is provided to the centre of the site.

- **DRP comment:** *The driveway to New Illawarra Road is excessively long and should be reduced in length. This will also reduce the height of the basement (this may necessitate extending the basement towards New Illawarra Road under the soft landscaping. If the driveway must be this long and the basement this high it would appear that there is no impediment to garbage collection directly from the basement.*

Council comment: Design amendments have been submitted, reducing the length of this driveway.

- **DRP Comment:** *The Bexley Road, building should be re-designed at its northern and southern ends to remove the splayed/angled layout to be more orthogonal. A small encroachment into the setback zone may be acceptable to achieve this.*

Council comment: These recommendations have been incorporated into the amended design.

- **DRP Comment:** *The south elevation of Block A (facing the park) should not be treated as a side elevation.*

Council comment: Significant improvements have been made to this façade, including deletion of the previously blank parallel wall, as well as substantial additional fenestration and articulation.

Sustainability

- **DRP Comment:** *The Panel notes that design achieves reasonable sustainability performance in accordance with BASIX. The Panel recommends including further*

sustainability initiatives such as rain water harvesting, photovoltaic solar power generation, community gardening, productive gardens, (e.g. fruit trees, vegetables), increased tree canopy cover (urban heat island), all of which would assist low income tenants.

Council comment: The proposed development provides rain water harvesting with all roof water being directed to underground rainwater tanks, and reused for the irrigation of common landscaping areas. LAHC have indicated that it is intended that photovoltaic solar power will be used for all common area power and lighting, and a condition is therefore recommended in this regard.

Increased tree canopy cover has been provided, however LAHC were not able to accommodate community or productive gardens within this development.

- **DRP Comment:** *The Panel recommends projecting the frontage of the two (2) single aspect apartments facing Bexley Road on each level by 1 metre and including windows on the projecting side walls to improve cross ventilation.*

Council comment: This recommendation has been adopted, except at ground level. LAHC considered that this would unduly interfere with the ground floor provide open space, and this is agreed to by Council.

Landscape

The DRP provided specific recommendations in relation to landscaping and these are reproduced in the following:

- **DRP design recommendation:** *Treatment of the overland flow path as a design opportunity (for passive recreation, canopy trees, view sharing and outlook) rather than a liability.*

Council comment: Significant improvements have been made to the central communal open space area affected by the overland flow path.

- **DRP design recommendation:** *An explanation of what happens to the overland flow on downstream sites.*

Council comment: The proposal does not redirect any water to through the overland flow path. The stormwater design has appropriately accounted for this matter.

- **DRP design recommendation:** *Proper screening landscaping adjacent to the driveways from Bexley Road and New Illawarra Road in the areas currently noted as mulch.*

Council comment: Additional landscaping has been provided in this location.

- **DRP design recommendation:** *Open palisade fencing to the park interface.*

Council comment: An 1800mm high metal palisade fence is now proposed.

- **DRP design recommendation:** *Improved access to the communal seating area for the residents of Block B.*

Council comment: Conditions are recommended to both reinstate the communal seating (since deleted) and improve access to it.

- **DRP design recommendation:** *Communal private open space for the residents of Block A.*

Council comment: The original proposal effectively provided two separate development sites, divided by a fence. The fence has now been deleted, and separate communal open space areas are not required. A condition is recommended to ensure that this arrangement is maintained after the completion of the development.

Amenity

- **DRP comment:** *The Panel considers that the design exhibits reasonable amenity subject to the other comments.*

Council comment: Noted

Safety

- **DRP comment:** *Redesign of all elevations facing the overland flow path or the park to include more windows and balconies to improve passive surveillance as well as residential amenity.*

Council comment: Inward-facing balconies are now provided to both buildings, giving suitable passive surveillance to the central landscaped area.

- **DRP comment:** *The ground floor apartments fronting Bexley Road should be provided with direct entries.*

Council comment: A condition is recommended to provide direct entries to the two central ground floor apartments. Entries to the two outer apartments would create the need for additional ramping, and would require a significant reduction in landscaping at the frontage.

Housing Diversity and Social Interaction

- **DRP comment:** *The Panel notes the absence of three (3) bedroom apartments and notes the applicant is a social housing provider and has asserted a need for one (1) and two (2) bedroom apartments for social housing.*

Council comment: Agreed, the apartment mix is acceptable.

- **DRP comment:** *The Panel recommends better design of the communal open space areas to facilitate social interaction, particularly considering the large amount of open space on the site.*

Council comment: Conditions are recommended in this regard.

Aesthetics

- **DRP comment:** *The Panel considers that the design has generally good aesthetics in terms of materials and finishes and composition, subject to the other comments.*

Council comment: Noted.

Design Quality Principles

As required by the *Environmental Planning and Assessment Regulation 2000*, the application is accompanied by a response to the design quality principles contained in Schedule 1 of SEPP 65. This response has been prepared by the project architect.

Excerpts from the discussion, as well as commentary on the discussion, are each contained within the table below.

Principle	Comment
Context	<p><i>"This site is well located in Bexley North, within 400m of the station and local shops. The site is located on a wedge-shaped block defined by New Illawarra, Bexley Road and Barnsbury Grove to the south.</i></p> <p><i>New Illawarra and Bexley Road join at the apex of the block and continue over the railway bridge to the intersection with the M5. Whitbread Park rises to the corner of Barnsbury Grove and Bexley Road.</i></p> <p><i>Bexley Road is more heavily trafficked with a petrol station towards the intersection. A 5-storey residential building is located to the east of the intersection with a large open car park serving supermarket and small shops.</i></p> <p><i>New Illawarra Road is predominately post war residential in nature near the subject site with a mix of 1 and 2 storey masonry housing. As it approaches the intersection with Bexley Road, local shops face the street (western side).</i></p> <p>Site</p> <p><i>The New Illawarra Road portion of the site is flanked by individual houses. The site is bisected by an overland flow path and falls from both street frontages towards the centre. The portion of the site facing Bexley Road has an irregular shape with the area to the north sitting forward of a 2-storey residential building. (311a Bexley Road).</i></p> <p><i>The long boundary to Whitbread Park and the fall to the centre of the site mean that the building will form a built edge to the park and the overland flow path will become a borrowed view from the park. This building (Block A) has been aligned parallel to Bexley Road and its massing stepped to respond to the site fall.</i></p> <p><i>The portion of the site facing New Illawarra Road is more regular in shape and falls from the south to the north and to the rear (3m over 60m). The building has responded to its topographical context by maintaining a 2-storey portion to the street in keeping with the adjacent single dwellings. The rear of the building is set down 1.5m through the use of a split level and utilises the site fall to provide 3 stories of accommodation".</i></p> <p><u>Officer's Comment:</u> The context has largely informed the consideration of the SCC, and the proposed site layout is responsive to the existing context.</p>

Principle	Comment
Built Form & Scale	<p><i>"The buildings respond to the context of the site, to the differing characters of the 2 street frontages and to the constraints and opportunities afforded by the adjacent park and the bisecting overland flow path.</i></p> <p><i>The scale of Block A is matched to the busier nature of Bexley Road. The massing of the building has been articulated to respond to the rhythm of individual lots of the street. Masonry is used as the predominate finish in keeping with the local streetscape. Balconies and adjustable screens are used to further articulate the building and to provide amenity for future residents. The upper level has been further setback and reduced in area. The location and corner massing and of balconies is also shaped to acknowledge the angled view from Bexley Road.</i></p> <p><i>Block A is setback minimum 2m from the park with no openings to the south. It is setback 3m from the No 311a Bexley Road to the lower three stories with increased setback of 6.4m to the fourth storey. Only openings to the non-habitable hallway are within 4.5m of the boundary. The balcony to this side is screened (refer to Northern Elevation).</i></p> <p><i>Block B's 2 storey component is setback 3m from the southern boundary. This low scale building, with living areas facing the street, will have minimal impact on neighbours. The 3-storey component is further setback with no windows from habitable rooms facing the south and an increased setback of 9m to the dwellings to the north.</i></p> <p><i>The separation between Block A and B is 12.7m. This is greater than the 12m separation distance between habitable rooms under Section 2F Building Separation of the Apartment Design Guidelines.</i></p> <p><i>For Block B facing New Illawarra Road, the design also uses a predominately masonry palette to respond to the streetscape. The elevated balconies provide cover to north west facing courtyards and also provide casual surveillance to the street in a similar manner to many elevated porches on the street. The roof has been shaped to minimise the impact on the building to dwellings to the south".</i></p> <p><u>Officer's Comment:</u> The development has been refined since the lodgement of the application, meaning that some of the setbacks given above, and the comments relating to openings, are no longer completely accurate. Notwithstanding, it is evident that the concentration of building mass towards the rear is consistent with the SCC and minimises the impacts on the two streets. Concerns in relation to the overall scale of Block A are discussed elsewhere.</p>
Density	<p><i>"The Site Compatibility Certificate for the site recognises the proximity of the site to Bexley North Station and the local shops and businesses. It supports the density of the proposal on the site.</i></p> <p><i>The density proposed on each street of the block responds to the differing character of that street.</i></p>

Principle	Comment
	<p><i>Block A, facing Bexley Road and adjacent to the park, proposes a higher density 4 storey building. This form and density responds to the busier nature of Bexley Road and takes its cues from the residential flat building to the east of Bexley Road. The increased setback to the upper level units and the topography of the site reduces the bulk and scale of the building. Block B on New Illawarra Road responds to the lower density of a street more residential in nature.</i></p> <p><i>Common open space is provided as per clause 3D Communal Open Space (25% of site area = 597sqm, 607 sqm provided). Deep Soil is provided as per Clause 3E Deep Soil Zones (7% of site area =167 sqm, 166 sqm provided with a minimum dimension of 6m)”.</i></p> <p><u>Officer’s Comment:</u> Despite the unusual height of the proposal, the proposed density is relatively low, and this is demonstrated by compliance with the minimum requirements for communal open space and deep soil. It is not agreed that the residential flat building to the north provides a visual design cue, for the building to Bexley Road; however, the wide frontage, location on a classified road, and location adjoining a park are unique characteristics of this site, which enable a taller building to be provided.</p>
Sustainability	<p><i>“This project makes good use of a well located and serviced site by providing a mix of lift serviced units. This is a socially and economically sustainable outcome.</i></p> <p><i>The buildings maximise use of natural ventilation and solar access. 17 of the 24 units received a minimum of 2 hours of solar access on the 21st of June. This meets the 70% of units requirement of Clause 4A Solar and Daylight access of the Apartment Design Guidelines. The common open space also receives greater than 2 hours of solar access. Only 3 of the 24 units do not receive direct sunlight to the living area of this day (12.5%). (ADG maximum of 15% of units). 15 of the 24 units are cross ventilated. This is 62% of the total units which is greater than the 60% under 4B Natural Ventilation of the Apartment Design Guidelines.</i></p> <p><i>Living areas are predominately located to the north and glazing is located and sized in keeping with passive thermal design principles. Ceiling heights are set at 2.7m throughout the building in compliance with 4C Ceiling Heights.</i></p> <p><i>As social housing, low running costs for future tenants has been a key consideration and is reflected in the thermal performance, use of robust materials both internally and externally and the use of rainwater for toilet flushing and landscape.</i></p> <p><i>Unit sizes are greater than the minimum set out in 4D Apartment Size and Layout. The minimum size for a 1 bed is 53 sqm (ADG 50 sqm) and for a 2 bedroom is 74sqm (ADG 70 sqm). All minimum dimensions are as per the ADG requirements. Private open spaces and balconies are provided in accordance with 4E Private Open Spaces & Balconies. Refer to Development Data.</i></p> <p><i>The proportion of landscape to footprints is positive and the current overland flow pattern has not been disturbed by the proposed buildings.</i></p>

Principle	Comment
	<p><i>The buildings have also considered their impact on the amenity of existing neighbours and park. For Block A, the location of the building mass and the topography of the park to the south means that the amenity of the park will be maintained. No. 3 New Illawarra Road is minimally affected as it is raised on retaining wall clear of the overland flow path. On New Illawarra Road, the building's setbacks and split level has limited impact on neighbours' amenity".</i></p> <p><u>Officer's Comment:</u> The proposed sustainability features are acceptable. The proposed development provides rain water harvesting with all roof water being directed to underground rainwater tanks, and reused for the irrigation of common landscaping areas. LAHC have indicated that it is intended that photovoltaic solar power will be used for all common area power and lighting, and a condition is therefore recommended in this regard. Note that the apartment sizes have changed since these comments were provided; however, they remain compliant.</p>
Landscape	<p><i>"The opportunities for the site to contribute positively to the streetscape of Bexley and New Illawarra Roads have been optimised.</i></p> <p><i>On Bexley Road, the park has been visually extended through the boundary planting and extensive planting is proposed in the front setback to screen and define spaces.</i></p> <p><i>On New Illawarra Road, the site of Block B is extensively planted. This responds to the lower scale residential context and provides amenity to residents and neighbours.</i></p> <p><i>Owing to the restrictions on planting in the overland flow path, landscaping in this area is restricted to turf, while maintaining the four existing trees. The choice of fence is to allow visual connection to this area to the park and borrow views to the high side of the site".</i></p> <p><u>Officer's Comment:</u> The landscape scheme has been modified to provide a significant increase in landscaping within the overland flow path. Subject to additional recommended landscape design amendments, the landscape scheme is supported.</p>
Amenity	<p><i>"Amenity of neighbours and the surrounding community has influenced design, massing, material choice and respond to streetscape.</i></p> <p><i>Residents' amenity has been considered in the provision of units design to meet LAHC Liveable Housing Requirements. Coupled with the provision of lift access, this will allow ease of access. Each unit is provided with a useable outdoor space, either as a courtyard or balcony. Moveable screens to many of these will give residents control over sun access and privacy. Drying lines are provided to each unit.</i></p> <p><i>Units facing Bexley Road are set back 7.5m with extensive landscaping to ensure a pleasant outlook and sufficient privacy. Units to New Illawarra Road have a greater setback than neighbouring properties to increase the landscape buffer and therefore increase amenity.</i></p>

Principle	Comment
	<p><i>In Block A, 8 out of 14 units are cross ventilated and comply with the ADG requirements for 2 or more hours of sun access on the 21st June. In Block B 7 of 10 units are cross ventilated and 8 of 10 meet the solar access requirements.</i></p> <p><i>Storage is provided as per LAHC Design Guidelines”.</i></p> <p><u>Officer’s Comment:</u> The proposal complies with relevant amenity controls and the amenity of the building is acceptable.</p>
Safety	<p><i>“The proposed design works with the principles of Crime Prevention through Design in its approach to the site. No thoroughfare is possible between the 2 streets.</i></p> <p><i>Block A, adjacent to the park and fronting Bexley Road, clearly defines public, semi public and private areas through choice of landscaping, fencing and screening. The main entry is clearly defined and the common lobby will be well lit.</i></p> <p><i>Individual units have ground level courtyards with screening which give privacy but still provide casual surveillance of the street. Upper level balconies overlook Bexley Road and provide casual surveillance the common entry.</i></p> <p><i>Sight lines have been considered in the landscape design. The fencing to the park is 1,800mm high open fence to allow a continued vista over the overland flow path and to visually extend the park without compromising the security of the residents. Fence either side (upstream and downstream) must be open to not restrict flow of water.</i></p> <p><i>Block B employs a similar approach to the definition of areas but uses a scale of detailing matched to the lower density nature of its streetscape. Block B’s foyer is naturally lit”.</i></p> <p><u>Officer’s Comment:</u> It was not agreed that a thoroughfare was not possible between the two sites and no information was provided to support that premise and conditions are recommended to incorporate better connection to communal open space areas. It is considered that passive surveillance to the central communal open space and Whitbread Park have each been improved through amendments to the design of windows and balconies.</p>
Housing diversity and social interaction	<p><i>“The design provides a mix of 1 and 2 bedroom units in a well serviced location. Block A provided 14 lift-serviced units. Block B provides 10 lift-serviced units.</i></p> <p><i>The units are all designed to LAHC Liveable Housing standards to ensure that the dwellings are suitable for a wide range of tenants”.</i></p> <p><u>Officer’s Comment:</u> The proposal provides housing diversity as required to meet social housing needs. The separation of the site into two distinct lots was not supported as discussed above. This matter has been rectified.</p>

Principle	Comment
Aesthetics	<p><i>"The proposed buildings respond to the site in their composition, rhythm and massing. The palette is predominately masonry in keeping with the local area and the balconies facing the street reflects the numerous front porches in the surrounding housing stock.</i></p> <p><i>Where required for privacy, facades are kept to simple planes with scale provided by the grain and colour of brick work and the use of traditionally proportioned openings.</i></p> <p><i>The proposal makes a strong contribution to the streetscape through landscaping and layering of public, semi-public and private open space expressed through extensive planting and a clearly hierarchy of fencing / screening".</i></p> <p><u>Officer's Comment:</u> The aesthetics have been supported by the Design Review Panel.</p>

Apartment Design Guide

The proposed development has been assessed against the NSW Apartment Design Guide (ADG). A summary table is provided below, followed by a discussion of specific non-compliances (note that some non-compliances are discussed exclusively within the table below).

Apartment Design Guidelines		Compliance/Comment
3C Public Domain Interface	<p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided</p> <p>Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view</p> <p>Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels</p>	Mailboxes are shown. However, other services are located in prominent locations. Refer to discussion.
Communal and public open space (3D)	Communal open space has a minimum area equal to 25% of the site.	Communal open space is provided adjacent to Block B north of Unit 4 partly over the onsite detention tank and extends to the center of the subject site as well as other landscaped areas around the side which provide access and amenity. 729sqm communal open space is provided which equates to approximately 30.5% of the site area.

	<p>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 9am and 3 pm on 21 June (mid-winter)</p> <p>Facilities are provided within communal open spaces and common spaces for a range of age groups (see also 4F Common circulation and spaces), incorporating some of the following elements:</p> <ul style="list-style-type: none"> • seating for individuals or groups • barbecue areas • play equipment or play areas • swimming pools, gyms, tennis courts or common rooms 	<p>Design amendments are recommended to improve the design of the principal usable space and highlight this purpose. Excellent solar access is available to this area. Refer to discussion.</p> <p>Inadequate facilities are provided. Refer to discussion.</p>
Deep soil zones (3E)	<p>7% of the site area shall be deep soil zones.</p> <p>For sites between 650-1500sqm the minimum dimension of the deep soil zone is 6m.</p>	<p>Complies</p> <p>Approximately 490sqm of the site is dedicated deep soil zone, resulting in 21% of the site area.</p>
Visual privacy (3F)	<p>Minimum separation distance from buildings to the side and rear boundaries, as follows:</p> <ul style="list-style-type: none"> • Up to 12m in height = 6m (habitable rooms), 3m (non-habitable rooms) • Up to 25m in height = 9m (habitable rooms), 4.5m (non-habitable rooms) • Over 25m in height = 12m (habitable rooms), 6m (non-habitable rooms) 	<p>Does not comply – Refer to discussion.</p>

	<p>ADG assessment note: When measuring the building separation between commercial and residential uses, consider office windows and balconies as habitable space and service and plant areas as non-habitable.</p> <p>Where applying separation to buildings on adjoining sites, apply half the minimum separation distance measured to the boundary. This distributes the building separation equally between sites (consider relationship with section 3F Visual privacy).</p>	
Pedestrian Access and Entries (3G)	<p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge.</p> <p>Entry locations relate to the street and subdivision pattern and the existing pedestrian network.</p> <p>Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries</p> <p>Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport.</p> <p>Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate.</p>	<p>Proposal provides appropriate connectivity between sites, subject to design amendments discussed in relation to Part 3C. Given the proposed boundary landscape scheme, and the short setback between Block A and Whitbread Park, direct entrances to the park are not provided, particularly as the park can be accessed a short distance from that boundary.</p>
Vehicle Access (3H)	<p>Car park access should be integrated with the building's overall facade. Design solutions may include:</p> <ul style="list-style-type: none"> the materials and colour palette to minimise visibility from the street security doors or gates at entries that minimise voids in the facade where doors are not provided, the visible interior 	<p>The proposal generally complies with these requirements, and the car parking area to Block A, which is visible from Whitbread Park, will be visually compatible with the remainder of the development, subject to conditions in relation to the finishes and materials.</p>

	<p>reflects the facade design and the building services, pipes and ducts are concealed</p> <p>Car park entries should be located behind the building line.</p> <p>Vehicle entries should be located at the lowest point of the site minimising ramp lengths, excavation and impacts on the building form and layout.</p> <p>Car park entry and access should be located on secondary streets or lanes where available</p> <p>Vehicle standing areas that increase driveway width and encroach into setbacks should be avoided.</p> <p>Visual impact of long driveways should be minimised through changing alignments and screen planting.</p> <p>Pedestrian and vehicle access should be separated and distinguishable. Design solutions may include:</p> <ul style="list-style-type: none"> • changes in surface materials • level changes • the use of landscaping for separation 	
Bicycle and Car Parking (3J)	<p>Protrusion of car parks should not exceed 1m above ground level. Design solutions may include stepping car park levels or using split levels on sloping sites.</p> <p>Natural ventilation should be provided to basement and sub-basement car parking areas.</p> <p>Ventilation grills or screening devices for car parking openings should be integrated into the facade and landscape design.</p>	<p>The Balcony to Unit 3 within Block B has been relocated to ensure that it no longer looks out over the driveway.</p> <p>The protrusion of the basement is discussed further in relation to Part 4.6 of RDCP 2011.</p>

	<p>On-grade car parking should be avoided.</p> <p>Exposed parking should not be located along primary street frontages.</p> <p>Positive street address and active frontages should be provided at ground level.</p>	
Solar and daylight access (4A)	<p>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.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	70.8% (17 of 24 units) receive at least 2 hours of mid-winter sunlight and 12.5% (3 of 24 units) do not receive any midwinter sunlight. The proposal is compliant with the relevant requirements.
Natural ventilation (4B)	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Apartments 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.</p>	62.5% (15 of 24) units are able to be naturally cross-ventilated.
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Complies
Ceiling heights (4C)	<p>Habitable rooms = 2.7m</p> <p>Non-habitable = 2.4m</p> <p>In mixed-use zones, ground floor and first floor to have 3.3m</p>	<p>Complies</p> <p>2.7m for habitable rooms</p> <p>Not within a mixed use zone.</p>
Apartment size and layout (4D)	<p>Minimum internal areas:</p> <ul style="list-style-type: none"> • Studio = 35sqm • 1-bed = 50sqm • 2-bed = 70sqm • 3-bed = 90sqm <p>The minimum internal areas include only one bathroom. Additional</p>	All apartments comply with the minimum apartment sizes.

	<p>bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p>	
	<p>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.</p>	<p>All windows exceed this requirement.</p> <p>Daylight and air are not borrowed by rooms in any unit.</p>
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>All apartments comply with the minimum dimension requirements.</p>
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> ▪ 3.6m for studio and 1-bedroom apartments ▪ 4m for 2- and 3-bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p> <p>All bedrooms allow a minimum length of 1.5m for robes</p>	<p>Complies</p>
Private Open Space (4E)	<p>Primary balconies to be as follows:</p> <ul style="list-style-type: none"> • Studio = 4sqm • 1-bed = 8sqm (min depth 2m) • 2-bed = 10sqm (min depth 2m) • 3+-bed = 12sqm (min depth 2.4m) <p>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 15sqm and a minimum depth of 3m.</p>	<p>Non-compliances in relation to ground floor units of Blk A. Refer to discussion.</p>

Common Circulation Space (4F)	<p>Daylight and natural ventilation should be provided to all common circulation spaces that are above ground</p> <p>Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors</p> <p>Design common circulation spaces to maximise opportunities for dual aspect apartments, including multiple core apartment buildings and cross over apartments.</p> <p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	<p>Corridor lengths are minimised, with the longest hall of 8m necessitated by the change in level between the 2 storey and 3 storey sections of Block B.</p> <p>Natural ventilation is not provided to the circulation areas within Block A. These areas are instead provided with void areas with floor-to-ceiling glazing, which ensures excellent daylight access is provided throughout. A high level of amenity is provided to these areas.</p>
Storage (4G)	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p> <ul style="list-style-type: none"> • Studio = 4m³ • 1-bed = 6m³ • 2-bed = 8m³ • 3+-bed = 10m³ <p>At least 50% of the required storage is to be located within the apartment</p>	Compliant storage not provided, refer to discussion.
Acoustic privacy (4H)	<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms</p> <p>Where physical separation cannot be achieved, noise conflicts are resolved using the following design solutions:</p> <ul style="list-style-type: none"> ▪ double or acoustic glazing ▪ acoustic seals ▪ use of materials with low noise penetration properties <p>continuous walls to ground level courtyards where they do not conflict</p>	Mitigation measures are recommended within the acoustic assessment report, and this is satisfactory.

	with streetscape or other amenity requirements	
Apartment mix (4K)	<p>The apartment mix is appropriate, taking into consideration:</p> <ul style="list-style-type: none"> the distance to public transport, employment and education centres the current market demands and projected future demographic trends the demand for social and affordable housing different cultural and socioeconomic groups 	Proposal is not compliant with RDCP 2011 apartment mix. Refer to discussion in relation to Part 4.5.1 of RDCP 2011.
Ground floor apartments (4L)	<p>Direct street access should be provided to ground floor apartments</p> <p>Privacy and safety should be provided without obstructing casual surveillance. Design solutions may include:</p> <ul style="list-style-type: none"> elevation of private gardens and terraces above the street level by 1-1.5m (see figure 4L.4) landscaping and private courtyards window sill heights that minimise sight lines into apartments integrating balustrades, safety bars or screens with the exterior design 	<p>Direct access is discussed in relation to Part 3C. Some parts of the terraces to the apartments fronting Bexley Road are elevated above ground level by less than the recommended minimum; however, this is an inevitable consequence of the slope of that frontage.</p> <p>The apartments fronting New Illawarra Road are not raised above the ground level; however, the generous depth to those terraces (6m) provides for sufficient privacy to these apartments.</p>
Universal Design (4Q)	Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features	Proposal does not comply with this requirement. Refer to discussion.

Part 3C - Public Domain Interface

The objectives of Part 3C are as follows:

- Transition between private and public domain is achieved without compromising safety and security.
- Amenity of the public domain is retained and enhanced.

Part 3C includes a variety of controls aimed at achieving the above objectives. The ground floor apartment that face Bexley Road are not provided with any individual apartment entries from the street. This is required by the design guidance to Part 3C, Part 3G, Part 4L, and Part 5.2 RDCP 2011, as well as being required by the DRP.

The proponent has agreed to a condition of consent requiring partial compliance with this design amendment, with direct access to be provided to the two central units. It is agreed that the landscape planting would be too compromised by the additional path to provide direct access to the two outer units for the Bexley Road Building.

Part 3C also requires that service requirements such as mailboxes, substations, and fire boosters be located within basement car parks or out of view. The fire boosters are shown within prominent locations on each frontage. A condition is recommended requiring that these be relocated elsewhere on the site. Note that a fire booster could be located within the driveway, perpendicular to the street frontage.

Part 3D – Communal Open Space

Part 3D of the ADG requires that communal open space be provided to an area that is equal to 25% of the site. The development provides approximately 729sqm of communal open space which equates to 30.5% of the site area.

While the proposal provides approximately 729sqm of communal open space (COS), a significant portion of this area is rendered un-usable for the purposes of active or passive recreation, as it is located within a heavily vegetated overland flow path. Approximately 324sqm (44.4%) of the communal open space is located within the overland flow path. The overland flow path is to be treated with flood compatible landscaping materials and finishes, so as to prevent soil erosion and to stabilise the soil within that area.

The original proposal had included a formalised passive recreation area on the northern side of the Block B, to the east of the driveway. This was deleted within the first amendment, and the applicant indicated that the reason for its deletion was associated with the outcomes of the flood report, which was provided to accompany the first amendment. However, there did not appear to be a strong basis for this position within the flood report.

Part 3D also requires:

- Facilities are provided within communal open spaces and common spaces for a range of age groups
- That 50% direct sunlight be provided to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).

The reintroduction of the formalised passive recreation area, including the associated facilities, would ensure that this area is provided in a location that is afforded excellent solar access and would provide a usable space that is not available elsewhere within the development. A condition is recommended to provide additional facilities to highlight this area is a communal open space area.

Finally, it is noted that Block A is provided with relatively poor connectivity to the communal open space area. Improvements have been made to this arrangement through the addition of a stairwell from the rear building. However, the only other access is via the narrow southern walkway. This is largely unavoidable due to the issues outlined elsewhere in relation to the siting of the building and the slope of the land (refer for instance to comments on Part 3F of the ADG and Part 4.4.2 of RDCP 2011). Furthermore, in relation to the connectivity between the buildings, conditions are recommended to ensure that the central dividing fence earlier included within the plans, is not reinstated in the future.

Part 3F Visual privacy

The design criteria for Part 3F of the guidelines prescribes minimum separation distances to be provided between windows and balconies from a building to the side and rear boundaries, as reproduced below:

Design criteria		
1.	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:	
Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Figure 5 Building separation requirements

(Source: Apartment Design Guide)

The proposal provides a compliant separation distance between the two buildings, but exhibits several non-compliances in relation to side boundaries, as shown within the summary table below (unless otherwise stated all setbacks are to habitable rooms).

Side Setbacks		
Building and location	Shortest Setback	Non-compliance
Block A, northern side setback, ground – second floor,	3.5m	2.5m
Block A, northern side setback, third floor	5.05m	3.95m
Block A, southern side setback, ground – second floor	1.1m	4.9m
Block A, southern side setback, third floor	1.1m	7.9m
Block B, northern side setback, all floors	6.3m	N/A
Block B, southern side setback, all floors	3.0m	3.0m

The applicant has provided the following justifications in relation to the non-compliant building setbacks detailed within the submitted Statement of Environmental Effects.

Separation to north between Block A and 2 storey dwelling at 311A Bexley Road.

Despite the minimum building separation being reduced, privacy will be reasonably maintained for residents of this dwelling as proposed balconies will be screened by louvres and habitable rooms not having windows facing this dwelling. This dwelling's private open space is not affected, being located on the western side of the dwelling, away from Block A.

Separation to north between Block B and 1 storey dwelling at No.88 New Illawarra Road

The 2 storey section of Block B is set back 6.3m from the boundary and is separated from the adjoining dwelling by 9.1m. Living rooms and private open space of units in this section of Block B are oriented towards the street. Their bedroom and dining room windows face the dwelling at No.86 and only look

over this dwelling's roof. An oblique view of the dwelling's backyard is minimised by the dining room window of the upper unit (unit 5) having a high sill and being recessed another 0.4m from the wall of the bedrooms.

Separation to the south between Block B and 1 storey dwelling at No.82 New Illawarra Road

This section of Block B is 2 storeys and faces New Illawarra Road, with its indoor and outdoor living areas facing the street, not the neighbouring dwelling. Only two units in proposed Block B are adjacent to No.82 New Illawarra Road and the bedroom and dining room windows have high sills to minimise overlooking.

Council has acknowledged the arguments put forward within the application package and generally concurs with the above discussion points. In addition, Council's assessment of the proposed development has identified further reasons to support the non-compliant side setbacks identified above.

- The subject site is an irregular shaped allotment with two (2) northern side boundaries, thus making it increasingly difficult to achieve compliant side setbacks. The extent of the non-compliance at the northeast corner of Block A, is exacerbated by it sitting a short distance opposite the south-eastern corner of the neighbouring allotment at No.311A Bexley Road. The setback gradually increases as the building moves further away from that corner.
- The non-compliant 1.1m side setback located on the southern elevation of Block A extending from the ground floor to the third floor of the building, will not result in any visual privacy or overshadowing impacts to adjoining dwellings, given the building is abutting Whitbread Park to the immediate south. Overshadowing to the park is deemed acceptable, given the slender building design (refer to discussion of Part 4.4.2 of RDCP 2011).
- The northern and southern elevations of Block A features significant articulation and fenestration which minimise the visual bulk of the building when viewed from Whitbread Park.
- The design of Block B prioritises compliance with side setbacks towards the rear, which is appropriate given the site layout, and the location of Block B adjoining numerous residential properties. The southern side setbacks to the front, non-compliant two-storey portion of Block B, compares favourably with what would be the minimum side setback controls for dwelling houses as prescribed by RDCP 2011. RDCP 2011 would otherwise allow a two-storey dwelling house with a minimum side setback of 900mm to the ground floor and 1.5m to the first floor. The total length of the southern elevation of Block B is approximately 42m, with approximately the rear 28m of the length of the building (including 6m of non-habitable space) being compliant with the setback requirements, and the non-compliant front 20m being predominantly only two storeys in height.
- The southern setback of Block B has been increased from the original proposal to ensure that each side of the rear portion of the building is compliant with the requirements of Part 3F.

Finally, it should be acknowledged that the proposal has provided several design approaches to minimise privacy impacts of the proposal:

- Balconies are either oriented towards Bexley Road, towards the centre of the site, or towards the north, where larger setbacks are provided.
- Privacy screening is used throughout the northern elevation to Block B and to the southern edge of the balconies to this building.
- The rear/inwards facing balconies to Block A are provided with a narrow depth (i.e. 0.5m).
- Windows on the southern elevation of Block B are generally of a small size, particularly when compared with the other elevations throughout the development.
- Louvres are provided to the stairwell of Block B to minimise overlooking from these areas.

Part 4E Private Open Space

The proposed development generally provides for balconies and terrace areas across both Block A and Block B which achieve compliant levels of private open space in accordance with Part 4E. However, Unit 1 and Unit 4 on the ground floor to Block A fronting Bexley Road include terrace areas which do not achieve the minimum 15sqm of private open space.

An assessment of the area of private open space provided to each unit within the ground floor of Block A is provided below:

Block A Ground Floor Units	Private Open Space Terrace Area/sqm	Complies: Yes/No
Unit 1	12.87sqm	No
Unit 2	20.59sqm	Yes
Unit 3	18.61sqm	Yes
Unit 4	13.68sqm	No



Figure 6 Site and ground floor Plan Extract Block A (Bexley Road)

Note: the sqm of private open space provided to each ground floor terrace area.

(Source: Land and Housing Corporation, 2018)

The non-compliances identified above are considered justifiable for the following reasons:

- The layout of Block A is largely constrained by the overland flow path to the rear and the irregular shape of this part of the allotment. The layout of Block A is a suitable response to these constraints, and the location of the private open space toward Bexley Road is a positive use of

the wide frontage to Bexley Road, and also a necessity given the changes in levels towards the rear.

- The building narrows towards the rear in response to the shape of the site, and the design therefore provides for two centrally located units which wrap around the wider central units. The result is that the private open space areas of the central units comfortably exceed the minimum requirement while the outer units do not exhibit a shortfall.
- It would therefore be possible to allocate a larger level of private open space to the terrace areas of Unit 1 and Unit 4, but under this scenario the private open space areas of each unit would not sit in front of the internal areas, and would potentially also compromise the connectivity of the internal living areas to the private open space areas.
- Furthermore, the minimum 15sqm of private open space specified within the ADG is a blanket rate which applies to all unit sizes on the ground floor, irrespective of the number of bedrooms proposed. It is to be noted that the ground floor of Block A includes only 1-bedroom units, which would otherwise achieve compliance with the 8sqm minimum private open space requirements for units located on the upper floors of the building. Where larger private open space areas are feasible, such as on the New Illawarra Road frontage, private open space areas in excess of 35sqm are proposed for inclusion as part of larger two-bedroom units.

These private open space areas are also required to be provided with a minimum depth 3m, and although the area reserved for this space is provided with an appropriate depth, the usable space is no wider than 2.8m, given the 0.2m thickness of the surrounding walls. These non-compliances are also acceptable.

Passive Surveillance

Part 4E indicates that balconies should play a role in provided passive surveillance to the street. Horizontal louvres are provided to the first-floor front façade of Block B and it is not clear if these louvres will interfere with the provision of good passive surveillance. A condition is therefore recommended requiring further information be provided to Council following determination.

Part 4G Storage

Council had earlier queried whether storage spaces provided to the development were compliant with the following requirements outlined within Part 4G:

Dwelling type	Storage size
Studio apartments	4m ³
1-bedroom apartments	6m ³
2-bedroom apartments	8m ³
3+ bedroom apartments	10m ³

LAHC have provided the following response:

“LAHC provide the following standard storage within units:

Bedroom 1: 1800mm full height wardrobe

Bedroom 2: 1200mm full height wardrobe

Kitchen: Pantry 600mm wide for 2-bedroom, 450mm wide for 1-bedroom

Broom: 450mm wide x 600mm deep – 0.65 m³

Linen: 450mm wide x 600mm deep – 0.65 m³

Where practical, LAHC provides additional storage within the unit layouts.

...

LAHC minimises storage spaces in order to reduce opportunities for hoarding by tenants.

While this may not strictly comply with ADG guidelines, LAHC considers the proposed level of storage space is reasonable and practical in this case”.

A table was also provided which indicates that aside from storage within pantries and wardrobes, each unit is provided with storage between 1m³ and 3.8m³. The proposal also provides private open space areas, which in most cases comfortably exceed the minimum requirements, and therefore can be used to provide some additional storage space for outdoor equipment and the like. The proposed non-compliance is acceptable.

Part 4Q Universal Design

An Access Compliance Assessment Report prepared by Design Confidence accompanied the original application and this report identifies that the proposed development is capable of satisfying the accessibility requirements of the DDA and BCA. However, the National Construction Code (NCC) does not require internal areas of Class 2 dwellings to be designed to AS1428.

The proposal therefore does not seek to provide any adaptable units and is therefore non-compliant with the minimum number of adaptable apartments required by Part 4Q of the ADG (20% or 5 dwellings) and Part 4.5.2 of RDCP 2011 (2 dwellings for development containing 10-30 dwellings). Instead, all of the apartments are designed to LAHC's less onerous 'Liveable Housing' standards, which has similar stated aims to AS1428. Given the proposal is for social housing to be delivered by LAHC on an ongoing basis, the accessibility standards set by LAHC are appropriate, particularly noting that all apartments will be designed to this standard.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with standard/provision
2.3 Zone R2 Low Density Residential	N/A – subject to ARH SEPP
4.3 Height of buildings	No – see discussion
4.4 Floor space ratio - Residential zones	No – see discussion
4.6 Exceptions to development standards	4.6 request submitted - see discussion
5.10 Heritage conservation	Yes
6.1 Acid Sulfate Soil - Class 5	Yes – see discussion
6.2 Earthworks	Yes
6.3 Development in areas subject to aircraft noise	N/A
6.4 Airspace Operations	Yes – see discussion
6.6 Flooding	Yes – see discussion
6.7 Stormwater	Yes – see discussion
6.12 Essential Services	Yes

2.3 Zone R2 Low Density Residential

The subject site is zoned R2 – Low Density Residential under the provisions of the RLEP 2011. The proposed development is for the purpose of a ‘residential flat building’ which is an innominate prohibited use within the zone.

The proposal relies on a site compatibility certificate (SCC) issued in accordance with the ARH SEPP. The SCC permits the carrying out of this development, despite the prohibition within RLEP 2011.

4.3 Height of buildings

Clause 4.3 provides a maximum height of buildings on the subject site of 8.5 metres. Block A has a maximum height of approximately 15.70m. This has been measured from the lift overrun, RL 38.70, to the existing ground level directly below, approximately RL 23.00, and this building is therefore non-compliant with the 8.5m height control specified within RLEP 2011.

The lift overrun of Block B measures to be RL 34.62 and the existing ground level beneath is approximately RL 25.00, giving an estimated height of approximately 9.62m. The rear ridge level measures to be RL 34.05 and the existing ground level beneath is approximately 23.00, giving an estimated height of approximately RL 9.05. The maximum height of this building is therefore estimated to be approximately 9.62m.

Each of the two buildings do not comply with the maximum 8.5m height limit permitted by RLEP 2011.

The proposal would seek to vary the maximum building height as it applies to Block A by 7.2m or 84.7%, and to vary the maximum building height as it applied to Block B by 1.12m or 13.2%.

4.4 Floor space ratio

Clause 4.4 restricts the development to a maximum floor space ratio (FSR) of 0.5:1.

The gross floor area of the development is calculated to be approximately 1886.2sqm which equates to an FSR of 0.79:1. This represents a non-compliance of approximately 692sqm, or 17.5%.

It should be noted that this calculation excludes the lowest level (i.e. parking level) within Block A. The definition for “gross floor area” prescribed by RLEP 2011 excludes “car parking to meet any requirements of the consent authority (including access to that car parking)”. Division 5 of the ARH SEPP indicates that no parking is required for this development, and therefore it could be understood that the consent authority does not require any parking. However, the SCC indicates that the final parking numbers should be determined by Council, and Council is satisfied that the proposed number of parking spaces is appropriate. Therefore, as this parking is required by Council, it has not been excluded from the calculation.

It should also be noted that the definition for “gross floor area” prescribed by RLEP 2011 excludes only *basement* garbage areas. The earlier discussion in relation to the ARH SEPP indicates that much of this parking level may not be strictly meet the definition of a basement, and it is likely that the garbage area within the parking level to Block A is not within an area defined as a basement. However, as it is not clear whether this area meets the definition for basement, this area is also excluded from the calculation.

Were this entire level included within the calculation, the gross floor area would be increased by approximately 360sqm to be approximately 2246.2sqm, with an overall FSR of 0.94:1.

4.6 Exceptions to development standards

The amended application was accompanied with a combined detailed justification for the proposed variations to the development standards. Relevant excerpts from the applicant's clause 4.6 request letter, combined with assessment commentary, are contained below:

Clause 4.6 allows a variation to a development standard subject to a written request and justification from the applicant. A 4.6 variation letter ("the Letter") was submitted to Council, to justify the variations to each standard.

The authority established within a recent judgement in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, provides that a 4.6 variation must address the matters required by clause 4.6(3), being:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The Initial Action judgment indicates that the consent authority need only be satisfied of the matters required within 4.6(4)(a), namely that the applicant has adequately addressed 4.6(3), and that the development is consistent with the objectives of the standards and the objectives of the zone (i.e. 4.6(4)(b)).

The submitted 4.6 variation request largely focuses on the objectives of the standards and the zone.

While *Initial Action* emphasises this as being the role of the consent authority, it is not inappropriate for the applicant to also address these reasons, provided that 4.6(3) is also properly addressed.

The letter offers the following environmental planning grounds for the non-compliances:

- *The proposed variation of the height and FSR standards allows for the provision of additional public housing stock over and above that of a strictly compliant development.*
- *The height and FSR variations allow for optimisation of the site's development potential as a transport-accessible site and provision of much needed affordable housing in the Bayside Local Government Area which in turn would assist in Council achieving the goals of Rockdale housing strategy and the NSW Government's A Plan for Growing Sydney, Future Directions for Social Housing and the Metropolitan Strategy, as well as satisfy the objects of the EP&A Act.*
- *The proposed height and FSR variations make for efficient, economic and optimal use of the subject site, taking advantage of the local topography, dual frontages and surrounding context, increasing the provision of social housing units with minimal environmental impact.*
- *The proposed development has been designed giving regard to the natural contours of the site, with the tallest sections of each building being sited in the lower parts of the site to reduce their visual impact.*
- *The non-compliant height and floor space will not give rise to any material streetscape or amenity impacts compared to a compliant development, by virtue of the proposed siting, massing, setbacks, design of the building, and site characteristics. The proposed development reflects a predominantly 2 storey streetscape to New Illawarra Road and a 3 storey streetscape to Bexley Road, with the upper floors being setback from the street frontages. The proposed buildings present a high quality urban form that has been designed to be consistent with and complementary to higher density development in the Bexley North Village Centre and surroundings.*

- *The proposed development satisfies the objectives of the height and FSR controls and zone objectives, despite the non-compliances.*

As outlined earlier, the Letter largely focusses on how the development satisfies the objectives of the height and FSR controls and zone objectives. This is again repeated in the excerpt shown above, and is also nominated as the reasons why compliance with the development standards is unreasonable and unnecessary. In that sense, the Letter has disproportionately focussed on the role of Council in assessing the 4.6 variation requests.

However, in addressing the objectives of the standards and the zone, the Letter has also given further environmental planning reasons for the non-compliances, as well as given reasons why compliance would be unreasonable or unnecessary. These are summarised below:

- The scale of the building is reduced at each street frontage, with taller elements located towards the rear.
- Overshadowing and other amenity impacts have largely been minimised and non-compliant setbacks generally do not correlate with amenity impacts.
- Higher floor space ratios and building heights are permitted on land further north towards Bexley North Station, and the land between is subject to a Planning Proposal aimed at increasing densities on that site. The following diagram contained within the Letter demonstrates depicts the location of nearby larger developments and shows the Planning proposal site:



Figure 7 Location of nearby Planning Proposal and other larger developments
(Source: Land and Housing Corporation, 2019)

- *“The proposed development will itself provide for important social infrastructure in terms of providing housing to the most vulnerable members of the community. The provision of affordable housing is one of the major planning challenges facing NSW and indeed the whole country. As at June 2017 there were over 51,000 households on the waiting list of which 1,657 are within the St George allocation zone which includes the Bexley North area. The waiting list for one and two bedroom units/houses in this zone is currently 10 years or more. It is against this background that the Land and Housing Corporation has been tasked to provide 23,000 new dwellings over the next 10 years”.*

Aside from reference to the Planning Proposal, which is within its preliminary stages, the reasons given are largely agreed with. It should also be added that the specific characteristics of the site would be understood to form part of the reason why the SCC was issued. Such characteristics include:

- The eastern end of the site contains a long frontage, adjoins a local park to the south, and adjoins an unusual subdivision pattern to the north. These characteristics facilitate the provision of a taller, building of a limited depth, such has been provided.
- The overland flow area is unable to be developed and the provision of flood-compatible plantings in this location largely improves the environmental treatment to this land. In addition, any overshadowing from Block A is unlikely to affect the amenity of this area, as it would not be expected to be commonly used by residents.
- With the eastern half of the site used for Block A and the overland flow area, the western half of the site is then able to be used for a lower, but deeper building, enabling generous setbacks to be provided to the more sensitive residential properties located on either side.
- The centre of the site sits lower than the two frontages, and adjoins a large retaining wall to the south. Therefore, the provision of taller elements in this location is of relatively low impact.

The departures to the development standards, subject to recommended design amendment conditions discussed elsewhere, are therefore able to be supported. Council generally concurs with the reasons given within the Letter, in relation to the obligations of Council prescribed by clause 4.6(3). These reasons have not been reproduced in full and reference should therefore be made to the Letter.

Council is therefore satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Note that the regional panel assume the Secretary's concurrence for the proposed variations to development standards.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property. The proposal will require basement excavation works; however, as the site is not within 500m metres of Class 1, 2, 3, or 4 land, an ASS Management Plan is not required.

6.4 Airspace operations

The proposed development is affected by the Inner Horizontal Surface of the Obstacle Limitation Surface (OLS), which is set at 51.00 AHD. The proposal is also affected by the 45.72m (150 feet) height limit prescribed by the *Civil Aviation (Buildings Control) Regulations 1988*.

The maximum level of the development is 38.158 AHD and the maximum height is 15.70m. The proposal will not exceed either height limit.

6.6 Flooding

The site is not identified on the LEP flood maps, and therefore is not affected by clause 6.6(2)(a) of RLEP 2011. However, the site contains other land that is below the level of the flood planning level (being the 1:100 average recurrent internal flood event plus 0.5m freeboard), and is therefore affected by clause 6.6(2)(b). This land is associated with an overland flow path which crosses through the site, in between the two proposed buildings. This land sits below the flood planning level. A subsurface drainage line is located within the overland flow path and an easement for drainage is registered in the location of the overland flow path and drainage line.

The application has been accompanied by a flood study and Council engineers are satisfied that the proposal will adequately mitigate risks associated with floodwaters. The driveway from Bexley Road is to be provided with crest and the parking level, and the external wall is to be watertight to the height of the flood planning level. Conditions are recommended to ensure this is achieved.

6.7 Stormwater

The proposal involves the construction of an in-ground rainwater tank, on-site stormwater detention (OSD) system and basement pumpout pit within each building. The stormwater discharge within the site is via an existing drain and pipe system within the registered overland flow path.

The proposed stormwater system has been approved by Council's development engineers and is consistent with this clause.

6.12 Essential services

Services will generally be available on the site. The proposal complies with the requirements of this clause.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

In May 2018, the Bayside Local Planning Panel considered a draft Planning Proposal in relation to land at 88-96 New Illawarra Road & 307-311A Bexley Road, Bexley North (subject site), being land that adjoins the subject site to the north, as shown within the image below:



Figure 8 Area subject to neighbouring Planning Proposal
(Source: Land and Housing Corporation, 2018)

The draft Planning Proposal was considered by the Bayside Local Planning Panel (BLPP) in May 2018, and according to the Council officer's report:

The draft Planning Proposal seeks to:

- 1. Rezone the land from R2 Low Density Residential (R2) to R4 High Density Residential (R4).*
- 2. Increase the maximum height of buildings (HOB) on the land from 8.5 metres to 20.5 metres.*
- 3. Remove the requirement for a minimum lot size on the land.*
- 4. Increase the maximum floor space ratio (FSR) on the land from 0.5:1 to 2:1.*

The intended outcome of the draft Planning Proposal is to facilitate the provision of new housing within walking distance of regular public transport and existing shops and services in Bexley North local centre.

The BLPP recommended to Council that the Planning Proposal be submitted to the Department of Planning and Environment for a Gateway determination, with the following recommended changes:

- *A Flood Plain Risk Management Plan be submitted for the Council staff's review in accordance with the Flood Plain Development Manual 2005.*
- *Exhibition of the Planning Proposal should not proceed until the study is completed to allow it to also be publicly exhibited concurrently.*
- *Similarly the RMS comments on the Planning Proposal should also be available for concurrent exhibition.*
- *An additional provision be drafted prior to exhibition to require a minimum lot size area of 1650 square metres for development.*
- *The Panel recommends that the Council request the Gateway Determination require a minimum of 28-day exhibition for the Planning Proposal to allow for community consultation.*

Notification of the meeting of the Bayside Local Planning Panel resulted in a significant number of submissions, including a resident petition. In early December 2018, a Councillor declared an interest in a property close to the subject site, which has triggered the requirement for an independent planning assessment of the Planning Proposal. An independent planning consultant is currently being engaged. It is estimated that the matter will be reported to Council in May 2019.

The amendment to RLEP 2011 has not yet reached Gateway determination and is not a matter for consideration as part of this application. However, this matter is referred to within the clause 4.6 submissions, and some of the objections to the proposal.

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application;

Rockdale Development Control Plan 2011

A summary of the compliance assessment against the *Rockdale Development Control Plan 2011* (RDCP2011) for the proposed development is provided below. Detailed discussions are provided for non-complying aspects of the proposal.

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.1.1 Views and Vista	Yes; refer to discussion
4.1.2 Heritage – vicinity	Yes; refer to discussion
4.1.3 Water Management	Yes, refer to discussion
4.1.4 Soil Management	Yes, refer to discussion
4.1.5 Contaminated Land	Yes; refer to discussion under SEPP 55.
4.1.6 Development on sloping sites	Yes – refer to discussion
4.1.7 Tree Preservation	Yes; refer to discussion in relation to Vegetation SEPP

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.1.9 Lot size and Site Consolidation – Residential Flat Buildings	Yes – refer to discussion
4.1.9 Lot size and Site Consolidation – Avoidance of Isolated Sites	Yes
4.2 Streetscape and Site Context – General	Yes – refer to discussion in relation to SEPP 65
4.2 Streetscape and Site Context – Fencing	Yes – refer to discussion in relation to SEPP 65
4.3.1 Open Space and Landscape Design – Residential Flat Building Centres	No, refer to discussion
4.3.2 Private Open Space - Residential Flat Building	N/A – as per clause 6A(1) of SEPP 65 this section no effect.
4.3.3 Communal Open Space	No – refer to discussion in relation to SEPP 65
4.4.2 Solar Access	No; refer to discussion
4.4.3 Natural Lighting and Ventilation - Residential	N/A – as per clause 6A(1) of SEPP 65 this section no effect.
4.4.3 Natural Lighting and Ventilation - Ceiling heights	N/A – as per clause 6A(1) of SEPP 65 this section no effect.
4.4.4 Glazing – General controls	Yes
4.4.5 Visual and Acoustic Privacy	No; refer to discussion
4.4.5 Visual privacy – Roof Top Area	N/A
4.4.6 Noise impact	No; refer to discussion
4.5.1 Social Equity - Housing Diversity and Choice	No; refer to discussion
4.5.2 Social Equity - Equitable Access	No, refer to discussion of Part 4Q of the ADG
4.6 Car Parking	N/A – determined by ARH SEPP; refer to discussion
4.7 Air Conditioning and Communication Structures	Yes
4.7 Waste Storage and Recycling Facilities	Yes; refer to discussion
4.7 Laundry Facilities and Drying Areas	Yes
4.7 Letterboxes	Yes
4.7 Service Lines/Cables	Yes
5.2 Residential Flat Building – front setbacks	Yes; refer to discussion
5.2 Residential Flat Building – site coverage	Yes; refer to discussion

4.1.1 Views and Vista

The subject site is not located on a ridge line nor is it particularly visible within the locality. Furthermore, the site is not afforded any view of Botany Bay or the any items of local or State heritage. In this regard, the subject site does not enjoy any significant views or vistas.

The siting of the proposed building ensures that there will be minimal impacts on the views of the street and general neighbourhood that are enjoyed by adjacent properties.

4.1.2 Heritage – vicinity

The nearest item of heritage significant is a house at 30 Kingsland Road South (item I151, local significance) and is located approximately 140m to the northwest. The spatial distance between the subject site and heritage item is considered to be sufficient to ensure the heritage item is not impacted by the proposed development.

4.1.3 Water Management

As discussed under clause 6.7 Stormwater earlier within this report, the proposed development has been reviewed by Council's Development Engineer, who subject to recommended conditions of consent does not object to the proposed stormwater management system.

4.1.4 Soil management

The proposed development will involve considerable earthworks for the construction of the basement car parking level, which will result in the disturbance of soil and dust.

In this regard, a condition of consent requiring a Soil and Water Management Plan prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils, shall be required to be submitted to the Principal Certifying Authority prior to the commencement of works.

4.1.6 Development on sloping sites

This part of RDCP 2011 requires that cut and fill be minimised in order to ensure the building form relates to the surrounding topography and to protect the amenity of adjoining properties. Although the proposal does not seek to introduce substantial fill on to the site, the basement to Block A sits well above the natural ground level. Subject to recommended design amendment conditions, the proposal will satisfy this part of RDCP 2011. Refer to discussion in relation to the ARH SEPP.

4.1.9 Lot size and Site Consolidation - Residential flat buildings

The site provides the minimum frontage width of 24m.

4.3.1 Open Space and Landscape Design - Residential Flat Building

The landscape plans were considered by Council's landscape architect, who provided the following comments:

- *Public domain landscape works change of tree species, and inclusion of one street tree between bus stop and driveway on New Illawarra Road.*
- *Shrubs and trees located within overflow area need to be relocated and/or replace as specified below*
- *A minimum of five (5) canopy trees to reach a minimum height of 10 meters shall be included in the landscape proposal.*

- *One canopy tree to reach a minimum mature height of 10 meters shall be included in the frontage setback.*
- *Common open space with facilities shall be included in the outdoor area and landscaped.*

In this regard, a condition of consent is recommended requiring a revised landscape plan designed in accordance with the most recent architectural plans to be submitted to the Council prior to the issue of a Construction Certificate, is recommended within the draft Notice of Determination.

4.4.2 Solar access

Part 4.4.2 requires buildings to be designed and sited to minimise the extent of shadows cast on:

- private and communal open space within the development;
- private and communal open space of adjoining dwellings;
- public open space such as parkland and bushland reserves;
- solar collectors of adjoining development; and
- habitable rooms within the development and in adjoining developments.

The proposal will cause additional midwinter overshadowing to properties that adjoin to the south, being No.82 and No.80 New Illawarra Road, No, 3 Barnsbury Grove and Whitbread Park.

Overshadowing to internal and external living areas

With respect to the two neighbouring properties fronting New Illawarra Road, concerns are largely limited to overshadowing on the directly adjoining property, No.82 New Illawarra Road. Compliance with the following control is required:

“Dwellings within the development site and adjoining properties should receive a minimum of 3 hours direct sunlight in habitable rooms and in at least 50% of the private open space between 9am and 3pm in mid winter”.

“Where existing adjoining properties currently receive less sunlight than these standards, sunlight must not be reduced by more than 20%”.

No.82 New Illawarra Road would be expected to be receiving compliant solar access, given that there are no buildings currently on the subject site. The proposal would result in non-compliance to the solar access requirements both to habitable rooms and to private open space.

With respect to the habitable rooms, it would appear that the non-compliance is largely unavoidable for this development. Given that the elements which cause overshadowing to that property are predominately two-storey, and are setback 3m from the southern boundary of the subject site, the new shadows to be cast would be largely commensurate with what may be cast by a two-storey dwelling in that location, which the RDCP 2011 would allow with a minimum side setback of 900mm to the ground floor and 1.5m to the first floor.

With respect to the private open space, Council had raised concerns with the applicant in relation to the location of the vertical circulation areas (lift/stairs) from Block B unnecessarily adding to the overshadowing to the private open space of No.82 New Illawarra Road. Council had indicated that the location of the lift overrun towards the southern side of the property was resulting in overshadowing that could be avoided through the relocation of the lift overrun – the tallest element of that building – further to the north. Council considered this matter to be of particular importance given that this issue is specifically referred to within Condition 3 of the SCC, and that a non-compliance was proposed with respect to the habitable rooms.

In response, the vertical circulation areas were relocated further to the north and the relative location of the lift and stairs were reversed, resulting in the taller element, the lift overrun, being located to the north of the stairs. However, each of these elements are still currently proposed on the southern half of the property and still cast the longest shadows into the private open space of No.82 New Illawarra Road.

The applicant has submitted to Council that a reduction in the height of the lift overrun by 0.6m, would largely negate the *extra* shadow cast by the lift overrun, beyond that cast by the stairs. Amended shadow diagrams were submitted seeking to demonstrate this to be the case (although no plan amendment was submitted).

An amended lift overrun with a maximum height of 34.02 AHD (0.6m below that proposed) would sit approximately 0.85m above the stairwell below, and approximately 1.4m further from the southern boundary. Although the angle of the sun varies throughout midwinter, it would be expected that the shadows cast by the lift overrun would extend a similar distance to the stairs:

The effect of these shadows are most pronounced at 1pm and the shadows cast at that time are shown below.

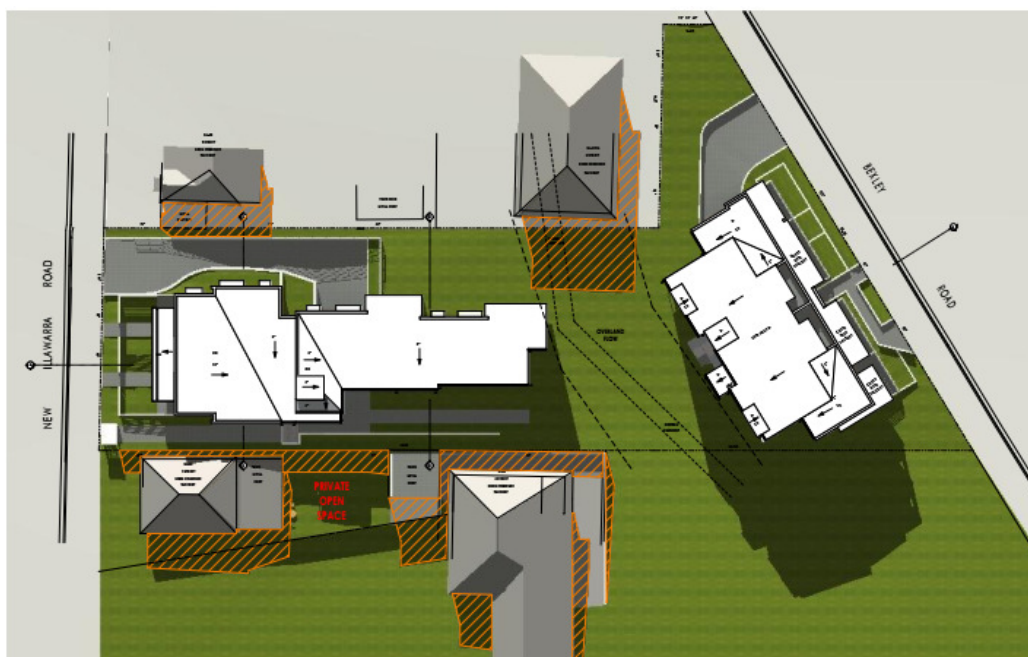


Figure 9 Midwinter shadow diagrams – 1pm (subject to design amendment)
(Source: Land and Housing Corporation, 2019)

The additional shadows cast by the lift overrun and adjacent roof element can be seen within the centre of the rear yard of No.82 New Illawarra Road as shown within Figure 9 above. For comparison the following images show the shadows cast by the current design (Figure 10), and those cast by the preceding design (Figure 11).

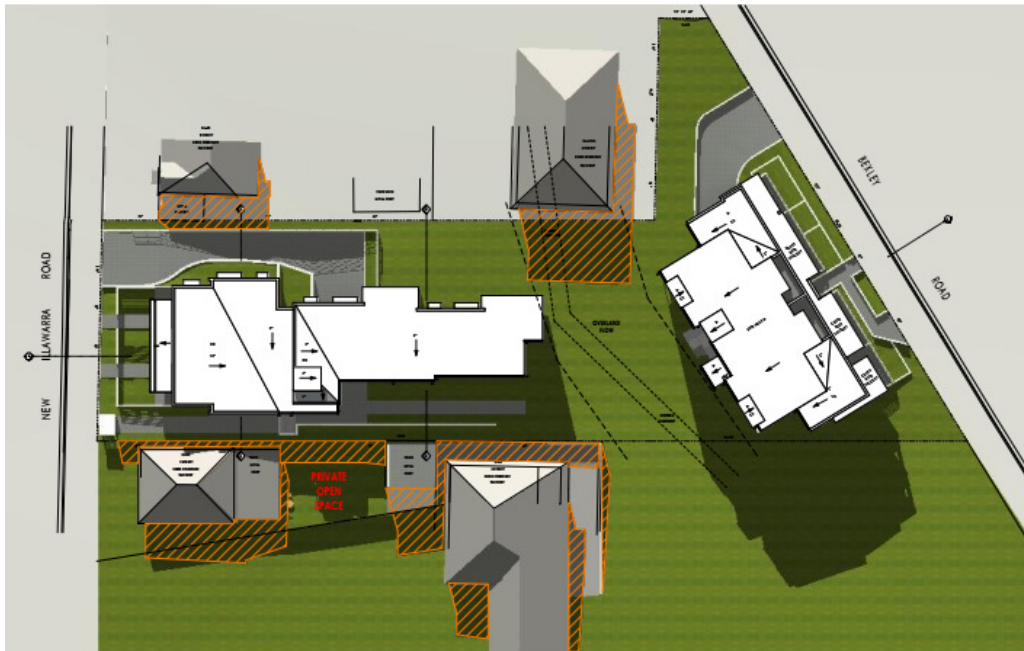


Figure 10 Midwinter shadow diagrams – 1pm (current design)
(Source: Land and Housing Corporation, 2018)

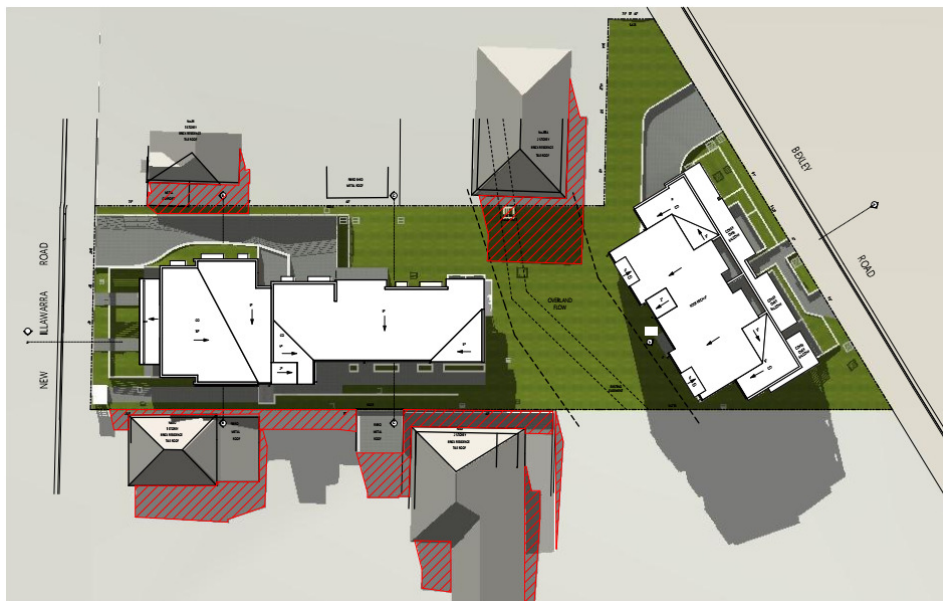


Figure 11 Midwinter shadow diagrams – 1pm (original proposal)
(Source: Land and Housing Corporation, 2017)

It is understood that the vertical circulation areas are located in this location for the following reasons:

- It is most appropriate for the lift overrun to be located at the junction of the two-storey and three-storey elements.
- The driveway is located on the northern side of the property, which is the lowest side, and this location allows for the overall height of the building to be reduced.

Therefore, while the proposal would create a non-compliance to No.82 New Illawarra Road, the design amendments have appropriately reduced the extent of the overshadowing. LAHC have indicated that

they would agree to a design amendment condition to lower the lift overrun by 0.6m, and such a condition is included within the draft conditions. It should also be noted that Council has in the past permitted variations to numerical controls, typically the height development standard, where the non-compliant portion was generally limited to the lift overrun or rooftop plant, etc. This highlights that it is typically Council practice offer leniency towards lift overruns, etc, when assessed against height limits (in this case, the building height limit set by the SCC).

Overshadowing to Whitbread Park

With respect to the overshadowing to Whitbread Park, there are no specific numerical controls within RDCP 2011 that relate to overshadowing of parks. The short setback to the boundary of the park has been a part of the proposal since the design of Block A was first formulated in 2014. The design outcome is seen as appropriate, given it enables the driveway to be located on the northern (lower) side of the development and maximises the separation distance to the residential properties to the north.

Moreover, Block A is oriented to align with Bexley Road, ensuring that the parts of the building that are closest to the boundary are limited to “corners” of the building. In addition, the building has a relatively slender design, allowing the shadows to move across the park relatively quickly during the winter solstice.

The shadow diagrams at 10am and 2pm (shown below) demonstrate these points.

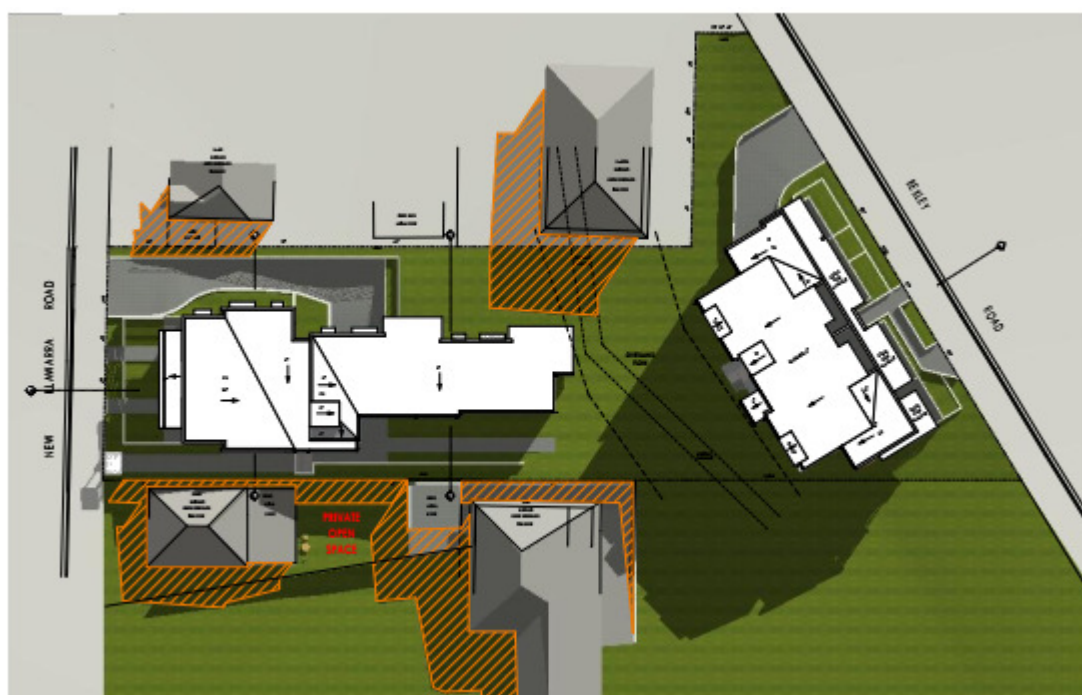


Figure 12 Midwinter shadow diagrams – 10am (subject to design amendment)
(Source: Land and Housing Corporation, 2019)

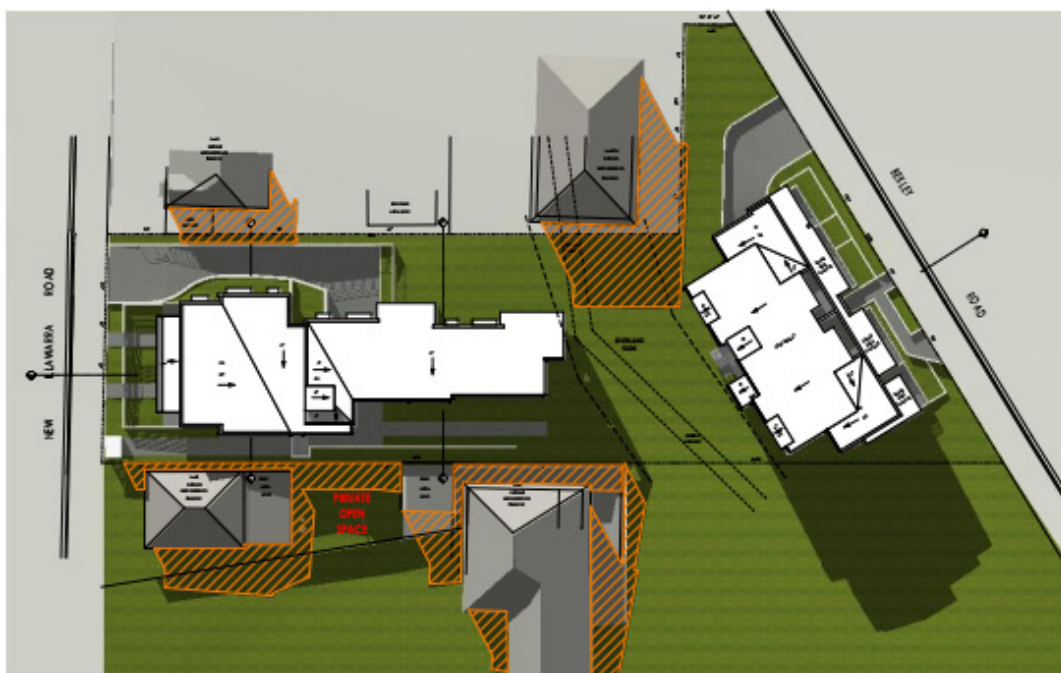


Figure 13 Midwinter shadow diagrams – 2pm (subject to design amendment)
 (Source: Land and Housing Corporation, 2019)

These shadow diagrams show that the only portion of the park which would be overshadowed continuously from 10am to 2pm is concentrated near the boundary, directly to the south of the building, representing a very small portion of the park. Aside from overshadowing from the retaining wall to the property at No.3 Barnsbury Grove, the park is otherwise provided with excellent solar access, particularly as the park widens towards the south. The approach to this aspect of the design is considered acceptable and the level of overshadowing to the park is satisfactory. It should be noted that these conclusions regarding overshadowing to Whitbread Park would be the same irrespective of whether the development were approved as is proposed, or whether the development were approved with the recommended design amendment condition to delete the top storey to Block A,

Overshadowing to solar collectors

A submission has received in relation to potential overshadowing impacts to the solar collectors located on the roof of the property at No.3 Barnsbury Grove. The survey plan shows that the roof ridge level to that property is approximately 34.51 AHD, which is marginally lower than the maximum level of Block B, being 34.62 AHD (recommended to be reduced to 34.02 by condition), and approximately 4m lower than the maximum level of Block A, being 38.190 AHD. Although the solar collectors sit at a lower height than the roof ridge, given the building is approximately 10m from the nearest part of either proposed building, it is not expected that there would be any significant overshadowing (if at all) associated with these solar collectors.

4.4.5 Acoustic Privacy and 4.4.6 Noise Impact

Part 4.4.5 and Part 4.4.6 each contain provisions which require a consideration of building layouts and their effect on acoustic privacy. The relative location of bedrooms to driveways, neighbouring living rooms and balconies, and lift shafts, are relevant in a consideration of building layout and the potential impact on sleep disturbance.

The layout of the development provides several instances of bedrooms that adjoin living rooms and that therefore have the potential to be affected by noise transmission through common walls. These impacts are largely unavoidable with the current site layout, particularly to Units 7/9 and Units 8/10 within Block B, which previously were compliant with this requirement, but were amended to provide living areas to the rear.

The submitted acoustic report has outlined recommended construction measures for common walls, as well as for wall treatments. Conditions are recommended to ensure compliance with these requirements.

4.5.1 Housing Diversity and Choice

Part 4.5.1 outlines the dwelling mix that is required for residential flat developments to be as follows:

- 1-bed/studio units – 10-30%
- 2-bedroom units – 50-75%
- 3+ bedroom units – 10-20%

The proposal provides for 12 x 1-bedroom units (50%) and 12 x 2-bedroom units (50%), and therefore only 2-bedroom apartments are compliant with this requirement. The DRP has noted that the absence of three (3) bedroom apartments and noted that the applicant is a social housing provider and has asserted a need for one (1) and two (2) bedroom apartments for social housing. This part of RDCP 2011 allows for variations to this control depending whether the development is used to provide affordable housing and on the relative location of public transport.

The apartment mix is acceptable given its intended use for social housing and the location of the site 350m from Bexley North Railway Station.

4.6 Car Parking, Access and Movement

The proposed development provides for 11 parking spaces within each basement, with no dedicated visitor, disabled or carwash spaces. Within the carpark for Block A, one space is provided for small cars, and within the carpark for Block B, two spaces are provided for small cars. The proposal also provides areas for bicycle and motorcycle parking, with the allocation within the Block B basement being larger than that within Block A.

Clause 36(4) of the ARH SEPP indicates that no car parking is required for this development.

Were it not for this clause, the development would be subject to Part 3J of the ADG. The subject site is located within 800m of Bexley North Train Station, and pursuant to Part 3J of the ADG, for development located on land within 800m of a train station, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments or the car parking requirement prescribed by the relevant council, whichever is less. The ADG would require 19 resident spaces and 5 visitor spaces (i.e. 24 spaces). The proposal would therefore exhibit a shortfall of two car parking spaces.

Further and although it would not apply to the development, the RDCP 2011 would require 22 resident spaces, 5 visitor spaces (i.e. 27 spaces), 5 adaptable parking spaces (of the total car parking), 1 car wash bay within each block, 2 motorcycle spaces and 3 bicycle spaces.

The proposal would not comply with either requirement; however, the provisions of the ARH SEPP preclude Council from requiring compliance with these requirements. Although motorcycle and bicycle spaces have not been explicitly marked on the plans, the spaces allocated for their provision are

sufficient to comply with these requirements and conditions are imposed requiring provision of parking spaces in accordance with RDCP 2011.

As noted in earlier, the basement car park protrudes as much as 2.7m metres out of the ground. Part 4.6 of the RDCP 2011, as well as part 3J of the ADG indicate that this outcome should be avoided. The report has earlier established (in relation to the ARH SEP) that there are limited opportunities to lower the basement. However, it is recommended that the appearance be addressed by conditions relating to the improvements to external finishes, as well as the provision of inoperable windows to these facades.

4.7 Waste Storage and Recycling Facilities

The proposal has been reviewed by Council's waste management officer, who advised that waste storage areas were adequate for the development, with the exception of a lack of bulk waste storage areas. The number of bins shown within each are in excess of those required by Rockdale Technical Specification Waste Minimisation and Management, and there appears to be capacity within each basement storage area for allow for the separate storage of bulk waste.

Conditions are recommended requiring compliance with Rockdale Technical Specification Waste Minimisation and Management for bulk waste storage areas and that the garbage bins are promptly removed from each street frontage after they are emptied.

5.2 RFB – Front setbacks

Part 5.2 requires primary street frontages to be consistent with the prevailing setbacks in the street. If there is not a consistent setback, a 6m setback applies.

The setbacks to the street frontages can be summarised as follows:

- At this part of the western side of Bexley Road (i.e. between New Illawarra Road to the north and Barnsbury Grove to the south), a consistent setback pattern is not observed, with a service station, batteaxe allotment, and Whitbread Park all located along the Bexley Road frontage of this relatively short block. In addition, the dwelling at 311 Bexley Road is provided with a front setback of approximately 4m. In this context, the proposed 6.5m setback is acceptable.
- A 7.8m setback is proposed to the New Illawarra Road frontage, which exceeds that generally provided to the developments along this part of New Illawarra Road.

The proposed front setbacks are compliant.

5.2 RFB – Site Coverage

Part 5.2 of RDCP 2011 requires a maximum building footprint of 35%. Site coverage has been calculated to be 811.95sqm (34% of site area) which complies with the maximum 35% control.

The figure within the initial Statement of Environmental Effects, relating to a similarly-sited building, was 29.7%. However, Part 5.2 refers to the 'building footprint' which includes not only the internal floor areas of the building, but also the balcony areas, and this is likely to have explained the difference in the calculation. The proposal is compliant, with regard to either calculation method.

It should also be noted that Part 4.1 of RDCP 2011 states that:

"If 'end to end' amalgamation occurs, the building setbacks and building footprint will be considered as if they were separate sites".

The intent of this clause with respect to setbacks, is largely achieved by the building separation requirements within Part 3F of the ADG. The intent of the clause with regards to the 'building footprint' is most likely aimed at ensuring that 'end to end' amalgamation does not create unusually-sited buildings, amongst otherwise regularly-sited buildings. Given the circumstances of this application (i.e. the reliance on an SCC for a development that is otherwise prohibited within the zone), this provision is of little relevance to the proposal.

S.4.15(1)(a)(iv) - Provisions of regulations

Clause 92 of the Regulations has been considered and there are no applicable provisions to the development.

S.4.15(1)(b) - Likely Impacts of Development

Potential impacts associated with the proposed development have been discussed in detail within this report.

S.4.15(1)(c) - Suitability of the site

The subject site is to accommodate this type of development has largely been considered as part of the SCC process. However, hazards and constraints that apply to the site, such as flooding and road traffic noise, as well as the relationship with neighbouring properties, particularly in relation to tree retention, solar access and privacy, have also been considered as part of this application. The issue of likely site contamination has also been considered, however, given the nature of the development, and the long-standing use of the land for residential purposes, onsite investigation is not warranted.

Subject to conditions, the site is considered to be suitable to accommodate the development.

S.4.15(1)(d) - Public Submissions

The development has been notified a total of three times, each time in accordance with the provisions of the RDCP 2011. Each notification period is outlined below:

- 19 June 2017 to 12 July 2017 – Notification of the original proposal, including newspaper advertising.
- 18 July 2018 to 1 August 2018 – Notification of the first amendment.
- 13 February to 28 February 2019 – Notification of the second amendment. The notification was required, despite the design amendments largely being direct responses to Council suggestions.

Throughout the three notification periods, a total of 60 different parties made submissions to the application, all of which objected to the proposal, with one later becoming a letter of support. The number of submissions received during each notification period is summarised below:

- 44 objectors during the notification of the original proposal.
- 24 objectors during the notification of the first amendment.
- 8 objectors during the notification of the second amendment.

The issues raised in the submissions have been taken into consideration in the assessment of the application as discussed below:

First notification period

Issue: Property has been rezoned without community consultation and a general lack of consultation in process including from LAHC and Council's DRP.

Comment: Rather than seeking a rezoning, the proposal seeks to undertake a development that may be carried out subject to the provisions contained within Division 5 of Part 2 of the ARH SEPP. The property has not been rezoned and the ARH SEPP does not require land to be rezoned to enable consideration under Division 5.

As part of the requirements of Division 5, the Director-General must seek Council comment; however, no other consultation is required as part of the SCC process. Notification of the subject application has been carried out in accordance with the requirements of RDCP 2011.

Issue: Bulk and scale and streetscape impacts, specifically relating to:

- *Single storey scale of neighbouring dwellings*
- *Objectives of R2 zoning*

Comment: The proposal is noted to be unusual in this regard. However, the provisions of the ARH SEPP enable this form of development, despite the differences. It is important the proposed design takes every opportunity to minimise the impacts of the proposal in this context. Discussion on these issues are provided throughout the report.

Issue: Overshadowing, specifically relating to:

- *Nearby low-density residential properties*
- *Whitbread Park*
- *82 New Illawarra Road*

Comment: Refer to discussion in relation to Part 4.4.2 of RDCP 2011.

Issue: Privacy impacts to neighbouring properties, specifically relating to:

- *Minimal setbacks to neighbouring properties.*
- *Adjustable screens create opportunities for overlooking.*
- *Noise impacts/acoustic privacy impacts*
- *North and south facing balconies.*
- *Southern facing windows and various additional balconies added to amended design*
- *Impacts to No.3 and No.1 and No.12 Barnsbury Grove and lack of privacy screening.*

Comment: The non-compliant setbacks and design measures aimed at alleviating privacy impacts, are each discussed in relation to Part 3F of the ADG.

Issue: Setback non-compliances, potentially exacerbated within the amended proposal.

Comment: As above, the non-compliant setbacks are discussed in relation to Part 3F of the ADG.

Issue: Clarification sought as to whether sites will be separated by fences

Comment: The initial plans showed that the two lots would be separated by fences. The removal of the fence between each block, ensures that a better design response is provided to the centre of the site. Conditions are recommended to ensure that no further fences are installed.

Issue: Overdevelopment of the site

Comment: While it is acknowledged that the SCC allows for a larger development than would otherwise be permitted; subject to conditions, the proposal will be consistent with the requirements of the SCC.

Issue: Insufficient off-street parking, and impacts on nearby streets, and impacts on sightlines of vehicles parked on -street, suggestions that Council should build parking station, consider resident parking scheme, and/or timed parking limits. The allocation of parking spaces is not provided.

Comment: The proposal is not required to provide any parking spaces. However, the number of parking spaces is appropriate as discussed in relation to Part 4.6 of RDCP 2011. A resident parking scheme may be approved by Council in the future, but this should not influence the outcome of this proposal. The allocation of parking spaces does not need to be provided prior to the determination of a development application. It is only necessary to ensure that sufficient parking is available.

Issue: Traffic impacts, including:

- *Traffic congestion, accidents, and pedestrian safety*
- *Impact on side streets, such as Lynesta Avenue and Fowler Avenue.*
- *Traffic density impacting on character of the area (i.e. capacity to walk and cycle).*
- *Safety concerns to Bexley Road driveway*
- *Issues with traffic report:*
 - *Existing vehicles movements estimated for a vacant site.*
 - *Surveys undertaken during school holidays.*
- *Right turning lane required at intersection of Bexley Road and Slade Road.*
- *Sightlines*

Comment: The majority of these matters are considered within the submitted Traffic and Parking Assessment Report (TPAR) and/or by the RMS assessment of the proposal (the latter being generally limited to the impacts associated with Bexley Road).

The TPAR largely points to the minimal increase in vehicular movements when compared with the recently demolished 10 dwellings at the site, and does not appear to rely on surveys of existing road conditions. Council engineers have reviewed the issue regarding to the assumptions made in the preparation of the TPAR and have advised that the expected generation is low enough that it would still be deemed acceptable, even if no existing traffic was accounted for within the TPAR (as would be the case with a vacant site).

Moreover, after the required design changes were made, the RMS provided concurrence to the proposal.

Issue: Increased crime and impacts to safety of local residents

- *Transient population*

- *Concerns regarding the nature of the tenants who will reside in the proposed development in relation to crime and anti-social behaviour*

Comment: As the site has until recently been used for social housing, has long been owned by LAHC (and under previous names), and as the provision of social housing is within the responsibilities of LAHC, a social housing development on this site would not be unexpected.

While resident safety is an important consideration in the assessment of this application, irrespective of whether or not there is any correlation between social housing and crime, there is no known reason why this development would be particularly vulnerable to crime or anti-social behaviour, compared with other potential developments.

LAHC have also pointed out that their strengthened antisocial behaviour policy features the following:

- A 'one strike' policy where serious breaches of a tenancy agreement will result in direct application to the NSW Civil and Administrative Tribunal for termination of a tenancy.
- A 'three strike' policy that could result in termination, if three strikes are validly issued to a tenant within a 12-month period.
- Acceptance of Neighbourhood Impact Statement by the NSW Civil and Administrative Tribunal to give the community and neighbours a voice in the Tribunal process.

Issue: Impact on property values, with reference made to specific literature on impacts of social housing on property values, and on the impact on lending/borrowing capabilities within the area.

Comment: As above, irrespective of whether or not there is any correlation between social housing and the value of surrounding privately-owned properties, there is no information to suggest that these negative impacts on property values would be particularly pronounced in this location.

Issue: Construction noise and dust, etc.

Comment: These matters are able to be addressed through conditions of consent.

Issue: Degradation of the natural environment.

Comment: There are no aspects of this particular proposal which result in undue impacts to the natural environment. The provision of flood compatible plantings within the overland flow area will stabilise the soil in this location, and the increased density close to public transport is broadly consistent with the objectives of sustainable urban development.

Issue: Block facing Bexley Road is as much as 38 metres in height when compared with the average ground level.

Comment: This is likely to relate to the overall height of the development as expressed in Australian Height Datum (AHD). AHD is a national unit of measurement which compares all structures to the mean sea level of 1966-68 (i.e. 0.00 AHD). The height of the proposal as expressed in metres above natural ground level is much less than 38m and this is discussed in relation clause 4.3 of the RLEP 2011.

Issue: Impact on future pattern of development within the locality, and concern relating to development precedent. Concern that SCC undermines zoning of entire area, potentially enabling further prohibited and non-complying developments.

Comment: A development cannot be undertaken if there are no legislative or policy provision which allow for it to be undertaken. The development is prohibited pursuant to RLEP 2011, but is allowable under the

higher planning instrument, being the ARH SEPP. This arrangement is not unusual in NSW, and in this particular case, the proposal is only able to be carried out after first being subject to the SCC process undertaken by DPE; this process cannot necessarily be replicated on all sites, as the sites must be deemed to be compatible with the surrounding land uses. The ARH SEPP states that in making this assessment, the Director-General must consider “the impact that the development (including its bulk and scale) is likely to have on the existing uses, approved uses and uses that, in the opinion of the Director-General, are likely to be the preferred future uses of that land”.

Non-complying developments (as distinct from prohibited developments) are always potentially able to be undertaken, if a merit assessment, usually undertaken by Council, deems that the non-compliances are acceptable. It is possible that approval of this application could have a positive impact on the likelihood of future non-compliances being approved within this locality. However, these are not grounds for the refusal of the current application, as the proposal explicitly takes advantages of provisions within a state planning instrument which allows the development to exceed numerical provisions that would apply under RLEP 2011, and that these matters would form part of the consideration of the SCC.

The status of the Planning Proposal on adjoining land to the north is discussed in relation to applicable draft environmental planning instruments.

Issue: Impact to trees, specifically:

- *Impact to T1, T2, T3 in Whitbread Park, from excavation for basement.*
- *Trees recently removed by carpark and Nairn Gardens on Bexley Road.*
- *Impact of loss of sunlight on trees.*
- *Query as to whether a new arborist report was submitted with the amended proposal.*

Comment: The proposal seeks the removal of trees on the site, but seeks to provide new trees throughout the development and generally provides an improvement in tree coverage to the site, subject to conditions. The impacts to trees on adjoining sites are discussed within the arborist report submitted with the application, and are generally agreed to by Council. It should be noted that the first design amendment sought a reduction in the minimum setback of the basement to Whitbread Park, but with an associated realignment which also simultaneously reduced the incursion on existing trees. Council's Tree Management Officer was satisfied that a further report was not required.

Other trees recently removed nearby are not relevant to the assessment of this application. The impact to sunlight on nearby trees was not deemed to be unacceptable.

Issue: Proposal does not comply with height, floor space ratio, and minimum lot size requirements.

Comment: The non-compliances with the height and floor space ratio development standards are each discussed in the consideration of the variation requests submitted in support of the non-compliances. There is no minimum lot size required for residential flat buildings in this location; however, a minimum street frontage of 24m is required by RDCP 2011 and the site meets this requirement at both frontages. RDCP 2011 also requires that where ‘end to end’ amalgamation occurs, as is the case within this development, then building footprint will be considered as if they were separate sites. This is discussed in relation to Part 5.2 of RDCP 2011 (although it is Part 4.1 that prescribes this requirement).

Issue: Issues with Site Compatibility Certificate, and concerns that the development is not compatible with surrounding land use.

Comment: The appropriateness of the SCC was considered by DPE prior to the issue of the SCC. The report prepared by DPE is attached to this report.

Issue: Proposal is inconsistent with requirements of the SCC.

Comment: It is agreed that the proposal is not consistent with the stated requirements of the SCC, particularly in relation to the proposed height, as measured in storeys. Design amendments in relation to the height of Block A are recommended and this is discussed elsewhere in this report.

Issue: Misleading information relating to building height

Comment: This assessment report has accurately described the proposed height of the development. Refer to discussion in relation to clause 4.3 of the RLEP 2011.

Issue: Impacts to amenity and use of Whitbread Park

Comment: The proposal takes advantage of the aspect to Whitbread Park will likely increase its patronage, and contains an adjacent building, which largely presents well to the park. Overshadowing impacts are discussed in relation to Part 4.4.2 of RDCP 2011, and there are not considered to be unreasonable impacts on this park.

Issue: Capacity of infrastructure to accommodate further residents, for instance:

- *Wolli Creek flooding*
- *Trains*
- *Impact on rates of additional development in the areas.*
- *Not supported by Special Infrastructure Contributions.*
- *Stormwater capacity*
- *Public transport capacity*
- *Schools capacity*

Comment: As with other developments within the local area, developer contributions will be payable to assist in the provision of local services. The impacts on stormwater and the local road network have been considered as part of this assessment and are deemed to be satisfactory. Services provided by state government, such as schools and public transport, are unlikely to be significantly impacted by the proposal, and are general not a consideration in the assessment of developments of this size. However, it should be noted that the provision of social housing, is itself, a public service, and a need for this service has been identified in this location.

Issue: Notification was not adequate, with some residents not receiving notification letters, including residents on parts of Fowler Street.

Comment: The map showing those properties that were notified is shown below, and these properties were notified during each of the three notification periods. This represents an expanded area over and above what is strictly required by RDCP 2011.



Figure 14 Notification Map
(Source: Council, 2017)

Issue: Flooding impacts, including:

- Flood study indicates that residents are to stay indoors or seek higher ground.
- May not adequately cater for vulnerable members of the community who may reside within the development.
- Bexley Road is closed during floods, creating further traffic issues.
- The co-location of the overland flow path and the communal open space is not appropriate.

Comment: Ongoing communication between Council and the applicant has resulted in improved modelling for the site. Subject to conditions, the management of residents during a flood emergency, is appropriate with regard to current best practice.

Issue: Views, including towards Whitbread Park.

Comment: The proposal is likely to affect the visual outlook from several surrounding properties. However, the two-storey height limit that applies to this site would largely impact on any such outlook, and the proposal is not considered to be unreasonable in this regard.

Issue: Overshadowing to solar hot water system of No.3 Barnsbury Grove.

Comment: Refer to discussion in relation to Part 4.4.2 of RDCP 2011.

Children from the development using Whitbread Park would create noise impacts for adjoining properties.

Issue: Noise from increased patronage of Whitbread Park

Comment: The increased use of public parks could be expected as part of any new development. The location of the proposal adjacent to a public park, may increase the likelihood that the park will be frequently used by residents; however, the public park is provided precisely for this purpose, and this should not count against the proposal.

Issue: Excavation into the bedrock will detrimentally impact dwellings (damage to buildings) in the immediate vicinity of the site.

The Geotechnical Report submitted with the development application makes recommendations to limit impacts on adjoining development during excavation.

LAHC has indicated that they will accept a condition of consent requiring dilapidation reports of adjoining properties prior to works commencing and for LAHC to be responsible for rectification or compensation for any damage caused.

Issue: Light pollution

Comment: There are no reasons to suspect that light pollution associated with the development will be beyond that expected of similar developments. Conditions will require that lighting be compliant with AS 4282-1997 *Control of the obtrusive effects of outdoor lighting*.

Second notification period

The following commentary relates to new issues raised within the section notification period.

Issue: Design lacks innovation and is not sensitive to the surrounding residential areas

Comment: Refer to assessment of the proposal in relation to SEPP 65.

Issue: Poor management of demolition (Aerial mapping indicates that the buildings on the site were demolished between August and November 2016).

Comment: The demolition that has already been carried out on site does not influence the assessment of the appropriateness of this proposal.

Issue: Concerns relating to 4.6 submission, specifically:

- *The timing of the submission (i.e. after lodgement).*
- *Disagreement with 'character' comments within the submission.*
- *References made to neighbouring developments that are in different zones (e.g. B4).*
- *Reference to planning proposal.*
- *4.6(8)(a) indicates that clause 4.6 does not apply to a development standard for complying development.*

Comment: It was agreed that there were some shortcomings within the initial 4.6 variation. The 4.6 variations were submitted based on feedback from the regional panel; the applicant had understood that the SCC would circumvent the requirement for a 4.6 variation.

Clause 4.6 operates so as to enable consent to be granted to a non-complying development – it is not necessary for the initial design to include a variation, only that one is considered prior to the granting of consent. The variation requests are discussed in relation to clause 4.6 of the RLEP 2011.

Note that within clause 4.6(8)(a), “complying development” refers to development for which a Complying Development Certificate (a different form of development approval) may be issued, not to whether or not a development complies with the height and FSR provisions within RLEP 2011. As the proposal does not seek a Complying Development Certificate, clause 4.6(8)(a) has no bearing on the 4.6 submission.

Issue: Discussion of whether ARH SEPP (i.e. SCC) overrides Rockdale LEP development standards.

Comment: In this instance the ARH SEPP and the SCC permits development that is not compliant with the Rockdale LEP development standards.

Issue: Request for further planting to be provided, particularly to the boundary with Whitbread Park.

Comment: Further planting has been provided throughout the development, with conditions recommended to further improve this outcome.

Issue: Flooding issues dictating design of communal open space and landscaping.

Comment: This issue is able to be addressed through conditions aimed at improving the planting within the overland flow path, and providing improved communal open space.

Issue: Changes to low density 'village' character contrary to the Greater Sydney Commission East District Plan, particularly noting the other nearby development precincts within the plan.

Comment: The development is compatible with the character of the locality. The Greater Sydney Commission East District Plan encourages an increase in the supply of affordable housing, such as that proposed by this development.

Issue: Issues with amenity of subject development, including:

- *Solar access restricted as a consequence of rezoning*
- *Lack of facilities within communal open space.*

Comment: The proposal does not seek to rezone the land, and solar access is discussed in relation to Part 4.4.2 of RDCP 2011. The proposal is compliant with the solar access requirement for individual apartments as required by the ADG. Conditions are aimed at providing an improved communal open space.

Issue: Loss of art deco architecture.

Comment: All demolition has already been carried out on site in accordance with the Activity approval attached to this report.

Issue: Loss of open space and parkland.

Comment: The site is currently fenced and has not been previously used as public open space or parkland. Subject to amended conditions, the proposal will satisfy the communal open space requirements of the Apartment Design Guide.

Issue: Reliance on Whitbread Park for communal open space.

Comment: As indicated above, subject to amended conditions, the proposal will satisfy the communal open space requirements of the Apartment Design Guide.

Issue: Cumulative impact on character of area, having regard for Bexley North Hotel development and rezoning on adjacent land.

Comment: The Planning Proposal on the property to the north has not yet been approved. Refer to discussion in relation to draft environmental planning instruments.

Issue: No lift access available at Bexley North Railway Station (i.e. as a reason that the area is not suited for population growth).

Comment: Although the proposal would increase the local population and potentially the patronage of Bexley North Railway Station, the state of existing facilities would be a matter for other government departments.

Issue: Proposal is contrary to comprehensive strategic planning process to be commenced by Council.

Comment: The strategic planning processes of Council are undertaken in the context of statewide environmental planning policies and legislation. The proposal is permitted subject to the ARH SEPP, a statewide policy.

Issue: Trees on perspectives are not shown on landscape plan

Comment: The landscape plan has been revised multiple times since the perspective plans (photomontages) were submitted with the original application. This plan is also subject to conditions requiring further refinement of the landscape plan. The photomontages continue to provide a useful depiction of the visual presentation of the buildings to each street frontage.

Issue: Higher greenhouse gas emissions related to per person and body corporate energy use within high-rise buildings.

Comment: The proposal is accompanied by a compliant BASIX certificate, and the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* indicates that other planning instruments (aside from that policy) or development control plans that aim to reduce the consumption of greenhouses gases, are of no effect.

Issue: The design and materials are not consistent with surrounding buildings.

Comment: The applicant has indicated that the proposed development will be primarily masonry, to reflect the predominant materials of surrounding development. The proposed material selection was considered to be acceptable by Council's DRP. The materials may not match existing neighbouring buildings, but the design is considered to be compatible. Conditions are recommended requiring a detailed colours and finishes schedule to be submitted to Council after determination.

Issue: General poor amenity of apartment buildings, and vulnerability to overshadowing from Planning Proposal to the north.

Comment: The apartments are provided with the suitable amenity and meet compliance with the relevant amenity measures outlined within the ADG. The provision of apartment development is a necessary consequence of increasing the density at this site. As stated elsewhere, the Planning Proposal is still within its initial stages. Consideration of a future development on the land to the north must include a consideration of the proposal, if it is approved.

Issue: Unsustainable or poorly planned growth, urban sprawl, etc.

Comment: An assessment of broader strategic planning objectives was undertaken as part of the assessment of the SCC. Refer to attachment.

Issue: Relationship with developer corruption.

Comment: There is no known evidence of any specific alleged corruption associated with this proposal.

Issue: Reasons needed for left-only turns from Bexley Road.

Comment: Driveway design has been revised to provide separate entry and exit to/from Bexley Road that it is angled to restrict vehicular movements to left-in/left-out, as requested by the RMS.

Issue: The fence separating the sites has been removed, allowing a thoroughfare for access to parking on streets to the east of the subject site.

Comment: No vehicular thoroughfare is proposed between the adjoining streets.

Issue: Queries as to whether the updated arborist report had considered the impacts to the trees to the neighbouring properties.

Comment: LAHC have issued the following response: “The Arboricultural Impact Assessment Report was based on the original architectural plans which provided a building setback of 2m to the southern boundary adjacent to Whitbread Park. Although the minimum setback to this boundary has been reduced to 1.1m, the encroachment only occurs at the corners of the building, with the majority of the building being setback over 2m. In this regard, the impact on existing trees will be comparable to that assessed in the arborist report. The provision of an updated Arboricultural Impact Assessment Report can be addressed as a condition of consent, if required”.

Conditions are therefore recommended in this regard.

Third notification period

The following commentary relates to new issues raised within the third notification period.

Issue: Other traffic impacts, including:

- *Interference of driveway with Fowler Avenue / Bexley Road intersection.*
- *Lack of pedestrian crossing and no-queueing signage.*

Comment: The RMS assessment deemed that the impacts to Bexley Road (including its intersections) would be acceptable. It should also be noted that the proposal has been amended such that the driveway to Bexley Road facilitates only left-turns, which will assist in minimising conflict with the intersection in question.

Issue: Misleading information submitted by the proponent, particularly descriptive information.

Comment: It is not unusual for opinions (professional or otherwise) to differ when using descriptive information to describe the development. However, the numerical and factual information submitted by the proponent is largely accurate, although there are some notable exceptions, particularly in relation to the number of storeys proposed within Block A.

Issue: Dwelling numbers are inappropriate, and the proposal is therefore inconsistent with the SCC.

Comment: The appropriateness of the number of dwellings is largely considered based on other impacts associated with the proposal. For instance, the recommended conditions seek deletion of two apartments. Therefore, with regard to this requirement of the SCC, Council has determined that the number of dwellings is not appropriate, but not specifically for reasons that relate solely to the proposed number of dwellings.

Issue: Issues with Traffic Report, including:

- *Mode-share travel data, and Bexley North not being a transit-oriented community.*

Comment: The site meets the public transport criteria that is a necessary precondition for consideration against Division 5 of the ARH SEPP. The use of mode-share data to estimate traffic generation is standard practice used for traffic modelling.

Issue: Inconsistency with the 1995 Rockdale City Council, Rockdale Urban Conservation Area Precinct 2, or Bexley North Precinct Rockdale, with reports attached to one submission.

Comment: This area is not part of a conservation area. It is possible that the reports included within the submission did not eventuate in the listing of a conservation area.

Issue: Concerns relating to resident isolation associated with high-rise social housing, with comparisons made to other social housing sites containing higher densities.

Comment: This proposal would concentrate 22 social housing dwellings within the one development site. The ARH SEPP permits on this site residential flat buildings that are undertaken by LAHC. The number of apartments proposed is not excessive, given that residential flat buildings for the purposes of social housing are permitted by the ARH SEPP.

Issue: Further submissions regarding the degradation of the natural environment, with submissions indicating that large buildings may impact on sunlight, wind and rain patterns.

Comment: The proposed development is not understood to disproportionately impact on environmental issues that may be of a larger scale.

S.4.15(1)(e) - Public interest

Granting approval to the proposed development will have no adverse impact on the public interest. The proposal will facilitate the orderly development of the land.

Section 94 Contributions

Although it is not uncommon for social housing in NSW to be exempt from developer contributions; currently, there are no provisions within either *Rockdale Section 94 Contributions Plan 2004*, or *Rockdale Section 94A Development Contributions Plan 2008*, or any other Council policy position, which precludes this development from being subject to developer contributions.

Conclusion

Development Application No. DA-2017/371 for the construction of a part two and three storey residential flat building comprising 10 residential units fronting New Illawarra Road and a second residential flat building of up to 5 storeys in height and comprising 14 residential units fronting Bexley Road including parking underneath at 84 New Illawarra Road (and former 313 Bexley Road) Bexley North, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval subject to conditions of consent.

Attachment

Schedule 1 – Draft Conditions of Consent

REFER TO SEPARATE DOCUMENT