

## SYDNEY SOUTH PLANNING PANEL - ASSESSMENT REPORT

<b>Panel Reference</b>	2019SSH010
<b>DA Number</b>	DA-303/2019
<b>LGA</b>	Canterbury Bankstown Council
<b>Proposed Development</b>	Demolition of existing structures, consolidation of lots and construction of a residential flat building (comprising 28 units) pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009, basement car parking and associated site works (Crown Development)
<b>Street Address</b>	24-28 Viccliffe Avenue Campsie
<b>Applicant/Owner</b>	Mono Constructions Pty Ltd (On behalf of Land and Housing Corporation)
<b>Date of DA lodgement</b>	22 May 2019
<b>Number of Submissions</b>	7 Submissions
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Part 4, Clause 20(1) of the SEPP (State and Regional Development) 2011 the application is declared as regionally significant development. Schedule 7 includes 'Crown development over \$5 million'. The proposed capital investment value of \$8,392,277 and falls within this category.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)</li> <li>• State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)</li> <li>• State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)</li> <li>• State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX)</li> <li>• Canterbury Local Environmental Plan 2012 (CLEP 2012)</li> <li>• Canterbury Development Control Plan 2012 (CDCP 2012)</li> <li>• Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1 - Architectural Plans</li> <li>• Attachment 2 – Solar Access and Development Calculations</li> <li>• Attachment 3 – Landscape Plan</li> <li>• Attachment 4- - Clause 4.6 Variation Request</li> <li>• Attachment 5 – Applicants Response to Council's letter</li> <li>• Attachment 6 - Google street view and aerial (in lieu of site visit). Prepared by Author</li> </ul>
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"> <li>• Canterbury Local Environmental Plan 2012 (CLEP 2012)</li> <li>• The Clause 4.6 relates to Clause 4.3 Height of Buildings of the CELP 2012</li> <li>• The subject site/s are in an R4 High Density Residential Zone</li> </ul>
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Insufficient number of on site car parking;</li> <li>• Proposal will further impact street parking;</li> <li>• Impact of additional traffic on Viccliffe Ave;</li> <li>• Clause 4.6 for the height breach;</li> </ul>

	<ul style="list-style-type: none"> <li>• Four storey building will be out of character;</li> <li>• Issues regarding privacy and overlooking into neighbouring properties;</li> <li>• Safety concerns from increase in vehicles;</li> <li>• Construction noise and air-pollution;</li> <li>• Front setback dominated by building infrastructures such as on-site detention;</li> <li>• Proposal has not demonstrated a design that addresses the fall of the topography;</li> <li>• Ground floor apartments do not have street connection with direct access as per the Apartment Design Guide (ADG);</li> <li>• Loss of solar access;</li> <li>• A number of issues from other infill affordable housing in the street, such as removalists blocking driveways, dumped rubbish, traffic, noise.</li> <li>• Affordable housing is out of character and will de-value surrounding properties.</li> </ul>
<b>Report prepared by</b>	Haroula Michael – Acting Executive Planner
<b>Report date</b>	27 March 2020

#### 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**

#### 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? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### 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**

#### Special Infrastructure Contributions

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

#### Conditions

Have draft conditions been provided to the applicant for comment? **No**  
*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*

## **EXECUTIVE SUMMARY REPORT**

This matter is reported to the Sydney South Planning Panel as the development application is for Crown Development that exceeds a capital investment value of \$5 million in accordance with Schedule 7(4) of State Environmental Planning Policy (State and Regional Development) 2011.

Development Application No. DA-303/2019 proposes demolition of existing structures, consolidation of lots and construction of a residential flat building (comprising 28 units) under Division 1 Infill Affordable Housing of the State Environmental Planning Policy (Affordable Rental Housing) 2009, basement car parking and associated site works.

DA-303/2019 has been assessed against the relevant provisions of State Environmental Planning Policy (State and Regional Development) 2011, State Environmental Planning Policy 65, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Affordable Rental Housing) 2009, Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012.

The key issues that need to be considered by the Sydney South Planning Panel (Panel) are:

- The Clause 4.6 Request to Vary a Development Standard relating to the height of buildings under the Canterbury Local Environmental Plan 2012;
- Clause 16A 'Character of local area' under the ARH SEPP;
- Insufficient information to determine compliance with the solar access under the Apartment Design Guide and other non-compliances with the ADG
- Height, scale and bulk of the proposed building;

The application was neighbour notified and advertised in the newspaper consistent with the provisions contained in the Canterbury Development Control Plan 2012 and subsequently re-notified in accordance with the Canterbury Bankstown Community Participation Plan. The application was initially on exhibition for a period of twenty eight (28) days from 11 June 2019 to 10 July 2019. A total of two (2) submissions were received. The amended plans were re-notified for a period of twenty eight (28) days from 29 January 2020 to 25 February 2020, a total of five (5) submissions were received. The submissions are discussed in detail further within the assessment report.

## **POLICY IMPACT**

This matter has no direct policy implications.

## **FINANCIAL IMPACT**

This matter has no direct financial implications.

## **RECOMMENDATION**

It is recommended that the Panel support Council's recommendation to refuse the application based on the reasons stated within the recommendations of this report.

As a consent authority, in this instance the Sydney South Planning Panel must not refuse consent to 'Crown Development', except with the approval of the Minister for Planning and Public Spaces Therefore, it is recommended that the application be referred to the Minister

for Planning and Public Spaces with a recommendation for refusal as per the requirements under Section 4.33 of the Environmental Planning and Assessment Act, 1979.

## **SITE & LOCALITY DESCRIPTION**

The subject sites which consist of three lots are legally described as Lots 8, 9 and 10 in Deposited Plan 35130 and known as 24-28 Vicliffe Avenue, Campsie. The site is of a regular shaped allotment with a combined total frontage of 39.09 metres and site area of 1817m<sup>2</sup>. The site is currently zoned R4 High Density Residential under the Canterbury Local Environmental Plan 2012.

The site is occupied by a single dwelling on each lot. It has a fall in a north to south direction and a sewer line runs through the entire width of the sites (north-south). The site is located on the northern side of Vicliffe Avenue and is surrounded by mainly single dwellings along Vicliffe Avenue with the exception of 55-57 Vicliffe Street which is a three storey (with attics) residential flat building approved under Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and a multi dwelling development located further south at numbers 48, 50 and 58 Vicliffe Ave, to the rear of the sites are residential flat buildings.

The aerial extract below identifies the site and the siting of developments on the adjoining and nearby sites.



**Figure 1:** Aerial of subject sites in blue. **Source:** NearMaps

## **PROPOSED DEVELOPMENT**

The Development Application proposes demolition of existing structures, consolidation of lots and construction of a residential flat building (comprising 28 units) under the State Environmental Planning Policy (Affordable Rental Housing) 2009, basement car parking and associated site works.

The specifics of the development are as follows:

<b>Floor</b>	<b>Description</b>
Basement Level 1	<ul style="list-style-type: none"><li>• 13 car parking spaces (3 of which are accessible spaces);</li><li>• 8 bicycle spaces;</li><li>• 26 storage cages;</li><li>• Fire pump and tank room;</li><li>• Services rooms; and</li><li>• Bin storage room.</li></ul>

Ground Floor	<ul style="list-style-type: none"> <li>• 4 x 1 bedrooms;</li> <li>• 3 x 2 bedrooms (1 of which is adaptable);</li> <li>• Bin presentation area; and</li> <li>• Communal Area.</li> </ul>
Level 01	<ul style="list-style-type: none"> <li>• 3 x 1 bedroom;</li> <li>• 4 x 2 bedroom (1 of which is adaptable).</li> </ul>
Level 02	<ul style="list-style-type: none"> <li>• 3 x 1 bedroom;</li> <li>• 4 x 2 bedroom (1 of which is adaptable).</li> </ul>
Level 03	<ul style="list-style-type: none"> <li>• 4 x 1 bedroom;</li> <li>• 3 x 2 bedroom</li> </ul>

## **BACKGROUND**

Following an initial pre-lodgment meeting with Council in August 2018, which were based on conceptual plans, the Applicant along with the NSW Land and Housing Corporation sought a further meeting to discuss the proposed development.

On the 20 February 2019, a pre-DA meeting was held with representatives of Mono Constructions and NSW Land and Housing Corporation to discuss the draft proposal. The following advice was provided to the Applicant's team at the meeting:

That a detailed assessment was not carried out on the draft proposal, however, the following comments relating to the building's design were provided:

- Clarification if the application is being made by a social housing provider or whether a developer will be constructing the DA as different parking, FSR, and landscaping requirements apply depending on this. The applicant advised that it would be a 100% social housing development;
  - Council is unlikely to support a Clause 4.6 variation to the height.
  - Support of the proposed 4 storey design would set an undesirable precedent which is inconsistent with the desired maximum 3 storey character of the area.
  - The development does not comply with 3.1m floor to floor heights recommended within the Apartment Design Guide (ADG) or the maximum 3 storey and 10m external wall height requirement outlined within Canterbury Development Control Plan (CDCP) 2012.
  - The current design comprises subfloor apartments, which result in substandard amenity and are not supported.
  - Orientation of the site will also result in substantial overshadowing of the properties to the south.
  - It was suggested that the development incorporate a stepped max 3 storey design that falls with the topography of land. Removal of the 4th storey would allow the ground floor of the northern portion of the design to be increased to ensure the northern units are not subfloor.
- Other matters discussed included:
- The Applicant is to demonstrate that the site is within an accessible area as required within the ARH SEPP.
  - Additional landscaping requirements apply to the site if the application is made by a social housing provider as outlined within the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).
  - The Applicant is to provide larger view from the sun diagrams to ensure they are legible. Also required to provide hourly overshadowing diagrams to

determine level of solar access provided to adjoining properties as well as the communal open space area within the site.

- The design is to comply with the minimum setback requirements. It was confirmed that setbacks are measured to the outside of the balcony or the like.
- It was noted that compliance with the natural ventilation controls outlined within the ADG relies on three apartments that incorporate operable skylights, which are not a preferred design. However, should they be required (as all other options are exhausted) they would need to provide details of how the operable skylights work and such skylights are not to exceed the maximum building height.
- The architectural plans should incorporate dimension and areas of rooms to facilitate an assessment against the apartment design controls within the ADG.
- It was noted that some private open space areas don't appear to meet the minimum requirements specified within the ADG. Compliance with such controls are required.
- Refer to CDCP 2012 for controls relating to façade design.
- The bin storage area should be designed so that it doesn't encroach the side setback requirement. Advised to liaise with Council's waste department (if they haven't already) to determine waste bin storage area requirements and the controls are outlined within CDCP 2012.
- The Applicant referred to a similar approved design at 55-57 Viccliffe that comprises 4 storeys. The Applicant was advised that this design is not 4 storey (its 3 storey plus attic) and it complied with the maximum building height standard. It was also advised that since this approval, we have received further advice regarding attic design and such design as approved at 55-57 Viccliffe would not be supported and Council would not want a repeat of the design at 55-57 Viccliffe Avenue.

Following the Briefing to the Sydney South Planning Panel (SSPP) held on 8<sup>th</sup> October 2019, Council wrote to the Applicant advising of the SSPP's comments and Council's concerns with the proposal. On the 12<sup>th</sup> of November 2019, Council met with Applicant, Architects and representatives of the NSW Land and Housing Corporation to discuss proposed changes to the proposal based on the correspondence received by Council.

Amended plans were lodged with Council on the 20<sup>th</sup> of December 2019.

On the 6<sup>th</sup> of March 2020 a teleconference was held with Council's Director of Planning, Co-ordinator Planning East and the assessing officer along with the Director Portfolio Services Projections Division of Land and Housing Corporation.

During this teleconference, Council outlined the concerns of the height breach and advised that Council would not support a variation and that the proposal should be pulled back to a three-storey development as intended by the CLEP 2012.

On the 10<sup>th</sup> of March 2020 the applicant advised council that the matter be reported to the April 2020 SSPP meeting based on the revised plans submitted to Council on the 20 December 2019, no further changes were going to be made to the proposal.

Council proceeded to finalise their assessment based on the amended plans lodged on the 20<sup>th</sup> of December 2019.

### **Statutory Considerations**

When determining this application, the relevant matters listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX)
- Canterbury Local Environmental Plan 2012 (CLEP 2012)
- Canterbury Development Control Plan 2012 (CDCP 2012)
- Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

### **SECTION 4.15 ASSESSMENT**

The proposed development has been assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

#### **Environmental planning instruments [section 4.15(1)(a)(i)]**

#### **State Environmental Planning Policy (State and Regional Development) 2011**

As outlined in Part 4, Clause 20(1) of the SEPP (State and Regional Development) 2011 the application is declared as regionally significant development. Schedule 7 includes 'Crown development over \$5 million'. The proposed capital investment value of \$8,392,277 and falls within this category. Accordingly, the application is reported to the Sydney South Planning Panel. An electronic Panel Briefing was held on 8<sup>th</sup> of October 2019. The Panel noted a number of issues at the briefing, which are outlined below.

- *The need to accommodate within the building envelope the FSR bonus gained under the ARH SEPP which normally requires some flexible application of standards. The panel notes the bonus available is not being fully exploited. This bonus issue bears on the assessment of the CL4.6 application and the 3 storey building limit of the DCP. Further as the application is made under the ARH SEPP it is not necessarily a precedent for later applications which do not provide the affordable housing element.*
- *The Applicant is to demonstrate that the site is within an accessible area required within the ARH SEPP.*
- *Additional landscaping requirements apply to the site if the application is made by a social housing provider as outlined within the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).*
- *The design is to comply with the minimum setback requirements.*
- *The current design comprises subfloor apartments, which result in substandard amenity and are not supported.*
- *Orientation of the site will also result in substantial overshadowing of the properties to the south.*
- *The architectural plans should incorporate dimension and areas of rooms to facilitate an assessment against the apartment design controls within the ADG.*
- *It was noted that some private open space areas don't appear to meet the minimum requirement specified within the ADG, and that compliance with such controls is required.*



- *Incorporation of a stepped max 3 storey design that falls with the topography of land, and removal of the 4th storey would allow the ground floor of the northern portion of the design to be increased to ensure the northern units are not subfloor.*

### **State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)**

Clause 7 of SEPP 55 – Remediation of Land requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, we must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, we must be satisfied that the land will be remediated before the land is used for that purpose.

The applicant has submitted a Geotechnical Investigation. The report contains recommendations in regards to future excavation, building foundations and contamination management. Council's Environmental Health Officer has also reviewed the documents and is satisfied subject to the imposition of suitable conditions of consent. Accordingly, the submitted reports demonstrate that the site is suitable for the purpose of the proposed development in accordance with SEPP 55 – Remediation of Land.

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

In accordance with BASIX SEPP, a BASIX Certificate accompanies this application. The Certificate makes a number of energy/resource commitments relating to water, energy and thermal comfort. The relevant commitments indicated on the BASIX Certificate have been shown on the plans in order to satisfy objectives of the SEPP.

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

The proposed development seeks approval for the removal of trees (including the street trees). Council's tree officer has reviewed the application and raised no objection to the removal of the trees (including the street trees), and in the event the application is approved, conditions have been provided by Council's tree officer.

### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

The following provisions of the SEPP ARH Division 1 In-fill affordable housing are relevant to this proposal:

#### **10 Development to which Division applies**

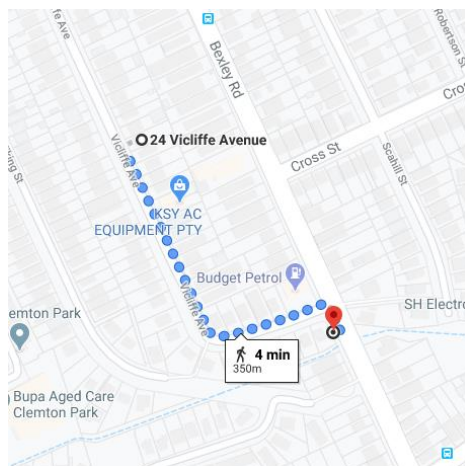
- (1) *This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if—*
  - (a) *the development concerned is permitted with consent under another environmental planning instrument, and*
  - (b) *the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the [Heritage Act 1977](#).*

A residential flat building is a permissible land use in the R4 High Density Residential zone under the Canterbury Local Environmental Plan 2012 and the proposal is not located on land containing a heritage item.

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

Clause 10(2) of the SEPP also requires that in-fill affordable housing developments in the Sydney Region be located within an 'accessible area' which is an area in proximity of certain transport nodes, including being within 800m walking distance to the entrance of a railway station or within 400m walking distance to a bus stop used by a regular bus service as defined by the SEPP ARH.

The site is located within 400m walking distance to a bus stop (refer to figure 2 below), that meets the definition of "accessible area" under clause 4 of the ARH SEPP. The application therefore satisfies the requirements of this Clause.



**Figure 2** Subject site/s to Bus Stop (Bus Stop ID 219469)

It should be noted that the bus stop nominated on the submitted architectural plans, Drawing No. DA03 Revision 10 is the incorrect bus stop and is not the one that the applicant is relying on to meet the requirements of this Clause. However, we do accept that the site meets the accessible requirements as the Bexley Road Bus stop is within 400 metres walking distance and meets the required bus service times as specified in Clause 4(1)(c) of the ARH SEPP.

### **13 Floor space ratios**

- (1) *This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*
- (2) *The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus—*
- (a) *if the existing maximum floor space ratio is 2.5:1 or less—*
- (i) *0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or*
- (ii) *Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where—*

**AH** *is the percentage of the gross floor area of the development that is used for affordable housing.*

$$Y = AH \div 100$$

Floor space ratio is defined as the maximum floor space allowable for the subject site (i.e. 0.9:1 as per Clause 4.4(2) of the CLEP 2012) plus a floor space bonus based on the amount of floor space to be dedicated to affordable rental housing.

The development provides a total gross floor area (GFA) of 2,111.7m<sup>2</sup> representing an FSR of 1.16:1.

This application proposes to dedicate 100% of the total GFA as affordable housing, it therefore benefits from an FSR bonus.

Given the maximum allowable floor space ratio in the subject zone is 0.9:1, however increases to 1.4:1 with the added bonus of 0.5:1 given the applicant's dedication of 100% of the total GFA of the proposal as affordable housing, the proposed FSR of 1.16:1 is compliant and is less than the maximum allowable FSR, satisfying the requirements of this clause.

#### 14 Standards that cannot be used to refuse consent

Clause 14 prescribes minimum standards which cannot be used by Council to refuse consent. The following table is an assessment of the proposal against these standards:

Control	Requirement	Proposal	Complies
Cl.14 (1)(b) <b>Site area</b>	450m <sup>2</sup>	1817m <sup>2</sup>	Yes
Cl.14(1)(c)(i) <b>Landscaped area</b>	in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided  Required 28 x 35m <sup>2</sup> = 980m <sup>2</sup>	722.62 m <sup>2</sup>	No
Cl. 14(1)(d) <b>Deep soil zone</b>	(i) 15% of site (equal to 272.55m <sup>2</sup> ),	11.66% (equal to 211.88m <sup>2</sup> when including areas with a minimum of 3m dimension)	No. However, the proposal meets the minimum requirements set out under the Apartment Design Guide (ADG) which requires 7% and is therefore acceptable in this regard
	(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres	Noted see above	Noted. See above.
	(iii) if practicable, at least two-thirds of the deep soil zone is located at rear of site (i.e 181.7m <sup>2</sup> )	284.9m <sup>2</sup> of deep soil located at the rear of the site	Yes
Cl.14(1)(e) <b>Solar</b>	if living rooms and private open spaces for a minimum of 70 per	The proposal proposed 2 hours of solar access	No

<b>access</b>	cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	between 9am and 3pm as per the ADG.  Insufficient information has been provided to ensure compliance that the living rooms and private open spaces would receive solar access.	
<b>CI14(2)(a) Parking</b>	(i) In the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms	(14 x 0.4space) + (14 x 0.5 spaces) = 12.6  13 spaces are required.  13 spaces are provided.	Yes
<b>CI.14(2)(b) Dwelling size</b>	if each dwelling has a gross floor area of at least—  (ii) 50m <sup>2</sup> per 1 bedroom (iii) 70m <sup>2</sup> per 2 bedrooms	The smallest 1 bed dwelling is 50.3m <sup>2</sup> . The smallest 2 bed dwelling is 70m <sup>2</sup> .  Given this, the proposal meets the minimum dwelling size requirements.	Yes

*Clause 14(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).*

## **15 Design Requirements**

- (1) *A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.*
- (2) *This clause does not apply to development to which clause 4 of [State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development](#) applies.*

Given this application is for a Residential Flat Building this clause does not apply.

## 16 Continued application of SEPP 65

*Nothing in this Policy affects the application of [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development](#) to any development to which this Division applies.*

An assessment of SEPP 65 has been carried out and is outlined further in this report.

### 16A Character of the Local Area

*A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.*

Clause 16(A) of the ARH SEPP requires that a consent authority take into consideration whether the design of the development is compatible with the character of the local area.

The current planning controls applicable to the subject site and its surrounds allow for a range of development types, including residential flat buildings.

The predominant development type along Viccliffe Avenue are low density residential dwellings consist of mainly single and two storey development and some multi dwelling housing to the south of Viccliffe Avenue (namely, 48, 50 and 58 Viccliffe Avenue). The only exception within the vicinity of the subject site being 55-57 Viccliffe Avenue, which consists of a three storey with attic and basement car parking infill affordable rental housing development.

Consideration should also be given to the context of the area and the desired future character, that are set by the objectives and controls of the Canterbury Local Environmental Plan 2012 (CLEP 2012) and Part C4 Residential Flat Buildings of the Canterbury Development Control Plan 2012 (CDCP 12012).

The proposal is inconsistent with the future character of the area, as sought by the CLEP 2012 and CDCP 2012. A four storey building (and in the south-western part of the building, 5 storey by virtue of the basement being more than 1 metre above the ground level (existing)) with a wall height greater than 10metres and breach in building height would be inconsistent with the desirable future character for the area and would set an undesirable precedent.

In addition to the above, part C4.2.3.2 also requires the roof design to relate to the desired built form and context and the use of a simple pitched roof. The proposed flat roof form is not compatible and sympathetic to the nearby buildings which are predominantly hip and gable roof forms.

The proposed development has been considered under the ARH SEPP and in this respect, does not respond appropriately to the intent of the Policy and has not satisfied the requirements of Clause 16A. The proposed development is not considered to be compatible with the existing and future character of the local area and cannot be supported.

## 17 Must be used as Affordable Housing for 10 Years

- (1) *A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that—*
  - (a) *for 10 years from the date of the issue of the occupation certificate—*
    - (i) *the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and*

- (ii) *all accommodation that is used for affordable housing will be managed by a registered community housing provider, and*
- (b) *a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the [Conveyancing Act 1919](#), that will ensure that the requirements of paragraph (a) are met.*
- (2) *Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.*

As per Clause 17(2), the land is owned by the NSW Land and Housing Corporation and is made on behalf of a public authority, therefore this clause does not apply to this application.

## **18 Subdivision**

*Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.*

The application does not seek consent for strata subdivision as part of this application. However, the application seeks consent to consolidate the three separate titles into one lot.

If the application were to be approved, this can be addressed by a condition of consent.

## **State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65)**

This policy applies to residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building, must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least 3 or more storeys and contain at least 4 or more dwellings. Residential apartment development does not include boarding houses or serviced apartments.

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing 'good design'. Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses the design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the ADG have been achieved. An updated design verification statement has not been provided with the plans submitted to Council on the 20 December 2019.

These principles are discussed as follows:

### Principle 1: Context and Neighbourhood Character

As previously outlined in this report, the proposal seeks a four storey residential building with a proposed building height of 13.65metres (at the heights point), representing a 2.15m to the allowable building height under the Canterbury Local Environmental Plan 2012.

Viccliffe Avenue is one undergoing change with the predominate built form being single and two storey dwellings. The exceptions in the street are a three storey residential flat building

at 7 Viccliffe Ave, 55-57 Viccliffe Avenue which consists of a three storey with attic residential flat building and two storey s dwelling developments located at 48, 50 and 58 Viccliffe Ave.

The proposed development is inconsistent with Council's height controls and fails to align with the desired future character of the locality. The proposed development will result in an uncharacteristic building bulk and a development that will be visually incompatible within the context of the surrounding environment and future character of the area.

#### Principle 2: Built Form and Scale

The breach in the building height control will result in a built form and scale that does not align with the desired future character of the locality. The proposal does not appropriately contribute to the character of the streetscape and the desired future character.

#### Principle 3: Density

The density of the proposed development is considered to be satisfactory and reasonable to cater for social and affordable housing.

#### Principle 4: Sustainability

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

#### Principle 5: Landscape

The proposed development requires a minimum of 980m<sup>2</sup> and has provided 722.62m<sup>2</sup>, which results in a deficiency of 257.38m<sup>2</sup>. The communal open space located along the south end of the site provides a balanced integration of areas for social interaction and deep soil planting.

The proposal however fails to provide contribute to the landscape character of the predominate streetscape given the number of services, driveway entry and pathways located within the front setback of the site.

#### Principle 6: Amenity

The proposed development has failed to demonstrate that the proposal is able to provide solar access to at least 70% of the units. The size and room dimensions meet the minimum standards within the Apartment Design Guide, however there are units on the ground floor located along the northern end of the site that are still sub-floor, with a portion of the unit being located beneath the natural ground level.

Therefore, it has not been demonstrated that the proposed units will achieve good internal amenity.

#### Principle 7: Safety

The applicant has considered Crime Prevention through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The proposal provides increased activation and passive surveillance of the surrounding streets and private open space areas on the site.

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

The proposed design incorporates various dwelling sizes and includes adaptable units promoting diversity, affordability and access to housing choice.

### Principle 9: Aesthetics

The proposal seeks to use a range of finishes and colours that would be visually compatible and responds to the existing and local context of the area.

The proposal also seeks a flat roof which would be inconsistent with the desirable elements and repetitions of the streetscape, the main roof type within the street is made up of hip and gabled roof forms.

### **Apartment Design Guide**

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

Section	Design Criteria	Proposed	Complies
<b>Part 3 Siting the Development</b>			



Section	Design Criteria	Proposed	Complies
<b>3C Public Domain Interface</b>	<ul style="list-style-type: none"> <li>- Avoid long, high blank walls and fences</li> <li>- Direct access from the street to ground floor apartments and windows overlooking the street improve safety and social interaction;</li> <li>- Key components to consider when designing the interface include entries, private terraces or balconies, fence and walls, changes in level, services location and planting.</li> <li>- Safety considerations (real or perceived) and consideration of social interaction opportunities when viewed from the public domain.</li> <li>- Terraces, balconies and courtyard apartments to have direct street level entry where possible;</li> <li>- Changes in levels between ground floor and terraces to balance passive surveillance and privacy;</li> <li>- Provide seating at building entries, letter boxes and private courtyards adjacent the street.</li> <li>- Multiple building entrances to be clearly defined through architectural detailing, changes in materials, plant species and colours;</li> <li>- Concealment opportunities minimized.</li> </ul>	The location of the bin storage area along the front boundary and will result a solid wall and will result in a poor public domain interface.	No
<b>3D Communal and Public Open Space</b>	<p>(1) Communal open space has a minimum area equal to 25% of the site. Total site area is 1817m<sup>2</sup>, requiring a minimum 454.25m<sup>2</sup>)</p> <p>Minimum dimension 3metres</p>	461.3m <sup>2</sup> (25.4%)	Yes

Section	Design Criteria	Proposed	Complies
	<p>(2) Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</p> <p>Min required = 227.125m<sup>2</sup></p>	<p>The proposal will not receive the minimum 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June.</p> <p>A portion of the area included in the calculation of communal open space receiving solar access, it is proposed for dense planting arrangement which does not make it useable and therefore does not form part of the principal usable part to the communal open space.</p> <p>The useable open space receiving solar access is:</p> <p>10am – 169.5m<sup>2</sup>  11am – 142.7m<sup>2</sup>  12noon – 1116.m<sup>2</sup></p>	No

Section	Design Criteria			Proposed	Complies
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions:			154.9m <sup>2</sup> (with a minimum dimension of 6m)	Yes
	Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)		
	Less than 650m <sup>2</sup>	-	7%		
	650m <sup>2</sup> - 1,500m <sup>2</sup>	3m			
	Greater than 1,500m <sup>2</sup>	6m			
	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m			
	Required = 127.19m <sup>2</sup>				

Section	Design Criteria	Proposed	Complies									
3F Visual Privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	Min 6 metres	Yes									
	<table><tr><th>Buildin g Height</th><th>Habitabl e Rooms &amp; Balconie s</th><th>Non- habita ble Rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr></table>			Buildin g Height	Habitabl e Rooms & Balconie s	Non- habita ble Rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m
	Buildin g Height			Habitabl e Rooms & Balconie s	Non- habita ble Rooms							
	Up to 12m (4 storeys)			6m	3m							
	Up to 25m (5-8 storeys)			9m	4.5m							
Note: An increased 3m building separation is required given the land to the north is a different zone that permits lower density residential.												
3J Bicycle and Car Parking	For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements. Otherwise, the CDCP 2012 controls apply.	Not applicable. The car parking rates have been assessed under the ARH SEPP	N/A									
	The car parking needs for a development must be provided off street.	All car parking associated with the site is off street	Yes									

Section	Design Criteria	Proposed	Complies
<b>3G Pedestrian Access and Entries</b>	<p>Multiples entries should be provided to activate the street edge.</p> <p>Entry locations relate to the street and subdivision pattern / existing pedestrian network.</p> <p>Building entries should be clearly distinguishable from private entries.</p> <p>Building access areas (lift lobbies, stairwells and hallways) should be clearly visible from public domain and communal spaces.</p> <p>Minimise ground floor and underground level changes along pathways and entries. Steps and ramps integrated into design.</p> <p>Provide way finding maps for large developments. Electronic access and audio/video intercoms required.</p> <p>Provide pedestrian links to streets and destinations with clear sight lines.</p>	<p>The proposal has provided a common entry into the building which is emphasised by the entry portico proposed along the front boundary of the site.</p> <p>Apartment 102 has been provided with its own entry directly via Viccliffe Avenue.</p>	Yes
<b>Part 4 Designing the Building</b>			

Section	Design Criteria	Proposed	Complies
<b>4A Solar and Daylight Access</b>	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>Insufficient information provided. The applicant was advised to provide view from the sun diagrams that demonstrate how much solar access would penetrate into the living rooms and private open spaces.</p> <p>This has not been provided.</p> <p>In addition, the submitted solar compliance table is inconsistent with the solar diagrams.</p>	No
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	In sufficient information to determine	No
<b>4B Natural Ventilation</b>	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartment at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	57% (16 units from 28)	No
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	The overall depth of the cross-through apartments do not exceed 18m measured glass line to glass line.	Yes

Section	Design Criteria	Proposed	Complies
<b>4C Ceiling Heights</b>	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	3.05m floor to floor	No.  The minimum floor to ceiling height of 2.7m for habitable rooms is achieved. However, the floor height is proposed as 3.05m rather than 3.1m. The proposed slabs are nominated as 200mm. it has not been demonstrated that once the floor finishes, insulation and the use of ceiling fans as per the BASIX Certificate the 2.7m floor to ceiling height will not be compromised. If this was the case, this will result in a further breach to the building height in order to meet the requirements of the ADG.
	<b>Minimum Ceiling Height for Apartment and Mixed Use Buildings</b>		
	Habitable rooms		
	Non-habitable		
	For 2 storey apartments		
	<div>2.7m</div> <div>main living area floor</div> <div>2.4 for second floor, where its area does not exceed 50% of the apartment area</div>		
	These minimums do not preclude higher ceilings if desired.		

Section	Design Criteria	Proposed	Complies									
4D Apartment Size and Layout	Apartment are required to have the following minimum internal areas:	The smallest 1 bed dwelling is 50.3m <sup>2</sup> . The smallest 2 bed dwelling is 70m <sup>2</sup> .	Yes									
	<table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table>	Apartment Type		Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>
	Apartment Type	Minimum Internal Area										
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	1 bedroom	50m <sup>2</sup>										
	2 bedroom	70m <sup>2</sup>										
	3 bedroom	90m <sup>2</sup>										
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.											
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> each.												
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.	Achieved	Yes										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Achieved	Yes										
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	Achieved	Yes										
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Achieved	Yes										
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>	Achieved.	Yes										



Section	Design Criteria	Proposed	Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Cross through apartments meet the minimum 4m dimension and will not crate deep narrow apartments	Yes															
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	The balconies to apartments 207, 307 and 407 do not meet the minimum 10m <sup>2</sup>	No															
	<table><tr><th>Dwellin g type</th><th>Minimu m Area</th><th>Minimu m Depth</th></tr><tr><td>Studio apartm ents</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroo m apartm ents</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroo m apartm ents</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroo m apartm ents</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table>			Dwellin g type	Minimu m Area	Minimu m Depth	Studio apartm ents	4m <sup>2</sup>	-	1 bedroo m apartm ents	8m <sup>2</sup>	2m	2 bedroo m apartm ents	10m <sup>2</sup>	2m	3+ bedroo m apartm ents	12m <sup>2</sup>	2.4m
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	2 bedroo m apartm ents			10m <sup>2</sup>	2m													
3+ bedroo m apartm ents	12m <sup>2</sup>	2.4m																
The minimum balcony depth to be counted as contributing to the balcony area is 1m.																		
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.																		
Not applicable																		
Not applicable																		
4F Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Seven apartments share one circulation core	Yes															

Section	Design Criteria	Proposed	Complies										
4G Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	The proposal provides the required storage areas both within each apartment and storage cages are also located within the basement.	Yes										
	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table>			Dwelling type	Storage size volume	Studio apartments	4m³	1 bedroom apartments	6m³	2 bedroom apartments	8m³	3+ bedroom apartments	10m³
	Dwelling type			Storage size volume									
	Studio apartments			4m³									
	1 bedroom apartments			6m³									
	2 bedroom apartments			8m³									
	3+ bedroom apartments			10m³									
At least 50% of the required storage is to be located within the apartment.													
4H Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses	The proposal has provided adequate building separation from adjoining properties.	Yes										
	Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	The proposal has generally grouped rooms with similar noise sources together.											
	Rooms with similar noise requirements are grouped together												
	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												

## Canterbury Local Environmental Plan 2012

This sites are zoned R4 High Density Residential under CLEP 2012. The controls applicable to this application are discussed below.

### Clause 2.3 Zone objectives and Land Use Table

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R4 High Density Residential Zone are as follows:

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

The proposed development meets the objectives of the R4 zone as it provides for residential housing within a residential flat building. The design comprises a mix of residential types through incorporating one and two bedroom apartments to contribute to the needs of the community, in a development that is designated to 100% of the GFA as affordable housing.

Provision/ Standard	Requirement	Proposal	Complies
<b>Part 2 Permitted or Prohibited Development</b>			
2.1-2.3 Zoning	R4 High Density Residential	Demolition of existing dwellings, consolidation of lots and construction of a Residential Flat Building with basement	Permissible.  Refer to SEPP ARH for further discussion permissibility with Division 1 of the SEPP ARH.
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Demolition of existing structures	Yes
<b>Part 4 Principal Development Standards</b>			
4.3 Height of Buildings	11.5m	The proposed building breaches the building height to the entire building.  The largest breaches are outlined below:  2.15m at the lift core (13.65m) 2.13m to the south western corner of the building (13.63m)	No. Detailed discussion below
4.4 Floor Space Ratio	0.9:1	1.16:1	Yes. By virtue of the ARH SEPP bonus

Provision/ Standard	Requirement	Proposal	Complies
4.6 Exception to development standards	The applicant has submitted a CI 4.6 request to vary the development standard relating to the building height. Refer to detailed discussion below		
Part 5 Miscellaneous Provisions			
5.10 Heritage Conservation	The subject sites are not identified as heritage items or within the vicinity of a heritage item or heritage conversation area.		
Part 6 Local Provisions			
6.1 Acid Sulfate Soils	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	Not affected by acid sulfate soils	Not applicable
6.2 Earthworks	Before granting consent to development including earthworks, the following must be considered: (a) drainage patterns and soil stability (b) the likely future use or redevelopment of the land, (c) quality of the fill or the soil to be excavated, or both, (d) effect of development on existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	<p>The proposed earth works are considered acceptable. The proposal is not likely to detrimentally impact the environmental functions of the site or surrounding area and will unlikely disturb any relics.</p> <p>The proposal is accompanied by a Geotechnical Investigation of the site prepared by STS GeoEnvironmental P/L.</p>	Yes

Provision/ Standard	Requirement	Proposal	Complies
6.3 Flood Planning	<p>This clause applies to land at or below the flood planning level.</p> <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <ul style="list-style-type: none"> <li>(a) is compatible with the flood hazard of the land, and</li> <li>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</li> <li>(c) incorporates appropriate measures to manage risk to life from flood, and</li> <li>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</li> <li>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</li> </ul>	The subject site has not been identified within a flood prone land.	Not applicable

Provision/ Standard	Requirement	Proposal	Complies
6.4 Stormwater Management	Consent must not be granted unless: (a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration. (b) Includes on-site detention if practical as an alternative means of water supply. (c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.	The application was referred to Council's Development Engineer who has not raised any objections with the proposed stormwater plans	Yes
6.6 Essential Services	Essential services must be available or adequate arrangements have been made to make them available, including: - the supply of water; - the supply of electricity ( <b>substation</b> ); - the disposal and - management of sewage; - stormwater drainage or on-site conservation; - suitable vehicular access.	The applicant has advised that a substation is not required for this site.  If the application were to be approved this would be confirmed with a condition of consent.	Yes

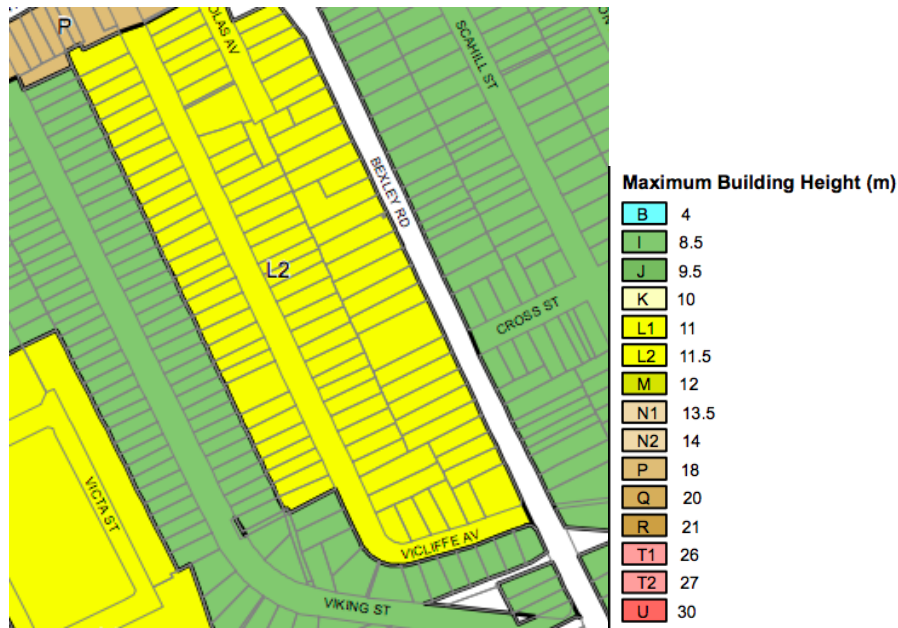
The proposal is generally consistent with the relevant provisions contained in CLEP 2012. Further discussion is provided below with respect to the contravention to the height of buildings development standard contained in Clause 4.3. The application is accompanied by a Clause 4.6 Request to Vary a Development Standard relating to the height of buildings.

#### *Clause 4.3 – Height of Buildings*

The proposal complies with the development standards contained in CLEP 2012, with the exception of Clause 4.3 (2), which reads as follows:

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

The subject sites have a maximum building height of 11.5m. Refer to Extract below:



**Source: NSW Legislation**

#### The proposed variation

The application proposes to contravene the building height standard of clause 4.3(2) of the CLEP 2012.

The variation ranges from 1.4m -2.150m.  
12.17% -18.695% degree of variation.

The area of encroachment onto the height control is shown in the 3D montage below.



**Source: Stanton dahl architects**

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

**(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**

An extract from the applicant's submission with respect to this point is provided below:

*Strict compliance with the standard in this particular case is unreasonable and unnecessary as the variation sought as part of this development application is considered appropriate in the context and setting of the site. Additionally, it is considered that:*

- *The FSR bonus in the ARH SEPP will inevitably result in conflict with height controls in LEP's in most cases.*
- *The proposed development has no significant non-compliances when considered against the ADG and SEPP.*
- *The FSR bonus has not been fully exploited in the proposed development.*
- *The extent of overshadowing to neighbouring property does not result in non-compliant solar access, this is demonstrated in the new shadow diagrams provided.*

*The proposed development meets the objectives of the zone, it meets the objectives of the height of buildings clause and it is considered that the objectives of the Act would not be undermined by supporting the variation.*

*It is submitted that the development standard is unnecessary given the negligible resultant environmental impacts arising from the proposal and is unreasonable given the numerous benefits that the development as proposed would bring to Campsie, over a strictly compliant development.*

*In supporting the variation, it is noted that the public interest is retained in that some key objectives of the planning controls have been achieved as a result of the development. Those include:*

- *Building Alignment to existing context.*
- *Extensive landscaping throughout*
- *Minimal shadow impacts.*

**Response:**

The objectives to the Height of Buildings under Clause 4.3(1) of the CLEP 2012 are:

**4.3 Height of buildings**

*(1) The objectives of this clause are as follows—*

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

The bonus FSR obtained under the ARH SEPP for affordable housing would result in variations to council's control, this generally relates to setback controls and not necessarily to the building height. Supporting a variation to the building height of 1.4m – 2.15m (12.17%-18.695%) would result in a development that would be out of character with the area and fails to meet the objectives to the height of building clause in the CLEP 2012.



The proposed building height breach will result in shadows reaching the semi-detached dwellings to the western side of Viccliffe (at 51-53 Viccliffe Avenue). The shadow impacts from the proposal extend onto the front open spaces of these properties, as well as the front wall of the building which contain a number of living windows. As, outlined in the shadow diagrams further in this report, a compliant building will only shadow a portion of the front yard of 51-53 Viccliffe Avenue and will have no impact to the front façade and living room windows to these properties. The applicant has not addressed the impacts of the overshadowing to these dwellings.

The Clause 4.6 also states that there is “an increased setback on the southern side which is where the height breach is located” page 11, the Clause 4.6 also claims that “the proposed encroachment will not present as a perceptible element” pg 11. Furthermore, on page 13 the Clause 4.6 refers to “positioning of the part of the building above the height limit centrally within the floor plate”.

It should be noted that the building height breach relates to the entire building and a considerable breach involves gross floor area and not just service areas. The breach to the south-western corner of the building fronting Viccliffe Ave is 2.13m and 1.56m-1.82m to the front middle section of the building, this breach will be quite prominent when viewed from Viccliffe Ave.

Therefore, given the impacts the proposed building height breach will create, it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

**(b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

An extract from the applicant’s submission with respect to this point is provided below:

*There are a number of positive environmental planning grounds that arise as a result of this development, and specifically the breach in the height limit, including:*

- The proposed variation of the height standard allows for the provision of additional affordable housing stock over and above that of a strictly compliant development.*
- The height variation allows for optimisation of the site’s development potential as a transport-accessible site and provision of much needed affordable housing in the Canterbury Bankstown Local Government Area which in turn would assist in Council achieving the goals of its housing strategy and the NSW Government’s A Plan for Growing Sydney, Future Directions for Social Housing and the Metropolitan Strategy.*
- The proposal represents the orderly and economic development of the land, and provides for affordable housing, both two objectives of the Environmental Planning and Assessment Act 1979.*
- The proposed height variation makes for efficient, economic and optimal use of the subject site, taking advantage of the local topography, and surrounding context, increasing the provision of affordable 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 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 built form that is consistent with the controls and development that has been already constructed in the locality (55 Viccliffe Avenue).*

- *The proposed development satisfies the objectives of the height control and zone objectives, despite the non-compliance.*
- *Compliance is achieved with all other development standards that apply to the development.*
- *Design excellence has been demonstrated through the general satisfaction of the ADG controls and SEPP 65 design principles.*
- *The provision of affordable housing (provided in perpetuity) results in an enormous public benefit. Limiting the development through the numerical compliance with this control, particularly when no unacceptable impacts would arise from that variation, is both unnecessary and unreasonable.*

*The environmental planning grounds cited above are considered to be sufficient as the benefits arising from contravention of the development standards, namely, the provision of additional affordable housing stock in a very accessible location with major physical and social infrastructure does not result in significant adverse environmental impacts such visual bulk, privacy and overshadowing, which have been reasonably ameliorated by the proposed site layout and building design.*

#### Response:

As stated earlier in this report, Viccliffe is undergoing change and transition, a more recent approval of an infill affordable housing is 55-57 Viccliffe Avenue which was approved in 2013. This development was approved with a building height of less than 11.5metres and as a three storey building with attic. The predominant development within the vicinity of the subject site are low density residential development Hence, the proposed development does not reflect a built form that is consistent with the controls and development sought for the area.

Objective 4.3(1)(a) of the CLEP 2012 states that the height of building is “*to establish and maintain the desirable attributes and character of an area*”.

The context and the future character of the area is guided as set out by the objectives on the CELP 2012 and Part C4 Residential Flat Buildings of the CDCP 2012.

As addressed under Clause 16 of the ARH SEPP, the proposal is inconsistent with the future character of the area, as sought by the CLEP 2012 and CDCP 2012 as a part five and part four storey building, with a breach to the building height and a wall height greater than 10 metres would be inconsistent with the desirable future character for the area and would set an undesirable precedent.

It is recognised that the proposal is providing affordable housing, it could still achieve the provision of affordable housing without compromising Council's development standard relating to building height. As previously outlined to the applicant by both Council and the Panel, the proposal could be redesigned as a three storey stepped building that falls with the topography of the site which would meet the height control.

On this basis, there are insufficient environmental planning grounds to justify the contravention of the development standard, relating to the building height.

**(4) Development consent must not be granted for development that contravenes a development standard unless—**

**(a) the consent authority is satisfied that—**

**(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and**

With regard to the above, it is considered that the applicant's written submission under Clause 4.6 of CLEP 2012 to vary the building height is not well-founded and it has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The submission has not provided sufficient environmental planning grounds to justify the contravention to the building height.

The written submission has not adequately addressed the matters required by sub-clause (3).

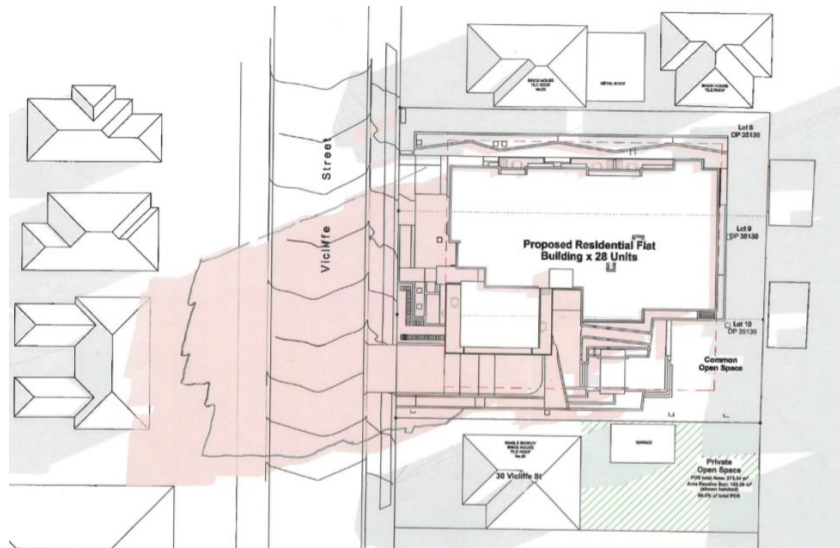
**(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**

Objective	Discussion
<i>(a) to establish and maintain the desirable attributes and character of an area,</i>	As outlined under Clause 16A of the ARH SEPP and as addressed throughout the discussion relating the Clause 4.6 submission, the proposal will not maintain the desirable attributes and character of the area.
<i>(b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,</i>	As demonstrated in the shadow diagrams below which show a compliant versus the proposed building height. The breach in height contributes to additional overshadowing reaching the semi-detached dwellings to the western side of Viccliffe (at 51-53 Viccliffe Avenue), the shadow impacts from the proposal extend onto the open spaces within the front yards of these properties as well as impacting the front façade which contains a number of living room windows. Therefore, the proposal in its current form does not minimise overshadowing and fails to meet this objective.
<i>(c) to support building design that contributes positively to the streetscape and visual amenity of an area,</i>	The proposed building design will not contribute positively to the streetscape. The breach to the building height, the number of storeys and breach to the wall height would result in a dominant building which would result in a poor planning outcome.
<i>(d) to reinforce important road frontages in specific localities.</i>	Not applicable to this application

Therefore, the proposal is not in the public interest, as the objectives of the of the Height of Building have not been met and a building with a compliant height would still meet the objectives of the R4 High Density Residential Zone, in providing a variety of housing types within a high density residential environment.

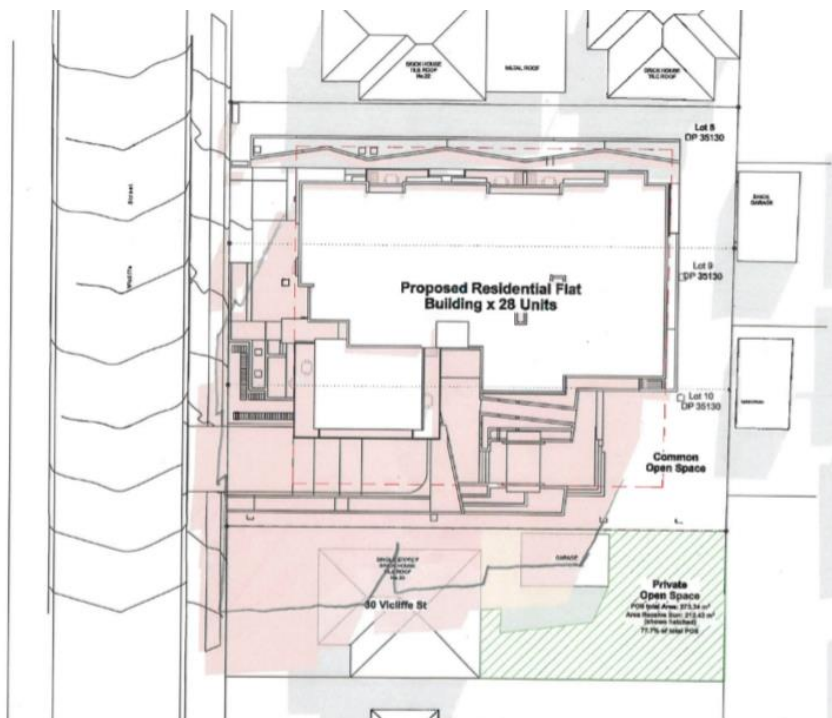
The proposed 9am, 12pm and 3pm June 21 shadows are provided below. These have been overlaid with a compliant building height to demonstrate the additional shadow the height breach creates. Objective (b) above emphasis "to minimise overshadowing", the shadow diagrams below have not satisfied this objective.

Proposed shadow diagram June 21 at 9am (compliant building height outlined in pencil).



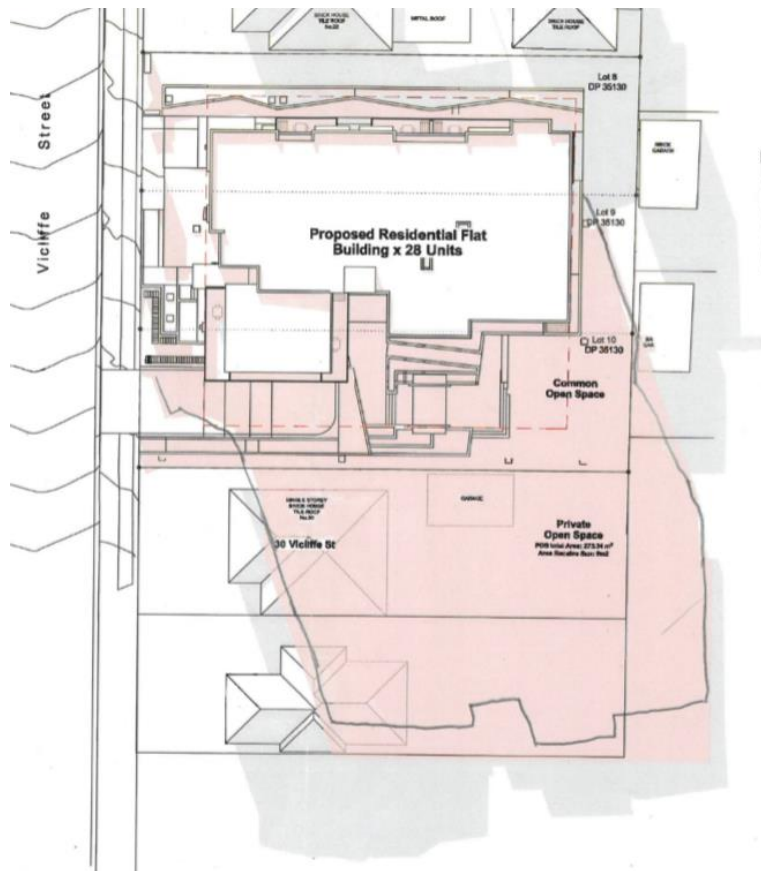
**Source:** *Stanton dahl architects (overlaid by compliant building height by author)*

Proposed shadow diagram June 21 at 12pm (compliant building height outlined in pencil).



**Source:** *Stanton dahl architects (overlaid by compliant building height by author)*

Proposed shadow diagram June 21 at 3pm (compliant building height outlined in pencil).



**Source:** *Stanton dahl architects (overlaid by compliant building height by author)*

**(b) the concurrence of the Planning Secretary has been obtained.**

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 17-006.

**Conclusion**

Based on the foregoing, the requested contravention of the standard is not well founded and is not supported for the following reasons:

- I. an appropriate degree of flexibility has not been applied and better outcomes are not achieved by the contravention of the building height.
- II. the circumstances of the proposal do not warrant contravention of the standard,
- III. there are not sufficient environmental planning grounds to warrant contravention,
- IV. the proposal is not in the public interest, as the development is not consistent with relevant objectives of the standard and the zone, and
- V. there is a public benefit in maintaining the standard, in the circumstances of the subject application.

### **Proposed Environmental Planning Instruments [section 4.15(1)(a)(ii)]**

On 6 March 2020 the Canterbury Bankstown Local Planning Panel endorsed the Planning Proposal to undergo exhibition. The Draft CBLEP is on public exhibition from 9 March 2020 until 24 April 2020

The Planning Proposal (PP\_2019\_CBANK\_005) seeks to produce a single set of planning rules and combine and align the Bankstown LEP 2015 and Canterbury LEP 2012 into a consolidated Local Environmental Plan.

- Produce a single land use table consistent with the Local Strategic Planning Statement, Standard Instrument (Local Environmental Plans) Order 2006 and other State requirements.
- Resolve differences between Bankstown LEP 2015 and Canterbury LEP 2012.
- Comply with the Gateway Determination issued by the Department of Planning, Industry & Environment (dated 20 February 2020), namely the conditions to preclude any changes to residential land uses and development standards, and to preclude the rezoning of any land other than those included in current land use strategies.

Planning Proposal (PP\_2019\_CBANK\_005) which is now on public exhibition and is a draft instrument and is a matter for consideration under Section 4.15 (1)(a)(ii) of the Environmental Planning and Assessment Act, 1979.

Council is seeking the addition of a Design Quality Clause within the Draft CBLEP. This draft clause which formed part of the Planning Proposal (PP\_2019\_CBANK\_005).

### ***Draft Design Quality Clause***

#### **6.14 Design Quality**

- (1) The objective of this clause is to ensure that development achieves good urban design and supports quality places for people.*
- (2) This clause applies to the following development: residential flat buildings, multi dwelling housing, boarding houses, seniors living, mixed use development, shop top housing, commercial premises, industrial buildings, warehouse or distribution centres, centre-based child care facilities, schools, places of worship, registered clubs, community facilities, in relation to:*
  - the erection of a new building, or*
  - in the Council's opinion, significant alterations or additions that are visible from the public domain.*
- (3) Before granting consent for development, the consent authority must have regard to the following matters, to the extent it considers them relevant to the proposed development:*
  - (a) whether the development positively contributes to the urban context and site conditions in terms of natural features, built form, streetscape, street wall height, building separation, setbacks, amenity, building bulk and modulation,*
  - (b) whether the development positively contributes to the quality and amenity of the public domain in terms of landscaping, passive surveillance, visual interest and the interface of public and private domain,*
  - (c) whether the development uses external materials that are good quality, durable and low-maintenance,*
  - (d) whether the development achieves a high standard of architectural detailing and colours that are appropriate to the building type and location,*

- (e) *whether the development achieves the principles of ecologically sustainable development,*
- (f) *whether the development achieves internal layouts that are functional, efficient and fit for purpose,*
- (g) *whether the development integrates a high quality landscape design with the built form,*
- (h) *how the development satisfactorily addresses the following matters:*
  - *impacts on heritage items, heritage conservation areas or historically significant buildings on the site or in the vicinity of the site,*
  - *environmental impacts such as solar access, visual and acoustic privacy, wind, reflectivity, urban heat and water sensitive urban design,*
  - *pedestrian, cycle, vehicular and service access and circulation requirements,*
  - *the integration of waste management infrastructure in the site layout and building design.*

Given, the assessment made throughout this report, the proposal would not be in line with the envisaged design quality and would be inconsistent with the Draft CBLEP and draft Design Quality Clause.

#### **Development control plans [section 4.15(1)(a)(iii)]**

The following table provides a summary of the development application against the controls contained in Part B1, B2, B3, B4, B5, B7, B9 and C4 of the Canterbury Development Control Plan 2012. As the application was lodged on the 23 May 2019, the application was assessed against Amendment 3 of the CDCP 2012.

#### **Canterbury Development Control Plan 2012 (CDCP 2012)**

The proposed development has been compared to the requirements of CDCP 2012 as follows:

##### **Part B1 – Transport and Parking**

An assessment of the proposal against the car and bicycle parking rates in Part B1 of CDCP 2012 is provided below:

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
<b>Car parking</b>	Refer to assessment made under ARH SEPP.		
<b>Bicycle Parking</b>	<ul style="list-style-type: none"> <li>• <b>Residents:</b> 1 space per 5 dwellings 5.6 (6) spaces required).</li> <li>• <b>Visitors:</b> 1 space per 10 dwellings 2.8 (3) spaces required)</li> </ul> <p><b>Total:</b> 9 spaces required.</p>	8 bicycle spaces provided, shortfall of 1	No

##### **Part B2 – Landscaping and Part B3 – Tree Preservation**

The application provided a landscape plan and the current design meets the objectives of the CDCP 2012.

#### Part B4 – Accessible and Adaptable Design

The access report prepared by Vista Access Architects was submitted as part of the Development Application. The report concludes that the design generally complies with the relevant standards. Where the design includes some non-compliances, these matters can be resolved through minor design changes or verified at the Construction Certificate stage. On this basis, the design is considered acceptable from an accessible and adaptable design perspective.

#### Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no objection with the current stormwater design.

#### Part B7 – Crime Prevention and Safety

An assessment of the proposed design against the relevant provisions of Part B7 is provided in the table below:

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Crime Prevention through Environmental Design	Avoid blind corners	The proposal does not provide any blind corners. The services in the basement have been separated from the waste bin areas, storage cages and car parking	Yes
	Provide natural surveillance for communal and public areas.	The proposal provides for natural surveillance. The proposal has allowed for dwellings to face the street for natural surveillance.	Yes
	Provide clearly visible entries.	The entry into the building has been emphasised by the entry portico located along the front boundary.	Yes
	Design the fence to maximise natural surveillance from the street to the building.	The use of an open palisade style fence will allow for maximised natural surveillance	Yes
	Avoid landscaping that obstructs natural surveillance.	The landscaping proposed within the front setback is not considered to obstruct the natural surveillance	Yes
	Ensure buildings are clearly identified by street numbers.	Can be achieved via a condition	Yes
	Use materials that reduce the opportunity for vandalism.	The proposed development incorporated the use of mainly brick work and therefore the opportunity of vandalism is reduced	Yes



	Provide an appropriate level of security for individual dwellings and communal areas through use of intercoms, self closing doors and signage.	Can be achieved via a condition	Yes
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#### Part B9 - Waste

The application was referred to Council's Resource Recovery Officer who raised some concerns with the submitted plans and are listed below:

- *The doorway for the bulky waste room need to be a minimum of 2m*
- *Due to the distance from the bulky waste room to the kerb carting equipment will be required.*
- *Due to the excessive gradient of the ramp (1:5 not 1:8) bin carting equipment will be conditioned. The storage location for this carting equipment should be shown on the plans.*
- *Bin presentation point requires a doorway/gate with a minimum of 2m in width*
- *A layback and a level pathway are required between the presentation point and the roadside.*

#### C4 - Residential Flat Buildings

An assessment of the proposal against the relevant provisions contained in Part C4 of CDCP 2012 is provided below:

Standard	Requirement	Proposal	Complies
<b>C4.2.1.1 Frontage</b>	- Up to 3 storeys 20m frontage (along any local road) 4+ storey building: Min 30m frontage	39.09m	Yes
<b>C4.2.1.2 - Isolated Sites</b>	Neighbouring properties are not to be isolated so that the property will be unable to reasonably accommodate coordinated development.	The proposal will not isolate any adjoining properties.	Yes
	Undertake negotiations with neighbouring owners to seek amalgamation and enable coordinated redevelopment.	Not applicable	N/A
	If adjoining owners do not agree on terms of amalgamation, provide evidence of reasonable offers and demonstrate that the isolated site is capable of reasonable redevelopment.		

<b>C4.2.1.3 - Open space and balconies</b>	<p>Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum balcony provisions within the ADG has been undertaken earlier within this report.</p> <p>Furthermore, an assessment against the communal open space requirements specified within the ADG has also been undertaken earlier within this report.</p>		
<b>C4.2.1.4 – Layout and Orientation</b>	Orientate development to maximise solar access and natural lighting.	<p>The development has orientated the majority of the apartments to face north and maximise solar access and natural light.</p> <p>However, insufficient information has been provided to determine the solar access to the apartments. This has been further addressed under the assessment of the ADG.</p>	No
	Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	The development has sited the building further to the north of the site and allowed for a larger setback along the south to reduce the overshadowing impact to the adjoining property.	Yes
	Site new development and private open space to avoid existing shadows cast from nearby dwellings.	<p>The development has sited the building further to the north of the site. And the communal open space is located along the southern side of the site.</p> <p>As addressed under the ADG the communal open space will not receive adequately solar access and would result in an unacceptable level of amenity the future occupants of the site.</p>	No
	Site a building to take maximum benefit from cross-breezes and	Achieved	Yes

	prevailing winds.		
<b>C4.2.2.2 - Height</b>	C1 Development for the purposes of residential flat buildings must not exceed the following numerical requirements:  (b) Maximum three storeys and 10m maximum external wall height, where the height of buildings under the LEP is 11.5m.	13.3m (highest external wall height)	No
	Basement that projects greater than 1m above ground level comprises a storey	The basement protrudes a metre above the ground level in the south-western corner of the site and will comprise a storey.  This will result, in part, a 5 storey building	No
<b>C4.2.2.3 - Setbacks</b>	Development, including basement and sub-floor areas fronting a major road must have minimum 9m front setback.	The subject site is not facing a major Road	N/A
	Side: Min 4m	6m	Yes
	Rear: Min 6m	6metres	Yes
	<u>Deep Soil – Setbacks:</u> Front and Rear: Min 5m Side: Min 2m	Front setback 5metre deep soil area has not been provided  Rear setback 5metres  North setback less than 3.04 metres  South setback 1.3 - >5metres metres	No  Yes  Yes  No. Only to part of southern setback
<b>C4.2.2.4 - Building Depth and C4.2.2.5 - Separation</b>	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum building depth and separation provisions within the ADG has been undertaken earlier within this report.		
<b>C4.2.2.6 - Floor to</b>	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to		

Ceiling	balconies and development to which the SEPP relates. An assessment against the minimum floor to ceiling provisions within the ADG has been undertaken earlier within this report.		
Part C4.2.3 – Building Design			
Contemporary Built Form	New building forms and design features shall not mimic traditional features, but should reflect these in a contemporary design	<p>The proposal seeks a four storey building with a flat roof form. Viccliffe Avenue is predominately made up of low density dwellings of brick construction with hipped and gabled roof forms.</p> <p>The design has not reflected these traditional features in a more contemporary design and therefore it is not considered that the proposal meets this control</p>	No
	Access to upper storeys must not be via external stairs.	Access to upper storeys is via internal stairs and a lift	Yes
	All dwellings must contain one kitchen and laundry facility.	All dwellings contain their own kitchen and laundry	Yes
Building Entries	Entries to residential buildings must be clearly identifiable.	The entry to the building has been accentuated by the entry portico along the front boundary of the site which provides a ramp into to the main entry of the building.	Yes
	A minimum of one habitable room per dwelling must be oriented towards the street.	A minimum of one habitable room is orientated towards the street	Yes
	Ground level private terraces located within the front setback must be setback at least 1m from the street boundary to accommodate a landscape strip which should remain in communal ownership.	The ground level private open spaces to apartments 101 and 102 are setback at least one metre from the street boundary	Yes
Façade Design	Façade design should	Achieved	Yes

	reflect the orientation of the site using elements such as sun shading devices etc.		
	<u>Articulating Façade Panels:</u> Street Elevations: 6m to 8m  Side Elevations: 10m to 15m	The front and side facades are provided with articulating panels.	Yes
	Avoid long flat walls along street frontages – stagger the wall alignment with a step.	The proposal provides articulation along the front façade and does not provide long flat walls	Yes
	Incorporate contrasting elements in the façade.	The proposal incorporates contrasting elements to the front façade such as metal cladding, face brick and render and paint	Yes
	Layer and step facades in order to avoid buildings forms that are bland, bulky or over scaled.	The proposal will result in a continuous building façade with minimal layering and stepping to the façade.  The breach in height, wall height will result in an over scaled building an inconsistent with the current and future scale of development	No
<b>Pavilions (4 or more storeys)</b>	Facades should be layered and stepped in order to avoid building forms that are bland, bulky and over scaled	The proposal does not achieve this control	No
	Layering of facades should incorporate the base and upper storey elements	The proposal does not achieve this control	No
	Stepping of facades should be provided by balconies, staggered alignments for exterior walls and by contrasting design elements.	The proposal does not achieve this control	No
<b>Windows</b>	Windows must be	Achieved	Yes

	rectangular.		
	Windows and openings shall be appropriately located and shaded to reduce summer heat load and maximum winter sun.	Achieved	Yes
<b>Roof Design and Features</b>  <b>Building four storeys or greater</b>	Roofs must not exceed a pitch of 10 degrees	The proposed roof form meet the requirements of the roof pitch for a four storey building	Yes
	Emphasise building articulation with the shape and alignment of the roof	The proposed roof form has failed to emphasise the building given the flat roof design	No
	Emphasise corner apartments or prominent balcony structures with raised roof elements.	The corner apartments would be better empathised with raised roof elements	No
	Relate roof design to the size and scale of the building, the building elevations and three dimensional building forms – including the design of any parapet or terminating elements, and the selection of roof materials	The proposal does not meet this control	No
	Respond to the orientation of the site, for example, by using eaves and skillion roofs to respond to sun access.	Achieved	Yes
	Integrate service elements into the design of the roof - including lift overruns, service plant, chimneys, vent stacks, telecommunication infrastructure, gutters, downpipes and signage.	The mechanical ventilation has been deigned as an internal riser.  The lift overrun as not been integrated within the roof and given the height breach propose, the proposal has not complied with this control	No
<b>C4.2.3.3 - Dwelling Layout and Dwelling Mix</b>	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum dwelling layout provisions within the ADG has been undertaken earlier within this report.		

	Min 10% of apartments to be adaptable or accessible  <b>Required:</b> 2.8 =equates to 3	3	Yes
<b>C4.2.4.1 - Solar Access and Overshadowing</b>	Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. A discussion on the solar access is made against the provisions under the ADG and addressed earlier within this report.		
<b>Solar Access and Overshadowing – Adjoining Development</b>	Development to retain a minimum of 2 hours of sunlight between 9am-3pm on 21 June for existing living areas and 50% of the principal private open space.	The adjoining neighbour to the south will achieve compliance with the minimum requirements.	Yes
	Daylight is to be provided to all common circulation areas (including lift wells) that are above ground.	A window that faces the street is located on each level and is located in front of the lift circulation area	Yes
<b>C4.2.5.1 - Fences</b>	Front fences within the front boundary setback are to be no higher than 1.2m	The front fence is 1.2 metres in height and is consistent with this requirement.	Yes
<b>C4.2.5.2 - Building services</b>	Integrate systems, services and utility areas within the design of the whole development.	The applicant has advised that a sub station is not required.  The fire hydrant booster system has been marked on the plans	Yes

### **Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)**

The Canterbury Development Contributions Plan 2013 applies to the site and if the application was approved would attract a s.7.11 contribution.

#### **Planning agreements [section 4.15(1)(a)(iia)]**

There are no planning agreements applicable to the proposed development.

#### **The regulations [section 4.15(1)(a)(iv)]**

The proposed development is not inconsistent with the provisions of the Environmental Planning and Assessment Regulation, 2000.

**The likely impacts of the development [section 4.15(1)(b)]**

Having regard to the height breach, character of the area, topography of the site and relationship to adjoining developments, the proposal will result in unacceptable impacts on the subject site and on the locality. The proposal is therefore not supported.

**Suitability of the site [section 4.15(1)(c)]**

Although, the proposal is a permissible use in the zone. The proposed scale and development is not considered acceptable and would be inconsistent with the future character of the area and therefore is not suitable for the site.

**Submissions [section 4.15(1)(d)]**

The application was neighbour notified and advertised in the newspaper consistent with the provisions contained in the Canterbury Development Control Plan 2012 and subsequently re-notified in accordance with the Canterbury Bankstown Community Participation Plan.

The application was initially on exhibition for a period of twenty eight (28) days from 11 June 2019 to 10 July 2019. A total of two (2) submissions were received. The amended plans were re-notified for a period of twenty eight (28) days from 29 January 2020 to 25 February 2020, a total of five (5) submissions were received.

***Objection: Insufficient number of on site car parking.***

Comment: The application is made pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009. As the application is made on behalf of a social housing provider and is located in an 'accessible area' the car parking rates are reduced. The proposal meets the minimum car parking spaces as required by Clause 14(2)(a)(i) of the ARH SEPP.

***Objection: Proposal will further impact street parking and Impact of additional traffic on Viccliffe Ave.***

Comment: The application was accompanied with a Traffic and Parking Impact Report. This report was reviewed by Council's traffic engineer who did not raise any objections on traffic. The proposal is not expected to adversely impact the street parking and as stated earlier all required car parking have been provided on site.

***Objection: Clause 4.6 for the height breach.***

Comment: A detailed discussion has been made on the Clause 4.6 relating to the height breach under the heading Canterbury Local Environmental Plan 2012.

***Objection: Four storey building will be out of character.***

Comment: This has been addressed throughout the assessment of this report.

***Objection: Issues regarding privacy and overlooking into neighbouring properties.***

Comment: The proposal has maintained a minimum of 6 metre to the side and rear boundaries, as outlined in the ADG and a greater setback than that stipulated within the CDCP 2012 which specifies 4 metres along the side boundaries.



If the application were to be approved conditions would be imposed requiring balconies be of obscure glazing to provide additional privacy measures.

**Objection:** *Safety concerns from increase in vehicles.*

Comment: The application was accompanied with a Traffic and parking impact report. This report was reviewed by Council's traffic engineer who did not raise any objections.

**Objection:** *Construction noise an air-pollution.*

Comment: Should the application be approved, relevant conditions will be imposed relating to construction hours and compliance with

**Objection:** *Front setback dominated by building infrastructures such as on site Detention*

Comment: This has been addressed earlier in the report.

**Objection:** *Proposal has not demonstrated a design that address the fall of the topography.*

Comment: This has been addressed earlier in the report.

**Objection:** *Ground floor apartments do not have street connection with direct access as per the ADG.*

Comment: The applicant has amended the proposal and has provided direct access to apartment 102 via Viccliffe Avenue.

**Objection:** *Loss of solar access.*

Comment: This has been addressed earlier in the report.

**Objection:** *A number of issues from similar in-fill affordable housing developments, such as removalists blocking driveways, dumped rubbish, traffic, noise.*

Comment: The refusal of the application on these grounds are not a matter under Clause 4.15 of the Environmental Planning and Assessment Act, 1979. Any breaches to the road rules should be reported to Council's ranger, police or managing agent.

**Objection:** *Affordable housing is out of character and will de-value surrounding properties.*

Comment: There is no evidence to suggest that affordable housing would devalue surrounding properties. Furthermore, this is no a matter for consideration under Clause 4.15 of the Environmental Planning and Assessment Act, 1979.

### External Referral:

External Referral	Comments Received
Ausgrid	Ausgrid has not raised any objections to the proposed development and impact on their infrastructure and have provided conditions.

### Internal Referrals:

Internal Referral	Comments Received
Development Engineer	No objections raised in regards to the drainage. Conditions provided.
Tree Officer	No objections raise by Council's tree officer. Conditions provided.
Resource Recovery	<p>The following issues remain outstanding:</p> <ul style="list-style-type: none"><li>• <i>The doorway for the bulky waste room need to be a minimum of 2m</i></li><li>• <i>Due to the distance from the bulky waste room to the kerb carting equipment will be required.</i></li><li>• <i>Due to the excessive gradient of the ramp (1:5 not 1:8) bin carting equipment will be conditioned. The storage location for this carting equipment should be shown on the plans.</i></li><li>• <i>Bin presentation point requires a doorway/gate with a minimum of 2m in width</i></li><li>• <i>A layback and a level pathway are required between the presentation point and the roadside.</i></li></ul>
Traffic Engineer	No objections to the proposal from a traffic perspective. Conditions provided.
Landscape Architect	No objections to the proposal in respect to the landscaping details. Conditions provided.
Environmental Health	No objections to the proposal from Council's Health Surveyors. Conditions provided.
Urban Designer	<p>Council's Urban Design does not support the proposal in its current form and the following issues have been raised:</p> <p><u>Building height and overshadowing</u></p> <ul style="list-style-type: none"><li>• The non-complying building height impacts the desired future scale and character of the street and local area.</li></ul> <p><u>Streetscape and public domain interface</u></p> <ul style="list-style-type: none"><li>• The temporary bin collection point location is right in front of the private open space of unit 101 and has negative impact both on the amenity of this unit and the streetscape.</li><li>• The proposed main entry ramp is taking a lot of space in the entry way and detrimentally impacting the quality of the streetscape and street address.</li></ul> <p><u>Internal layout</u></p> <ul style="list-style-type: none"><li>• The proposal does not have stair access to the basement level. The access to the basement level should be provided via the main emergency exit staircase. It is recommended the pedestrian (waste safety ramp) next to the parking ramp to be reconsidered.</li><li>• The proposed driveway to the basement car park is not encapsulated within the built form, thus detrimentally impacting the quality of the streetscape. The driveway access from the street should be redesigned to enhance the aesthetic quality of the built form and the streetscape.</li></ul>

	<ul style="list-style-type: none"> <li>• According to the ADG (4B-3), 60% of the apartments should be naturally cross ventilated and this should be at least 13 units in total. At the moment, 57% (16 units) are naturally cross-ventilated. Units 105, 205, 305 and 405 which are annotated as cross-ventilated apartments does not comply with the ADG cross ventilation requirements.</li> <li>• The balconies of units 106, 206, 306, 406 are located and oriented in a way that they do not contribute to the main living areas. Furthermore, they would raise issues in terms of privacy for the adjoining habitable rooms of the neighbouring apartments. It is recommended to relocate the balconies of the above-mentioned units to the southern side of the apartment</li> </ul>
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### **The public interest [section 4.15(1)(e)]**

The approval of the proposed development, would not be in the public interest in terms of the built form and a compliant building will be a positive result in providing affordable housing. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by ensuring that any adverse impacts on the surrounding area and the environment are avoided. As outlined throughout this report, the breach in the building height and design of the development is inconsistent with the future character of the area. The matters raised in the public submissions, which are also similar to those raised by Council, reinforce that the development will result in unreasonable impacts on the locality and result in a undesirable precedent for future development.

### **CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Canterbury Local Environmental Plan 2012* and *Canterbury Development Control Plan 2012*.

The application seeks approval for the demolition of existing structures, consolidation of lots and construction of a residential flat building (comprising 28 units) pursuant to Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009, basement car parking and associated site works (Crown Development).

The proposed development application was lodged on the 22nd May 2019, on behalf of the Land and Housing Corporation and is therefore 'Crown Development', with a with a capital investment value of \$8,392,277, the application classifies as Regional Development Therefore, the matter is referred to the Sydney South Planning Panel.

The proposal seeks to depart from Clause 4.3 relevant to the height standard between 12.17%-18.69% breach (maximum 2.15m) under the provisions of Clause 4.6. The departure has been assessed and it is considered that the breach to the development standard relating to the building height is not acceptable in this circumstance.

The proposal also presents variations to the provisions of the Statement Environmental Planning Policy (Affordable Rental Housing) 2009), the insufficient information and variations sought to the apartment design guide (ADG) and the Canterbury Development Control Plan 2012.

The above variations have been addressed throughout the assessment of this report and on the basis, the proposal would result in an uncharacteristic built form and would result in a development that is inconsistent with the desired future character of the area. Following a

detailed assessment, it is considered that Development Application No DA 303/2019 be refused.

It is recommended that the Panel support the recommendation to refuse the application as per the reason for refusal outlined below.

As a consent authority, in this instance the Sydney South Planning Panel must not refuse consent to 'Crown Development', except with the approval of the Minister for Planning and Public Spaces. Therefore, it is recommended that the application be referred to the Minister for Planning and Public Spaces with a recommendation for refusal as per the requirements under Section 4.33 of the Environmental Planning and Assessment Act, 1979

## **RECOMMENDATION**

THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, the Sydney South Planning Panel, for the reasons set out below refer the application to the Minister for Planning and Public Spaces for refusal.

1. The Clause 4.6 Request to vary Clause 4.3(2) 'Height of buildings' of the Canterbury Local Environmental Plan 2012 is not well founded and it has not been adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the objectives of Clause 4.3(1) contained in the Canterbury LEP 2012 including:
  - (a) to establish and maintain the desirable attributes and character of an area,
  - (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,
  - (c) to support building design that contributes positively to the streetscape and visual amenity of an area,
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012 relating to 'Height of buildings' and exceeds the allowable height of building of 11.5m
4. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with State Environmental Planning Policy (Affordable Rental Housing) 2009 with respect to Clause 16A 'Character of the Area'. The proposal will result in an uncharacteristic building and will not be consistent with the future character of the area.
5. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with State Environmental Planning Policy (Affordable Rental Housing) 2009 with respect to Clause 14(1)(c)(i) 'Landscaped Area' as the proposed development will be deficient in the minimum required landscaped area.
6. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of the Canterbury Development Control Plan 2012:

### **Part B1 Transport and Parking**

- I. Insufficient bicycle spaces have been provided and no in accordance with B1.3.1, C1 (Table B.1)

### **Part B9 Waste**

- II. The proposal fails to demonstrate compliance with Part B9.4 in regard to the bin-carting routes.
- III. The proposal fails to demonstrate compliance with Part C9.6 in regard to the bulky waste storage areas.

### **Part C4 Residential Flat Buildings**

- IV. The proposal has failed to demonstrate that the orientation of the development will maximise solar access to the development as required by C4.2.14, control C1.
  - V. The proposal fails to comply with C4.2.2.2, control C1(a) as it exceeds the maximum allowable external wall height.
  - VI. The basement, in part projects greater than 1m above the ground level and comprises a storey, as outlined in C4.2.2.2, control C2. Therefore, the proposal will result in a part 5 storey building.
  - VII. The proposal fails to provide adequate deep soil area within the front setback as required by C4.2.2.3, control C3.
  - VIII. The proposal fails to provide adequate side setback deep soil as required by C4.2.2.3, control C3.
  - IX. The location of the bin presentation area is located within the front setbacks and is inconsistent with C4.2.2.3, control C4.
  - X. The proposal will result in a building design that is inconsistent with C4.2.3.1 controls C2 and C22 and will not be considered to complement the architectural character of the area and will result in an over scaled building.
  - XI. The proposal will result in a roof design that is not compatible with the predominate streetscape and is inconsistent with C4.2.3.2.
7. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of the Apartment Design Guide.
- I. The proposal fails to provide an adequate public domain interface and inconsistent with Objective 3C-1.
  - II. The proposal fails to provide adequate solar access to the communal open space as required by Objective 3D-1, Design criteria 2.
  - III. The proposal fails to comply with the minimum number of apartments receiving natural cross ventilation as required by Objective 4B-3, Design criteria 1.
  - IV. The primary balconies to apartments 207, 307 and 407 do not meet the minimum area as required by Objective 4E-1, Design Criteria 1.
8. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development including:
- I. View from the sun diagrams that adequately provide the amount of solar access that penetrates through the living room and private open space to determine compliance with Objective 4A-1, Design Criteria 1 and determine which units do not receive direct sunlight as per design criteria 3 of the Apartment Design Guide have not been provided.
  - II. Insufficient information has been provided to ensure the proposal will ensure compliance with the required ceiling heights as required by Objective 4C-1, Design criteria 1 and ensure that the proposal would not result in further breaches to the height as a result of changes to the ceiling heights.
9. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
10. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

