

SUMMARY

Proposal:	Demolition of the existing townhouses and tree removal and the construction of a five (5) storey residential flat building with affordable rental housing component and two (2) levels of basement.
Applicant:	Bechara Chan & Associates
Owner:	A & A Lederer Pty Ltd
Date of lodgement:	1 May 2020
Notification period:	First round: 7 May 2020 to 21 May 2020 Second round: 1 October 2020 to 22 October 2020
Submissions received:	First round: Three (3) submissions received Second round: One (1) submission received
Assessment officer:	ND
Estimated cost of works:	\$11,791,430
Zoning:	R3 Medium Density Residential- SLEP 2012
Heritage:	The site is located opposite heritage item No. I152 – “Manx Cottage”.
Flood affected:	Yes
Is a Clause 4.6 variation proposed?	Yes – Building Height
Extent of the variation supported?	The Clause 4.6 variation is not supported.
Reason for referral to Sydney Eastern City Planning Panel:	CIV of affordable housing component of development exceeds \$5 million
RECOMMENDATION OF OFFICER:	REFUSAL

EXECUTIVE SUMMARY

The development application seeks approval for the demolition of the existing townhouses and tree removal and the construction of a five (5) storey residential flat building with affordable rental housing component and two (2) levels of basement.

The application was publicly notified in accordance with the Strathfield Community Participation Plan from 7 May to 21 May 2020; three (3) submissions were received as a result. The issues raised in the submissions included building height non-compliance, traffic and on-street parking congestion, incompatibility with the streetscape, overshadowing onto the adjoining properties, tree removal, density and visual privacy concerns.

The application was referred to the Strathfield Design Review Panel (DRP) who provided independent technical advice on the design quality of the proposal. The Panel was not supportive of the original proposed design (the revised design was not re-issued to the DRP as the changes did not result in

material different warranting a review) commenting that the proposal was a significant overdevelopment of the site with an unacceptable level of residential amenity.

An amended design was submitted which included a minor increase to the northern side setbacks from 4m to 4.17m for tree retention purposes, the retention of four (4) on-site trees, reconfiguration of the pedestrian entrance and a reduction in the building height of 2.25m from 18.38m to 16.13m. The revised application was re-notified from 1 October 2020 to 22 October 2020. One submission was received as a result.

The concerns raised by the DRP and by Council in RFI letters and correspondence including building height non-compliance, non-compliant side setbacks and poor residential amenity outcomes for the future residents have not been satisfactorily addressed.

The proposal does not respond to the context of the site and its surrounding neighbourhood character. It results in an overdevelopment of the site and is incompatible with the local character; and providing unacceptable levels of residential amenity for its future residents. In particular the building does not meet solar access requirements under the Affordable Rental Housing SEPP 2009 and solar access and cross-ventilation provisions under the ADG.

The proposal seeks a Clause 4.6 variation to the building height development standard under the Strathfield Local Environmental Plan 2012. The variation is considered not to be well founded and is not supported.

Accordingly, the application is recommendation for refusal.

BACKGROUND

1 May 2020	The subject DA is lodged with Strathfield Council.
7 May 2020 to 21 May 2020	The Development Application was notified in accordance with the Strathfield Community Participation Plan with three (3) submissions received.
21 May 2020	Council provided the Applicant with a Request for Further Information (RFI) letter (refer Attachment 1).
19 June 2020	The Applicant submitted the requested additional documentation (Heritage Impact Statement and updated Quantity Surveyors Report).
23 June 2020	Council provided the Applicant with a RFI letter (refer Attachment 2).
15 July 2020	The Application is considered by Council's Design Review Panel (DRP) and minutes from the meeting are issued to the Applicant on 28 July 2020 (refer Attachment 3).
12 August 2020	The Applicant requested an extension to submit amended plans responding to Council's RFI and the DRP meeting minutes.
7 September 2020	A response to Council's RFI letter and DRP minutes was lodged with Council including revised architectural drawings and amended documents to reflect the

revised design including Clause 4.6 Variation, Arborist Report, Root Mapping Report, Design Verification Statement.

**1 October 2020 to
22 October 2020**

The Development Application was re-notified in accordance with the Strathfield Community Participation Plan.

15 October 2020 A briefing was held with the Sydney East Planning Panel.

DESCRIPTION OF THE SITE AND LOCALITY

The site is identified as 2 Eastbourne Road, Homebush West (SP32811) and is shown in Figure 1. The site is irregular in shape, with a street frontage of 16.15m to Eastbourne Road and a total site area of 1,565.1m² (Figure 1). The site is presently occupied by a strata subdivided two (2) storey multi-dwelling housing development containing six (6) dwellings with car parking (Figure 2). Vehicular access is provided from Eastbourne Road. The site contains pockets of landscaping with mature canopy trees along the front, rear and side boundaries.



Figure 1: Aerial image of the site and surrounds. The subject site is outlined in yellow.

The site is adjoined on the northern side by the rear yard of three3-storey residential flat buildings and a place of public worship (Hindu Temple) orientated to The Crescent (Figure 3).

To the east of the site is the rear yards of one 3-storey and one 4-storey residential flat buildings. The site is adjoined to the west by Eastbourne Road. Kerbside parking is provided on both sides of the carriageway. The opposite side of Eastbourne Road contains a detached dwelling (heritage listed item) and several two (2) and three (3) storey residential flat buildings (Figure 4)



Figure 2: Site and surrounds.



Figure 3: Adjoining Hindu Temple.



Figure 4: Buildings directly opposite the subject site.



Figure 5: Subject site and southern adjoining property (from the rear of the subject site towards Eastbourne Road).

PROPERTY BURDENS AND CONSTRAINTS

There are no easements or burdens on the land which could affect, or be affected by, the proposed development.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

A revised development proposal was submitted in response to the Design Review Panel meeting and Council's request for amended plans. The revised proposal seeks development consent for the demolition of the existing townhouses and tree removal and the construction of a five (5) storey residential flat building with 16 affordable rental units and two levels of basement (Figure 6). Specifically, the amended proposal includes the following:

- Demolition of existing townhouses;
- Removal of 21 on-site trees and one (1) street tree;
- Construction of a five storey residential flat building comprised of:
 - Two level of basement car parking
 - 32 residential car spaces
 - 2 visitor car spaces
 - 16 bicycle spots
 - 0 motor bike spaces
 - Total of 35 residential units consisting of:
 - 1 bed = 10 (28.5%)
 - 2 bed = 21 (60%)
 - 3 bed = 4 (11.4%)
 - 16 affordable rental units consisting of:
 - 1 bed = 3
 - 2 bed = 9
 - 3 bed = 4
 - Communal Open Space: 431m² (27.53%)
 - Ground floor = 160m²
 - Level 4 = 158.78m²
 - Level 5 (roof) = 112.22m²



Figure 6: Photomontage of the proposed development

REFERRALS

INTERNAL REFERRALS

Engineering Comments

Council's Engineer offered no objections to the proposal, subject to the imposition of standard conditions of consent in the event the application is approved.

Building Comments

Council's Building Officer has commented on the proposal as follows:

"I suggest that the applicant invest in a BCA/fire engineering report prior to further assessment as the building has BCA non-compliances relative to but not limited to fire safety, and egress that may require design changes.

In accordance with BCA requirements, all units are to be provided with kitchens, bathrooms and laundries.

The BCA requires in Class 2 Buildings that provision for access is provided to and within not less than 1 of each type of room or space for use in common by the residents, including a cooking facility, sauna, gymnasium, swimming pool, common laundry, games room, individual shop, eating area, or the like.

Recommendation:

Additional Information should be submitted for further assessment prior to the DA being finalised."

Waste Comments

Council's Waste Officer has commented on the amended proposal as follows:

- *"The original design did not provide sufficient space for onsite collection. The amended design has not addressed this matter, only re-located the waste collection area on the ground floor. It is not desirable for Council trucks to park on the street and transfer the waste bins between the truck and waste collection room."*
- *The waste collection area on the ground floor needs to be larger to better accommodate the required number of bins."*

Landscaping Comments

Council's Tree Coordinator provided the following comments on the original proposal:

- *"The landscape plan shows the removal of about 25 trees on the site itself, and shows 3 adjacent street trees, one rear neighbour's tree and the planting of only 6 replacement trees (within the site - all small growing species of a maximum 6-8 metres in height)."*
- *The submitted Arborist Report supports the removal of the trees instead of proposing alternatives to the removal of the healthier or larger trees.*
- *It is recommended that this development proposal not be supported and the street trees numbered 1 and 3 and on-site trees 11, 13, 18, 20, 21, 24, 26 and 29 be carefully incorporated into an amended design.*
- *The tree numbered 23 is 1/3 dead and although it is a neighbour's property, its removal would be supportive should such a request be made."*

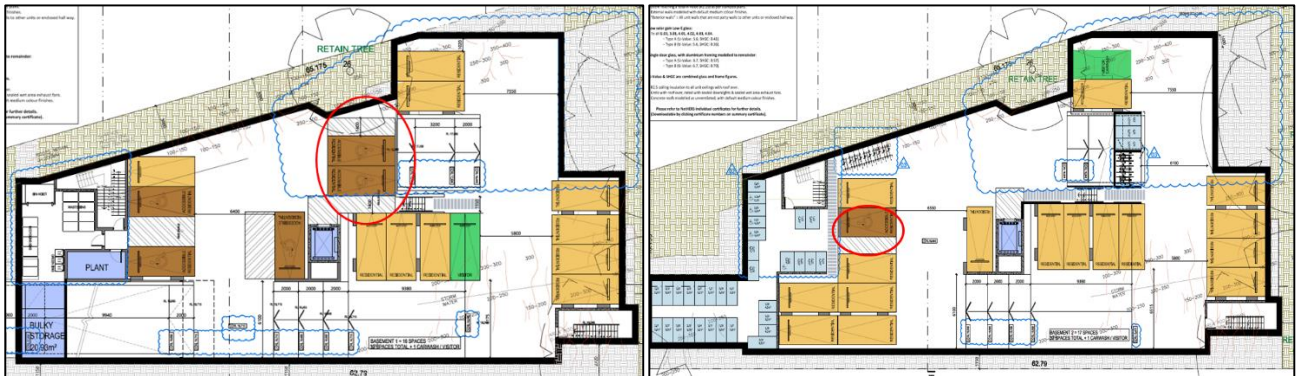
Council's Tree Coordinator provided the following comments on the amended design proposal:

- *Based on the amended plans, amended Arborist Report and Root Mapping Report, five (5) trees are identified to be retained and protected.*
- *The Stormwater Plan appears to adversely impact on trees shown to be kept, making their retention impossible. The design therefore needs to be amended to keep the trees.*
- *Under the Australian Standard AS4970-2009: Protection of trees on development sites (3.3.2 Minor encroachments and 3.3.3 Major encroachments) this encroachment into the Tree Protection Zone (TPZ) ".....should be compensated for elsewhere and continuous with the TPZ." From my review of the reports, plans and supporting documentation the applicant has not demonstrated that they have adequately protected the trees that they themselves have proposed to be retained and protected.*
- *I do not support the proposed design site or the recommendations of their arborist (Redgum Horticulture). It is highly likely that the accumulation of root loss, branch removal and branch reduction pruning for building clearances, will kill or render dangerous all of the trees on the development site.*
- *The street tree number 2 (Brush Box) is proposed to be removed and replaced. With the exception of the Brush Box street tree impacted by the stormwater outlet pipes and road works, only the street trees will remain healthy and viable.*
- *The eight (8) trees identified to be retained and protected previously by Council are all identified and being in a good condition and having Good Form and Vigour, by Redgum Horticulture in their amended report. Accordingly, the previously nominated trees are to be retained and protected and the design of the proposed development should be further amended."*

Traffic Comments

Council's Traffic Engineer has commented on the proposal as follows:

- *"The proposed on-site parking provision includes 34 car parking spaces which is considered satisfactory in relation to affordable apartment component and residential apartment components.*
- *The potential traffic generation is estimated based on the rates of high density residential flat buildings. The net traffic generation increase as a result of the development is marginal.*
- *All aspects of the carpark and the associated vehicular access have been assessed against AS/NZS 2890 series. The headroom above the dedicated disable parking spaces is not clearly indicated. Pursuant to AS2890.6:2009 Clause 2.2.1, a shared area of 2.4m by 5.4m shall be provided on one side of the dedicated disable parking space. The spaces circled in red are non-compliant.*



- *The current parking layout only permits access for passenger vehicles and light vans. Further advice is required on the waste collection arrangement to ensure the suitability of the parking layout."*

Heritage Comments

Council's Heritage Advisor has provided the following recommendation on the proposal:

"It is recommended that the development consider using a grey instead of a dark contrasting black to meet DCP objectives and controls within 3.4 Materials and colour. It is also recommended that at least one mature trees is retained within the front setback. Whilst this site is not listed as associated with the heritage item, the trees on the site do aid to form a garden character within this part of the streetscape in the vicinity of the heritage item. Retention of at least one mature tree would thus better meet the objectives of the DCP in relation to "settings".

Therefore, changes to form and garden are recommended to ensure that the development is in keeping with the heritage item."

Environmental Health Comments

Council's Environmental Health Officer has commented on the proposal as follows:

"The State Environmental Planning Policy (Infrastructure) 2007 clause 87 and 102 were considered in this noise assessment. The site is not located on land in or adjacent to the road corridor or railway line so the LAeq levels in the SEPP were not applied. I agree with this comment. However, internal noise criteria's were selected and detailed in the below table, which align with the SEPP LAeq levels.

Space /Activity Type	Internal Noise Requirement dB(A)
	Traffic Noise – dB(A) L_{eq}
Sleeping Areas	35 dB(A) L_{eq} (9hour) – SEPP (10pm to 7am) 40 dB(A) L_{eq} (15hour) – SEPP (7am to 10pm) 35 dB(A) L_{eq} (1hour) – AS2107 (10pm to 7am)
Living Room	40 dB(A) L_{eq} (15hour) – SEPP 40 dB(A) L_{eq} (1hour) – AS2107
Internal Common Areas/Lobbies	45 to 55 dB(A) L_{eq} – AS2107

All glazed windows and doors are to be fitted with acoustic seals and thicker glazing is recommended in the below areas:

Facade	Levels	Room	Glazing	Seals
All	Ground	Lobby	4mm Toughened	Yes
	All	Bedroom	4mm Toughened	Yes
		Living Room	4mm Toughened	Yes

Environmental Services has read the above DA and supporting documents and can support the proposed subject to the special conditions relating to the use of the outdoor communal area, mechanical services be enclosed with acoustic barriers and the recommendations of the Acoustic Report are adopted.”

EXTERNAL REFERRALS

NSW Police

The subject application has been referred to the NSW Police. A response has since been received from the Flemington Local Area Command recommending the imposition of standard conditions of consent.

Design Review Panel

The application was referred to the Design Review Panel. The following comments have been provided:

“The Panel considers that the proposal is a significant overdevelopment of the site that if built would deliver an unacceptable level of residential amenity for residents.

The site is highly constrained by its irregular shape which impacts on its ability to satisfactorily accommodate a development of the proposed scale and density.

Maximising the allowable FSR including the bonus FSR results in a development that is non-compliant with the maximum building height for the site as well as a number of non-compliances

with the Apartment Design Guidelines which adversely impacts on the relationship with neighbouring developments as well as impacts on the amenity of the apartments.

Primary impacts resulting from the excessive FSR include building height non-compliance, side and rear setback non-compliance, compromised floor plate layouts and cross ventilation, solar access non-compliances, removal of significant trees due to non-compliant setbacks and the basement design.

Tree Removal

The proposal includes the removal of a large number of trees. The large native trees provide significant amenity to the subject and surrounding sites. The Panel recommends that the applicant work with the Council's Arborist to identify the trees that are required to be retained. The basement is excessive and its' size results from the large number of units proposed. A smaller building footprint and a smaller basement would allow for deep soil and trees to be retained.

Location of garbage holding bay

The garbage holding bay is located at ground level adjacent to the pedestrian entry. The location of this area is not suitable as it impacts on the configuration of the entry. It will also likely conflict with pedestrian traffic on collection day and pose odour nuisance both to future tenants as they pass this location upon entry and existing the building as well as to the north facing apartments in the adjoining flat building. The garbage holding bay should be relocated in an area which is separate from the entrance.

Pedestrian Entry

The entry as proposed is awkwardly located down a long and narrow pathway to the side of the building, essentially half way down the site and adjacent to the basement driveway. The pedestrian entry should ideally be relocated to the front of the building for easy identification and improved interaction with the street and be adequately separated from the driveway for safety.

The panel acknowledges that this will result in the front room to be deleted/relocated however will improve the presentation of the development to the street and improve the amenity and safety for future occupants.

Sunlight

The Panel questions if the existing residential flat building to the south will continue to receive sufficient sunlight to its apartments due to the non-compliant side setback. The panel recommends that the applicant undertakes a study that demonstrates how many units currently receive sunlight and how many will lose sunlight for Council's proper assessment. The applicant should synthesise this analysis and ensure that the objectives of Part 3B-2 of the ADG are complied with.

Cross ventilation

The Panel questions the cross-ventilation calculations provided by the applicant and does not agree that the development achieves compliance with the cross ventilation requirements of the Apartment Design Guidelines. The applicant should review apartments 1.08, 2.08, 3.02, 3.08m and 4.02 as the panel recommends that these apartments are not cross ventilated in the current design.

Setbacks

The setbacks to all sides of the development are unacceptable and do not comply with the setback requirements under the ADG. The Panel acknowledges the irregular shape of the site however, advised that the non-compliant setbacks clearly indicates that the development is an over development of the site and a development of this scale is not feasibly due to site constraint. The panel recommend that all ADG setbacks are complied with to preserve the amenity of both the subject site and the surrounding buildings.

Apartment Layout

The floor plate layout to a number of apartments is less than satisfactory and results in impractical and useless spaces that although add to the overall size of the apartments does not increase room size or amenity. A number of apartments include unreasonably long corridors/hallways, in particular units 1.06, 2.06 and 3.06 have awkwardly shaped long and useless corridors and a number of apartments have awkward shaped rooms, especially, units 1.05, 2.05 and 3.05.

The Panel recognises that the irregular shaped allotment impact on the built form to some extent however, the compromised floor plate layouts is a direct result of maximising yield.

Adaptable Units

The Panel notes that the adaptable apartments appear below the required size to be easily adapted into ample sized apartments post adaptation and recommends that this is considered further in consultation with an access consultant."

Amended plans were submitted to Council following the Design Review Panel meeting. The amended plans partially address DRP recommendations including amendments to the location of the pedestrian entrance, location of the ground level waste holding room, retention of multiple on-site trees, reconfiguration of the units improve solar access and cross-ventilation and reduction of the building height from 18.38m to 16.13m. However as discussed in this report, non-compliances of these elements remain.

SECTION 4.15 CONSIDERATIONS – EP&A Act, 1979

In determining a development application, the consent authority is to take into consideration the following matters of consideration contained within section 79C of *the Environmental Planning and Assessment Act, 1979* as relevant to the development application:

The application has been assessed pursuant to the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act* and the relevant matters described in Sub-section (1)(a), (b), (c), (d) and (e) of Section 79C have been considered within this report. The relevant statutory considerations are as follows:

- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Strathfield Local Environmental Plan 2012; and
- Strathfield Consolidated Development Control Plan 2005:

- Part C – Multiple-Unit Housing;
- Part H – Waste Minimisation and Management;
- Part P – Heritage; and
- Part Q – Urban Design

4.15(1)(a) the provisions of:

(i) any environmental planning instrument

STATE ENVIRONMENTAL PLANNING POLICY (SEPP) – BASIX 2004

In accordance with the BASIX SEPP all new housing in NSW is required to meet a designated target for energy and water reduction.

A BASIX Certificate was submitted as part of the original application which indicated that the proposal met the required reduction targets. However, an amended BASIX Certificate was not submitted reflecting the modified building design.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

SEPP 55 applies to the land and pursuant to Section 4.15 is a relevant consideration.

A review of the available history for the site gives no indication that the land associated with this development is contaminated as the site has historically been utilised for residential purposes only. Further, the site is not identified as a known landfill site under Part K of the SCDP 2005. As such, there are no historic uses that would trigger further site investigations.

The objectives outlined within SEPP55 are considered to be satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017

The policy replaces the provisions of Clause 5.9 of Strathfield Local Environmental Plan 2012 relating to the preservation of trees and vegetation.

The original application sought to remove 26 trees, 25 of which are located within the subject site. Council's Assessment Officer and Tree Preservation Officer identified eight (8) on-site trees that are of a higher health and form, appropriate locations and desirable species that could be accommodated into a more site responsive design for a residential flat building on the site.

The revised architectural plans were accompanied by an updated Arboricultural Impact Assessment and Root Mapping Report. The revised design proposes to retain four (4) on-site trees and did not include all of the trees identified by Council as being favoured for retention. The trees identified for retention will be adversely impacted by the proposed stormwater drainage design and the building footprint (excluding the drainage) does not comply with the Australian Standard AS4970-2009: Protection of Trees On Development Sites. Council's Tree Coordinator has concluded that the accumulation of root and branch removal proposed in the submitted reports will not enable the long-term viability of any of the retained on-site trees. The submitted Landscape Plan proposes six (6) replacement trees with a maximum mature height ranging between 6-8m. The removal of such a large number of native and mature trees in good health that contribute to the landscape setting of the locality and sub-optima replacement planting does not achieve the objectives of the SEPP (Vegetation in Non-Rural Areas) 2017

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007 (INFRASTRUCTURE SEPP)

Clause 102 of the Infrastructure SEPP requires Council to assess the impact of traffic and road noise from adjacent classified roads on the amenity of the proposed developments and Clause 87 to assess the impact of rail corridor noise. Whilst both Clauses do not directly apply to the subject site, the close proximity (approximately 90m from the rail and 95m from Centenary Drive) warrants Councils consideration of the potential impacts of the infrastructure on the amenity of the developments' future residents. The submitted the Noise Impact Assessment demonstrates that through the implementation of thicker glazing and acoustic seals on the windows and doors the development can achieve compliance with the internal noise levels specified in Clause 87 and 102 of the State Environmental Planning Policy (Infrastructure) 2007 and the NSW Department of Planning 'Development Near Rail Corridors and Busy Roads – Interim Guidelines.

STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

The development application seeks to construct a residential flat building with 16 affordable rental housing units. The following is an assessment of the affordable housing component of the proposal against the Division 1 In-Fill Affordable Housing provisions of the ARH SEPP 2009:

Clause	Development Control	Required	Proposal	Compliance
10(1)	Permissibility	Permissible under SLEP 2012	A residential flat building is permissible with consent in the R3 – Medium Density Residential zone.	Yes
10(3)	Location and access to facilities	The site is located within 400m walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to. Located within an accessible area.	The site is located approximately 320m from a B4 Mixed Use and 330m walking distance from Flemington Railway Station.	Yes
13(1) and (2)	Floor Space Ratio - Affordable housing	Min 20% of GFA must be dedicated as affordable housing. Max FSR as per SLEP is 1.45:1 and 42% of gross floor area is dedicated as affordable housing. Total FSR: 1.45:1 + 0.42:1 = 1.87:1 (2,926.73m ²)	42% (1,249.42m ²) of development is provided as affordable housing. Proposed FSR: 1.86:1 (2,926.47m ²).	Yes Yes

Clause	Development Control	Required	Proposal	Compliance
14(1) Note: Unable to refuse based on these provisions	Site area	Min 450m ²	The site area is 1,565.1m ²	Yes
	Landscaping	Min 30% (469.53m ²)	33.2% (519.61m ²) of the site is provided as landscaping.	Yes
	Deep Soil	Min 15% (234.76m ²) with min 3m dimension Preferably to the rear of the site.	20.88% (326.81m ²) of the site is provided as deep soil landscaping.	Yes
	Solar Access	Living rooms and private open space for min 70% receive min 3hrs direct sunlight between 9-3pm	50% (8/16) of the affordable units receive at least 3hrs of direct solar access.	No
14(2) Note: Unable to refuse based on these provisions	Parking	1 bed – 0.5 spaces x 3 2 bed – 1 space x 9 3 bed – 1.5 spaces x 4 TOTAL = 1.5 + 9 + 6 = 16.5 (17) spaces required	A total of 32 residential car parking spaces are provided across the two (2) levels of basement.	Yes
	Dwelling size	1 bed unit = 50m ² 2 bed unit = 70m ² 3 bed unit = 95m ²	All of the affordable rental units meet the minimum dwelling size requirements.	Yes
15	Design requirements	SEPP 65 compliant	An assessment against the relevant ADG requirements is provided further in the report.	N/A Refer to SEPP 65 assessment.
16	Character	Design of development is compatible with character of local area	The proposal is incompatible with the character of the local area specifically in relation to building envelope, landscaping and building height.	No. Refer to discussion below.
17	Affordable housing	Consent authority impose conditions that units must be used as affordable housing for 10 years from the issue of OC. Must be managed by a registered community housing provider.	The application is recommended for refusal. Council considers that a portion of affordable housing contribution should be held by Council in perpetuity.	N/A. Recommended for refusal.

Clause	Development Control	Required	Proposal	Compliance
		A restriction against the title of the property under Section 88E instrument that will ensure requirements are met.		
18	Subdivision	May be subdivided with consent.	The development application does not propose strata subdivision.	N/A

Clause 16A:

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

The materials, roof line and modulation of the building are generally consistent with the existing streetscape. However, the scale of the building is not compatible. The proposed northern and southern side setbacks prescribed by the ADG and consequently private open spaces and window openings are fitted with privacy screens and obscure glazing up to a sill height of 1.8m to address opportunities of overlooking by the future residents into the adjoining properties.

As a consequence of the non-compliant setbacks and building height, the sense of openness between the proposed building is lost and the adjoining residential properties are not compatible with the established building rhythm of the street, desired within the medium density land use zone.

Native canopy trees co-existing with residential flat buildings are a common element in Eastbourne Road. The combination of significant tree removal, unviability of any trees to be retained and sub-optimal replacement tree planting result would result in a development that reflects a co-existence of environmental and built outcomes that currently existing in the neighbourhood.

SEPP 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) aims to improve the design quality of residential flat development in New South Wales. SEPP 65 recognises that the design of residential apartments is of significance due to the economic, environmental, cultural and social benefits of high quality design.

Clause 30(2) requires that consent cannot be granted if the application does not demonstrate that adequate regard has been given to the design principles of the SEPP and the objectives specified for the relevant design criteria of the ADG. An assessment of the application against these has been undertaken below:

Principle 1: Context and neighbourhood character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Assessment Officer's Response: The context of the site is described as a medium density residential area surrounded by 2-4 storey residential flat buildings of various ages with pitched roof forms and external finishes comprising rendered masonry and facebrick in a landscape setting. The proposal has not adequately responded to the context of the site by proposing a building envelope that is five (5) storeys, provides little spatial relief due to non-compliant setbacks and requires the removal of an excessive number of on-site mature native trees that contribute to the landscape setting of the locality.

Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Assessment Officer's Response: The building is orientated to Eastbourne Road with a well-articulated front building façade and addresses the public domain through the incorporation of deep soil landscaping in the front setback, a clear pedestrian entrance and balconies. However, the proposal does not exhibit good design by virtue of proposing a building of a height and scale with inadequate side setbacks for a multi-level building. The resulting building envelope and composition of the building elements is not appropriate to the existing and desired future character of the street.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Assessment Officer's Response: The proposed development does not achieve an acceptable level of residential amenity. The proposed units rely on an extensive use of privacy screens and obscure/frosted glazing on windows to address visual privacy issues as a result of non-compliant building setbacks. The density and configuration of the units results in the proposal failing to meet solar access and cross-ventilation requirements. The appropriateness of the proposed density of the building is questioned, given the extent of non-compliance of the development against the ADG objectives and design criteria.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Assessment Officer's Response: The design of the building and configuration of the residential units results in 25.71% (9/35) of the units receiving no direct sunlight between 9am and 3pm at mid-winter and 42.85% (15/35) are not cross-ventilated requiring the future residents to depend on artificial lighting and mechanical means for comfortable living. A BASIX Certificate meeting the requirements under SEPP BASIX 2004 was submitted with the original application, however an amended BASIX Certificate did not accompany the amended proposal.

The original design scheme proposed the removal of 25 on-site trees. During the assessment process a revised scheme was submitted, proposing the retention of four (4) on-site trees. The footprint of the building and associated stormwater infrastructure in addition to the proposed root and branch removal will not enable the long-term viability of any of the on-site trees. The proposed replacement planting schedule is considered inadequate. Consequently, the proposal is not of good sustainable design.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

Assessment Officer's Response: As previously discussed, the building footprint has not been designed to respond to the context of the locality or the existing site conditions. This is reflected through the removal of a substantial number of on-site trees and the building not complying with the Australian Standard AS4970-2009: 'Protection of trees on development sites' in regards to the trees to be retained.

The plans and submitted documentation do not identify the provision of a rainwater tank and the BASIX Certificate notes that no tap is to be provided in any common areas. As such, it is uncertain how the vegetation in the common areas are to be irrigated, particularly those areas planted over structures.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Assessment Officer's Response: The proposed development does not provide adequate natural light and cross-ventilation. The percentage of cross-ventilated units and the number of units that receive no direct solar access do not comply with the ADG requirements.

The inadequate side setbacks and resultant visual privacy issues are elected to be resolved by privacy screens and extensive frosted/obscure window glazing along the side (northern and southern) and rear (eastern) elevations, a treatment that is not supported. The residential units have been provided with compliant ceiling heights.

Whilst 27.53% of the site is dedicated as communal open space, exceeding the 25% requirement, the area is distributed to three (3) areas including 112.22m² on the rooftop which is only access by means of an external stair case. As the rooftop is only accessible by external stairs, it is difficult to access, discouraging and maintenance.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Assessment Officer's Response: The proposed building has a pedestrian entrance that is readily identifiable from the public domain. Passive surveillance opportunities are provided through the orientation of balconies to Eastbourne Road.

Principle 8: Housing diversity and social interactions

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Assessment Officer's Response: The proposal provides an acceptable mixture of unit types consisting of:

- 10 x 1-bedroom apartments (28.5%)
- 21 x 2-bedroom apartments (60%)
- 4 x 3-bedroom apartments (11.4%)

The following 16 of the total 35 residential units are identified as affordable rental housing units and are appropriately distributed across the building levels:

- 3 x 1-bedroom apartments;
- 9 x 2-bedroom apartments; and
- 4 x 3-bedroom apartments.

As previously mentioned, the proposal provides communal open space areas located on the ground floor to the rear of the site, on the fourth floor and rooftop. The rooftop communal open space is accessible by an external staircase only which would not encourage use by residents.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Assessment Officer's Response: The building is well articulated and avoids large expanses of unbroken wall through modulated building form and balconies on all elevations. The proposal incorporates a mixture of facebrick, rendered masonry, powdered aluminium and cladding. The colour palette comprises of neutral colours including tones of white, grey, black and dark blue. Although the external building façade from the ground to third floor is acceptable, the white cladding on the fourth floor, whilst will not be visible from Eastbourne Road is a stark contrast to the traditional facebrick and rendered masonry on the lower levels and does not create a visually integrated building form. The building height exceedance is not in keeping with the local context.

APARTMENT DESIGN GUIDE QUALITY DESIGN OF RESIDENTIAL FLAT BUILDINGS

Design Criteria	Required	Proposed	Compliance
3B – Orientation	Responsive to streetscape and site.	The proposed building is orientated to Eastbourne Road.	Yes
	Designed to optimise solar access and minimise overlooking.	The proposal is not designed to optimise solar access or minimise overlooking.	No
	Living areas, private open space receive solar access as per 3D and 4A design criteria.	Shadow diagrams of the elevations of the adjoining southern (No. 4 Eastbourne Road) and south-eastern (No. 5-9 Hornsey Rd) were submitted demonstrating sufficient solar access.	Yes

3C – Public Domain Interface	Direct street entry to ground floor apartments where appropriate. Balconies/ windows orientated to overlook the public domain.	All apartments are accessible via the main pedestrian entry only.	No, however design is acceptable.
	Height of solid fences should be limited to 1m then use visually permeable treatments.	Balconies and windows are orientated to provide passive surveillance opportunities to the public domain and communal area on the ground floor.	Yes
	Services concealed Access ramps minimised	A small front fence to the private open space of the Unit G.01 orientated to Eastbourne Road is provided. The low scale of the front fence would enable pedestrians to look directly into the private open space and living room of the residential unit.	No.
		Services such as the waste holding bay and the basement door are concealed from the public domain. Insufficient information has been submitted regarding the location of fire hydrant infrastructure and letterboxes.	Yes
3D – Communal Open Space	Min. 25% (391.27m ²) – Site area 1,565.1m ²	27.53% (431m ²) of the site is dedicated as communal open space and is distributed across three (3) areas as follows: • Ground floor = 160m ² • Fourth floor = 158.78m ² • Fifth floor (rooftop) = 112.22m ²	Yes
	Min 2h to 50% communal open space at mid-winter	At least 50% of all three (3) communal areas receive a minimum of 2h solar access in mid-winter.	Yes
	Allow range of activities, be attractive and inviting.	Only the ground floor communal area is provided with any shade (12pm noon onwards) (shadow from the building) during the summer months. Accordingly the fourth floor and rooftop communal areas have not been designed to be inviting for residents to use during the summer months.	No
	Designed to maximise safety.	The rooftop communal area is accessible via external building stairs only and is potentially unsafe and not accessible for all residents.	No

3E – Deep Soil Zones	<p>Min. 7% (109.55m²) Min 6m dimension</p> <p>Deep soil zones provide areas on the site that allow for and support health plant and tree growth.</p>	<p>The proposal provides 20.88% (326.81m²) of deep soil distributed to the front, rear and northern portions of the site.</p> <p>Although the proposal exceeds the 7% numerical deep soil requirement, it does not achieve the objective of 3E-1 as the size and location of the deep soil zones as a result of the building footprint do not allow adequate clearance to ensure the long-term health of four (4) on-site trees proposed to be retained.</p>	<p>Yes</p> <p>No</p>
3F – Visual Privacy	<p>Up to 4 storeys:</p> <ul style="list-style-type: none"> • 6m between habitable rooms/balconies and the boundary • 3m between non-habitable rooms and the boundary <p>5 - 8 storeys:</p> <ul style="list-style-type: none"> • 9m between habitable rooms/balconies and the boundary • 4.5m between non-habitable rooms and the boundary 	<p>Ground floor third floor (4th storey):</p> <p><u>Northern side elevation:</u></p> <ul style="list-style-type: none"> • Habitable rooms: 3m – 5m • Non-habitable rooms: 4m <p><u>Southern side elevation:</u></p> <ul style="list-style-type: none"> • Habitable rooms: 5 - 7m • On-habitable rooms: 6m <p><u>Eastern/rear elevation:</u></p> <ul style="list-style-type: none"> • Habitable rooms: 4m -4.3m • Non-habitable rooms: - <p>Fourth floor (5th storey):</p> <p><u>Northern side elevation:</u></p> <ul style="list-style-type: none"> • Habitable rooms: 6m -7.5m • Non-habitable rooms: - <p><u>Southern side elevation:</u></p> <ul style="list-style-type: none"> • Habitable rooms: 7m • Non-habitable rooms: 7m <p><u>Eastern/rear elevation:</u></p> <ul style="list-style-type: none"> • Habitable rooms: 6m • Non-habitable rooms: - <p>Note: Privacy screens on the balconies and frosted/obscure glazing up to sill height of 1.8m from the floor are incorporated to non-compliant balconies and rooms to minimise overlooking to adjoining properties.</p>	<p>No, however privacy measures to minimise overlooking opportunities into the adjoining properties have been incorporated.</p>
3G – Pedestrian Access and Entries	<p>Entry addresses public domain</p> <p>Clearly identifiable</p>	<p>The pedestrian and basement entrances address the public domain and are clearly identifiable.</p>	<p>Yes</p>

	Steps and ramps integrated into building design	The vehicular ramp and fire stairs are appropriately integrated into the building.	Yes
3H – Vehicle Access	Integrated into façade. Visual impact minimised. Entry behind the building line. Clear sight lines	Vehicle access is integrated into the façade and provides clear sightlines.	Yes
	Garbage collection screened	The ground floor garbage holding bay is appropriately screened from the public domain.	Yes
	Pedestrian and vehicle access separated.	Pedestrian and vehicle access is separated.	Yes
3J – Bicycle and Car Parking	Within 800m of a railway station: Min RMS Rate applies: Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.	The proposal provides two (2) levels of basement parking with: <ul style="list-style-type: none"> • 32 residential car spaces • 2 visitor car spaces • 16 bicycle spaces • 0 motor bike spaces 	Yes
4A – Solar and Daylight Access	Min. 70% receive 2 hours solar access	89.47% (17/19) of the residential units receive at least 2hrs of direct solar access. Note: Direct solar access for affordable rental units is under ARH SEPP 2009.	Yes
	Max. 15% units have no solar access	10.52% (2/19) of the residential units receive no solar access receive no direct sunlight between 9am and 3pm at mid-winter.	No
	Light wells, skylights and highlight windows are only to be a secondary source where sunlight is limited.	It is noted that the ARH SEPP 2009 has no requirement for units with no solar access. As a whole building 25.71% (9/35) of the total residential units All habitable rooms are provided with appropriately sized windows.	
4B – Natural Ventilation	Min. 60% are cross ventilated in first 9 storeys.	57.14% (20/35) of the units are cross-ventilated. The submitted plans identify units on the third and fourth floor as achieving cross-ventilation through the use of breezeway corridors. As insufficient details regarding the main doors to these residential units accompanied the application (ie. Solid doors, flyscreens, vents), they cannot be counted as being cross-ventilated.	No
			Yes

	<p>All habitable rooms are naturally ventilated</p> <p>Single aspect units have limited depth to maximise ventilation</p>	All habitable rooms are naturally ventilated by means of openable windows.	
4C – Ceiling Heights	<p>Habitable: 2.7m</p> <p>Non-habitable: 2.4m</p>	2.7m internal floor to ceiling heights to all habitable and non-habitable rooms.	Yes
4D – Apartment Size and Layout	<p>1 bed: 50m²</p> <p>2 bed: 70m²</p> <p>3 bed: 90m²</p> <p>Additional bathrooms +5m².</p> <p>Each habitable room must have a window >10% floor area of the room. Habitable room depths = max 2.5 x ceiling height. Or if open plan layout = max 8m from a window. Master bed: min 10m² Other bedroom: min 9m²</p> <p>Living rooms min. width: Studio and 1 bed: 3.6m, 2 and 3 bed: 4m. Crossover/through: min 4m</p>	<p>All units achieve the minimum unit size requirements.</p> <p>The majority of units do not exceed the maximum 8m depth in open plan layouts. The units that exceed the 8m depth are considered acceptable, providing direct solar access and cross-ventilation.</p> <p>Not all residential units are provided with a laundry and no communal laundry is provided.</p> <p>Unit 3.02 is not provided with a bathroom or kitchen.</p>	<p>Yes</p> <p>No, acceptable on merit.</p>
4E – Private Open Space and Balconies	<ul style="list-style-type: none"> • 1 bed: 8m², min depth 2m • 2 bed: 10m², min depth 2m • 3 bed: 12m², min depth 2.4m 	<p>The balconies for Units 1.01, 1.02 and 3.01, all three bedroom units do not meet the 12m² minimum requirement. All other balconies and private open spaces meet the minimum area requirements.</p> <p>All balconies meet the minimum depth requirements.</p>	<p>Size – No</p> <p>Depth - Yes</p>
4F – Common circulation and spaces	<p>Max. 8 apartments off a single core</p> <p>Daylight and natural ventilation provided to all common circulation above ground.</p>	<p>No level has more than 8 apartments off a single core.</p> <p>The common circulation space on the first and second floors are not provided with any windows or openings.</p>	Yes
4G – Storage	<p>1-bed: 6m³</p> <p>2-bed: 8m³</p> <p>3-bed: 10m³</p> <p>At least 50% within the basement.</p>	<p>All units are provided with storage areas within the basement level 2. Insufficient information is provided on the floor plans to calculate storage areas in each unit.</p>	Insufficient information to determine compliance.
4H – Acoustic Privacy	Orientate building away from noise sources.	The driveway entrance and main pedestrian entrance door are located away from bedrooms.	Yes

	Noise sources should be located at least 3m from bedrooms. Rooms with similar noise requirements are grouped together.	An Acoustic Report was submitted recommending window glazing and acoustic seals to minimise noise from the nearby classified road (Centenary Drive) and the railway corridor. The bedrooms of units G.08, G.07, 1.01, 2.01, 3.01, 3.07 adjoin the fire stairs and the bedrooms of units 1.08, 2.08 adjoin the lift.	No
4J – Noise and Pollution	Site building to maximise noise insulation Noise attenuation utilised where necessary	An Acoustic Report was submitted recommending window glazing and acoustic seals to minimise noise from the nearby classified road (Centenary Drive) and the railway corridor.	Yes
4K – Apartment Mix	Variety of apartment types. Appropriate apartment mix. Different apartments distributed throughout the building	The proposal provides the following housing mix: <ul style="list-style-type: none">• 10 x 1-bedroom units (28.5%)• 21 x 2-bedroom units (60%)• 4 x 3-bedroom units (11.4%) Of the 35 units, 16 are identified as affordable rental houses and are appropriately distributed throughout the building.	Yes
4L – Ground Floor Apartments	Street frontage activity is maximised where ground floor units located Casual surveillance whilst providing privacy	The irregular shape of the site constrains opportunities for multiple ground floor units to have direct street access. The low scale front fence to the private open space of unit G.01 facing Eastbourne provide direct overlooking opportunities from the public domain into the unit.	Yes No
4M – Facades	Building facades provide visual interest along the street while respecting the character of the local area. Defined base, middle and top. Building functions are expressed by the façade.	The composition of the building façade has a defined base, middle and top which has a mixture of external finishes to provide visual interest. However, the use of white cladding to only the fourth floor, does not integrate well into the overall façade of the building. The front building façade is well articulated using variation in building materials and modulated components to visually break up the building.	Yes Yes

	Building services integrated into the façade.	<p>Whilst the interface between the public domain and the building façade is compatible with the streetscape character, the scale of the building is not.</p> <p>Insufficient information regarding the lift overrun and fire hydrant infrastructure have been submitted.</p>	
4N – Roof Design	Roof design integrated into the building. Incorporates sustainability features May include common open space	A flat roof design is proposed which includes a rooftop common open space area in the central portion of the building.	Yes
4O – Landscape Design	Landscape design is viable and sustainable. Contributes to the streetscape and amenity.	The proposed landscape scheme proposes to retain four (4) out of 25 on-site trees. The building envelope and associated stormwater infrastructure does not comply with the relevant Australian Standards for tree protection. The landscape design does not complement the existing features of the site or contribute to the landscape setting of the neighbourhood. The proposal provides no information how the landscape areas are to be irrigated.	No
4P – Planting on Structures	Appropriate soil profiles and structural design Irrigation and drainage systems	Plant species proposed on top of structures (basement, fourth floor and rooftop) are either ground covers or trimmed to a height of 2m. The amenity of the communal open areas could have been greatly improved through raised planters and garden beds.	No
4Q – Universal Design	20% of total apartments incorporate Livable Housing Guidelines silver level universal design features. Adaptable housing in accordance with Council Policy (15%)	The ground floor plans identify three (3) (8.57%) universal units and four (4) (11.42%) adaptable units. It is noted that the units shown on Drawing No. DA.09 as post adaptable unit and universal design are inconsistent with the unit layouts on the floor plans.	No No
4U – Energy Efficiency	Adequate natural light to habitable areas. Adequate natural ventilation Screened areas for clothes drying	<p>The proposal does not achieve compliant cross-ventilation outcomes requiring future residents to rely on artificial lighting and thermal comfort</p> <p>All habitable rooms are provided with windows.</p>	No Yes

	Shading on northern and western elevations.		
4V – Water Management and Conservation	Efficient fixtures/ fitting WSUD integrated Rainwater storage and reuse	A compliant BASIX certificate accompanied the original building design. An amended BASIX Certificate was not submitted with the revised design scheme. The development proposes no rainwater tank and the submitted plans and BASIX Certificate state there is no tap facility in the common areas. As such, it is unclear how the communal landscape areas are to be irrigated.	No No
4W – Waste Management	Minimise impact on streetscape, building entry and amenity	The proposal provides a waste storage room in the basement and a waste collection room on the ground floor.	Yes
4X – Building Maintenance	Material selection reduces ongoing maintenance costs.	The proposed schedule of external finishes include facebrick, rendered masonry and cladding. The materials are relatively durable to reduce the ongoing maintenance cost of the building.	Yes

STRATHFIELD LOCAL ENVIRONMENTAL PLAN (SLEP) 2012

An assessment of the proposal against the general aims of SLEP 2012 is included below:

Cl. 1.2(2)	Aims	Complies
(a)	<i>To achieve high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities and neighbourhoods in Strathfield</i>	No
(b)	<i>To promote the efficient and spatially appropriate use of land, the sustainable revitalisation of centres, the improved integration of transport and land use, and an appropriate mix of uses by regulating land use and development</i>	No
(c)	<i>To promote land uses that provide a wide range of employment, recreation, retail, cultural, service, educational and other facilities for the local community</i>	N/A
(d)	<i>To provide opportunities for economic growth that will enhance the local community</i>	N/A
(e)	<i>To promote future development that integrated land use and transport planning, encourages public transport use, and reduced the traffic and environmental impacts of private vehicle use</i>	Yes
(f)	<i>To identify and protect environmental and cultural heritage</i>	Yes
(g)	<i>To promote opportunities for social, cultural and community activities</i>	Yes
(h)	<i>To minimise risk to the community by identifying land subject to flooding and restricting incompatible development</i>	Yes

Comments: The proposed use of the site as a residential flat building is appropriate for the site and will provide affordable accommodation by the provision of affordable rental housing apartments. However, the scale of the development does not achieve a site responsive design and will not integrate well with surrounding development in the streetscape. The proposed density of the development results in sub-optimal residential amenity outcomes.

Permissibility

The subject site is Zoned R3 Medium Density Residential under Strathfield Local Environmental Plan (SLEP) 2012.

Residential flat buildings are permissible within the R3 Medium Density Residential Zone with consent and is defined under SLEP 2012 as follows:

“Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.”

The proposed development for the purpose of a residential flat building is consistent with the definition above and is permissible within the R3 Medium Density Residential zone.

Zone Objectives

An assessment of the proposal against the objectives of the R3 Medium Density Residential Zone is included below:

Objectives	Complies
➤ To provide for the housing needs of the community within a medium density residential environment.	Yes
➤ To provide a variety of housing types within a medium density residential environment.	Yes
➤ To enable other land uses that provide facilities or services to meet the day to day needs of residents.	N/A

Comments: The proposed residential flat building with infill affordable rental housing achieves the objectives of the R3 zone given that the development provides for the housing needs of the community in a medium density residential setting.

Part 4: Principal development standards

An assessment of the proposal against the relevant provisions contained within Part 4 of the SLEP 2012 is provided below.

Height of building

Cl.	Standard	Controls	Proposed	Complies
4.3	Height of building	14m	16.13m	No

	Objectives	Complies
(a)	To ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area	No
(b)	To encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area	N/A
(c)	To achieve a diversity of small and large development options.	Yes

Comments: The proposal will result in a non-compliant 16.13m building height, a 15.2% (2.13m) variation (illustrated in Figure 7). Refer to Clause 4.6 Exception to Development Standards assessment below. The height encroachment facilitates another level of residential living contributing to an overdevelopment of the site.

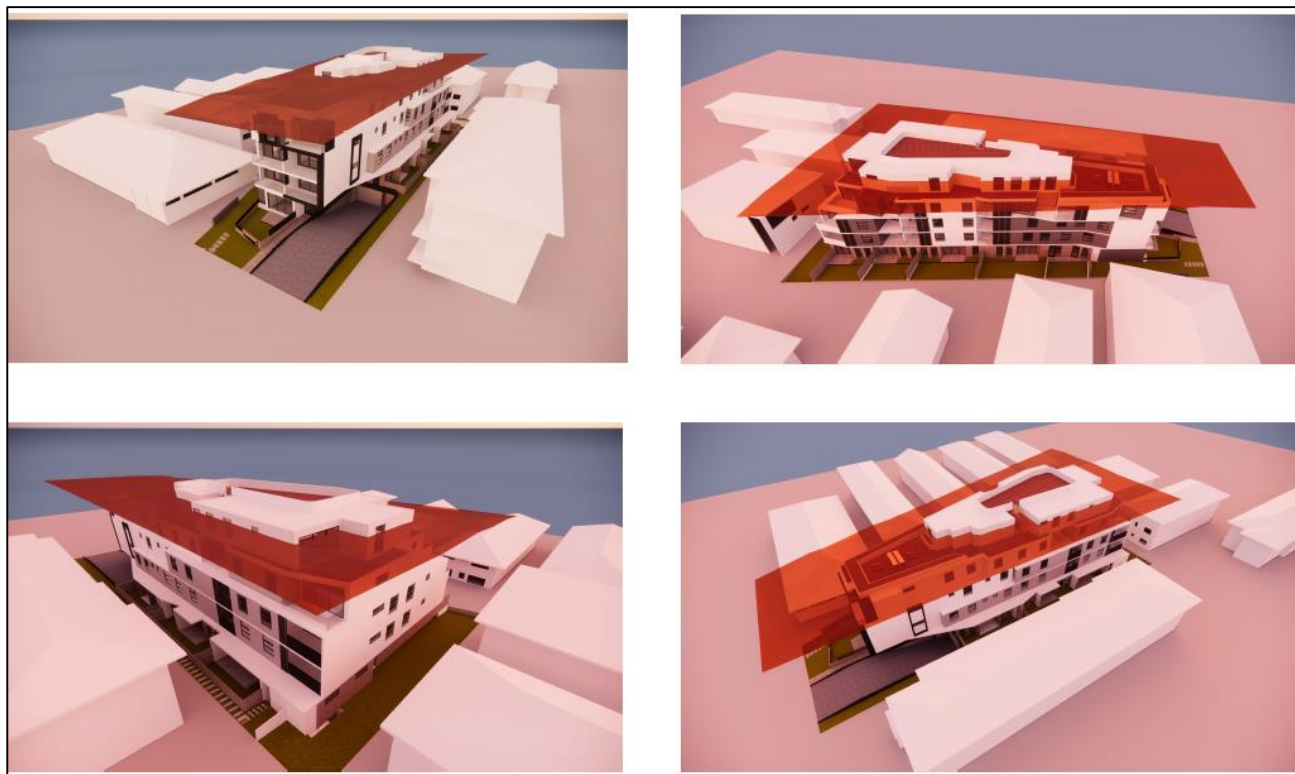


Figure 7: Height plane of proposed building illustrating building height non-compliance.

Floor space ratio

Cl.	Standard	Controls	Proposed	Complies
4.4	Floor space ratio	1.45:1 (2,269.39m ²) ARH SEPP 2009 FSR bonus = 0.42:1 as 42% of GFA dedicated as affordable rental housing Total = 1.45:1 + 0.42:1 =1.87:1 (2,926.73m ²)	1.86:1 (2,926.47m ²)	Yes, in accordance with ARH SEPP 2009 prevails where bonus FSR is applied.

	Objectives	Complies
(a)	<i>To ensure that dwellings are in keeping with the built form character of the local area</i>	No
(b)	<i>To provide consistency in the bulk and scale of new dwellings in residential areas</i>	No
(c)	<i>To minimise the impact of new development on the amenity of adjoining properties</i>	No

(d)	<i>To minimise the impact of development on heritage conservation areas and heritage items</i>	Yes
(e)	<i>In relation to Strathfield Town Centre:</i> i. <i>to encourage consolidation and a sustainable integrated land use and transport development around key public transport infrastructure, and</i> ii. <i>to provide space for the strategic implementation of economic, social and cultural goals that create an active, lively and people-oriented development</i>	N/A
(f)	<i>In relation to Parramatta Road Corridor – to encourage a sustainable consolidation pattern that optimises floor space capacity in the Corridor</i>	N/A

Comments: Whilst the proposal numerically complies with the maximum floor space ratio permitted pursuant to the Clause. The scale and bulk of the building is not proportional to the site or compatible with the surrounding streetscape resulting in an overdevelopment displaying poor residential amenity and streetscape outcomes.

Clause 4.6 Exceptions to Development Standards

The provisions of Clause 4.6 in the SLEP 2012 prescribe partly as follows:

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

Under Clause 4.3 of the SLEP 2012, the maximum building height permissible for the site is 14m. The proposed development results in the exceedance of the development standard by 2.13m, a 15.2% variation. The applicant has provided a written request to justify the contravention of the building height development standard (refer to Attachment). Extracts from the variation request is as follows:

- *The proposed development will significantly improve the appearance of the existing area by replacing a dilapidated two (2) storey multi-dwelling unit development with an architecturally designed residential flat building which has been sensitively designed in order to provide an appropriate response to the context of the site.*
- *While the height of the proposed building is greater than other buildings in the locality, it has been designed to have a streetscape appearance which is appropriate in the locality. Sightline diagrams show that the upper levels will not be readily apparent, such that the development*

has a four (4) storey scale as is envisaged for the site (and precinct) in Strathfield Comprehensive Development Control Plan 2005.

- The proposed built form achieves a suitable built form, in terms of setbacks, building separation, provision of landscaping and streetscape presentation, such that the additional height is acceptable regardless.*
- It is commonly accepted in caselaw that the additional GFA permitted under the ARHSEPP, or part thereof, requires some form of variation to the built form envelope. In this instance, it has been accommodated by increasing the height of the proposed development rather than encroaching further into setbacks in order to mitigate amenity impacts from additional GFA.*
- The bonus FSR provisions in the ARHSEPP are beneficial and facultative and designed to permit additional FSR over and above that ordinarily permitted, in order to provide for the affordable housing needs of the community. The site must be able to be used in a way so as to give proper effect to the bonus FSR, and to not deprive the owner of the right to develop the land in a manner, and to an extent, suitable for and appropriate to the permitted purpose. As such the bonus FSR provisions of the ARHSEPP would be expected to result in development at a higher FSR, and hence higher building than for a standard residential flat building in the R3 zone, justify a contravention of the standard.*
- That the contravention is justified is emphasized by the lack of any unreasonable adverse impact arising from the contravention.*
- The fact that the site is flood affected and requires the proposed ground floor level to be elevated contributes to the extent of the non-compliance.*
- The adjoining residential flat building to the south will receive more than two (2) hours of solar access to all of its north-facing living rooms and private open spaces on 21 June, in compliance with the requirements of the Apartment Design Guide.*

Comments: The following are made in response to the information submitted in the Clause 4.6 request:

- Council does not accept that the topography or site conditions (allotment shape) of the site requires a breach to the height standard.
- The development provides 16 affordable rental units out of the 35 total number of apartments to be provided representing 42% of the total gross floor area. The provision of affordable rental housing is not a plausible planning ground to breach a development standard.
- Council does not have a policy on affordable housing and the granting of development standard variations in certain circumstances. The ARH SEPP 2009 allows for additional FSR for the provision of affordable rental units and this must be balanced with a site responsive design. The height variation is not justified with high levels of amenity elsewhere and is an overdevelopment of the site.
- The proposal results in unacceptable residential amenity outcomes for the future occupants with the percentage of apartments receiving no direct solar access and cross-ventilation exceeds the ADG design criteria.

- The submitted plans do not detail a life overrun so the true maximum building height cannot be determined.
- Plans have been submitted demonstrating that the fourth floor and rooftop will not be visible when viewed immediately in front of and opposite the site. The applicant has not demonstrated that the floors will not be visible from adjacent residential streets such as The Crescent, Exeter Road and Hornsey Road.
- The applicant has not demonstrated the extent in which the building has been required to be elevated in response to the flood affectation of the site.

The proposed non-compliance of the building height development standard is not supported, in that the variation is not well founded and the matters required to be satisfied under Clause 4.6 of the SLEP 2012 have not been met.

Clause 4.6 (4) continues on to state the following:

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

Comments: Council may assume the concurrence of the Secretary under the Planning Circular PS 08-003 issued in May 2008.

Accordingly, the proposed non-compliance with the building height development standard is not supported.

Part 5: Miscellaneous Provisions

The relevant provisions contained within Part 5 of the SLEP 2012 are addressed below as part of this assessment:

5.10 Heritage Conservation

Clause 5.10 of the SLEP 2012 requires consideration be given to the potential impacts of development upon heritage items within the vicinity of the subject site included associated fabric, settings and views. The subject site is directly opposite “Manx Cottage” weatherboard cottage (heritage item No. I152) at No. 1 Eastbourne Road) and is in the vicinity of “Brooklyn” Victorian cottage (heritage item No. I60) at No. 1 Hornsey Road under Schedule 5 of the Strathfield Local Environmental Plan 2012. Both heritage items are single storey cottages. A Heritage Impact Statement was submitted during the assessment process and reviewed by Council’s Heritage Advisor whom does not support the application on heritage grounds.

Part 6: Local Provisions

The relevant provisions contained within Part 6 of the SLEP 2012 are addressed below as part of this assessment:

6.1 Acid sulphate soils

The subject site is identified as having class 5 acid sulfate soils and is located within 500m of Class 3 acid sulfate soils. A combined Geotechnical Investigation and Acid Sulfate Soil Assessment was submitted during the assessment process to determine whether acid sulfate soils are present and if the proposed works are likely to disturb these soils. Council’s Environmental Health Officer reviewed

the Assessment and is satisfied that the site is not significantly impacted by acid sulfate soils and an acid sulfate soil management plan is not required.

6.2 Earthworks

Clause 6.2 of the SLEP 2012 requires consideration be given to the potential impact of the proposed ancillary earthworks on drainage within the locality, the future redevelopment of the site, adjoining development and any environmentally sensitive areas. The proposed development includes two (2) levels of basement requiring the excavation and removal of soil. A Geotechnical Investigation Report was submitted during the assessment process with recommendations regarding shoring and excavation methods during the construction phases of the development to mitigate any potential impacts. Accordingly the application satisfies the provisions of Clause 6.2.

6.3 Flood planning

Clause 6.3 of the SLEP 2012 requires consideration to be given to the compatibility of development on flood prone land and the flood hazard of the land. The site is located within the 1 in 100 year overland flood extent in accordance with the Powells Creek and Salesyard Creek Flood Study. A Flood Planning Report was submitted during the assessment process demonstrating that the proposal has been suitably designed in accordance with Council's flood planning policies and the NSW Government Department of Planning's 'Floodplain Development Manual'. Accordingly the application satisfies the provisions of Clause 6.3.

6.4 Essential services

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed development.

4.15(1)(a)(ii) any draft environmental planning instruments

There are no applicable draft planning instruments that are or have been placed on public exhibition, to consider as part of this assessment.

4.15(1)(a)(iii) any development control plan

STRATHFIELD CONSOLIDATED DEVELOPMENT CONTROL PLAN (SCDCP) 2005

Part C – Multiple- Unit Housing

Clause 6A of SEPP 65 confirms that in the event of any inconsistency between the controls of the ADG and Council's Development Control Plan, the objectives, design criteria and design guidance set out in the ADG prevail.

This confirms that if a development control plan contains provisions that specify requirements, standards or controls in relation to the following matters, those provisions are of no effect:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,

- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage,
- (i) parking.

PART H - WASTE MANAGEMENT (SCDCP 2005)

A Waste Management Plan was submitted with the development application. The proposed development incorporates a common bin storage area within basement level 1 and a bulky storage room on the same level. A waste holding area where the bins are to be collected is proposed on the northern side of the ground floor, approximately 20m from the road kerb. Council's Waste Officer does not support the proposed layout and collection arrangement, as it would require Council's waste collection truck to park on Eastbourne Road and staff to transport the bins between the truck and waste holding area. To minimise traffic and on-street parking conflicts and time efficiency, Council's preference is for waste collection activities to be contained wholly on the subject site. The design has not been revised to achieve this preference.

PART P- HERITAGE

An assessment of the proposal against the objectives contained within Part P of SCDCP 2005 is included below:

1.5	Objectives	Satisfactory
a.	<i>To encourage development which complements existing heritage items and heritage Conservation Areas in a modern context.</i>	No
b.	<i>To retain evidence of historic themes of development evident in the Strathfield Local Government Area, through the proper care and maintenance of individual heritage items and heritage Conservation Areas.</i>	N/A
c.	<i>To protect those items and areas that are of value to the local community</i>	N/A
d.	<i>To ensure that development in the vicinity of heritage items is designed and sited to protect the heritage significance of the item.</i>	Yes
e.	<i>To retain any significant horticultural or landscape features that assist in the interpretation of Strathfield's heritage.</i>	N/A

Comments: The prevalent roof form of buildings along Eastbourne are pitched, complementing the heritage listed cottage opposite the site. The flat roof form, whilst not strictly in keeping with the street is not out of context and is acceptable.

The neutral colour tones of the facebrick and rendered masonry align with the predominant building materials of development and are compatible with the heritage item. However, there is a stark contrast of the black aluminum cladding and white cladding to the heritage item. Alternative colour tones would have been an acceptable design outcome.

The application proposes the removal of trees across the site including six (6) trees located in the front setback and one (1) street tree. The trees located within the front setback contribute to the landscape setting of the streetscape which form the setting of the heritage item. The proposed

replacement planting of two (2) trees with a mature height of 6m and 8m in the front setback are not sufficient supplementation.

PART Q - URBAN DESIGN (SCDCP 2005)

The proposed development address the Eastbourne Road public domain by providing an identifiable pedestrian entrance to the main lobby, orientated private open spaces and openings to enhance passive surveillance opportunities and articulated building components. The façade treatment includes facebrick, rendered masonry, powdered aluminium and cladding in neutral colour tones. The white cladding to the fourth floor does not integrate well with the rest of the building finishes.

The site is currently occupied by six (6) two-storey attached townhouses with landscape setbacks throughout the site with mature trees. The proposal does not respond to the respond to the site conditions or maintaining the landscape pattern in the locality; being native trees of a substantial height. The retention of additional trees would have provided additional residential amenity to the future applicants, by filtering noise generated from the railway corridor, adjoining road and the shade cast by the trees assist in lowering building and outside temperatures on balconies and communal areas.

The proposed development does not achieve an acceptable level of residential amenity to the proposed units by relying on an extensive use of privacy screens and obscure/frosted glazing on windows to address visual privacy issues as a result of non-compliant building setbacks. Further, the size of the private open spaces do not complement the occupancy allocation in that the generous ground floor private open spaces would be more suitable for 2-bedroom and 3-bedroom units.

4.15(1)(iia) any planning agreement or draft planning agreement

No planning agreement has been entered into under section 93F of the *Environmental Planning and Assessment Act 1979*.

(i) matters prescribed by the regulations

Clause 92 of the *Environmental Planning and Assessment (EP&A) Regulation 2000* requires Council to take into consideration the provisions of the Government Coastal Policy and Australian Standard AS2601–1991: *The Demolition of Structures*, in the determination of a development application.

Having regard to these prescribed matters, the proposed development is not located on land subject to the Government Coastal Policy as determined by Clause 92(1)(a)(ii) however does involve the demolition of a building for the purposes of AS 2601 – 1991: *The Demolition of Structures*.

Should this application be approved, appropriate conditions of consent are recommended to ensure the prescribed conditions of consent including compliance with the *Building Code of Australia* and insurance requirements under the *Home Building Act 1989* are met.

(ii) any coastal zone management plan

Not applicable.

4.15(1)(b) *the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

Residential amenity

The configuration and density of the units across the residential flat building result in an unacceptable level of residential amenity for the future residents. In particular 25.71% (9/35) of the residential units receive no direct sunlight between 9am and 3pm at mid-winter and 42.85% (15/35) of the residential units are not cross ventilated. Additionally, not all of the apartments are fitted with a laundry and no communal building laundry is provided. As discussed in the ADG compliance section of the report, all of the residential units and affordable rental units numerically comply with the minimum unit size requirements. However, units 1.01, 1.06, 2.01, 2.02, 2.06 and 4.03 have unreasonably long and/or awkwardly shaped hallways and units 1.05, 2.05, 3.01, 3.05 have awkwardly shaped rooms, impacting on the functionality of the units and the amenity of the occupants.

Environmental impacts

The existing conditions of the subject site include six 2-storey townhouses and pockets of landscaping throughout the site containing 25 native trees ranging from 7-18m in height. The proposal seeks to remove 21 trees, retain four (4) existing trees and replacement tree planting comprising of six (6) trees with a mature height of 6-8m. The amended architectural plans submitted during the assessment process were accompanied by an amended Arborist Report and a Root Mapping Report. Council's Tree Management Coordinator has concluded that all four trees to be retained are unlikely to survive in the long-term. Accordingly the proposal will result in six (6) trees on a site that is unequal environmentally in comparison to its current environmental conditions.

4.15(1)(c) *the suitability of the site for the development*

The site is considered to be unsuitable for the development. The proposal does not respond to the context of the site and its surrounding neighbourhood character resulting in an overdevelopment of the site that is incompatible with the local character and provides unacceptable levels of residential amenity for its future residents.

4.15(1)(d) *any submissions made in accordance with this Act or the regulations*

The application was notified in accordance with the Strathfield Community Plan from 7 May 2020 to 21 May 2020 with three (3) submissions received and from 1 October 2020 to 22 October 2020 with one (1) submission received, raising the following concerns:

Theme	Issues Raised in Submission
Building height	<ul style="list-style-type: none"> The fifth floor exceeds the maximum building height for the site under the SLEP 2012. The building height is in stark contrast compared with the surrounding residential buildings. Although the uppermost level is not visible from Eastbourne Road, it will be visible from the adjoining roads (The Crescent, Hornsey Road and Exeter Road) and is not consistent with the surrounding locality. The floor area exceeding the building height limit results in overshadowing onto the adjoining southern and eastern properties.

Car parking	<ul style="list-style-type: none"> The area is prone to high on-street parking and the development will put more pressure on the demand for on-street parking. The proposed car parking rates results in some units not being give any car parking spaces and therefore will need to park their vehicles on the street. This will further increase the parking congestion on Eastbourne Road and surrounding roads.
Density	<ul style="list-style-type: none"> There are a high number of apartment buildings, is the proposed development required in an area already full of apartments. There is an oversupply of apartments for both lease and sale in Homebush West, the proposed apartments will negatively impact on the current value of units and rental income.
Landscaping	<ul style="list-style-type: none"> The proposal seeks to remove mature landscaping from the front yard and has previously been used as a nesting site for bush turkeys.
Overshadowing	<ul style="list-style-type: none"> The side setbacks of the building results in overshadowing to the southern and south-eastern adjoining properties/
Streetscape	<ul style="list-style-type: none"> The proposed building is not consistent with the surrounding streetscape by way of building height, bulk and scale. The building is visually unappealing.
Privacy	<ul style="list-style-type: none"> The proposal includes screen planting to minimise the loss of privacy this is not sufficient. Screen planting only grows up to one (1) storey high and takes multiple years to grow.
Dust	<ul style="list-style-type: none"> Dust and pollution impacts during the demolition and construction phases of the proposed development.

4.15(1)(e) the public interest

The public interest is served through the detailed assessment of this development application under the relevant local planning controls and legislation and consideration of any submissions received relating to it by Council.

The proposed development is considered to be contrary to the public interest having undesirable impacts upon the locality and the provision of sub-optimal quality residential accommodation for the community.

LOCAL INFRASTRUCTURE CONTRIBUTIONS

Section 7.13 of the *EPA&A Act 1979* relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. Should this approved be approved, a condition requiring the payment of a monetary contribution in accordance with the Strathfield Direct Contributions Plan 2010-2030 is to be imposed as part of any consent.

CONCLUSION

The application has been assessed having regard to 4.15 of *the Environmental Planning and Assessment Act 1979*, the State Environmental Planning Policy (Affordable Rental Housing) 2009, the Strathfield Local Environmental Plan 2012 and the Strathfield Development Control Plan 2005.

As discussed in this report, the Clause 4.6 request to vary the building height development standard is not supported and the proposed development fails to comply with a number design criteria and objectives under the Apartment Design Guide such as side setbacks, private open space, solar

access and cross-ventilation and requirements under the State Environmental Planning Policy (Affordable Rental Housing) 2009 including local character compatibility and solar access.

Accordingly, the application is unsatisfactory for approval.

PEER REVIEW

The content and recommendation of the development assessment report has undergone peer review and is satisfactory for consideration by the Panel.

RECOMMENDATION

That Development Application No.2020/080 for the demolition of the existing townhouses and tree removal and the construction of a five (5) storey residential flat building with affordable rental housing component and two (2) levels of basement at 2 Eastbourne Road, Strathfield be **REFUSED** for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with Clause 4.3 Height of Buildings development standard under the Strathfield Local Environmental Plan 2012. The Clause 4.6 request to vary the building height development standard is not supported.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is unsatisfactory in terms of the design quality principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and objectives of the Apartment Design Guide in terms of the following:
 - i. 3D – Communal and public open space;
 - ii. 4A – Solar and daylight access;
 - iii. 4B – Natural ventilation;
 - iv. 4E – Private open space and balconies;
 - v. 4O – Landscape design;
 - vi. 4Q – Universal design;
 - vii. 4V – Water management and conservation;
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with the *State Environmental Planning Policy (Affordable Rental Housing) 2009* in terms of the following:
 - a) Clause 14(1)(e) Solar access – The development fails to comply with the minimum solar access requirements for the affordable rental housing units.
 - b) Clause 16A Character of local area – The development is incompatible with the character of the local area.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development fails to comply with the objectives of the State Environmental Planning Policy (Vegetation in Non-Rural Areas).

5. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposal will have the following likely impacts in the locality:
 - a) Built environment – The proposal is inconsistent with the envisaged character of the neighbourhood in terms of building height, bulk and scale.
 - b) Natural environment – The significant removal of native vegetation and inadequate replacement planting will have a negative impact on the locality.
6. The application is considered not acceptable under the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* in that the proposed residential flat building is of a scale and design which is not suitable for the site.
7. The application is not considered acceptable under the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the proposed residential flat building design is of a scale and design which is not in the public interest.

Attachment 1 – RFI letter dated 21 May 2020 prepared by Strathfield Council

Attachment 2 – RFI letter dated 23 June 2020 prepared by Strathfield Council

Attachment 3 – DRP meeting minutes dated 15 July 2020

Attachment 4 – Clause 4.6 Variation Request dated 7 September 2020 prepared by Slattery Planning Group

Attachment 1:

RFI letter dated 21 May 2020 prepared by Strathfield Council

21 May 2020

Nicole Doughty

Bechara Chan & Associates
Suite 6F, 9-13 Redmyre Road
STRATHFIELD NSW 2135

Dear Sir/Madam,

DEVELOPMENT APPLICATION DA2020/080

NO:

PROPERTY: 2 Eastbourne Road, Homebush West

PROPOSAL: Demolition of existing structures and construction of a five (5) storey residential flat building including two (2) levels of basement parking containing infill affordable rental housing.

Reference is made to the abovementioned Development Application which was lodged with Council on 1 May 2020.

A preliminary assessment of the application has revealed the following outstanding matters. Once the following additional information has been received a more detailed assessment of the development application will be undertaken.

1) Design Review Panel

In accordance with the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Strathfield Design Review Panel Charter, the subject development application must be referred to the Design Review Panel (DRP). The fee for the DRP is \$3,000 and must be paid prior to the determination of the development application.

2) Quantity Surveyor Report – Affordable housing component

Under the *Environmental Planning and Assessment Act 1979*, Regional Planning Panels have jurisdiction to determine development applications that met the relevant criteria of Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011. Development applications whereby the affordable housing component of the development has a capital investment value over \$5 million are to be determined by the relevant Regional Planning Panel.

Accordingly, the submitted Quantity Surveyors Report is to be updated to clearly identify the capital investment value (pursuant to Clause 3 of the Environmental Planning and Assessment Regulation 2000) of the affordable housing component of the development, including the costs which are intimately connected with the provision of the affordable housing.

3) Geotechnical Report

It is noted that the development application was accompanied by a Geotechnical Desk Top Study. As the propose development proposes two (2) levels of basement car parking, a Geotechnical Report assessing the surface and subsurface condition of the site with recommendations for the design and construction shall be submitted.

4) Heritage Report

The subject site is directly opposite heritage item No. I152 - "Manx Cottage" weatherboard cottage (No. 1 Eastbourne Road) under Schedule 5 of the Strathfield Local Environmental Plan 2012. Accordingly a Heritage Impact Statement which considers the impact of the proposal having regard to the provisions of Clause 5.10 Heritage Conservation of the Strathfield Local Environment Plan 2012 and Part P 'Heritage' of the SCDGP 2005 is to be submitted.

5) Acoustic Report

Due to the close proximity of the site to a railway corridor and a classified road (Centenary Drive) a detailed acoustic assessment prepared by a qualified acoustic consultant is to be submitted. The acoustic assessment report shall address the following:

- The noise impacts from the operations of the railway corridor and classified road upon the internal amenity of the development; and
- Recommendations of acoustic attenuation measures demonstrating how the development will achieve compliance with the internal noise levels specified in Clause 87 and 102 of the State Environmental Planning Policy (Infrastructure) 2007 and the NSW Department of Planning 'Development Near Rail Corridors and Busy Roads – Interim Guidelines.

6) Acid Sulfate Soils

The subject site is identified as having class 5 acid sulfate soils and is located within 500m of Class 3 acid sulfate soils. Accordingly a preliminary assessment in accordance with the 'Acid Sulfate Soils Assessment Guidelines 1998' is to be submitted demonstrating that an acid sulfate management plan is not required.

Should you choose to address the issues raised, please do so within **21 days** from the date of this letter. Any additional supporting information/plans should be submitted **on USB/CD, including 1 set of hard copy plans**. Once the additional information has been submitted and reviewed, a detailed assessment of the proposal will be undertaken and a letter requesting amended plans will be sent.

Council staff reserves the right to request further additional information, following further assessment of the proposal and/or the receipt and assessment of any reports and/or documents in relation to the abovementioned matters.

Should you require further information regarding this matter, or wish to arrange a meeting with the Assessing Officer, please do not hesitate to contact the undersigned on 9748 9999 during normal business hours.

Yours sincerely



NICOLE DOUGHTY
PLANNING OFFICER

Attachment 2:

RFI letter dated 23 June 2020 prepared by by Strathfield Council

23 June 2020

Nicole Doughty

Bechara Chan & Associates
Suite 6F, 9-13 Redmyre Road
STRATHFIELD NSW 2135

Dear Sir/Madam,

DEVELOPMENT APPLICATION

NO: DA2020/080
PROPERTY: 2 Eastbourne Road, Strathfield
PROPOSAL: Demolition of existing structures and construction of a five (5) storey residential flat building including two (2) levels of basement parking containing infill affordable rental housing.

Reference is made to the abovementioned Development Application which was lodged with Council on 1 May 2020.

1) Design Review Panel

The application must be reviewed by the Design Review Panel (DRP) and is scheduled for the next DRP on the 15th July. The \$3,000 fee must be paid prior to the DRP meeting. Details confirming the meeting time and attendance details will be sent closer to the meeting. It is recommended that any amended plans addressing the matters raised in this letter are presented on the day of the meeting for the Panel to review. Alternatively, all amended plans are to be submitted by Monday 29th June.

2) Building Height

The subject site is subject to a maximum building height limit of 14m (under Clause 4.3 of the Strathfield Local Environmental Plan 2012). The proposal exceeds the maximum building height and it is noted that a Clause 4.6 Variation has been submitted in this regard. The Clause 4.6 Variation is not considered to be well-founded and is not supported. It is noted that any variation to the maximum building height is unlikely to be supported on this site.

3) Floor Space

Clause 4.4 of the SLEP 2012 sets out the maximum floor space (FSR) for the site as 1.45:1 plus an additional 0.5:1 FSR as at least 50% of the gross floor area of the development is used for affordable housing under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* resulting in a total permissible FSR of 1.95:1 (3,051.95m²). It is noted that the application has calculated the proposed FSR as 1.94 (3,033.87m²) and the area included in the calculations shown on drawing number A.01.

In SLEP 2012, gross floor area is defined as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Whilst it is noted that gross floor area is to exclude common vertical circulation, such as lifts and stairs, the definition of gross floor area does not exclude common horizontal circulation spaces and ground floor garbage areas from the calculation. Where ground floor garbage storage areas are enclosed they need to be included in the calculation of floor space. Only enclosed garbage areas located in basement levels are excluded.

4) Tree Retention

The development application seeks the removal of 26 trees, 25 of which are located within the subject site. The removal of such a large number of native species to accommodate the proposed development is an overdevelopment of the site that does not respond to environmental conditions of the site or the surrounding streetscape character. Council's Tree Management Coordinator has reviewed the application and advised that the following trees are to be retained.

Tree No. in Arborist Report	Species
1	<i>Lophostemon confertus</i> - Queensland Brush Box
3	<i>Lophostemon confertus</i> - Queensland Brush Box
11	<i>Corymbia citriodora</i> - Lemon Scented Gum
13	<i>Callistemon salignus</i> - Willow Bottlebrush
18	<i>Corymbia maculate</i> - Spotted Gum
20	<i>Grevillea robusta</i> - Silky Oak
21	<i>Corymbia maculate</i> - Spotted Gum
24	<i>Angophora costata</i> - Sydney Red Gum
26	<i>Callistemon salignus</i> - Willow Bottlebrush
29	<i>Casuarina glauca</i> - Swamp She Oak

5) General Design Matters

Council notes that the current design of the development does not achieve the aims of the Strathfield Local Environmental 2012 to achieve high quality development that exhibits design excellence. In this regard the following components of the development are encouraged to be amended:

- Building height - The proposal exceeds the maximum building heights and it is noted that a Clause 4.6 Variation has been submitted. The Clause 4.6 Variation is not considered to be well-founded and is not supported.
- Public domain interface – The design of the building entrance is poorly integrated with the streetscape presentation of the building and additionally conflicts with the garbage collection area.
- Clothes drying facilities are not provided.
- Bicycle racks are not provided.
- Housing diversity - The development comprises of a residential flat building containing 38 apartments including 21 affordable rental apartments. The affordable housing apartments are not evenly distributed throughout the building and are to be re-considered.

6) Additional Information

A preliminary assessment of the application has revealed that additional information must be submitted to enable a detail the following plans are required and a detailed assessment of the application cannot be completed until the information is received:

- Elevation plans of No. 4 Eastbourne Road and No. 5 Hornsey Road illustrating the extent of overshadowing of the proposed development onto those properties at 9am, 12pm and 3pm on the winter solstice; and
- 3D height plane of the proposed development and building height development standard.

7) SEPP No. 65 – Design Verification Statement

Under Clause 50 of the Environmental Planning and Assessment Regulation 2000, development applications relating to a residential apartment development must be accompanied by a Design Verification Statement that includes the following:

(1AB) The statement by the qualified designer must—

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development—*
 - (i) addresses how the design quality principles are achieved, and*
 - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.*

The submitted SEPP No. 65 Design Verification Statement has not demonstrated how the proposed development achieves the objectives of Parts 3 and 4 of the Apartment Design Guide.

8) Waste Collection

The proposed waste arrangements have been reviewed by Council's Waste Officer and are considered inadequate for the number of apartments. In particular the following must be addressed:

- The location of the garbage collection area over 21m from the street edge is not supported, being too distant from the street edge to enable efficient waste collection.

- The waste collection area does not achieve the objectives of 4W-1 of the ADG, adjoining the building entrance and sharing the narrow pedestrian entrance path from the building to the public domain.
- Bulk collection area must have at least 15.m² (rate of 4m² per 10 units)
- Waste bin storage area must accommodate easy access to all waste bins at a rate of 1.1m² per 240L bin and 2.03m² per 660L bin. The layout of the waste and recycling storage room must allow easy unobstructed access to all bins (stacked bin arrangements are not acceptable).

For 38 apartments, the following bin requirements are:

- Recycling Bins:
 - 60L per unit per week
 - 19 (nineteen) X 240L or 7 (seven) X 660L Recycling Bins (to be collected fortnightly)
- Garbage Bins:
 - 120L per unit per week
 - 19 (nineteen) X 240L or 7 (seven) X 660L Garbage Bins (to be collected weekly)
- Green Waste (garden organics / vegetation):
 - collection to be arranged with licensed waste contractors

9) Stormwater Matters

In accordance with section 4.9 of Council stormwater code only single residential dwelling are permitted to connect pipe systems to the street gutter provided the discharge does not exceed 15l/s per outlet for 100yr ARI design, with a maximum of two nominal 20m street frontage. All other developments/building works are required to connect directly to a Council pipe or channel system. Accordingly, the proposed stormwater drainage plan is not supported.

Any additional supporting information/plans should be submitted **on USB/CD, including 1 set of hard copy plans.**

Council staff reserves the right to request further additional information, following further assessment of the proposal and/or the receipt and assessment of any reports and/or documents in relation to the abovementioned matters.

Should you require further information regarding this matter, or wish to arrange a meeting with the Assessing Officer, please do not hesitate to contact the undersigned on 9748 9999 during normal business hours.

Yours sincerely



NICOLE DOUGHTY
PLANNING OFFICER

Attachment 3:

DRP meeting minutes dated 15 July 2020

DESIGN REVIEW PANEL MEETING

Meeting Report and Recommendations

Meeting Date: 15 July 2020

Location: Halliday Room, City of Canada Bay Council

Panel members	Conrad Johnston (Chair) Peter Hill Peter McGregor
Apologies	Nil
Council staff	Edna Sorensen – City of Canada Bay Council Peter Giaprakas – City of Canada Bay Joe Gillies – Strathfield Council Nicole Doughty – Strathfield Council Miguel Rivera – Strathfield Council Dragana Strbac – Strathfield Council
Declaration of interest	Nil

Item and Meeting Minutes

Item number	1
DA number	DA2020/080
Property address	2 Eastbourne Road, Homebush West
Proposal	<p>Demolition of existing structures and construction of a five (5) storey residential flat development including two (2) levels of basement parking containing infill affordable rental housing.</p> <p>Apartment mix; 1 bedroom = 12 units including 5 affordable 2 bedroom = 23 units including 13 affordable 3 bedroom unit = 3 units all are affordable</p>
Representative in attendance to address to the Design Review Panel	<p>Rverzi</p> <p>Genevieve Slattery</p> <p>Joseph Dagher</p> <p>Redum Consultant</p> <p>John Boumelhem</p> <p>John O'Grady</p> <p>Gihad Bechara</p> <p>Samer El Haddad</p>

Preface

Due to the situation with Covid-19, the subject site was inspected separately by panel members prior to the meeting. Site photos taken by the assessing officer along with Google maps/street view and general knowledge of the area have also been relied on. The Panel is generally not supportive of the proposed development in its current form. This is further elaborated below.

Key Issues and Recommendations:

The Panel notes that this development application (DA) has been lodged pursuant to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

Under SEPP Affordable Rental Housing 2009 an additional 0.5:1 bonus floor space ratio applies to the proposed development. This brings the total permissible FSR for the site to 1.95:1 (1.45:1 + 0.5:1).

The Panel considers that the proposal is a significant overdevelopment of the site that if built would deliver an unacceptable level of residential amenity for residents.

The site is highly constrained by its irregular shape which impacts on its ability to satisfactorily accommodate a development of the proposed scale and density.

Maximising the allowable FSR including the bonus FSR results in a development that is non-compliant with the maximum building height for the site as well as a number of non-compliances with the Apartment Design Guidelines which adversely impacts on the relationship with neighbouring developments as well as impacts on the amenity of the apartments.

Primary impacts resulting from the excessive FSR include building height non-compliance, side and rear setback non-compliance, compromised floor plate layouts and cross ventilation, solar access non-compliances, removal of significant trees due to non-compliant setbacks and the basement design.

Tree Removal

The proposal includes the removal of a large number of trees. The large native trees provide significant amenity to the subject and surrounding sites. The Panel recommends that the applicant work with the Council's Arborist to identify the trees that are required to be retained. The basement is excessive and its size results from the large number of units proposed. A smaller building footprint and a smaller basement would allow for deep soil and trees to be retained.

Location of garbage holding bay

The garbage holding bay is located at ground level adjacent to the pedestrian entry. The location of this area is not suitable as it impacts on the configuration of the entry. It will also likely conflict with pedestrian traffic on collection day and pose odour nuisance both to future tenants as they pass this location upon entry and existing the building as well as to the north facing apartments in the adjoining flat building. The garbage holding bay should be relocated in an area which is separate from the entrance.

Pedestrian Entry

The entry as proposed is awkwardly located down a long and narrow pathway to the side of the building, essentially half way down the site and adjacent to the basement driveway.

The pedestrian entry should ideally be relocated to the front of the building for easy identification and improved interaction with the street and be adequately separated from the driveway for safety.

The panel acknowledges that this will result in the front room to be deleted/relocated however will improve the presentation of the development to the street and improve the amenity and safety for future occupants.

Sunlight

The Panel questions if the existing residential flat building to the south will continue to receive sufficient sunlight to its apartments due to the non-compliant side setback. The panel recommends that the applicant undertakes a study that demonstrates how many units currently receive sunlight and how many will lose sunlight for Council's proper assessment. The applicant should synthesise this analysis and ensure that the objectives of Part 3B-2 of the ADG are complied with.

Cross ventilation

The Panel questions the cross-ventilation calculations provided by the applicant and does not agree that the development achieves compliance with the cross ventilation requirements

of the Apartment Design Guidelines. The applicant should review apartments 1.08, 2.08, 3.02, 3.08m and 4.02 as the panel recommends that these apartments are not cross ventilated in the current design.

Setbacks

The setbacks to all sides of the development are unacceptable and do not comply with the setback requirements to the ADG. The Panel acknowledges the irregular shape of the site however, advised that the non-compliant setbacks clearly indicates that the development is an over development of the site and a development of this scale is not feasibly due to site constraint. The panel recommend that all ADG setbacks are complied with to preserve the amenity of both the subject site and the surrounding buildings.

Apartment Layout

The floor plate layout to a number of apartments is less than satisfactory and results in impractical and useless spaces that although add to the overall size of the apartments does not increase room size or amenity.

A number of apartments include unreasonably long corridors/hallways, in particular units 1.06, 2.06 and 3.06 have awkwardly shaped long and useless corridors and a number of apartments have awkward shaped rooms, especially, units 1.05, 2.05 and 3.05.

The Panel recognises that the irregular shaped allotment impact on the built form to some extent however, the compromised floor plate layouts is a direct result of maximising yield.

Adaptable Units

The Panel notes that the adaptable apartments appear below the required size to be easily adapted into ample sized apartments post adaptation and recommends that this is considered further in consultation with an access consultant.

Attachment 4:

Clause 4.6 Variation Request dated 7 September 2020
prepared by Slattery Planning Group

REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.3(2) OF STRATHFIELD LOCAL ENVIRONMENTAL PLAN 2012

This Clause 4.6 Exception Submission has been prepared by the Slattery Planning Group on behalf of Jaycorp Pty Ltd (the Applicant), in relation to a Development Application for the property at No. 2 Eastbourne Road, Homebush West (the site).

This Submission is made to Strathfield Council in support of a Development Application (DA) for demolition of an existing multi-dwelling housing building and construction of a new residential flat building in its place. The proposed development incorporates provision of affordable housing, pursuant to Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009.

1.0 CLAUSE 4.6 OF THE SLEP

Clause 4.6(1) is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 of SLEP 2012 has the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (*Initial* at 87).

Clause 4.6(2) of the LEP specifies that:

“development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument”.

Clause 4.6(3) specifies that 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*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.”*

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (*Initial* at 88).

Clause 4.6(4) specifies that 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*
 - (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*
- (b) *the concurrence of the Secretary has been obtained.”*

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *“whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

2.0 APPROACH TO CL 4.6

This request has been prepared having regard to:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248;
- NSW Department of Planning and Infrastructure’s *Varying Development Standards: A Guide* 2015;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Hansimikali v Bayside Council* [2019] NSWLEC 1353; and
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been 'virtually abandoned or destroyed' by the Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.

As noted by Sheahan J in *Liberty Investments Pty Ltd v Blacktown City Council* [2009] NSWLEC 7, the considerations identified by Preston CJ in *Wehbe* are not intended to be exhaustive or applied as a code, and accordingly there may be other bases for considering that compliance with a development standard is unreasonable or unnecessary.

Preston CJ, in *Wehbe* states that "... development standards are not ends in themselves but means of achieving ends". Preston CJ goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard."

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and

3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, considered a DA which involved a relatively substantial variation (65%) to the FSR control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and the zone, is not a requirement to “achieve” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “something less onerous than ‘achievement’”.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

Finally, in *Hansimikali v Bayside Council* [2019] NSWLEC 1353, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

The following assessment is undertaken pursuant to cl 4.6 and the above principles.

3.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?

3.1 Clause 4.3(2) of Strathfield Local Environmental Plan (SLEP) 2012

Pursuant to Clause 4.3(2) of SLEP 2012, a maximum building height of 14m is permitted at the site.

3.2 What is the extent of the non-compliance?

The proposed development has a maximum height of 16.13m to the upper communal roof terrace balustrade.

The setback Fourth floor level has a height of 15.2m while the dominant Third floor level has a height varying between 11.745m at the centre of the site and 12.065m at the front of the site.

The proposal is therefore partly compliant. The proposed non-compliant elements exceed the development standard by between 1.2m (8.6%) and 2.13m (15.2%).

4.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

4.1 Clause 4.3 Objectives are achieved

The objectives of Clause 4.3 of SLEP 2012 are as follows:

- (a) *“to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area,*
- (b) *to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area,*
- (c) *to achieve a diversity of small and large development options.”*

(a) *to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area*

The proposed development will significantly improve the appearance of the existing area by replacing a dilapidated two (2) storey multi-dwelling unit development with an architecturally designed residential flat building which has been sensitively designed in order to provide an appropriate response to the context of the site.

The site is located within an area containing a mix of building styles and uses, including residential flat buildings and dwelling houses along with a place of public worship, to the north of the site on The Crescent.

The proposal's front setback is consistent with the front setback of the neighbouring buildings, and provides a landscaped front yard, consistent with the prevailing character of Eastbourne Road in the vicinity. The proposed rear setback is also consistent with the adjoining building to the south.

The building has been designed with recessive upper levels and variations in colour and materiality assist in minimising the perception of bulk and scale and minimises the apparent height of the building.

While the height of the proposed building is greater than other buildings in the locality, it has been designed to have a streetscape appearance which is appropriate in the locality. Sightline diagrams show that the upper levels will not be readily apparent, such that the development has a four (4) storey scale as is envisaged for the site (and precinct) in Strathfield Comprehensive Development Control Plan 2005 (refer to **Figure 1** below).

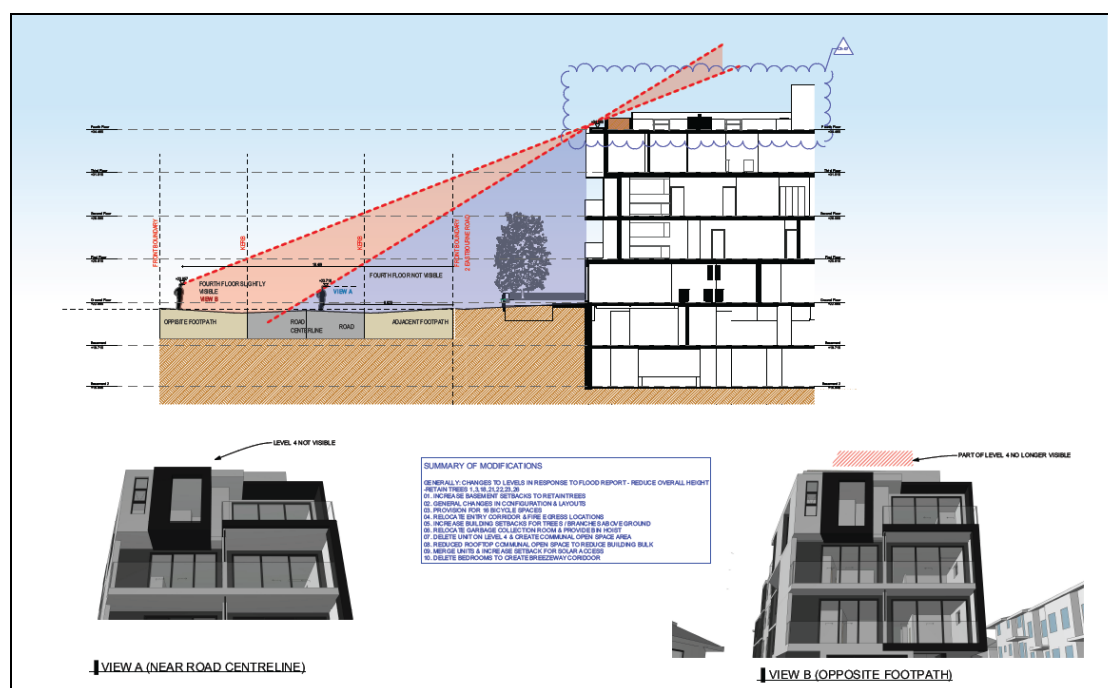


Figure 1: Sightline diagrams showing the lack of visibility of the upper levels (Source: Bechara Chan & Associates)

The proposed landscaped and open space areas will contribute significantly to the amenity and enjoyment of future occupants of the development while also providing a visually interesting aspect from the properties adjoining the site. Screen planting is proposed along the boundaries of the site, to provide a visual buffer between the site and the neighbouring properties.

The proposed development adopts a contemporary character and style, and achieves a bulk, scale and elevational character that complements the surrounding buildings in an infill form.

It is considered that the proposal sits comfortably within the existing streetscape whilst also adopting a presentation to the street which is not incompatible with the existing area.

Having regard to the context of the site, it is considered that the development is consistent with objective (a) despite the non-compliance with Clause 4.3(2).

(b) to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area

The site is not part of a consolidated allotment. Notwithstanding, the proposed built form achieves a suitable built form, in terms of setbacks, building separation, provision of landscaping and streetscape presentation, such that the additional height is acceptable regardless.

(c) to achieve a diversity of small and large development options

The proposal adds to the diversity of development options by proposing a new residential flat building containing 35 apartments, 16 of which are identified as affordable housing, at the site.

4.2 R3 Medium Density Zone Objectives are achieved

The site is located within the R3 Medium Density Residential zone pursuant to SLEP 2012. The objectives of the R3 zone are as follows:

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

To provide for the housing needs of the community within a medium density residential environment.

The proposal provides for the housing needs of the community by providing 35 new residential apartments, 16 of which are proposed to be affordable housing pursuant to Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP). The proposed residential flat building is permitted in the zone.

It is commonly accepted in caselaw that the additional GFA permitted under the ARHSEPP, or part thereof, requires some form of variation to the built form envelope. In this instance, it has been accommodated by increasing the height of the proposed development rather than encroaching further into setbacks in order to mitigate amenity impacts from additional GFA.

The proposal will satisfy the objectives of the development standard, despite the numerical non-compliance, as outlined above.

The proposed development complies with the ARHSEPP and will present a well-considered modern design for the site. Furthermore, the FSR bonus permitted by the ARHSEPP can only ever have effect by pushing a building "up" or "out" beyond Council's building envelope controls.

In this case, the proposal includes a height non-compliance and follows the precedent established by the Land and Environment Court in Abdul Rahman v Strathfield Council. In that decision, Fakes C permitted a height non-compliance in order to give effect to the FSR bonus of the ARH SEPP. Front and side setback controls will maintain Council's intended street character of the area and allows for adequate landscaping to soften the appearance of the built form. The height non-compliance is caused by a portion of the Fourth Floor external wall/roof and the communal roof terrace and balustrade at roof level.

The non-compliant elements will be setback from the front elevation and will, therefore, have minimal impact on the streetscape as can be seen in **Figure 1** above.

On this basis, it is considered that the scale and form of the building maintains a medium density environment and furthermore, the proposal provides for the housing needs of the community.

As such, the proposal is consistent with the first objective.

To provide a variety of housing types within a medium density residential environment.

The proposal will provide a variety of housing types within the site itself, including a variety of one (1), two (2) and three (3) bedroom apartments. Six (6) of the proposed apartments are adaptable and as discussed previously, 16 of the 35 units are provided as affordable housing, providing further variety.

Furthermore, the proposal will contribute to a variety of housing types within the local medium density residential environment, by replacing the existing two (2) storey multi-dwelling housing development with a new residential flat building. The diversity of the area will continue to be maintained, with a range of dwelling houses, residential flat buildings and multi-dwelling housing buildings evident.

As such, the proposal is consistent with the second objective.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The third objective is not applicable to this DA.

4.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required, such that compliance is unreasonable or unnecessary?

It is not considered that the underlying objective of the Standards is irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standard, despite the non-compliance.

4.4 Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?

It is not considered that the Standard has been virtually abandoned or destroyed by Council's actions, however, having regard to the particulars of this Application, and the internal amenity gains resulting from the non-compliance, it is considered that flexibility in the application of the Standard is warranted.

5.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

5.1 What is the aspect or feature of the development that contravenes the development standard?

As discussed previously, the height non-compliance is caused by a small section of the top of the proposed Fourth Floor level along with the upper communal roof terrace and associated balustrade. The fact that the site is flood affected and requires the proposed ground floor level to be elevated contributes to the extent of the non-compliance.

5.2 Why is contravention of the development standard acceptable?

The bonus FSR provisions in the ARHSEPP are beneficial and facultative and designed to permit additional FSR over and above that ordinarily permitted, in order to provide for the affordable housing needs of the community. The site must be able to be used in a way so as to give proper effect to the bonus FSR, and to not deprive the owner of the right to develop the land in a manner, and to an extent, suitable for and appropriate to the permitted purpose.

As such the bonus FSR provisions of the ARHSEPP would be expected to result in development at a higher FSR, and hence higher building than for a standard residential flat building in the R3 zone, justify a contravention of the standard.

That the contravention is justified is emphasized by the lack of any unreasonable adverse impact arising from the contravention.

The fact that the site is flood affected and requires the proposed ground floor level to be elevated contributes to the extent of the non-compliance. The additional height is setback from the front of the building where it will have minimal impact on streetscape or appreciation of the locality (see **Figure** above).

The proposal has been designed to respect the visual and acoustic amenity of the properties in the vicinity of the site. The proposed roof terraces are well setback from the perimeter of the respective levels with planter boxes around the area at Fourth Floor to minimise the potential for overlooking. Privacy devices, window location, window proportions, building separation and landscaping provide further privacy protection (refer to Privacy Diagrams prepared by Bechara Chan & Associates).

The adjoining residential flat building to the south will receive more than two (2) hours of solar access to all of its north-facing living rooms and private open spaces on 21 June, in compliance with the requirements of the Apartment Design Guide.

Contravention of the development standard is also considered acceptable as the non-compliance allows provision of additional dwellings which will add to the stock of affordable rental accommodation available at the site, to the benefit of the locality, along with communal roof terraces, which will provide significant amenity benefits to the future occupants of the building.

5.3 The Proposed development is in the public interest because it is consistent with the objectives of the particular standard and the zone objectives (cl4.6(4)(a)(ii))

Having regard to the acceptable environmental impacts, and the merits of the proposed development, it is considered that the public interest is being met by the proposed development, despite the non-compliance.

The proposed departure from the standard does not create any unreasonable adverse amenity or streetscape impacts, as discussed herein. Furthermore, the proposal is considered to meet the public interest, as it results in sensitively designed residential flat building containing 16 affordable apartments, in a manner which does not have any discernible streetscape impacts and which will not unreasonably adversely impact on the amenity of nearby properties.

5.4 Objectives of the Standard

The objectives of the standard and the consistency of the proposal with those objectives are considered in detail above.

5.5 Zone objectives

The objectives of the zone and the consistency of the proposal with those objectives are considered in detail above.

6.0 REQUIREMENTS FOR PLANNING SECRETARY'S CONCURRENCE

The Planning Secretary's concurrence may be assumed pursuant to Planning Circular PS18_003 issued 21 Feb 2018. Nevertheless the proposal is considered against the matters to which the Secretary is required to have regard below.

6.1 Clause 4.6(5)(A) - Matters of State or Regional Environmental Planning

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

6.2 Clause 4.6(5)(B) - The Public benefit of maintaining the standard

For all of the reasons outlined above, in particular the bonus FSR permitted by the ARHSEPP and the underlying implications of permitting additional FSR within a site with a height limit, and the absence of unreasonable environmental harm, there is greater public benefit in permitting the contravention than in maintaining the standard.

6.3 Clause 4.6(5)(C) – Any Other Matters Required to Be Considered

There are no other known matters required to be taken into consideration by the Director-General before granting concurrence.

As can be seen from the discussion herein, the proposed development is consistent with the objectives of the development standard and R3 Medium Density Residential zone pursuant to SLEP 2012 despite the non-compliance with the Building Height development standard.

It is considered that the proposal has adequately addressed the matters outlined in Section 4.6(3) – (5) of SLEP 2012.

7.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of SLEP 2012, the five-part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.

Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no material benefit to requiring the proposal to comply with Clause 4.3(2) of SLEP 2012 and on this basis, an exception to Clause 4.3(2) of SLEP 2012 is considered well-founded, and worthy of Council's support.