
Bayside Planning Panel

24/04/2018

Item No	6.2
Application Type	Development Application
Application Number	DA-2017/107
Lodgement Date	29 September 2016
Property	1-3 Oriental Street, Bexley
Owner	Y Z Z Investment Pty Ltd
Applicant	Mr Peter Yuan
Proposal	Construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings.
No. of Submissions	One (1) in opposition
Cost of Development	\$ 4,711,892.00
Report by	Brendon Clendenning, Creative Planning Solutions Pty Limited Pascal van de Walle, Coordinator Development Assessment

Officer Recommendation

- 1 That the Bayside Planning Panel does not support the variation to Clause 4.4 in accordance with the Clause 4.6 justification provided by applicant.
- 2 That Development Application DA2017/107 for construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings at 1-3 Oriental Street, Bexley, be REFUSED pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, for the following reasons:
 - i) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following considerations listed within Clause 28 of State Environmental Planning Policy 65 Design Quality of Residential Apartment Development:
 - a) 3D – Communal Open Space
 - b) 3F – Visual Privacy
 - c) 4A – Solar Access
 - d) 4E – Private Open Space
 - e) 4H – Acoustic Privacy
 - f) 4K – Apartment Mix
 - ii) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy – BASIX, as an amended certificate has not been provided to accompany an amended design.

- iii) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale Local Environmental Plan 2011:
 - a) Clause 2.3 – Zone Objectives
 - b) Clause 4.4 – Floor Space Ratio
 - c) Clause 4.6 – Exceptions to Development Standards.
 - d) Clause 6.7 - Stormwater
- iv) The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:
 - a) 4.1.3 – Water Management
 - b) 4.2 – Streetscape and Site Context
 - c) 4.3.2 – Private Open Space
 - d) 4.3.3 – Communal Open Space
 - e) 4.3.4 – Open Space and Landscape Design – Residential Building
 - f) 4.4.2 – Solar Access
 - g) 4.4.5 – Visual and Acoustic Privacy
 - h) 4.4.6 – Noise Impact
 - i) 4.5.1 – Housing Diversity and Choice
 - j) 4.6 – Car Parking and Movement
 - k) 5.2 – Residential Flat Buildings
- v) Having regard to the abovementioned non-compliances and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
- vi) Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.
- vii) Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

3 The objectors be advised of the Bayside Planning Panel's decision.

Attachments

- 1 Assessment Report
- 2 Site Analysis Plan
- 3 North & South Elevations Plan
- 4 East & West Elevations Plan
- 5 Landscaping Plans and Details
- 6 Basement Parking Plan
- 7 Written Clause 4.6

Location Map



BAYSIDE COUNCIL

Bayside Planning Panel Assessment Report

Application Details

Application Number:	DA-2017/107
Date of Receipt:	29/09/2016
Property:	1-3 Oriental Street, BEXLEY NSW 2207
Lot & DP/SP No:	Lots 36 and 37 in DP 5216
Owner:	Y Z Z Investment Pty Ltd
Applicant:	Mr Peter Yuan
Proposal:	Construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings.
Value:	\$ 4,711,892
Recommendation:	Refusal
No. of submissions:	One (1) in opposition
Author:	Brendon Clendenning, Creative Planning Solutions Pty Limited
Date of Report	4 April 2018

Key Issues

Council received Development Application No. DA-2017/107 on 29 September 2016 seeking consent for the construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings at 1-3 Oriental Street, Bexley.

Following the receipt of amended plans in relation to the comments of the Design Review Panel, Council issued an additional information request in August 2017, which outlined a range of issues with the proposal, relating to Apartment Design Guide non-compliance (including building separation), solar access, apartment schedule, building design, apartment mix, floor space ratio, plan details, Design Review Panel comments, waste transport, landscaping.

Council received additional information in October 2017.

Minimal changes were included within the amended proposal, and the information that was requested by Council to provide further support of the non-compliances was not provided. The proposal exhibits a wide range of non-compliances, with the most fundamental issues relating to floor space ratio, building separation and solar access.

The original proposal sought a variation to the floor space ratio standard for the site. The proposal was amended in response to the floor space ratio issues; however, the overall size of the building was increased. The amended proposal provides a breezeway or 'open lobby' to each level of the building, with full height screening provided at either end of the open lobby, and void areas provided for each level above the ground floor. It is understood that the applicant intends for the open lobby areas to be excluded from the calculation of gross floor area, and for the proposal to comply with the 1:1 floor space ratio requirement. However, given the screening provided at either end of the open lobbies, it is considered that these areas meet the definition for gross floor area. The floor space ratio variation is not supported.

The proposal does not comply with the building separation requirements for three of the four boundaries. It is acknowledged that the existing blank wall to the south provides an opportunity for reduced setbacks towards the south, but this would be expected to be limited to those levels that are equivalent in height to the blank wall. The various other setback non-compliances are not appropriate in this instance.

With respect to solar access, limited information has been provided to enable a consideration of the impacts to surrounding properties. A range of additional information was sought to enable a proper assessment of solar access impacts. This information was not provided; however, it is likely that the impacts to solar access would be deemed to be unacceptable.

The amended plans submitted in October 2017 in response to Council's letter, resulted in an increase in the overall size of the proposed building, which would require a re-notification of the proposal. Given that the application is recommended for refusal, these plans have not yet been notified. Should the panel determine that the recommendation of refusal is not appropriate, it is recommended that the application be deferred to enable a further notification period, with a supplementary report to be provided addressing any submissions made. **Any development consent granted without an additional notification period would most likely be declared invalid if it were challenged in Class 4 Land and Environment Court proceedings.**

The development application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for refusal, for the reasons outlined within the Recommendation.

Recommendation

That:

- A. That the Bayside Planning Panel does not support the variation to Clause 4.4 in accordance with the Clause 4.6 justification provided by applicant; and,
- B. Development Application DA2017/107 for construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings at 1-3 Oriental Street, Bexley, be REFUSED pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act 1979, for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following considerations listed within Clause 28 of State Environmental Planning Policy 65 Design Quality of Residential Apartment Development:
 - a) 3D – Communal Open Space
 - b) 3F – Visual Privacy
 - c) 4A – Solar Access
 - d) 4E – Private Open Space
 - e) 4H – Acoustic Privacy
 - f) 4K – Apartment Mix
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of State Environmental Planning Policy – BASIX, as an amended certificate has not been provided to accompany an amended design.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following requirements or objectives of Rockdale Local Environmental Plan 2011:
 - a) Clause 2.3 – Zone Objectives
 - b) Clause 4.4 – Floor Space Ratio
 - c) Clause 4.6 – Exceptions to Development Standards.
 - d) Clause 6.7 - Stormwater
4. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and provisions of Rockdale Development Control Plan 2011 including:
 - a) 4.1.3 – Water Management
 - b) 4.2 – Streetscape and Site Context
 - c) 4.3.2 – Private Open Space
 - d) 4.3.3 – Communal Open Space
 - e) 4.3.4 – Open Space and Landscape Design – Residential Building
 - f) 4.4.2 – Solar Access

- g) 4.4.5 – Visual and Acoustic Privacy
 - h) 4.4.6 – Noise Impact
 - i) 4.5.1 – Housing Diversity and Choice
 - j) 4.6 – Car Parking and Movement
 - k) 5.2 – Residential Flat Buildings
5. Having regard to the abovementioned non-compliances and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
 6. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the suitability of the site for the proposed development has not been adequately demonstrated.
 7. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

C. The objectors be advised of the decision of the Panel.

Background

History

29 September 2016 – DA-2017/107 submitted to Council

Construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings.

8 – 26 October 2016 - Public notification of proposal

19 October 2016 – Consideration by Design Review Panel

The primary concerns that the Design Review Panel raised were in relation to the insufficient information about building separation and associated impacts, floor space ratio (FSR) exceedance, solar access and overshadowing impacts on adjoining properties, privacy impacts, insufficient provision of large trees in deep soil zones, overall amenity including apartment layouts, and apartment mix.

The Design Review Panel recommended the deletion of Unit 13 and its replacement with an additional roof garden to reduce bulk and to bring the FSR into approximate compliance. It was considered that this would improve the provision of communal open space and mitigate privacy concerns with neighbours. It was also recommended that the communal open space area at ground level and the rooftop space at Level 3 be carefully designed to increase buffer planting between private and common space and that furniture be carefully positioned to minimise overlooking.

13 December 2016 – Tree Management Officer referral response

The Tree Management Officer referral response indicated that the existing White Cedar street tree was to be retained and protected, whilst other trees were supported for removal.

10 February 2017 – Submission of updated plans

20 February 2017 - Referral to Sydney Airport Corporation

The decision was to approve the controlled activity of the proposal under the *Airports (Protection of Space) Regulations 1996*, to a maximum of 60.7 metres AHD (this height was later reduced), inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues, etc.

April 2017 – Submission of further updated plans

August 2017 – Request for further information

Letter sent to applicant regarding several deficiencies in the DA and the proposal in general. These dealt with various non-compliances with the specific design criteria and design guidance

prescribed within the Apartment Design Guide (including minimum apartment sizes, lack of ventilation and solar access to circulation areas, building separation requirements), solar access and overshadowing impacts, building design, apartment mix, FSR, and landscaping. Other information was also sought such as an apartment schedule and updates to the architectural plans.

October 2017 – Submission of further updated plans

The updated plans submitted to Council did not adequately reflect the amendments sought by the letter requesting further information in August 2017. A number of matters remained outstanding, as outlined within this report.

4 December 2017 – Landscape Architect referral response

The Landscape Architect referral response indicated that the landscaping was in need of further improvement. The main issues include the quality of amenities to the rooftop communal open space area, insufficient planting at the southern boundary and within the communal open space area, requirement for a shade structure or awning near or over the BBQ area, and an inadequate number of trees and lawn area within the deep soil zone at Oriental Street. The applicant was later notified of these issues.

5 December 2017 – Engineering referral response

The Development Engineer referral response indicated that there were issues in relation to the stormwater design and calculations. Additionally, the location and dimensions of some of the parking areas are not suitable. The applicant was later notified of these issues.

16 January 2018 – Meeting with applicant

After earlier advising the applicant that Council intended to refuse the application, Council agreed to a further meeting with the applicant in an attempt to resolve the issues. A meeting was held on 16 January 2018 and direction was given to the applicant on design amendments that may result in approval. At this meeting, discussions were held not only relation to the issues that were identified in Council's letter of August 2017, but also in relation to issues that were later identified within the landscape and engineering referral responses.

Council indicated to the applicant, that the prompt return of an amended proposal was required in order for Council to facilitate approval of the application, and the applicant indicated that the plans would be provided within three weeks of the meeting date. A follow up email was sent to the applicant on 23 January 2018 to clarify the position of Council.

No further information has been provided to Council, and the assessment is therefore based on the plans submitted in October 2017.

Notification

The amended plans submitted in October 2017 resulted in an increase in the overall size of the proposed building, which would require a re-notification of the proposal. Given that the

application is recommended for refusal, these plans have not yet been notified. Should the panel determine that the recommendation of refusal is not appropriate, it is recommended that the application be deferred to enable a further notification period, with a supplementary report to be provided addressing any submissions made. **Any development consent granted without an additional notification period would most likely be declared invalid if it were challenged in Class 4 Land and Environment Court proceedings.**

Site Description

The site is known as 1-3 Oriental Street, Bexley. It comprises two lots which are legally described as Lot 36 within DP 5216 (3 Oriental Street) and Lot 37 within DP 5216 (1 Oriental Street).

The site is located on the southwestern side of Oriental Street, at the south-eastern end of Oriental Street, a short distance from the cul-de-sac head. The site is rectangular in shape and has an area of 1,044.8sqm. It has a primary frontage of 24.38m to Oriental Street and a depth of 42.85m.

The site is relatively flat with fall of approximately one metre towards to the south-eastern boundary. The site currently contains two single storey brick dwellings with roof tiling. A detached brick garage exists in the rear yard of 1 Oriental Street.

The site contains landscaping and tree plantings along the frontage as well as throughout the site. A large street tree sits in front of the site at 3 Oriental Street, with a small tree in the front setback to 1 Oriental Street. Two trees are located adjacent to the boundary shared with 5-7 Oriental Street.

Each existing dwelling is provided with vehicular access from Oriental Street, with the driveway to 3 Oriental Street located on the southern side of the allotment. 1 Oriental Street is provided with vehicular access via a right of carriageway accessed from Kingsland Road South. The subject site is affected by Class 5 Acid Sulfate Soils and subject to Sydney Airport's Building Height Controls.

The site is at the end of the Oriental Street cul-de-sac., The cul-de-sac terminates at this end of Oriental Street, but pedestrian access is available through to Forest Road. The adjoining development to the south-east faces Forest Road and is part of the Bexley town centre where there is a mixture of retail and recreational facilities. The site is also within close proximity to regular bus services along Forest Road and Stoney Creek Road, as well as educational facilities (Bexley Public School), and various services located along Forest Road.

The adjoining development to the south-east comprises a four (4) storey mixed use development and is known as 437 Forest Road, Bexley. This development includes commercial premises on the ground floor which front Forest Road, as well as three (3) storeys consisting of residential units on the upper levels. The adjoining development to the north-east of the site includes a "walk-up" residential flat development, generally of three (3) to four (4) storeys in height with a consistent setback, at 5-7 Oriental St and 9-11 Oriental Street, Bexley.

Development opposite the site comprises of a two storey residential flat building, and is known as 2 Oriental Street, Bexley.

Description of Development

The development application DA-2017/107 at 1-3 Oriental Street, Bexley, seeks consent for the construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings at 1-3 Oriental Street, Bexley.

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

Site area	1044.8sqm (survey)
Site dimensions	<ul style="list-style-type: none">• Frontage/width: 24.38m• Length: 42.85m
Gross floor area	1044.8sqm
Floor space ratio	1.177:1
Building Height	14.27m
No. of Units	15
Unit sizes	50sqm – 90sqm
Private Open Space sizes	12sqm – 67sqm (terraces and balconies)
Communal Areas	<ul style="list-style-type: none">• Communal open space: 130.7sqm• Level 3: 60.2sqm
Parking	<ul style="list-style-type: none">• Car spaces: 19• Accessible spaces: 3 (including 1 visitor space)• Visitor spaces: 3• Motorcycle spaces: 1• Bicycle spaces: 2

Built form

The proposed built form consists of a four (4) storey building, roughly rectangular in shape. The building includes a flat roof containing rooftop terraces. The building contains a lift and stair core providing access to each of the levels and the basement below.

The building is setback 5.85m from Oriental Street, 1.1m from the south-eastern side boundary, and 1.56m from the north-western side boundary. The rear portion of the building is setback 3m from the rear boundary.

Internal layout and facilities

The development consists of 15 units with a mix of 1-bedroom, 2-bedroom and 3-bedroom units. Each unit contains a living area, combined dining and kitchen, a bathroom, a laundry, storage space and either a terrace or balcony, with rooftop terraces also provided to each of the Level 3 units, with spiral staircases proposed within the balconies to enable access to the rooftop spaces. Each floor provides a floor plate containing four units, except for Level 3 which contains only 3 unit units, and a communal open space area oriented towards the north.

Basement

The development includes a single level of basement car parking which comprises fourteen (14) car parking spaces, 4 accessible spaces (including 1 visitor space and 1 shared space), 3 visitor spaces, 1 motorbike space, 2 bicycle spaces, a waste bin storage room, and one (1) lift core providing pedestrian access to the building above. Vehicular access to the basement is provided off a driveway to Oriental Street. The car park is arranged in a single aisle. The basement has setbacks which are not entirely consistent with the setbacks of the surrounding buildings, being a 3000mm side setback to the southern side boundary, 2000mm side setback to the northern side boundary and a nil rear setback at the western boundary.

Materials and finishes

The materials and finishes of the development include a mixture of light and dark toned bricks, aluminium framed windows, glass balustrades and render. The Oriental Street elevation is shown within Figure 1.



Figure 1. Streetscape Elevation (Resolut, 2017)

Trees and landscaping

The proposal provides for deep soil areas within the front setback (61sqm) and at the rear (39sqm). Most site trees are proposed to be removed, while a street tree, as well as trees adjacent to the north-western boundary are proposed to be retained and protected. Several screen plantings along the side boundaries and rear boundary are proposed, as well as at the terraces for Units 1 and 2. Several larger trees are proposed in the front and rear setback areas.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

The proposed development includes BASIX affected buildings and therefore requires assessment against the provisions of this SEPP and BASIX certification. A Basix certificate was submitted with the original proposal in accordance with the provisions of this SEPP. However, an amended Basix Certificate was not provided in either of the amendments that were submitted to Council. In this regard, it is unclear whether the proposal satisfies the provisions and objectives of this SEPP.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 4.1.5 Contaminated Land of the Rockdale Development Control Plan 2011. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

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

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

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

As part of the application several trees are proposed to be removed from the site to accommodate the proposed development. Council's Tree Management Officer has reviewed the original application and raised no objection to the proposed tree removals, including several trees which are sought for retention. The White Cedar tree within the street is not able to be removed. Tree management conditions would be able to be imposed were the application recommended for approval.

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

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

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

Advice from Design Review Panel

The original scheme was considered by the St George Design Review Panel (DRP) at a meeting held at Council's offices on 19 October 2016.

Subject to these meetings the DRP recommended several changes be made to the proposal in order to satisfy the nine (9) design quality principles of SEPP 65. The applicant responded to the recommended changes and provided amended architectural plans in April 2017 but the proposal was not again referred to the DRP.

The recommendations of the DRP are highlighted below, followed by a comment by the assessment officer in relation any design response made by the applicant:

- a) **DRP comment:** The application contains insufficient information about these boundary conditions. At a minimum, all architectural drawings (plan and section) should show detailed information for adjacent buildings at each level. These should include window locations, setbacks, balconies, trees etc.

Assessment consultant comment: Floor plans have been superimposed over survey, and elevations provided with some detail on neighbouring properties. Details of each

individual level of neighbouring buildings is not shown on the submitted plans. This is discussed further in relation to solar access.

- b) **DRP comment:** The proposal should attempt to be more sympathetic to the largely brick context and landscape frontages.

Assessment consultant comment: It is agreed that the previously proposed colours and finishes created an uneasy contrast with the existing streetscape. Council later requested that the predominately white façade be substituted with neutral tones similar to the character of the street. The amended plans provide for a dark grey brickwork throughout the development, which is also not considered to be compatible. Further discussion is provided throughout the report.

- c) **DRP comment:** The scale is appropriate however; the Built Form requires further consideration in regard to the following:

- i. The design applies 3 metre setback to side boundaries without demonstrating impacts on and relationship with the adjacent building to the south;
- ii. Overshadowing impacts on adjacent properties should be demonstrated using either sun eye-view analysis or elevations to inform building form and layout refinements
- iii. The location of rooftop communal space in the southern corner adjacent to the existing building should be reviewed to minimise privacy impacts between properties;
- iv. Consider the removal of Unit 13 and its replacement with additional roof garden to reduce building bulk in the rear of the site and adjacent existing apartments and houses.
- v. The location of the bin storage and entry feature within the street setback needs to be removed. Bins should be relocated to the basement level. Entry should be simplified and designed as a predominantly planting area with a large tree to supplement the existing street tree planting;
- vi. Services should be clearly indicated on the architectural package and located outside of landscape zones. Hydrants should be located perpendicular to the street and integrated into driveway access to minimise the visual impact;
- vii. Excessively high walls adjacent to driveway access and pedestrian paths should be removed;

Assessment consultant comment: Comments on each of the above points are provided below:

- i. The design seeks a setback as low as 1.1m side setback to the southeastern boundary and a 1.56m side setback to the north-western boundary. It is agreed that a thorough analysis of the impacts of these non-compliances has not been provided. In this regard, the proposal is recommended for refusal. The impacts of the proposed side setbacks are discussed elsewhere within this report.

- ii. Sun eye-view analysis or elevation shadows have not been provided. The applicant has indicated that there are limited windows on the adjoining properties that could be affected by the proposal. Further information was requested, either through sun eye-view analysis or otherwise, in order to demonstrate that the impacts were acceptable. However inadequate information has been provided, and the application is consequently recommended for refusal.
 - iii. Rooftop communal open space remains and is not supported.
 - iv. Unit 13, a 3-bedroom unit, has been retained, despite the request of the DRP.
 - v. Bin storage has been relocated to within the basement. The entry area is well landscaped and features a deep soil area with plantings.
 - vi. The fire booster has not been shown on the architectural plans. There may be potential to widen the driveway to facilitate a fire booster. Other services have not been shown on the plans.
 - vii. Other than the courtyard fences, there are no large walls within the front setback.
- d) **DRP comment:** There has not been a convincing argument provided for exceeding the floor space ratio. As raised above, there are a number of significant concerns related to proximity and impact to and from neighbours. Exceeding the FSR is unacceptable given these issues.

The removal of Unit 13 and its use as additional communal space would bring FSR into approximate compliance and improve the provision of communal open space and mitigate privacy concerns with neighbours.

Assessment consultant comment: Further discussion on the variation that is sought to floor space ratio is provided elsewhere within this report. The proposal is recommended for refusal given the proposed floor space ratio non-compliance.

- e) **DRP comment:** There is an insufficient provision of large trees in deep soil zones. This impacts on the local micro climate and should be reviewed.

Further information is required as to solar access compliance with ADG.

Assessment consultant comment: The tree plantings within the deep soil zones remains inadequate. Further discussion on solar access is provided elsewhere within this report.

- f) **DRP comment:** The current design has not adequately considered privacy issues between ground floor apartments and communal space at the rear of the site. It is recommended that this be carefully designed to increase buffer planting between private and common space and that furniture be carefully positioned to minimise overlooking. The deep soil should be utilised to provide large trees at the rear of the property and on the side boundaries. It is preferable that trees are grouped where possible.

Assessment consultant comment: Insufficient planting is provided for privacy purposes. As indicated above, there is an insufficient provision of large trees in deep soil zones

- g) **DRP comment:** The front landscape zone needs complete redesign as noted in comments above under Built Form. These zones should be predominantly planted with large trees and under-storey planting to provide amenity for residents and to the street. All supplementary walls should be removed.

Assessment consultant comment: Other than the courtyard fences, there are no large walls within the front setback. The front setback area is well landscaped. There is insufficient provision of large trees in deep soil zones.

- h) **DRP comment:** Detention tanks and basins should be located outside of garden spaces and deep soil zones (such as under driveway, in basement carpark zones). It appears that there is a large stormwater pit in the front lawn. This should be relocated out of the deep soil zone.

Assessment consultant comment: It is recommended that any OSD/trenching be located underneath driveway/vehicle circulation areas to maximise the area available for deep soil tree planting and landscaping on the site. However, the application is recommended for refusal.

- i) **DRP comment:** Small isolated pockets of lawn should be replaced with planting.

Assessment consultant comment: The lack of planting within the lawn areas remains unsatisfactory. Refer to comments elsewhere within this report.

- j) **DRP comment:** The apartment layouts should be reviewed in order to ensure that room sizes and shapes are fit for purpose and furnishable. Units 1 and 13 have insufficient space around the entry. Units 8 and similar units above have awkwardly positioned dining rooms and these units should be re-planned to provide a more suitable kitchen and dining relationship. Similarly, Bedroom 2 is undersized and should be amended to comply with the ADG minimum.

The spiral staircases to Units 13, 14 and 15 need to be reconsidered in terms of location, safety and amenity.

The communal open space should be redesigned to allow for a range of uses to enjoy the space. This should be incorporated into the design approach through the creation of a series of small outdoor spaces defined by planting and incorporating a variety of furniture layouts and facilities. Provision of a small amenity room with toilet and storage would improve the function of this space.

Assessment consultant comment: Concerns remain with the space provided to apartment entries. All apartments are generally provided with open plan living areas. The previous proposal contained undersized bedrooms and units, but this has been amended.

The amended plans have detailed furnishing within the rooftop communal open space, and it is unclear if this space caters for a range of uses. An amenities area has not been provided within either the ground floor or Level 3 communal open space.

The spiral staircases have been retained and their retention contributes to the reasons for refusal.

- k) **DRP comment:** The front entrance is particularly awkward with an offset entry from the street to the lobby and a curved disabled access ramp dominating the space. This raises a number of issues related to amenity for the units as well as general amenity for the residents of the building. It should be completely redesigned. If necessary internal floor levels should be modified to reduce the length of external ramping.

Assessment consultant comment: The floor levels of the development have been lowered and the proposal now accommodates a linear entry ramp which provides a direct connection to the building entry.

- l) **DRP comment:** The current design with large walls and concealed spaces at the entry of the building are a potential safety issue.

Assessment consultant comment: The design of the entry has been rationalised and is now acceptable.

- m) **DRP comment:** There is an excess of 2-bedroom units and the proposal should comply with Council's required apartment mix.

Assessment consultant comment: Apartment mix remains non-compliant, and this is included as a reason for refusal.

- n) **DRP comment:** As noted above, the selection of materials could be more sympathetic with the dominant brick context. The Panel appreciates the desire for a contemporary building expression but believes this could be achieved whilst still responding to the context.

Assessment consultant comment: The proposal has been amended to address comments from the DRP and Council. The amended colours and finishes schedule provides for a reduced portion of lighter materials. However, it is considered that earthy tones should be used, consistent with the remainder of the street. The dark grey bricks that are proposed would create an uneasy contrast in Oriental Street.

- o) **DRP comment:** The Panel recommends the removal of the clutter in the front setback by removing garbage bin storage to the basement. Mail boxes should be

integrated into existing building walls. All services should be located in a visually unobtrusive location. Refer to comments above under Built Form and Landscape.

Assessment consultant comment: The majority of these matters have been addressed; however, fire boosters were not shown on amended plans.

Design Quality Principles

The following comments provide a general discussion of the response of the proposal to the design quality principles. These comments are partly informed by the commentary provided by the Design Review Panel.

Principle	Comment
Context	<p>The site is located on a quiet cul-de-sac within 30 metres of a highly prominent location at Forest Road, where much of the Bexley Town Centre is concentrated. The surrounding context is predominantly characterised by a mixture of residential and commercial land uses. Oriental Street is characterised by residential land uses primarily consisting of two and three storey residential flat buildings. Forest Road is primarily characterised by commercial land uses in a traditional two storey shopfront arrangement.</p> <p>The existing building to the south is a mixed use building with a party wall along the side boundary for the ground floor, with residential balconies, with variable setbacks, facing towards the side boundary on upper levels. The DRP noted that there are many balconies at the adjoining three storey apartment building to the north which face the site boundary. The Panel recognised that the Development Application contains insufficient information about these boundary conditions and that all architectural drawings were to indicate detailed information for adjacent buildings at each level.</p> <p>The Panel also considered that the proposal should attempt to be more sympathetic to the largely brick context of Oriental Street and its landscaped frontages. Landscaped area at the site frontage is now appropriate, however concerns remain with the colour and material selection, and an overall lack of planting within deep soil zones.</p> <p>Building separation non-compliances remain to both side boundaries and to the rear boundary. A blank wall at a height of two storeys is situated on the boundary shared with 437 Forest Road, adjacent to the front half of the subject site. The non-compliant setbacks to this property are acceptable insofar as they respond to this existing wall, and to some extent the reduced setbacks to the side boundaries are consistent with the streetscape character of development within the Oriental Street. However, the proposal is not consistent with the prevailing pattern of development, with respect to height, floor space, and rear setbacks, and for this reason, the existing pattern of development provides only limited guidance on an appropriate setback response.</p> <p>The proposal has had little regard for the future development potential of properties to the south and west, whereby similar developments may be able to</p>

Principle	Comment
	<p>be undertaken in the future. It is noted that a right of carriageway, benefitting 1 Oriental Street - and possibly other properties - currently sits at the rear of the site. However, this will no longer be required as a consequence of the proposal, and the proposed setbacks do not respond appropriately to the potential future character of these sites.</p> <p>The extent of overshadowing as a consequence of the setback non-compliances is also unclear, and insufficient information has been provided to enable a thorough consideration of this matter.</p> <p>The proposal is not considered to be consistent with the desired future character established by the planning controls, and does not provide an appropriate response to this context and setting of the neighbourhood.</p>

Built Form & Scale	<p>In terms of bulk, scale and built form, the proposed is of a similar streetscape scale to the development at 437 Forest Road, to the south, also being 4-storeys in height. However, there are few other buildings within the locality that are of a similar scale to the proposal or 437 Forest Road. The overall scale of the proposal is not appropriate in this location. Refer to comments elsewhere.</p> <p>The facades of the building are generally well articulated with balconies and architectural features, recesses in elevations, use of variable building materials and colours creating visual interest along the streetscape and when viewed from adjoining properties. However, concerns remain in relation to the specific colour selection.</p> <p>Following receipt of comments from Council's DRP, minor amendments have been made to the building design. However, there are still various non-compliances with the design. The principal factors governing the bulk and scale of buildings is that of building separation and FSR. Building separation non-compliances remain on both sides and the rear of the building.</p> <p>As indicated earlier, there is redevelopment potential to the properties zoned as B4 further to the southwest of 437 Forest Road, and to properties zoned as R4 to the rear of the subject site. Residential flat buildings are permissible within the R4 zone, and shop top housing is permissible within the B4 zone. The proposed development does not respond appropriately to the development that be likely to eventuate there in the future. Furthermore, the proposed non-compliant setbacks unduly constrain development on these properties. In this context, the balconies are also oversized, given the inappropriate building massing and setbacks.</p> <p>FSR remains largely non-compliant with a proposed FSR of 1:177. This is 17.71% in excess of the FSR permitted by RLEP2011. The amended design has introduced wider circulation areas to all levels which improves internal amenity. However, these areas are labelled as breezeways and it is understood that they are omitted from the applicant's GFA calculations. It is understood that</p>
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	<p>it was the applicant's intention that the amended proposal would comply with the FSR standard, and that the GFA would be reduced compared with the first amendment. A review indicates that the applicant has possibly omitted all of the open circulation areas from the calculation. Regardless of whether these areas are included within the GFA calculation, they add to the overall size of the building, and contribute to the excessive scale of the building. Furthermore, the overall width of the northern part of the building at the western elevation has evidently increased, and this is generally due to the wider circulation areas.</p> <p>One of the DRP's recommendations was to consider the removal of Unit 13 on Level 3 and to replace it with additional roof garden in order to reduce building bulk in the rear of the site and the adjacent existing apartments and houses. It is noted that Unit 13 remains. There are other design options available that could potentially enable compliance with the floor space ratio standard, as well as a reduced scale.</p>
Density	<p>As mentioned above, the FSR is non-compliant by 17.71%. The DRP considered that the FSR exceedance was unacceptable due to several significant concerns related to proximity and impact to and from neighbouring properties.</p> <p>The DRP recommended deletion of Unit 13 in order to address the FSR non-compliance, improve the provision of communal space and mitigate privacy concerns with neighbours. Unit 13 has not been deleted as part of the amended proposal. Deletion of Unit 13, as well as other design amendments, would assist in providing appropriate density at the site.</p>
Sustainability	<p>In consideration of the initial plans, the DRP comments had indicated that there was an insufficient provision of large trees in deep soil zones. The Panel also commented that further information was required as to solar access compliance with the ADG.</p> <p>It is noted that an amended Landscape Plan has not been submitted. Furthermore, the extent of overshadowing remains unclear as the impacts have not been demonstrated adequately. Finally, an amended Basix Certificate has not been provided.</p>
Landscape	<p>The proposal provides for landscaped areas generally located at the front and rear at the site, with some plantings also provided to the first Level 3 communal open space.</p> <p>The Rooftop communal open space area does not provide adequate amenities for the residents, and the design has not yet fully met the potential of this space. The mix of soft landscaping should be increased by 20% and larger plantings are required. There is a lack of adequate design features such as shade structures and plantings.</p> <p>The southern boundary would benefit from a larger amount of plantings with wider planters to provide an acoustic barrier from the other premises. This space</p>

	<p>would be greatly improved with increased 'natural' plantings to break away from the solid nature of the building. This space currently can be made more private by adding at least more native plantings of large trees to understorey plantings or climbers to provide a cooling and aesthetic improvement to this area.</p> <p>The minimised paved communal area does not provide adequate shading from the western sun. Further planters would be appropriate in this location, including vegetable/herb raised beds. The level of offering could be further enhanced and possibly divided into areas of passive and active recreation including a turfed area</p>
Amenity	<p>As previously mentioned, the extent of overshadowing remains unclear as the shadow diagrams do not adequately demonstrate the impacts of the proposal.</p> <p>It is acknowledged that the applicant has attempted to minimise privacy impacts on the adjoining properties through the careful selection of windows and included screening. However, these are not adequate particularly when the setback non-compliances are significant.</p> <p>With regards to visual privacy, there are significant non-compliances with building separation at both sides and the rear of the proposed building. The applicant's arguments regarding the existence of a blank wall on the lower two floors of the building to the south (437 Forest Road) and the window selection will assist in minimising privacy impacts. However, there are no particular sound environmental planning reasons for the majority of the building separation non-compliances.</p> <p>Room layouts have been amended and some indicate good design, and unit size non-compliances have been addressed. However, Unit 1 still has issues with providing sufficient space at the entrance. It has now been modified to include a longer narrow hallway leading to the kitchen with a bedroom adjoining the communal walkway. The unit layout has been modified but is still problematic.</p> <p>Spiral staircases to Units 13, 14 and 15 were considered an issue and were recommended to be reconsidered in terms of location, safety and amenity. However, these staircases remain and no amendment has been made.</p> <p>The Level 3 communal spaces and rooftop private open spaces have generally remained unchanged and it is considered that privacy issues still remain. The DRP's comments to delete Unit 13 and replace it with additional roof garden to reduce building bulk in the rear of the site have not been incorporated into the design. The DRP also recommended the creation of a series of small outdoor spaces defined by planting and incorporating a variety of furniture layouts and facilities, as well as the provision of a small amenity room with a toilet and storage. None of these recommendations have been considered in order to further improve the amenity and function of the space</p> <p>The DRP also commented on the front entrance being particularly awkward and requiring redesign. Subsequently, the ground floor level has been lowered to</p>

	enable the deletion of the curved disabled access ramp which dominated the front space. Direct access from the street is now proposed at a gradient of 1:40.
Safety	<p>The DRP comments outlined safety concerns with the original design, due to the large walls and concealed spaces at the entry of the building.</p> <p>The applicant has made amendments to the entry of the building which assist in creating further opportunities to maximise passive surveillance of the area and therefore promote safety.</p> <p>Having regard to the above, the proposal is therefore considered satisfactory with regard to safety.</p>
Housing diversity and social interaction	<p>The proposal does not provide an acceptable dwelling mix and the DRP had noted that there was an excess of 2-bedroom apartments. The DRP advised that the proposal should comply with Council's required apartment mix. Following amendments, it is now further non-compliant. There are 80.0% of 2-bedroom units and 6.7% of 3-bedroom units. RDCP2011 requires 50-75% of 2-bedroom units and 10-20% of 3-bedroom units.</p> <p>The number of adaptable dwellings is compliant.</p>
Aesthetics	<p>The DRP commented that the selection of materials could be more sympathetic with the dominant brick context. The Panel recommended the removal of the clutter in the front setback by removing the garbage bin storage to the basement. It was also recommended that mailboxes be integrated into the existing building walls and that all services be located in a visually unobtrusive location.</p> <p>Amendments have been made according to these recommendations. The garbage bin storage area within the front setback has been deleted and relocated within the basement area. Furthermore, the mailboxes have been relocated and integrated into the existing building wall at the entrance.</p> <p>The amended colours and finishes schedule provides for a reduced portion of lighter materials. However, it is considered that earthy tones should be used, consistent with the remainder of the street. The dark grey bricks that are proposed, would create an uneasy contrast in Oriental Street.</p>

Apartment Design Guide

The proposed development has been assessed against the NSW Apartment Design Guide (ADG). There are numerous non-compliances which are not considered acceptable. These non-compliances against the design criteria are discussed as follows:

Part 3D Communal open space

The proposal provides for a total of 191sqm of communal open space, including the ground floor (131sqm) and the area on Level 3 (60sqm). This equates to approximately 18% of the site

area, which does not comply with the 25% requirement. It is noted that smaller communal open space areas are contemplated by the RDCP2011.

The Level 3 communal open space is likely to create adverse privacy impacts to adjoining properties, particularly given the non-compliant setbacks. The ground floor communal open space is long and narrow, overshadowed by the proposed building, and is provided with a poor relationship to neighbouring terraces, creating privacy issues.

Furthermore, as discussed elsewhere, the design features provided within the communal open space area are considered to be inadequate.

Part 3F Visual privacy

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

Design criteria

1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

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

Figure 2 Building Separation Requirements

The proposal incorporates four-storeys with a building height of 14.27 metres measured from the building roof top edge. The lower three storeys would require boundary setbacks of 3m for non-habitable rooms and 6m for habitable rooms and balconies. The fourth storey would require setbacks of 12m; however, given approximately one third of the fourth storey sits above 12m, a larger setback of 4.5m for non-habitable rooms and 9m for habitable rooms and balconies may also be appropriate. However, for simplicity, this assessment considers only the controls for buildings under 12m.

The proposal seeks various non-compliances with the building separation requirements.

Rear setbacks

At the rear of the building, the proposed floor levels would sit more than 1m above natural ground level at the northern side of the allotment. Therefore, the ground floor external terraces at the rear of the proposal, are to be considered in an assessment of the rear setback control. Similarly, the basement extends to the rear boundary, and is provided more than 1m above the ground level, and thus requires consideration in the calculation of the building setbacks.

The table below summarises the proposed rear setbacks.

Rear Setbacks		
Dwelling no. and location	Setback	Non-compliance
Basement	0.0	6.0m
Unit 1, Ground	4.7m	1.3m
Unit 3, Ground	4.7m	1.3m
Unit 5, Level 1	5.3m	1.8m
Unit 7, Level 1	6.0m	N/A
Unit 9, Level 2	5.3m	1.8m
Unit 11, Level 2	6.0m	N/A
Unit 13, Level 3	5.3m	0.7m

The Statement of Environmental Effects provides the following justification for the non-compliance:

“In terms of the setback to the western (rear) boundary, the development generally complies with the required setback to this boundary with the exception of balconies, being less than 1m under the controls. The development in its current form will not give rise to significant visual privacy impacts to this boundary due to the low level of activity that has a primary orientation to the west and with the proposed windows being fitted with sliding screens and timber louvers. Deep soil landscaping is also proposed along this boundary which will assist in minimising overlooking between properties. Therefore, there will be minimal impact on privacy of the surrounding residential development”.

The property to the northwest, 5-7 Oriental Street is set back approximately 11m from the rear boundary. The property to the southeast, lies within the B4 Mixed Use zone. These properties are oriented towards Forest Road, which results in the subject site sharing a side boundary with three properties. Adjoining to the southeast at the rear part of the subject site, is a carparking area associated with 447 Forest Road, which is burdened by a right of carriageway, benefitting several lots within the locality. The sites to the east may be subject to potential shop top housing development in the future.

Given the context of the surrounding properties, it is not considered that a reduced rear setback is acceptable in this instance. A reduced setback will not be consistent with future development to the south, potentially undermining the pattern of development that may be undertaken on the adjoining B4 zoned properties. Shop top housing would require setbacks in accordance with the ADG requirements, and the proposal does not account appropriately for future development in this location.

The two properties to the rear, 6 Kingsland Road South and 8 Kingsland Road South, currently accommodate single dwellings, but lie within the R4 zone. These properties are also able to accommodate residential flat buildings, which would require a 6m rear setback in order to comply with building separation controls. The rear setbacks, including the protrusion of the basement out of the ground, are not appropriate in these circumstances. The basement location also impacts on the potential of deep soil planting to be provided within this location.

South-eastern side setbacks

With respect to the south-eastern side boundary, the proposal provides for a 3m setback for the majority of the south-eastern façade contained above ground level. At ground level, the setbacks are as low as 1.25m. At each level, habitable rooms are located along the entire length of the south-eastern façade, with all non-habitable rooms located adjacent to the circulation core of the building. This represents a non-compliance of 3m to this wall.

The Statement of Environmental Effects provides the following justification for the non-compliance:

“The setback of the adjoining development to the south (No 437 Forest Road) is also minimal with no windows facing the subject site at the lower levels (illustrated in Figure 11). The inconsistency with the setback requirements of the ADG on both properties would not result in any loss of privacy at these lower levels. For the upper levels, the majority of windows which face this adjoining property are bathroom and bedroom windows as outlined in Figure 10. While there are some living area windows also facing this boundary, these are secondary windows with the main orientation towards the street and rear open space. Therefore there is likely to be minimal overlooking between sites.

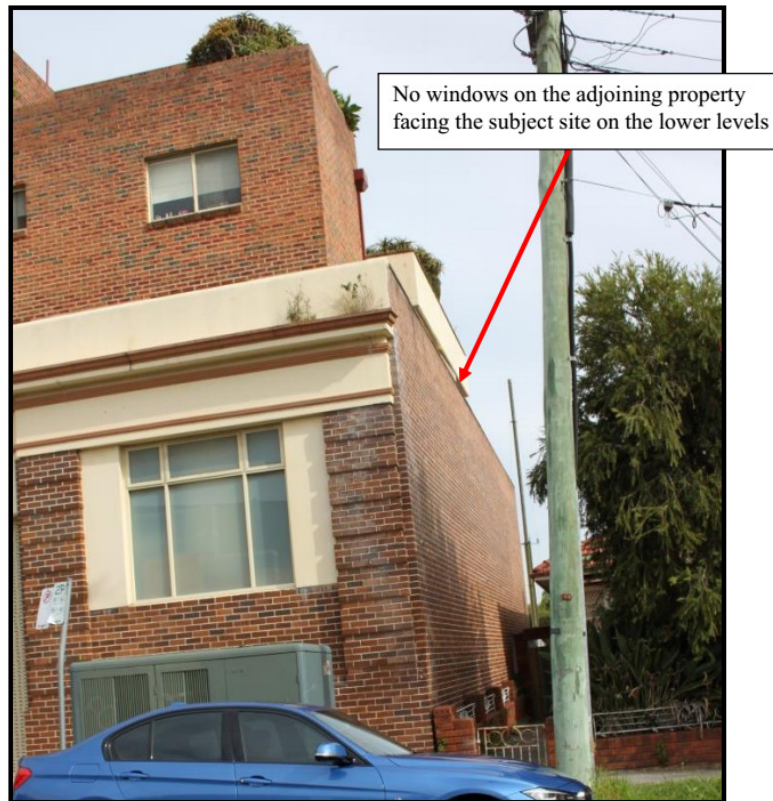


Figure 3 Neighbouring building at 437 Forest Road, viewed from Oriental Street (Steven Layman Consulting, 2016)

It is agreed that a suitable response to the minimal setback to the blank wall shown above, within 437 Oriental Street, is to provide lesser setbacks than that required by the ADG. However, this wall lies adjacent to the front dwellings of the proposed development, but not adjacent to the rear dwellings. The proposed rear dwellings lay adjacent to the properties from 443-449 Forest Road. Furthermore, the wall is 7m tall, well short of the proposed height of the development, which is in excess of 14m.

Limited information has been provided to enable a consideration of the impacts to the solar access to the surrounding properties, including the balconies at the adjoining development. In addition, the ground floor provides 3m high blank walls less than 1.5m from the property boundary, which is not appropriate. The setback non-compliances are not supported.

North-western side setbacks

The majority of the north-western façade is setback 4.2m from the north-western boundary. The rear portion of each front units is setback a smaller amount, being 3m. In addition, the ground floor also features a raised floor terrace area which is set back 3m from the northern boundary. The rooms on this side of the building are a mixture of habitable and non-habitable rooms. However, the western façade utilises smaller windows to attempt to mitigate privacy impacts.

The proposal provides a reasonable response to balconies that are situated a short distance from the side boundary. However, the Level 3 terrace generates unreasonable privacy impacts on these properties, as well as on any future development situated to the west. The setbacks are not supported in this location.

The proposal also provides rooftop terraces to each of the top floor units, which sit above the internal floor area of each unit. Given the inadequate setbacks provided throughout the development, these rooftop terraces are not appropriate, given the privacy implications.

Part 4E Private Open Space

The proposed development generally provides for balconies with an area will in excess of that required by Part 4E. However, to address concerns relating to unit mix, the amended proposal includes a reduced balcony to Unit 13, such that it is no longer compliant with the specific requirements of Part 4E. In addition, the spiral staircase situated within this balcony area reduces the open space that is available. It should be noted that the spiral staircases within the Level 3 balconies are not supported, and that this forms part of the reasons for refusal.

As the roof top terraces and the spiral staircases are not supported, and as there is a poor connection to the internal living areas situated below, it is considered that compliant private open space should be provided level with the internal floor area.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with standard/provision
2.3 Zone R4 High Density Residential	No - see discussion
4.3 Height of buildings	Yes
4.4 Floor space ratio - Residential zones	No – see discussion
4.6 Exceptions to development standards	4.6 request submitted - see discussion
5.10 Heritage conservation	Yes
6.1 Acid Sulfate Soil - Class 5	Yes
6.2 Earthworks	Yes
6.3 Development in areas subject to aircraft noise	Yes
6.2 Airspace Operations	Yes
6.7 Stormwater	No – see discussion
6.12 Essential Services	Yes

2.3 Zone R4 High Density Residential

The subject site is zoned R4 – High Density Residential under the provisions of the RLEP 2011. The proposed development is for the purpose of a ‘residential flat building’ which is permitted with consent in the zone.

The objectives of the R4 zone are outlined in the following:

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

The proposal is not considered to meet first two objectives, for reasons outlined elsewhere within this report.

4.3 Height of buildings

Clause 4.3 provides a maximum height of buildings on the subject site of 14.5 metres. The existing ground levels beneath the proposed roof area range from RL 46.13 – RL 47.26. The highest building levels is RL 60.40, and therefore the maximum building height is 14.27m. The proposal complies with the development standard and therefore satisfies this clause.

4.4 Floor space ratio - Residential zones

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

The gross floor area of the development is calculated to be 1229.84sqm which equates to an FSR of 1.17:1. This does not comply with the FSR permitted under the RLEP2011 – i.e. a variation of 17.7%.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

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

In considering the applicant’s submission, the consent authority must be satisfied that:

- (i) the applicant’s written request is satisfactory in regards to addressing subclause (3) above, 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 of the relevant zone.*

- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*
- 5(b) the public benefit of maintaining the development standard.*

The variations to the floor space ratio has been assessed below.

It is noted that the proposal has further been assessed against the principles established by the Land and Environment Court judgement *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the site and development.

Extent of Variations Proposed - FSR

The proposal seeks to vary the FSR standard for the site as noted in Clause 4.4 - FSR. The original proposal contained circulation spaces with no access to natural light or ventilation. The amended proposal provides a breezeway or 'open lobby' to each level of the building, with full height screening provided at either end of the open lobby, and void areas provided for each level above the ground floor. It is understood that the applicant intends for the open lobby areas to be excluded from the calculation of gross floor area, and for the proposal to comply with the 1:1 floor space ratio requirement. However, given the screening provided at either end of the open lobbies, it is considered that these areas meet the definition for gross floor area.

Furthermore, it has been calculated that the proposal would not comply with the 1:1 floor space ratio requirement, even with the benefit of the exclusion of the open lobbies.

The gross floor area of the development is calculated to be 1229.84sqm which equates to the proposal having a maximum FSR of 1.177:1 which exceeds the maximum permitted FSR of 1:1. This represents a non-compliance of approximately 185sqm, or 17.7%.

The original application was accompanied by a detailed justification for the proposed variation to the development standard. A summary of the key rationale provided in the applicant's clause 4.6 in respect of the FSR development standard are as follows (it should be noted that the design had twice been amended since the submission of the reasons for the variation, however, it is likely that the arguments remain the same):

- The non-complying FSR does not result in unreasonable impacts on the amenity of nearby properties in terms of overshadowing, privacy, loss of views and has minimal impact on the streetscape.*
- Compliance with FSR is considered to be unreasonable and unnecessary given the proposal and its relationship to neighbouring properties due to being well-designed and it unlikely to result in any significant adverse impact regarding overshadowing or loss of privacy.*
- The proposed additional building articulation and architectural detailing proposed for the built form will minimise the visual impact. This is achieved through the use of a variety of*

materials and the design of the development with changes in building alignment and use of building recesses. The additional floor space allows articulation and the reduction of bulk and scale over the floor space limit thus assisting in reducing the potential visual impact of the proposal.

- There is no adverse environmental impact resulting from the FSR variation. There are minimal trees to be removed and limited landform change. Proposed landscaping will soften the development and provide stormwater benefits.*
- The proposal is considered to be a better planning outcome as it allows for various unit sizes that generally comply with the requirements of the ADG. The units will achieve sufficient ventilation and solar access and provide private open space areas. The proposal will also provide greater housing choice and housing types due to various one, two and three bedroom units, as well as adaptable dwellings.*
- The existing site constraint is that it is virtually the last remaining development site in the street. This provides an opportunity unique to this site. The proposal generally complies with the minimum unit sizes under the ADG and provides for a high level of amenity with a variety of unit sizes. There are sufficient environmental planning grounds to justify varying the FSR as it will allow for additional housing opportunities in a well serviced location.*
- The proposal is in the public interest given additional housing opportunities will be provided in close proximity to transport and services and within an accessible building. It will provide for the housing needs of the community in a high-density environment.*
- The proposal involves an amount of floor space that seeks to maximise the development density and intensity of the proposed land use on the site, given the availability of infrastructure in the area. It is capable of distributing the traffic generated by it easily throughout the surrounding road network.*
- The proposal will maintain an appropriate visual relationship between new development and the existing character of the area due to the prevalence of three and four storey residential flat buildings in the street, the mix of development within the locality due to the proximity of the Bexley Town Centre and the range of housing densities.*
- The proposed floor space will be compatible with the adjoining development at 437 Forest Road and allow for an appropriate transition along the streetscape to the adjoining 3 storey residential flat building at 5-7 Oriental Street.*
- Landscaping opportunities are provided for and these will assist in minimising runoff and providing an aesthetically pleasing development when viewed from the street and outdoor open space areas.*

Floor Space Ratio Discussion

The proposal seeks a variation to clause 4.4 Floor Space Ratio. The objectives of this clause are as follows:

- (a) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
- (b) to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*

- (c) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

Consideration has been given as to whether the built form of the proposal is consistent with that of the surrounding area. It is considered that the FSR variation as proposed is inappropriate for the following reasons:

- (a) Building separation non-compliances remain to both sides boundaries and to the rear boundary. The blank wall on 437 Forest Road is at a height of two storeys and for the area adjacent to the front half of the subject site. There does not appear to be any particular sound environmental planning reasons for the majority of the building separation non-compliances, and it is evident that there are other design options available which would provide for a lower overall floor space, increased setbacks to the side and rear boundaries, as well as addressing some of the other non-compliances (for example, unit mix).
- (b) Aside from the existing building at 437 Forest Road, the proposal is generally inconsistent with other residential apartment development within the locality, in relation to bulk, scale and built form, as there are no four storey apartment buildings of this size, on a site as small as the subject site. The FSR exceedance is unacceptable due to the impacts to neighbouring properties, including issues relating to overshadowing, privacy, and visual bulk and scale.
- (c) It is considered that redevelopment potential exists to the properties zoned as B4 further to the southwest of 437 Forest Road, and to properties zoned as R4 to the rear of the subject site. RFBs or shop top housing are permissible in both zones. The proposed non-compliant setbacks unduly constrain development on these properties, and the proposal is not compatible with the potential future character of development on surrounding sites. Any new development proposed on surrounding sites would be expected to be provided with a compliant setback, and the scale of the proposed development would not be compatible with any future development in this location. It is noted that the subject site benefits from a right of carriageway to the south; however, this land could become part of a development site in the future.
- (d) The proposal is likely to create significant overshadowing impacts on the properties to the south which front Forest Road, including land that in which shop top housing is permissible, with a building height of 16m (and up to 19m for buildings with a site area in excess of 600sqm). The exact extent of overshadowing remains unclear as the shadow diagrams do not adequately demonstrate the impacts of the proposal; however, it is likely that the proposal will cast significant shadows on neighbouring properties.
- (e) The overall scale of the development has not been reduced in order to minimise the impacts of the FSR non-compliance. The proposal seeks generally oversized balconies and raised terraces, and a raised basement provided with a nil setback to the south-western boundary. Each of these elements add to the overall building bulk. Further, insufficient landscaping is proposed to screen the development, and reduce the perception of its scale.

- (f) The maximum FSR standard that applies to the subject site is considered a reasonable reflection of the maximum development potential of the site.

It is considered that there are other design options available that could potentially enable compliance, as well as a reduced scale of development.

Despite the arguments presented within the 4.6 variation request, the proposed FSR variation is not supported. It has not been demonstrated that the applicable FSR development standard referred to above are unreasonable or unnecessary in this instance.

6.1 Acid Sulfate Soil - Class 5

Acid Sulfate Soils (ASS) – Class 5 affects the property. An Acid Sulfate Soils Management Plan is not required as the proposed works are unlikely to lower the water table below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

6.2 Earthworks

Earthworks including excavation are required on site in order to allow for the construction of the basement on site. The objectives and requirements of Clause 6.2 of RLEP 2011 have been considered in the assessment of this application. It is considered that the proposed earthworks and excavation will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposal meets the objectives of this clause.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51.00 AHD. At a maximum height of 60.70 AHD, the proposal will penetrate the OLS by 9.7 metres, and therefore represents a controlled activity under Section 182 of the *Airports Act 1996*.

The application was referred to Sydney Airports Corporation Ltd (SACL), who approved the controlled activity, subject to conditions. It is noted that the maximum height of the amended proposal is 60.40 AHD.

6.7 Stormwater

Several issues are outstanding in relation to the submitted stormwater plans. Refer to discussion in relation to Part 4.1.3 of RDCP2011.

6.12 Essential services

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

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

There are no draft planning instruments that will affect the proposed development.

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

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

A summary of the compliance assessment against the Rockdale Development Control Plan 2011 (RDCP2011) for the proposed development is provided below. Detailed discussions are provided as noted.

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.1.1 Views and Vista	Yes
4.1.2 Heritage Conservation - Vicinity of Heritage Item	Yes – refer to discussion
4.1.3 Water Management	No – refer to discussion
4.1.4 Soil Management	Yes
4.1.6 Development on sloping sites	Yes
4.1.7 Tree Preservation	Yes
4.1.8 Contamination	Yes – see discussion in relation to SEPP 55
4.1.9 Lot size and Site Consolidation – residential flat buildings	Yes – see discussion
4.1.9 Lot size and Site Consolidation – Avoidance of isolated sites	Yes – see discussion
4.2 Streetscape and Site Context – General	No – refer to discussion in relation to SEPP 65
4.2 Streetscape and Site Context – Fencing	Yes – see discussion
4.3.1 Open Space and Landscape Design – Residential flat building centres	No – see discussion
4.3.2 Private Open Space - Residential Flat Building	No – refer to discussion in relation to the ADG
4.3.3 Communal Open Space	No – refer to discussion in relation to the ADG
4.4.2 Solar Access – General Controls	No – see discussion

Relevant Parts of the RDCP 2011	Compliance with standard/provision
4.4.3 Natural Lighting and Ventilation - Residential	N/A – as per clause 6A(1)(b) and (g) of SEPP 65 this section no effect.
4.4.3 Natural Lighting and Ventilation - Ceiling heights	N/A – as per clause 6A(1)(b) and (g) of SEPP 65 this section no effect.
4.4.4 Glazing – General controls	Yes
4.4.5 Visual and Acoustic Privacy	No – see discussion
4.4.5 Visual privacy – roof top area	No – see discussion
4.4.6 Noise impact – Non-residential	No – see discussion
4.5.1 Social Equity - Housing Diversity and Choice	No – see discussion
4.5.2 Social Equity - Equitable Access	Yes
4.6 Car Park Location and Design	No – see discussion
4.7 Air Conditioning and Communication Structures	Yes
4.7 Waste Storage and Recycling Facilities	Yes
4.7 Laundry Facilities and Drying Areas	Yes
4.7 Letterboxes	Yes
4.7 Service Lines/Cables	Yes
5.2 RFB – General	No – refer to discussion in relation to the ADG
5.2 RFB – Setbacks	No – refer to discussion in relation to the ADG
5.2 RFB – Balcony Balustrade	Yes – see discussion

4.1.1 Views and Vista

The subject site is located a short distance from the local ridge line along Forest Road. The site is not afforded any view of Botany Bay or any items of local or State heritage. In this regard, the subject site does not enjoy any significant views or vistas.

It is unlikely that the siting of the proposed development will generate any significant impacts on the views of the street and general neighbourhood that are enjoyed by adjacent properties.

4.1.2 Heritage – vicinity

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

4.1.3 Water Management

Drainage

The following comments were provided by Council's development engineer:

- *"The Drainage of Low Level Properties Checklist refers to an absorption system in accordance with Geotechnical report (which is not the case) where Stormwater Plans / Stormwater Plan Certification and Check List refers to an onsite detention system. Clarification is required.*
- *The concept stormwater design / checklist failed to acknowledge the following;*
 - *Disposal of surface runoff from landscape areas, mainly the backyard – Drainage of low level properties procedure.*
 - *Protection of low level driveways procedure – Basement inundation.*
- *A gutter flow analysis, prepared in accordance with Technical specification stormwater management is required to be submitted for assessment. The analysis is required to:*
 - *Estimate the flow of water in the street kerb and gutter; and*
 - *Recommend the required crest level in the driveway to protect the low level driveway from flooding.*

Where a crest is required, an amended longitudinal surface profile must be also be submitted for assessment".

Although not identified in Council's earlier letters, the applicant was afforded the opportunity to address these issues, but no information was provided. Subsequently, this matter is included in the recommended reasons for refusal.

Groundwater

The submitted geotechnical report indicates that groundwater is located 3m below ground. In accordance with the submitted geotechnical report, permanent groundwater is not expected within the depth of the basement and anticipated seepage may be below 3mL per year, which is below the threshold requiring an approval for a controlled activity pursuant to the *Water Management Act 2000*.

Sewer

The submitted geotechnical report indicates that the proposed development is in the presence of a Sydney Water Sewer line which crossed the western portion of the site. The report indicates that based on information from Sydney Water, the sewer comprises a 225mm vitrified clay pipe with an invert depth of approximately 1.98m. Considering the extent and depth of the proposed basement, this section of sewer would require re-alignment. Were the application recommended for approval, this could be addressed as a condition of consent.

4.1.4 Soil management

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

In this regard, conditions of consent requiring a Soil and Water Management Plan (prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils) would be required to be submitted to the Principal Certifying Authority prior to the commencement of works. However, this application is recommended for refusal.

4.1.9 Lot Size and Site Consolidation - Residential flat buildings

The site provides the minimum frontage width of 24m.

4.1.9 Lot Size and Site Consolidation – Avoidance of isolated sites

In accordance with RDCP 2011, a property will be isolated by a proposed development when that property cannot satisfy the minimum lot requirements to achieve its development potential under the planning controls. Oriental Street is generally characterised by existing residential flat developments, and the subject site represents the final two allotments before the B4 zoned land to the southeast. Therefore, the proposal does not render any potential development sites as being isolated.

4.2 Streetscape and Site Context – Fencing

Front fencing is provided to the ground floor units facing Oriental Street. Parts of the front fences sit approximately 1.8m above the footpath level; however, the fences are generally no greater than 1.2m above the ground floor level. This is not inconsistent with the requirements of the ADG, which encourages raised levels for ground floor private open space areas.

4.3.1 Open Space and Landscape Design - Residential Flat Building

It is noted that the site includes some larger trees, some of which are proposed to be retained. Several screen plantings along the side boundaries and rear boundary are proposed, as well as at the terraces for Units 1 and 2. Several larger trees are proposed in the front and rear setback areas, as per the submitted landscape plan prepared by Outliers Design Studio. This plan was reviewed by the Landscape Architect who has highlighted that the rooftop communal open space area does not provide adequate amenities for the residents, that inadequate landscaping is provided within the southern boundary setback, and that an increase in planting is required to the deep soil zone. This is consistent with commentary provided by the Design Review Panel, and the application is recommended for refusal in relation to these recommendations.

4.4.2 Solar Access to residential flat buildings

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

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

Furthermore, Part 4A of the ADG requires the following:

- *Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.*
- *A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter*

In its letter to the applicant, dated in August 2017, Council sought additional information to enable a thorough understanding of the solar access and overshadowing impacts.

Commentary on the amended plans that were submitted to address the issues outlined within the information request, is outlined in the following:

- *The shadow diagrams provide insufficient detail on neighbouring properties to determine the overall impact. The degree of overshadowing to neighbouring windows and balconies should be provided in a shadow elevation plan. Note that the Design Review Panel (DRP) had also recommend that each floor plan show details on the corresponding level of the neighbouring site, and that each elevation provide details on the neighbouring properties. This has not been shown on the plans.*

Comment: Levels of neighbouring properties have not been not shown to assist in determining solar access.

- *There is insufficient detail to determine the extent of overshadowing on the communal open space areas. An analysis of the provision of solar access to the ground floor and Level 3 communal open space should be provided. Shadows cast by neighbouring buildings, fences, and the proposal must be accounted for in this analysis.*

Comment: This information has not been provided.

- *The view from sun analysis that was requested by the Design Review Panel has not been provided.*

Comment: This information has not been provided. However, the submission of the remainder of the outstanding information would likely have been sufficient to address this point.

- *The Statement of Environmental Effects indicates that all units comply with the solar access requirements of the ADG. However, given the location and orientation of certain*

units (for example, Unit 11), it is not possible for all units to receive the two hours midwinter solar access that is required by the applicable control.

Comment: The submitted sun path shadow diagrams are not useful in determining compliance. They do not appear to account for levels above and they also indicate compliance where it is not possible.

The amenity of the units is generally acceptable; however, deletion of an additional unit would improve overall solar access and be consistent with the original recommendations.

- *To ensure the accuracy of the shadow diagrams, the location of true north is to be determined by applying the current angle between magnetic north and true north (magnetic declination). This has not been shown accurately on the survey, and it is likely that this angle was relied upon in the preparation of the shadow diagrams. Note that the magnetic declination in Sydney is currently approximately 12 degrees.*

Comment: This has not been provided.

- *In order to determine compliance, a detailed analysis of the required information outlined above is to be provided to Council.*

Comment: A detailed analysis of solar access has not been submitted.

The information that was provided with the amended package was similar to the information provided at lodgement. Examples of the amended shadow diagrams that were provided is shown below:

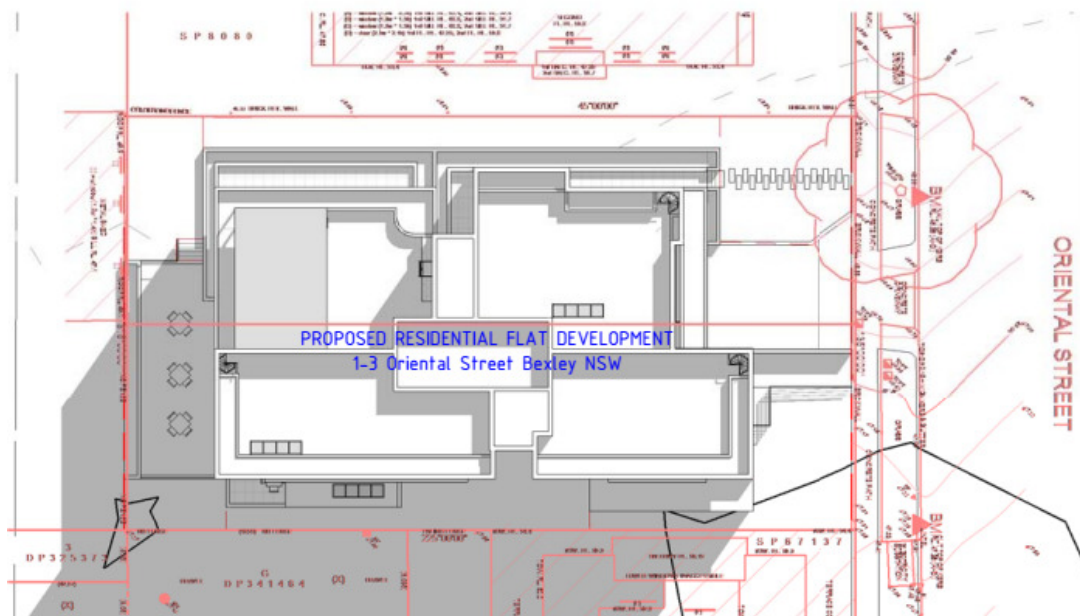


Figure 4 12pm midwinter shadow diagrams (Resolut, 2017)

With respect to overshadowing to surrounding properties, Figure 4 provides an example of the information that was provided to demonstrate the impacts to neighbouring properties. The shadow diagram within Figure 4 depicts the overshadowing to neighbouring properties. However, very limited information is provided on the neighbouring properties. No elevation shadow diagrams have been provided to demonstrate the impacts to balconies, etc, and insufficient information is provided to enable any proper understanding of the impacts to ground level overshadowing, as the entirety of the shadows are not shown.

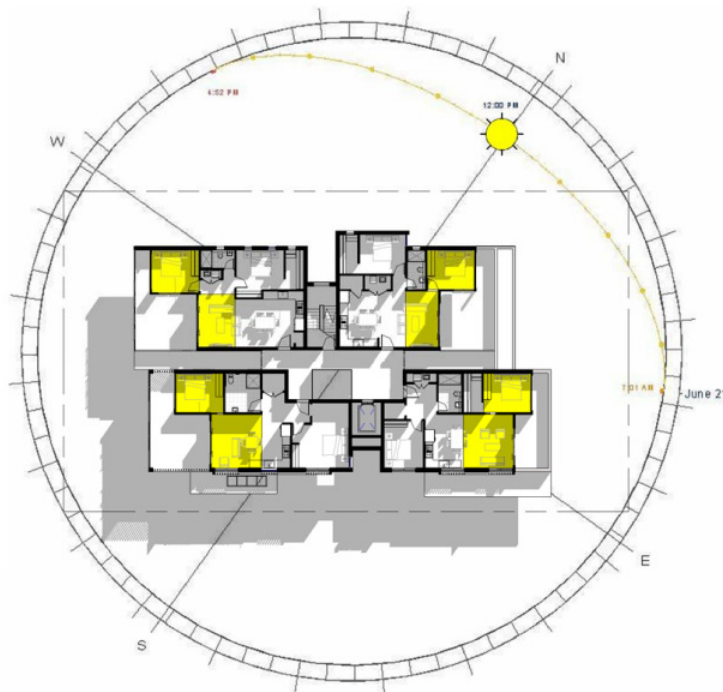


Figure 5 12pm Level 1 midwinter sun path shadow diagrams (Resolut, 2017)

With respect to solar access to the subject property, Figure 5 provides an example of the information that was provided to demonstrate the solar access received by dwellings within the development. The submitted Statement of Environmental Effects indicates that 100% of units receive compliant solar access. However, this is not possible, given:

- The units on the southern corner of the building would be expected to receive very little solar access in midwinter, as all openings face either southwest or southeast.
- Living rooms on the western corner of the building are also oriented towards the south and are unlikely to receive compliant solar access.
- It would be expected that the neighbouring building to the northwest would also cast shadows on the proposed dwellings.

Therefore, it is unlikely that the proposal will be compliant with the controls contained within Part 4A of the ADG. Note that it is unclear what is intended to be depicted by the yellow shading within Figure 3.

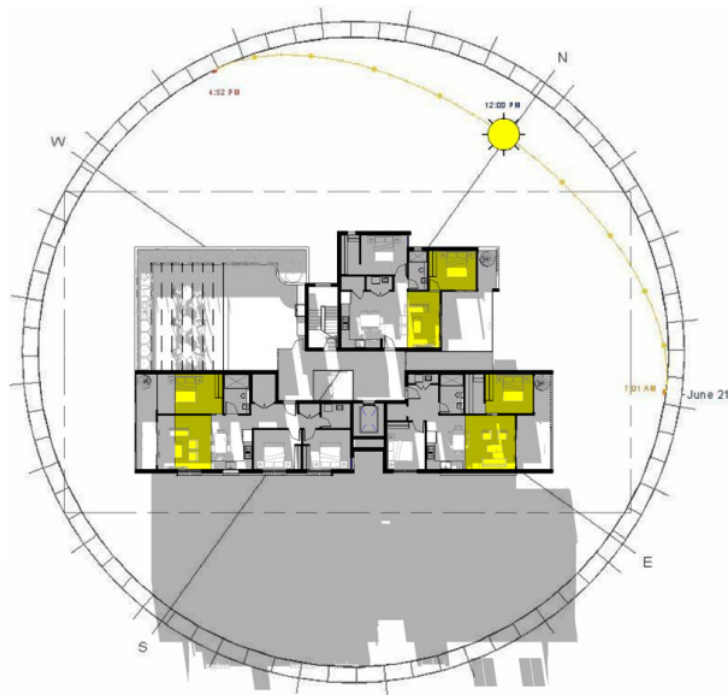


Figure 6 12pm Level 3 midwinter sun path shadow diagrams (Resolut, 2017)

Finally, with respect to overshadowing to the proposed communal open space areas, Figure 6 provides an example of the information that was provided to demonstrate compliance. The direction of the shadow diagrams would be expected to be cast in a southerly direction, identical to those shown within Figure 5, however, the shadow diagrams depict shadows being cast towards the southeast. It is not possible to determine the level of solar access that is received to the communal open space. Excellent solar access should be provided to the Level 3 communal open space, as the ground floor communal open space, provided within a narrow and non-compliant rear setback area, would receive very little midwinter solar access.

The application does not provide adequate information to demonstrate compliance with the various solar access and overshadowing controls that are applicable to the proposed development. Given the application seeks an in-fill residential flat development, with non-compliant setbacks and floor space ratio, it is imperative that solar access impacts are demonstrated in detail, in order to determine whether the proposal has responded appropriately to the constraints of the site. Note that similar points were also raised by the Design Review Panel.

4.4.5 Visual Privacy – roof top area

Part 4.4.5 of the RDCP 2011, outlines that the use of the roof top area for recreational purposes is permissible as long as the usable area of the roof is setback at least 1500mm from the edge of the building, and that other devices such as privacy screens and planter boxes to be incorporated to protect the visual and acoustic amenity of neighbouring properties. A communal open space area is provided on Level 3, above Unit 9, but sitting below the overall rooftop of

the building. In addition, three separate rooftop private open spaces are provided on the roof of the building.

The trafficable areas of these spaces are setback approximately 1.25m-1.35m from the edge of the building, with planter boxes provided within that setback area. Were the application recommended for approval, a condition of consent would be recommended to increase that dimension to 1500mm. However, given the privacy issues, these rooftop elements are not supported.

4.4.5 Visual and Acoustic Privacy and 4.4.6 Noise Impact

Bedroom 1 within Unit 1 is located with windows adjoining the common walkway towards the ground floor communal open space. The bedroom is not supported in this location, and could be designed to be away from this noise sources. In addition, as outlined elsewhere, further planting is required within the southern boundary setback to minimise the transfer of noise to adjoining properties.

An acoustic assessment, prepared by Acoustic Noise & Vibration Solutions P/L certifies that the internal noise attenuation levels for the proposed development will otherwise satisfy the requirements of AS2021-2015 and the requirements of Council.

4.5.1 Housing Diversity and Choice

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

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

The proposal provides for two (2) x 1-bedroom units (13.3%), twelve (12) x 2-bedroom units (80%), and one (1) x 3-bedroom unit (6.7%). As a consequence, only the 1-bedroom units are consistent with the proportional dwelling mix, and there is an over-allocation of 2-bedroom units, and an under-allocation of 3-bedroom units.

Part 4.5.1 of the DCP further outlines that the dwelling mix may be refined with regard to:

- Location of development to public transport, public facilities, employment areas, schools, and retail areas;
- Population trends; and
- Whether development is for affordable housing/ community housing or non-for-private organisation.

The submitted Statement of Environmental Effects has provided the following justification for this departure from the control:

“It is considered that the proposed unit mix is satisfactory for the subject site given its proximity to the Bexley town centre and bus services to surrounding suburbs. This proximity increases the demand for 2 bedroom units since it is likely that the proposal will comprise smaller households close to public transport. Furthermore, the trend towards smaller households requires that the majority of the proposal should comprise 2 bedroom units.

The provision of a spread of units comprising one, two and three bedroom units in a development of 15 units is considered to be adequate and therefore housing choice is considered to be appropriately addressed by the proposal. it is requested that the Council support this variation”.

The justification above fails to identify the particular reasons why the proposed dwelling mix provides an appropriate response to the specific location of the site; that is, there are no reasons given as to why the specific location of the site increases the demand for 2-bedroom units.

Furthermore, as R4 zoned land is generally provided in areas with good access to public transport and other amenities, it is not considered that there are any particular circumstances that apply to this site that would warrant variation to this development control. Variation to this control would be more likely to be supported in areas where it can be demonstrated that a proximity to particular services warrants variation to the control.

Given the other issues raised elsewhere within this report in relation to setbacks and floor space ratio, it is considered that there are design options available that would enable compliance with dwelling mix controls and setback controls. For instance, the rear 2-bedroom dwellings at any of the levels above ground level are able to be combined into a single 3-bedroom unit, which could enable for a reduction in the size of the building, compliance with setbacks, and improvements to the unit mix.

It should be noted that Council's Design Review Panel had also sought changes to the proposed dwelling mix.

4.5.2 Social Equity - Equitable Access

The proposed development provides ramped access where required from public areas to the development, three (3) accessible parking spaces are provided in the basement close to the lift location. The communal open space area on Level 3 is accessible via the lift.

An Access Compliance Assessment Report prepared by Sydney Access Consultants accompanied the development application. The Access report identifies that the proposed development is capable of satisfying the accessibility requirements of the DDA and BCA. In this regard, the proposed development can be considered to be suitable from an accessibility perspective.

4.6 Car Parking, Access and Movement

The proposed development provides for a complying 16 parking spaces for residents, three (3) of which are accessible, with three (3) car parking spaces for visitors, one (1) of which also doubles as a car wash bay, within the basement car park level. Two (2) bicycle spaces are also provided within the basement.

The location of the vehicle access point off Oriental Street is considered to be rational and suitable, and it is likely that the occupants of the subject site will no longer require the use of the right of carriageway provided via Kingsland Road South.

One of the visitor spaces may be difficult to access due to its location next to the ramp and a storage cage, and is not supported by Council's engineer. In addition, the shared car wash space is not adequately dimensioned and requires a minimum width of 3.5m. Given the issues with the layout, these issues are captured within the reasons for refusal, particularly given there are limited opportunities to increase the site coverage of the basement. The applicant has not provided a response to these issues

4.7 Air Conditioning and Communication Structures

Part 4.7 of the RDCP 2011 requires that for each building comprising two (2) or more dwellings that a master TV or satellite dish to be provided. The submitted plans and Statement of Environmental Effects does not include any reference to master antenna or satellite dish. This matter would be able to be dealt with via conditions. However, the application is recommended for refusal.

4.7 Waste Storage and Recycling Facilities

The proposed waste storage area within the basement provides space for 10 bins within the basement, with temporary space available for larger waste. This is appropriate for a development of this size.

5.2 RFB – Site Coverage

Part 5.2 of RDCP 2011 requires a maximum building footprint of 35%. The building footprint for this development includes not only the internal floor areas of the building, but also the raised terraces within the rear yard, which sit above the ground level. Additionally, the building footprint of the ground floor and the upper levels are not identical, and a comparison of the basement, the ground floor, and the upper levels is required in order to accurately determine the site coverage.

5.2 RFB – Balcony Balustrade

Part 5.2 of RDCP 2011 outlines that solid balustrading should be included in the façade design to provide screening of clothes line and other paraphernalia. The proposal will include some glass balustrades. Conditions would be able to be imposed to require opaque balustrades. However, the application is recommended for refusal.

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

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

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

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

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

As previously mentioned in this report, the subject site is of a suitable overall area and dimensions to accommodate a reasonable increase in density. The design of the proposal however is not suitable for the subject site for the reasons previously detailed within this report.

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. It is reiterated that the proposal exceeds FSR requirements and as a result, creates privacy and overshadowing impacts.

As such, the proposal is recommended for refusal and the site is not suitable for the proposed development in its current form.

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

The original proposal development has been notified in accordance with the provisions of the RDCP 2011. In response, 1 submission was received, which objected to the proposal. Following the receipt of amended plans in November 2017, despite an increase in the overall size of the building, the application was not renotified, given that the application was to be recommended for refusal. **Any development consent granted without an additional notification period would most likely be declared invalid if it were challenged in Class 4 Land and Environment Court proceedings.**

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

Issue 1: Height, noting that other buildings within the area are a maximum of three storeys.

Comment: The plans have been amended to comply with the required maximum height limit. The adjoining building to the southeast is a total of four storeys in height. However, it is agreed that the building is not appropriate in its context, and the proposal is recommended for refusal.

Issue 2: Traffic and parking

Comment: The proposal does not provide adequately dimensioned parking within the basement, and this is included as a reason for refusal. The submitted traffic report indicates that surrounding streets can accommodate the additional traffic movements.

Issue 3: Privacy impacts, particularly the balcony to 12/5-7 Oriental Street.

Comment: It is agreed that inadequate information has been submitted to demonstrate that the proposed building separation is reasonable in this instance. Refer to discussion in relation to Part 3F of the ADG.

Issue 4: Extra bins on street, and the associated impacts on parking.

Comment: A bin storage area is located within the basement, and conditions of consent would require that the waste bins be stored within the basement after they are emptied.

Issue 5: Proposal inappropriate in the local context, noting the colour of the brickwork, and that there are few other developable sites in the street.

Comment: It is agreed that the proposal should respond to design cues within Oriental Street, particularly given there are few other developable sites within the street. Concerns remain in relation to the colour selection, and in relation to the bulk of the development at the rear, and these issues are reflected within the reasons for refusal.

Issue 6: Glare from white paint and windows

Comment: The previously proposed white render no longer forms part of the proposal; however, issues remain with the proposed finishes. The proposed windows would provide amenity to the apartments, and the reflectivity would be required to comply with relevant Australian Standards.

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

For the reasons outlined previously within this report, the proposed development is inconsistent with the requirements and objectives of relevant planning policies and as such is deemed to be unsatisfactory and not in the public interest in its current form.

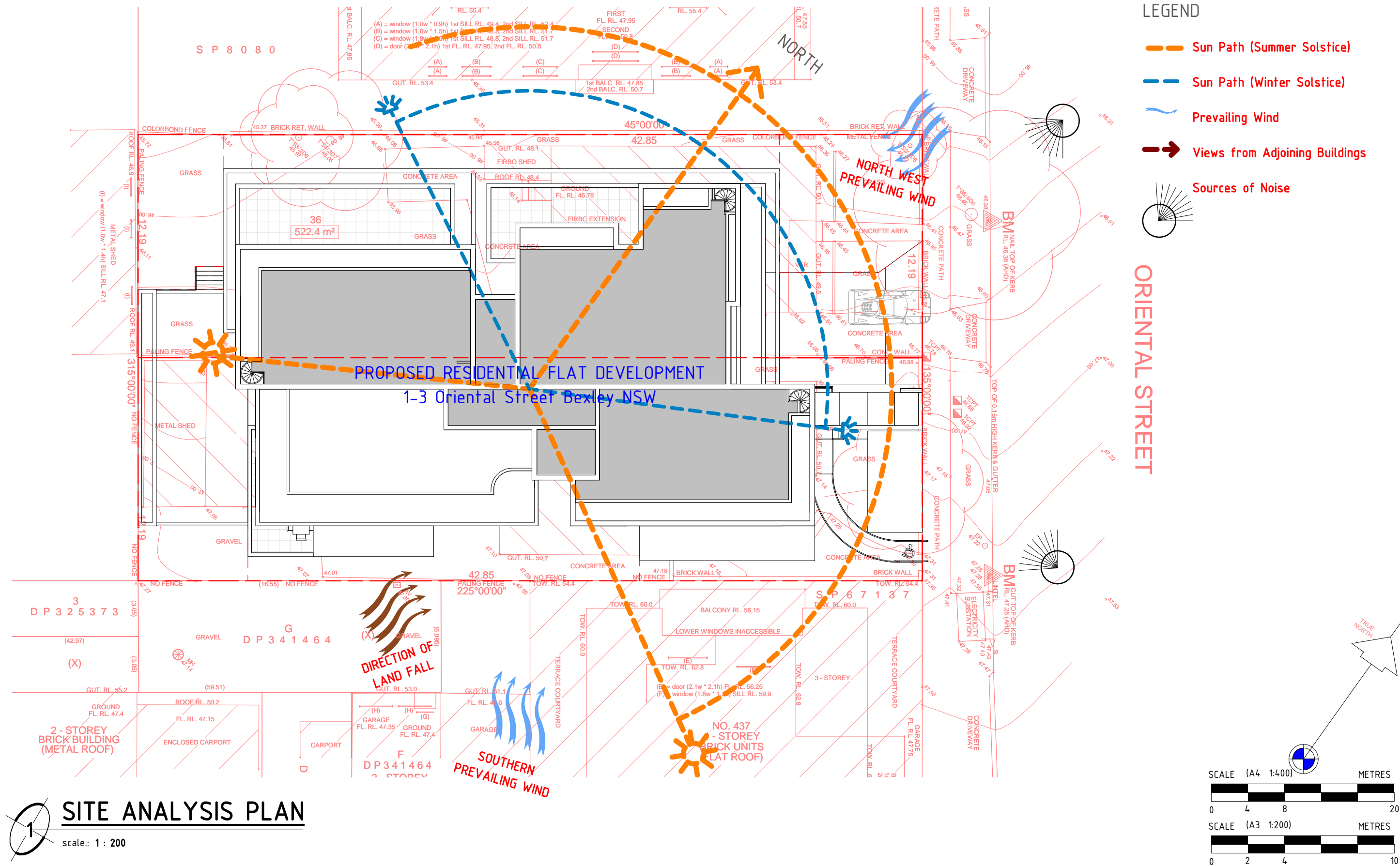
Section 94 Contributions

S94 contributions would apply to the development, as a result of the proposed increase in density, should the proposal have been supported.

Conclusion

Development Application No. DA-2017/107 for the construction of a four (4) storey residential flat building comprising 15 residential units, roof terrace, basement car parking and demolition of existing buildings at 1-3 Oriental Street, Bexley has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and is recommended for refusal for the reasons outlined within the recommendation.

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Resolut Building Solutions

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in association with



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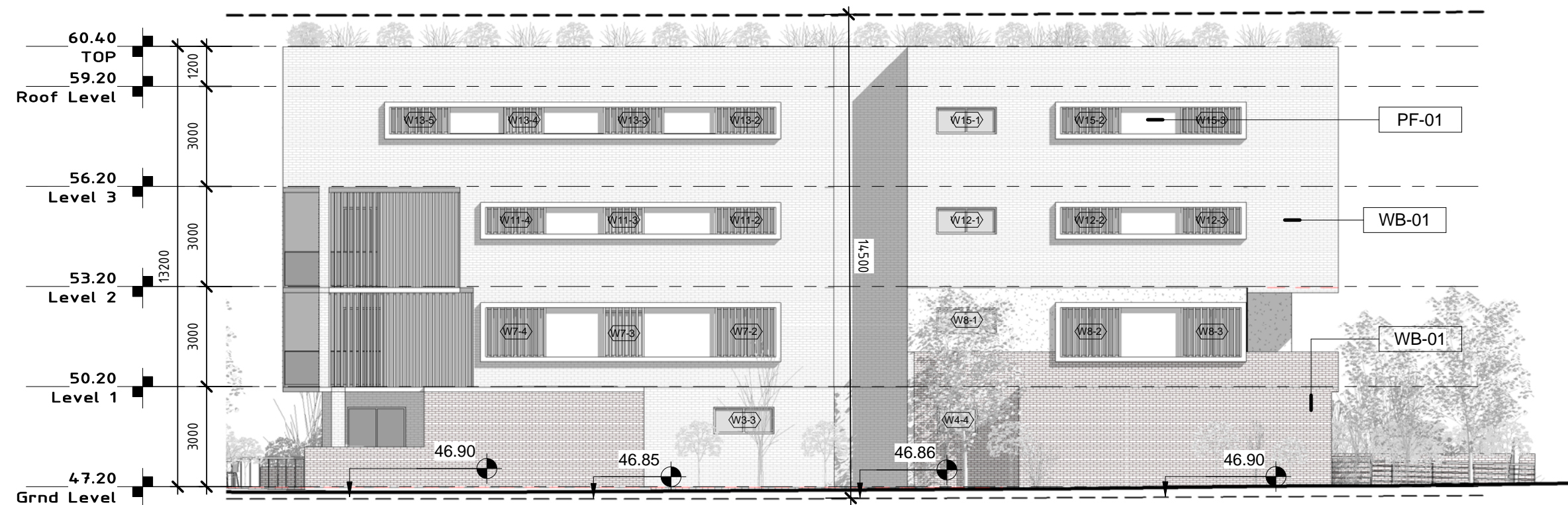
NO	DESCRIPTION	DATE
1	ISSUED FOR DA	27.09.2016

PROPOSED RESIDENTIAL FLAT DEVELOPMENT

1-3 Oriental Street Bexley NSW

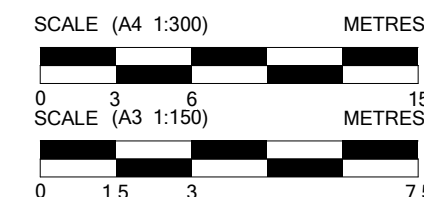
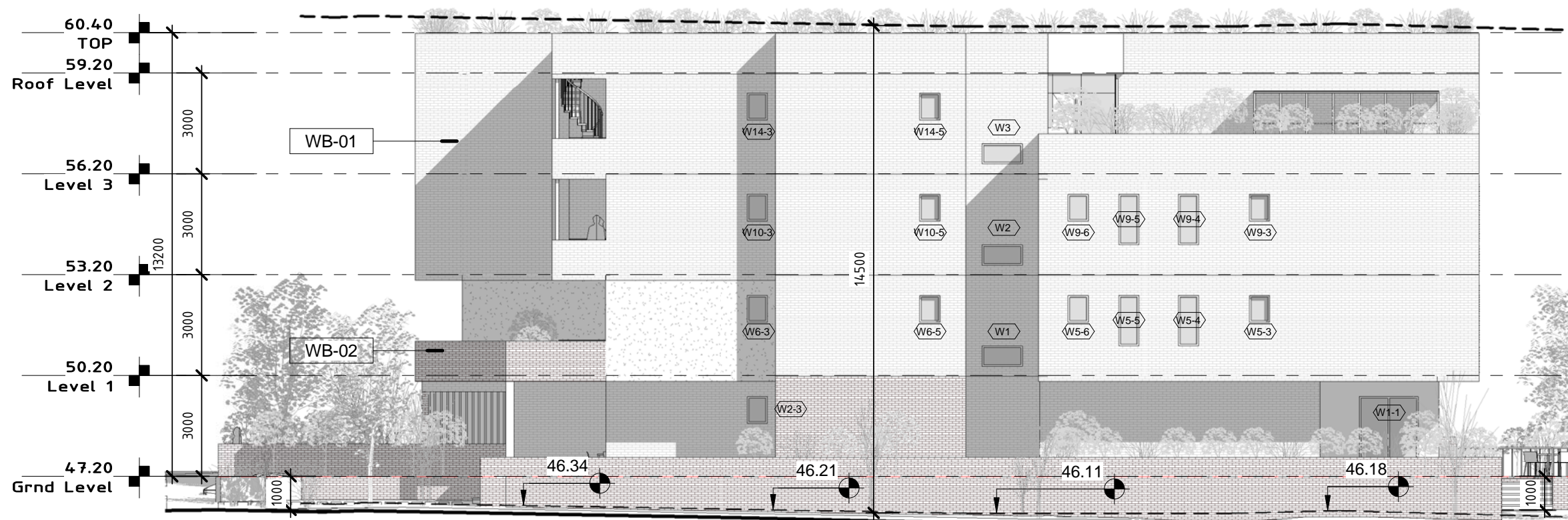
SITE ANALYSIS PLAN

Project number	R201512109	DA003
Date	16.12.2015	
Drawn by	RS/KB/JD/EN	
Checked by	RS / CJH	
Scale		1 : 200



KEYNOTE LEGEND	
KEY VALUE	KEYNOTE TEXT
PF-01	RENDERED & PAINTED SURFACES: "LEXICON" DULUX-PCWF6 OR APO GREY OR SIMILAR
WB-01	AB-BRICKS-BOWRAL CHILLINGHAM WHITE OR SIMILAR
WB-02	AB-BRICKS-URBAN ONE PEPPER OR SIMILAR

SOUTH ELEVATION (LEFT SIDE)
scale: 1 : 150



NORTH ELEVATION (RIGHT SIDE)
scale: 1 : 150

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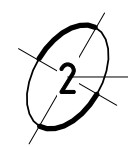
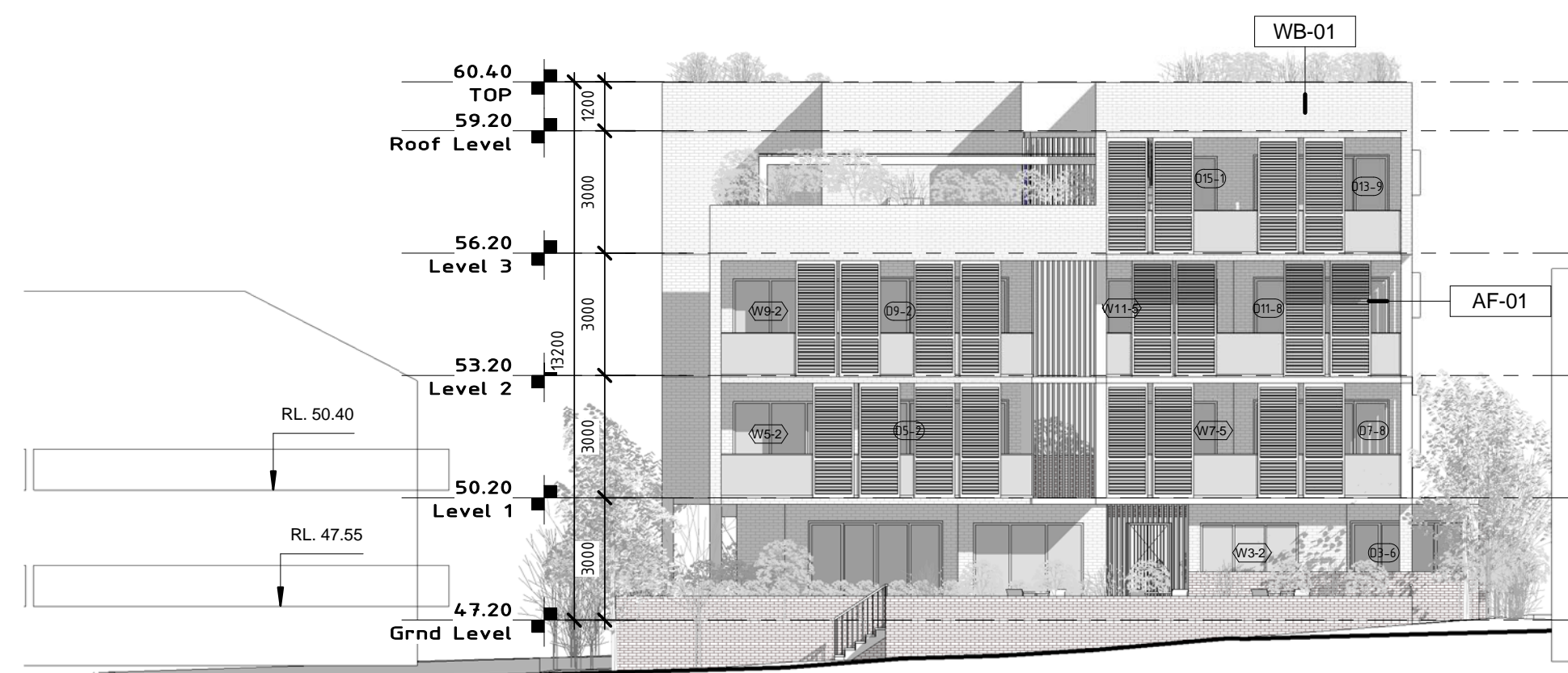
NO	DESCRIPTION	DATE
1	ISSUED FOR DA	27.09.2016
2	ISSUED FOR DA 2	10.02.2017
3	ISSUED FOR DA 3	18.04.2017
4	ISSUED FOR DA 4	26.09.2017

PROPOSED RESIDENTIAL FLAT
DEVELOPMENT

1-3 Oriental Street Bexley NSW

NORTH & SOUTH ELEVATIONS

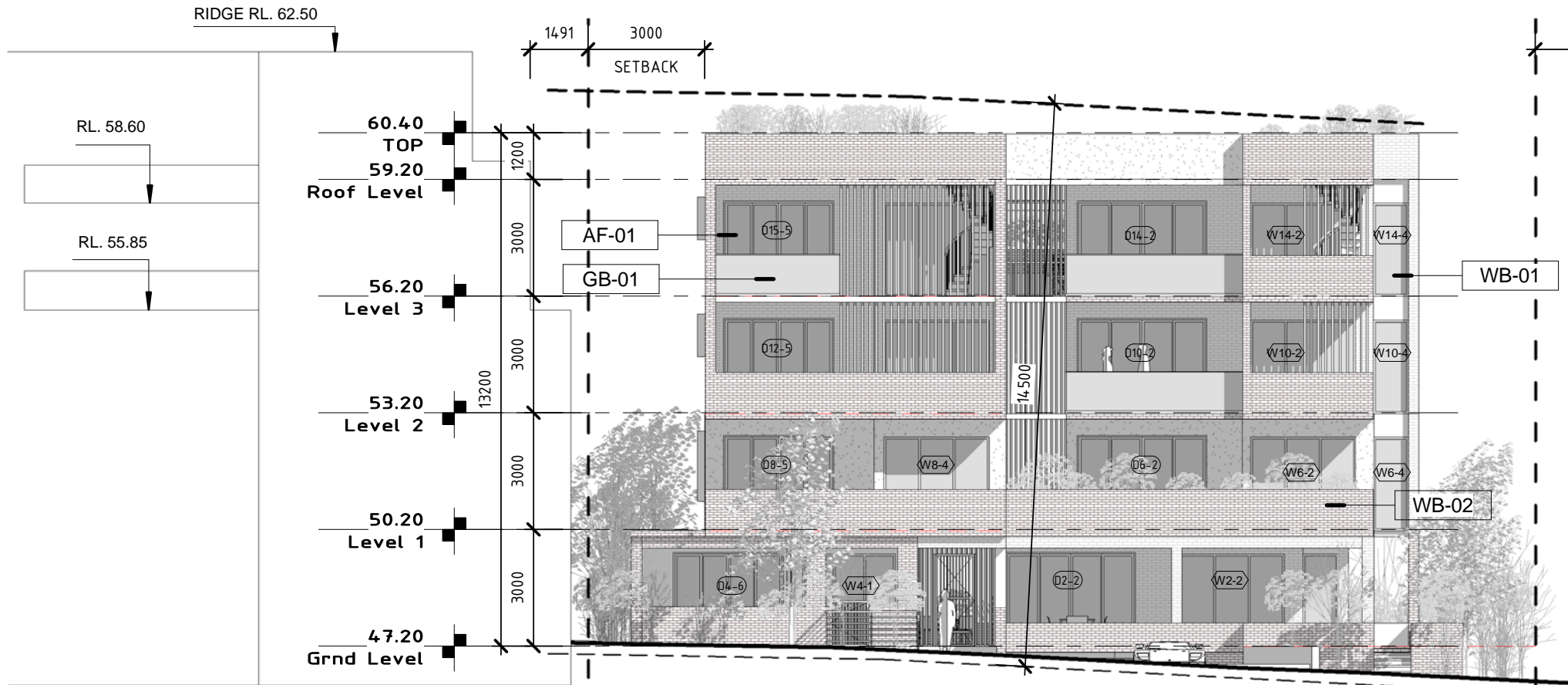
Project number	R201512109	DA202	
Date	16.12.2015		
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Checked by	RS / CJH		
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WEST ELEVATION (REAR)

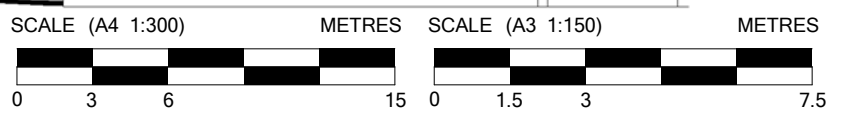
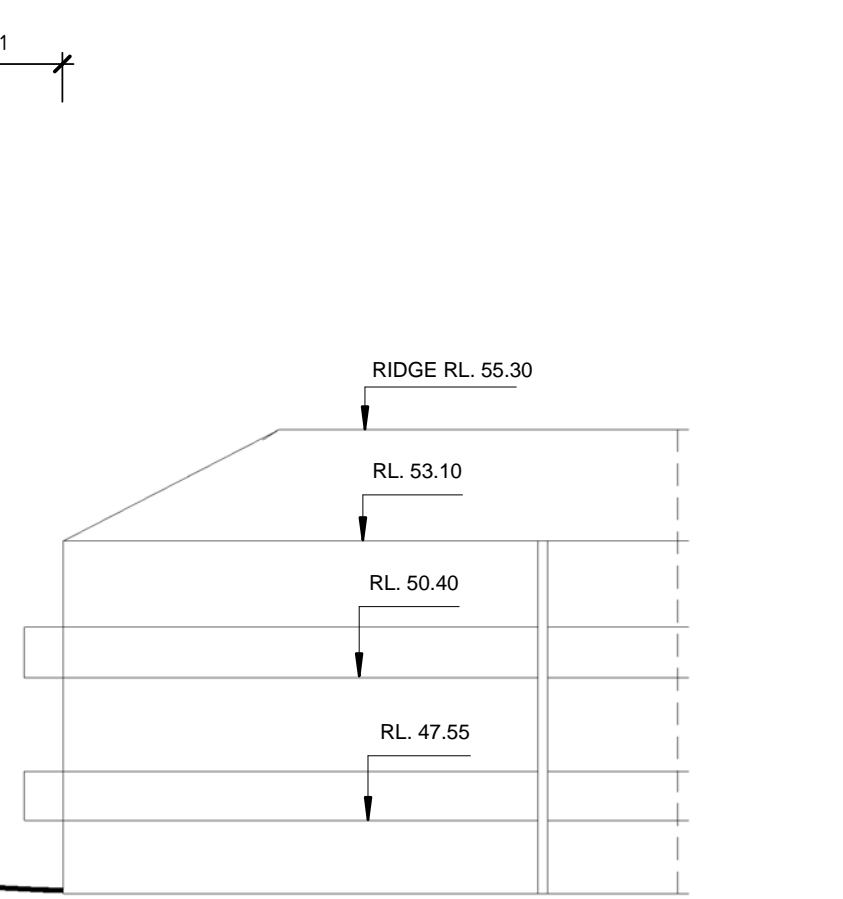
scale: 1 : 150

KEYNOTE LEGEND	
KEY VALUE	KEYNOTE TEXT
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GB-01	FRAMELESS GLASS BALUSTRADE
WB-01	AB-BRICKS-BOWRAL CHILLINGHAM WHITE OR SIMILAR
WB-02	AB-BRICKS-URBAN ONE PEPPER OR SIMILAR



EAST ELEVATION (FRONT)

scale: 1 : 150



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NO	DESCRIPTION	DATE
1	ISSUED FOR DA	27.09.2016
2	ISSUED FOR DA 2	10.02.2017
3	ISSUED FOR DA 3	18.04.2017
4	ISSUED FOR DA 4	26.09.2017

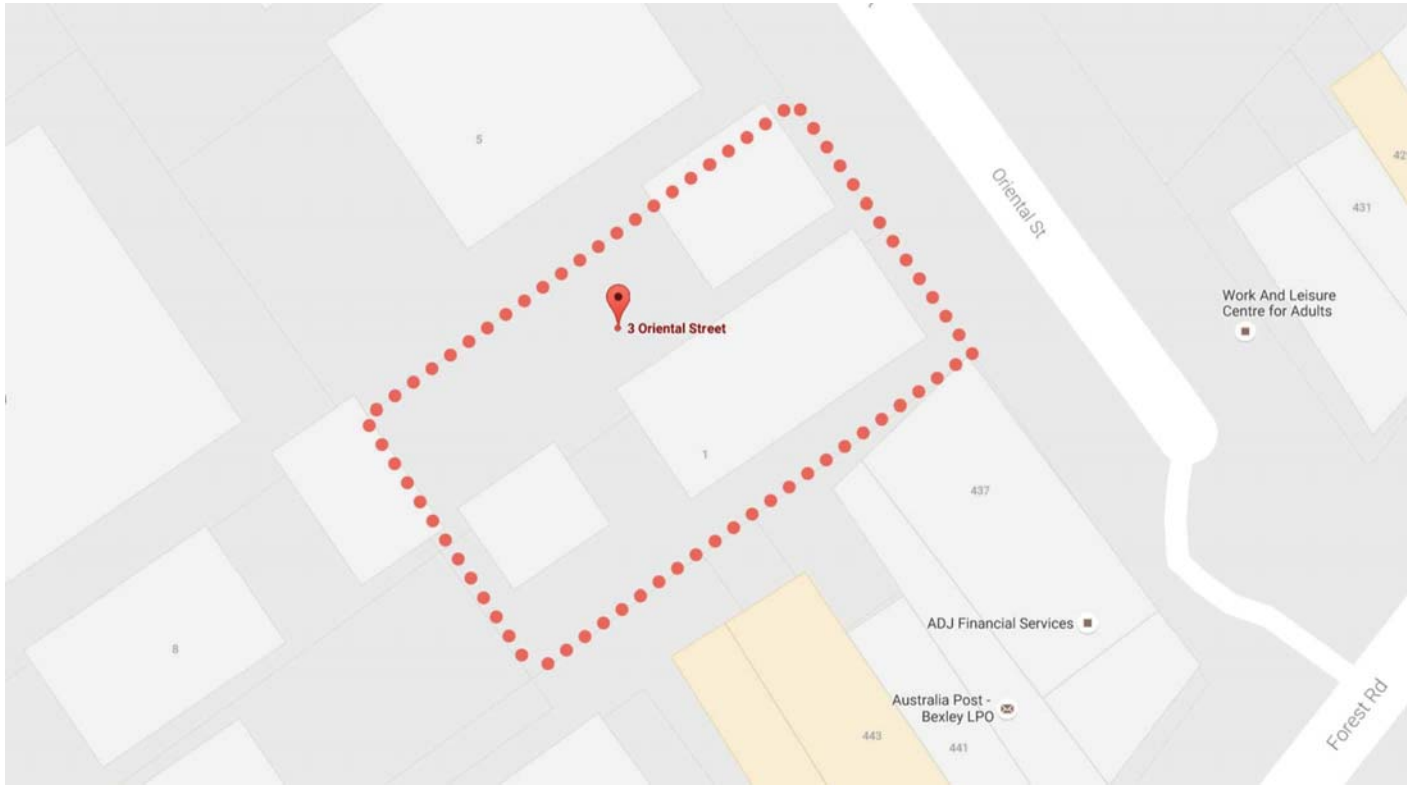
PROPOSED RESIDENTIAL FLAT DEVELOPMENT

1-3 Oriental Street Bexley NSW

EAST & WEST ELEVATIONS

Project number	R201512109	DA201
Date	16.12.2015	
Drawn by	RS/KB/JD/EN	
Checked by	RS / CJH	
Scale		1 : 150

SITE LOCATION
NTS



D R A W I N G S C H E D U L E

LA-000	COVER PAGE
LA-001	CONCEPT LANDSCAPE PLAN – GROUND FLOOR
LA-002	CONCEPT LANDSCAPE PLAN – BALCONY AND ROOFTOP
LA-003	LANDSCAPE DETAILS AND SPECIFICATIONS

N O T E S

- NOT FOR CONSTRUCTION
- FOR ALL DRAINAGE WORKS, INCLUDING OSD, PIT AND DRAINAGE LINE LOCATION, TANK SIZING AND SPECIFICATION, REFER TO HYDRAULICS ENGINEER'S PLANS AND DETAILS..
- ALL LANDSCAPE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH THE ARCHITECT'S AND ADDITIONAL CONSULTANT'S DRAWINGS, SPECIFICATIONS AND REPORTS.
- ALL LANDSCAPED AREA ARE TO HAVE A MINIMUM 1:100 FALL AWAY FROM DWELLING FOR POSSIBLE OVERLAND WATER DRAINAGE
- CONTRACTORS TO CONFIRM ALL 'TOW' AND GROUND LEVEL ARE CORRECT, ADEQUATE AND COMPLY WITH STANDARDS PRIOR TO ANY EXCAVATION WORKS TO NATURAL GROUND LEVEL.
- ALL PUBLIC UTILITY SERVICES ARE TO BE LOCATED ON SITE BY THE CONTRACTOR PRIOR TO THE COMMENCEMENT OF WORKS. THE LOCATION, PRESENCE AND EXTENT OF SERVICES SHOWN ARE NOT GUARANTEED COMPLETE OR CORRECT.
- NO TREES PROTECTED UNDER THE LOCAL COUNCIL'S TREE PRESERVATION ORDER ARE TO BE REMOVED UNLESS APPROVED BY DEVELOPMENT CONSENT OR PERMIT OBTAINED FROM COUNCIL.
- ALL PAVING IS INDICATIVE, TO BE TO FUTURE SPECIFICATION, AND SET OUT ON SITE.
- ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH THE LOCAL COUNCIL'S APPROVAL, STANDARDS AND CODES.

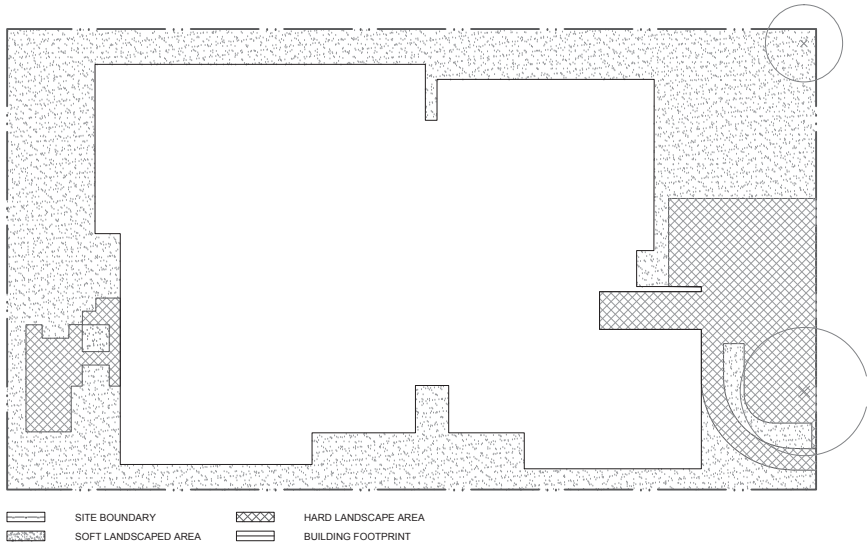
LEGEND

-----	1800MM HIGH FENCE		MASONRY RETAINING WALLS
---	SITE BOUNDARY		TURF SURFACE
---	EXISTING CONTOURS		PAVING SURFACE
---	PROPOSED CONTOURS		CONCRETE SURFACE
+ 45.59	EXISTING LEVELS		STENCILED CONCRETE SURFACE
TOW 45.59 +	TOP OF WALL LEVELS		MASONRY OR TIMBER RETAINING WALLS WHERE REQUIRE TO ENG DETAILS
RL 46.00+	PROPOSED LEVELS		
x	EXISTING TREES TO BE REMOVED		
+	EXISTING TREES TO BE RETAINED		

PLANT SCHEDULE

Trees/Palms	SYMBOL	BOTANICAL NAME	COMMON NAME	QUANTITY	POT SIZE	MATURE SIZE	STAKING
	JM	Jacaranda mimosifolia	Jacaranda	3	100Ltr	8m	Yes
	LI	Lagerstroemia indica	Crape Myrtle	5	100Ltr	6m	Yes
	MC	Michelia champaca	Golden champaca	2	100Ltr	7m	Yes
	MLG	Magnolia grandiflora 'LI Gem'	Dwarf Magnolia	4	100Ltr	6m	Yes
	PB	Pyrus Calleryana 'Bradford'	Bradford Pear	1	100Ltr	8m	Yes
	TA	Tibouchina alstonville	Tibouchina	2	100Ltr	5m	Yes
	TL	Tristanopsis laurina	Kanooka Gum	3	100Ltr	15m	Yes
Shrubs & Hedges							
	Aat	Agave attenuata	Lion's Tail	10	200 mm	1m	
	An	Alphina nutans	Dwarf Cardamon	8	300 mm	1m	
	Ap	Agave parryi	Parry's Agave	18	200 mm	0.6m	
	Bm	Buxus microphylla 'Balis'	Buxus Balls	14	300mm	0.7m	
	Cal	Correa alba	White Correa	4	200 mm	1.2m	
	Mp	Murraya paniculata	Orange Jessamine	18	200 mm	3m	
	Pss	Pittosporum 'Silver Sheen'	Silver Sheen	12	300mm	3m	
	Rai	Raphiolepis indica 'Snow Maiden'	Indian Hawthorn	15	300mm	1.2m	
	St	Sansevieria trifasciata	Mother in Law's Tongue	10	200mm	0.7m	
	Vo	Viburnum odoratissimum	Sweet Viburnum	22	300mm	2m	
	Vs	Viburnum Suspensum	Viburnum Suspensum	132	300mm	3.5m	
	Wbg	Westringia fruticosa 'Mund'	Coastal Rosemary	23	200 mm	0.5m	
	Ye	Yucca filamentosa	Filamentosa Yucca	5	300mm	2m x 1.5m	
Grasses & Ground Covers							
	Ob	Olivia miniata 'Belgian'	Olivia	6	200mm	0.6m	
	Om	Olivia miniata	Olivia	16	200mm	0.6m	
	Dc	Dianella caerulea	Blue Flax Lily	178	200 mm	0.6m	
	Df	Dichondra argentea 'Silver Falls'	Dichondra	32	150 mm	0.3m	
	Hh	Hedera helix	Common Ivy	15	150mm	0.3m	
	Lmu	Liriope muscari 'Variegata'	Liriope	81	200mm	0.4m	
	Lt	Lomandra 'Tanika'	Mitt Rush	19	200mm	0.7m	
	Pa	Pachysandra terminalis	Japanese spurge	41	150 mm	0.2m	
	Sma	Senecio mandraliscae	Blue Chalk Sticks	16	150 mm	0.2m	
	Tja	Trachelospermum jasminoides	Star Jasmine	24	150 mm	0.4m	
	Vh	Viola hederacea	Native Violet	56	150mm	0.2m	
Turf							
		Stenotaphrum secundatum 'Sir Walter'	Sir Walter Buffalo	150 ^{m2}	Rolls	NA	

LANDSCAPE RATIO & TREE REMOVAL PLAN



Total Site Coverage Area	1044.8 ^{m2}	100.00%
Total building footprint including terrace, stairs, and porch area	589.9 ^{m2}	56.46%
Total hard landscape area including driveways, concrete and paved areas	112.51 ^{m2}	10.77%
Total soft landscape area including lawn, planting and pebble area	342.39 ^{m2}	32.77%
Minimum Landscape Requirement to be achieved 25%		

AMENDMENTS

Issue	Date	Description
A	12.08.16	CONCEPT LANDSCAPE PLAN FOR DEVELOPMENT APPLICATION



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PROPOSED RESIDENTIAL FLAT DEVELOPMENT
1-3 ORIENTAL STREET, BEXLEY NSW 2207
LOT36 AND 37, DP 5216

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Drawing Title

COVER PAGE



Drawn by AB
Verified by AB
Authorised by

Scale
Proj. No.
162106

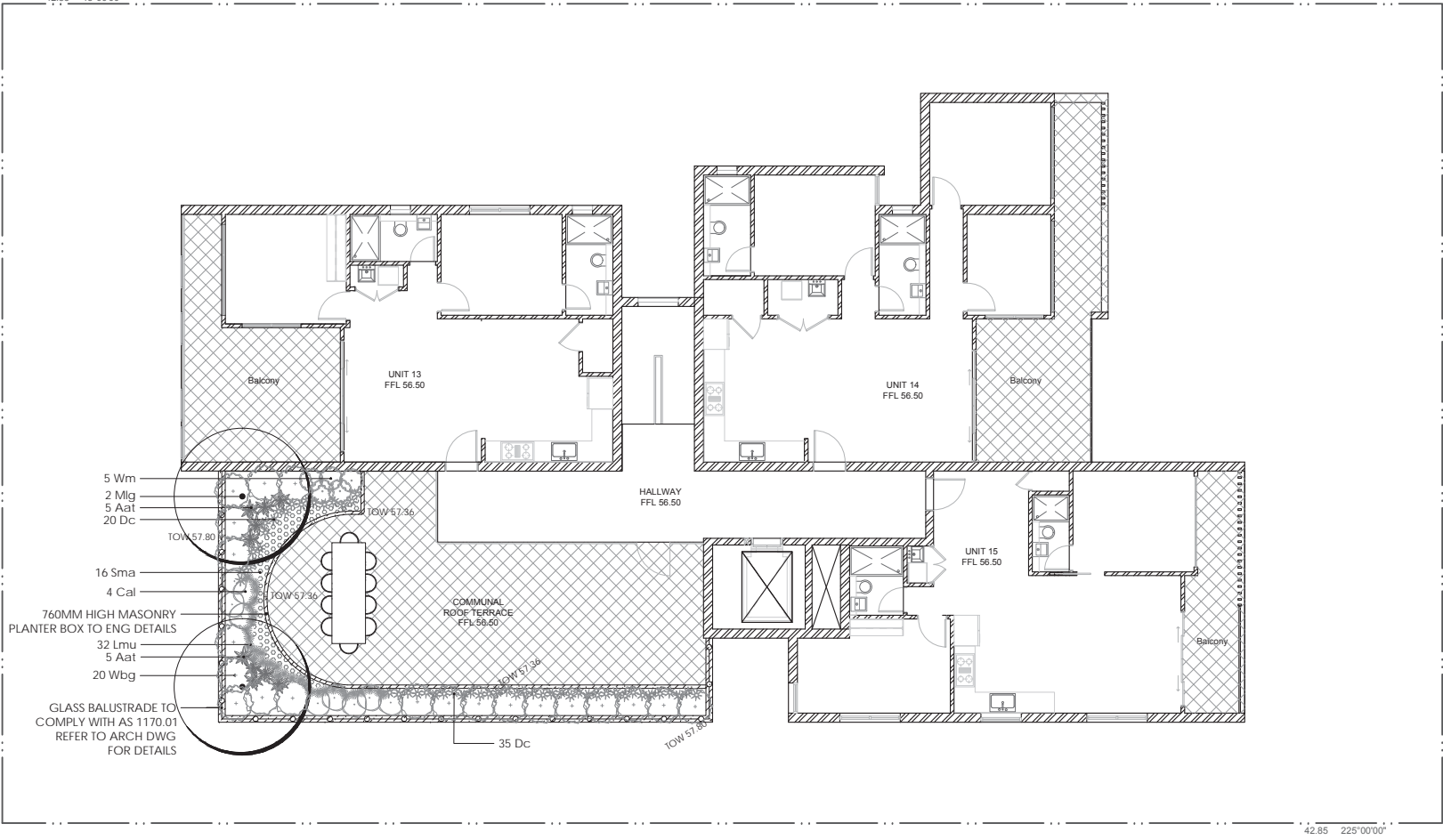
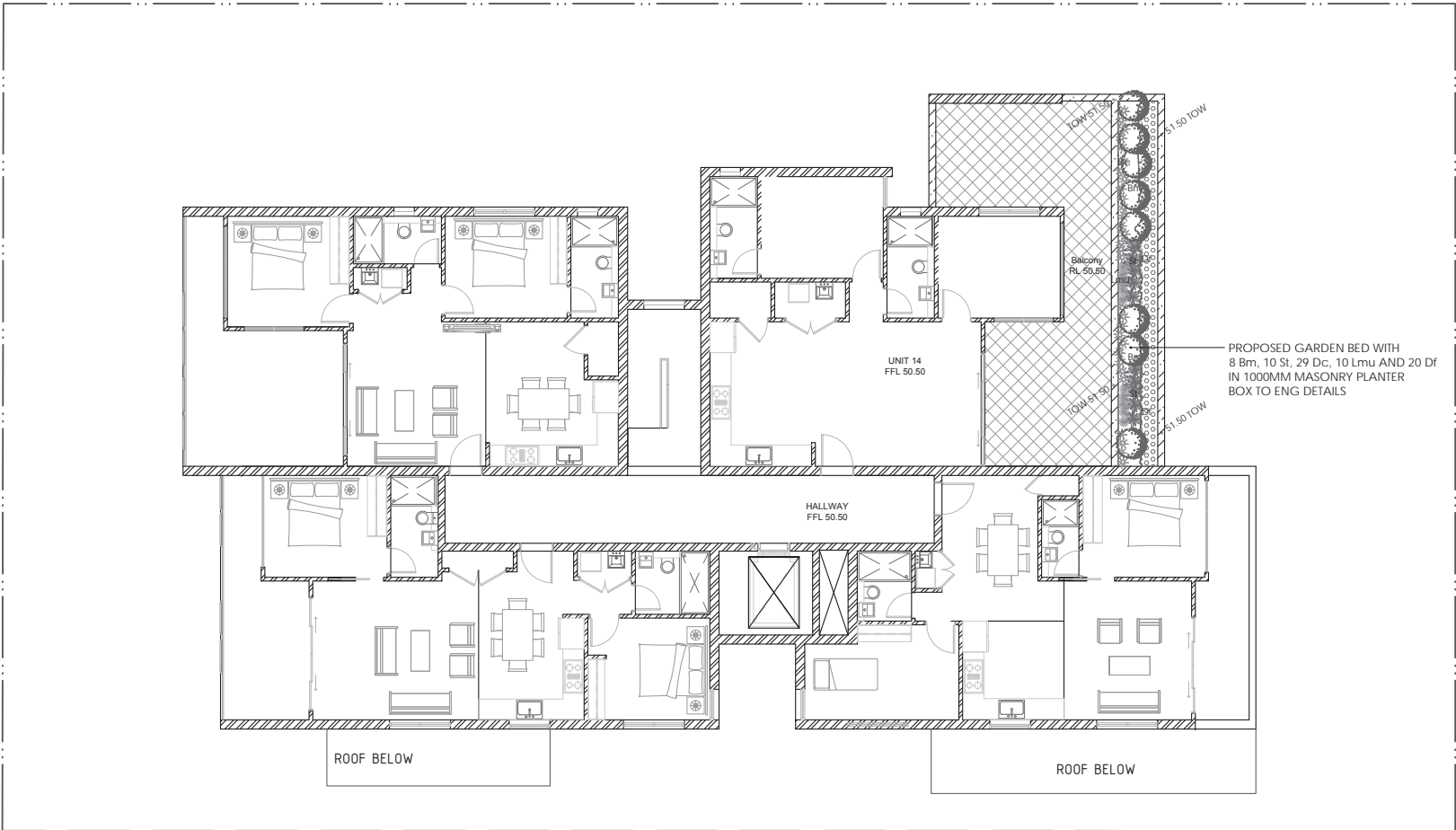
Date
12.08.16
Drg. No.
LA-000

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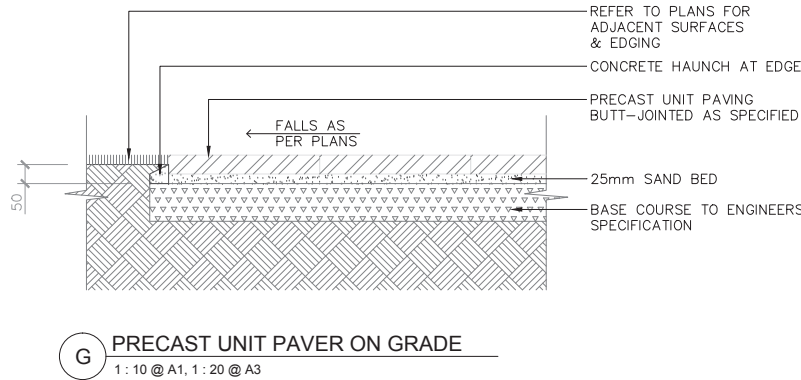
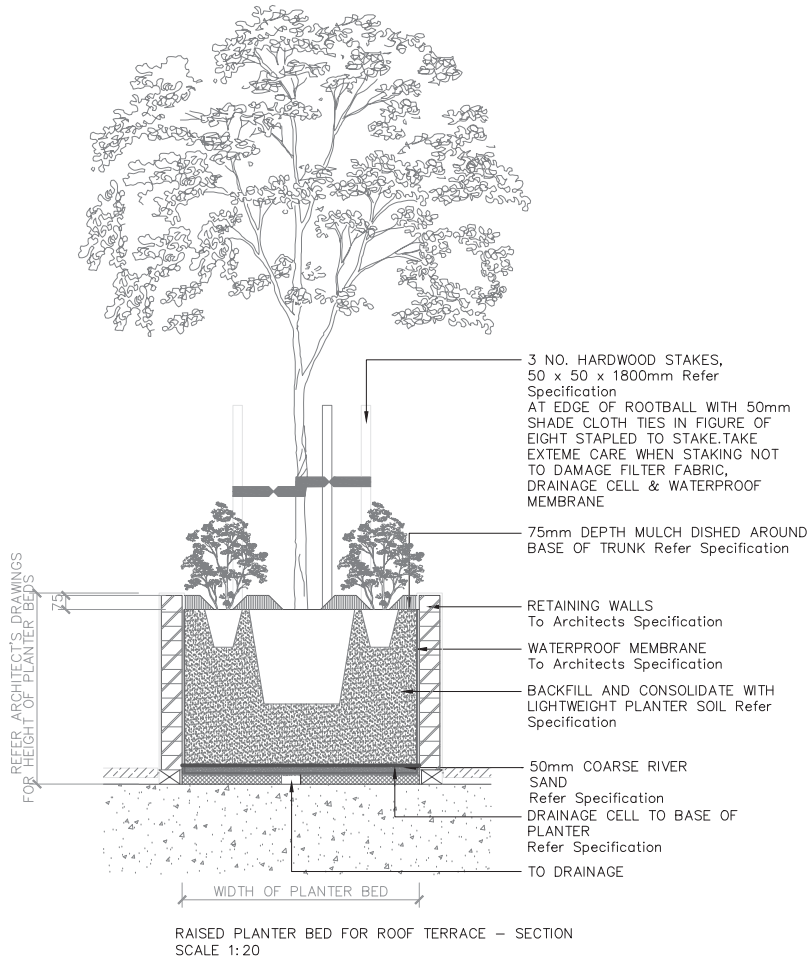
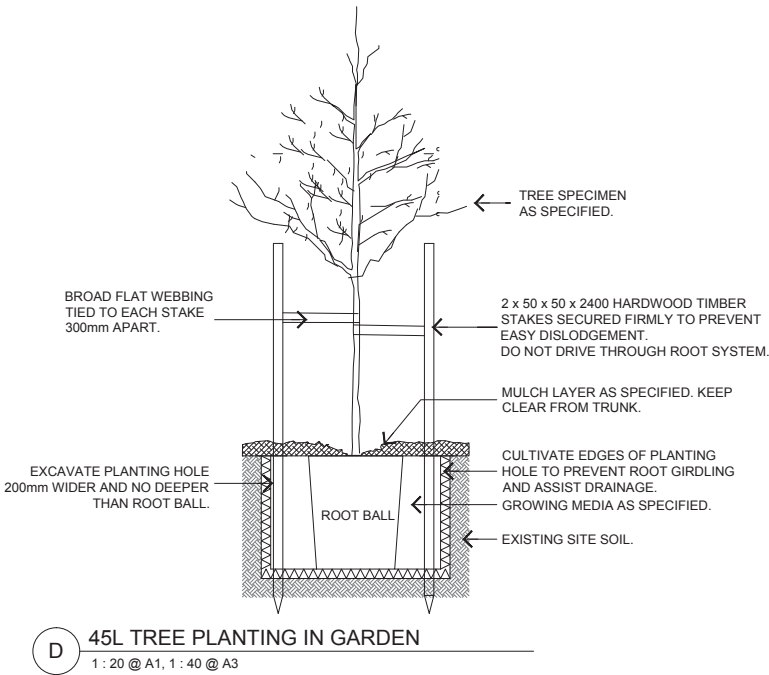
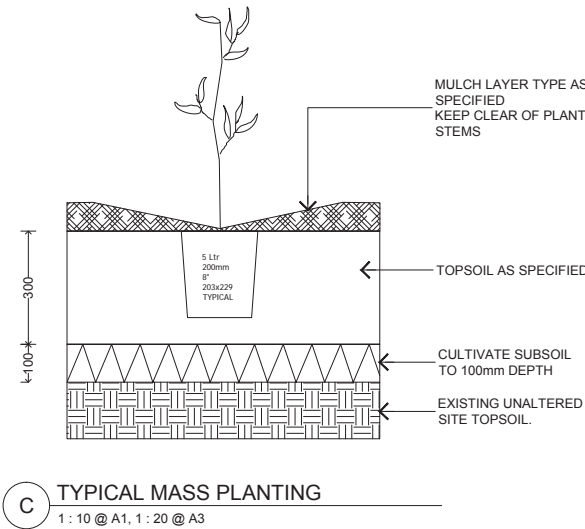
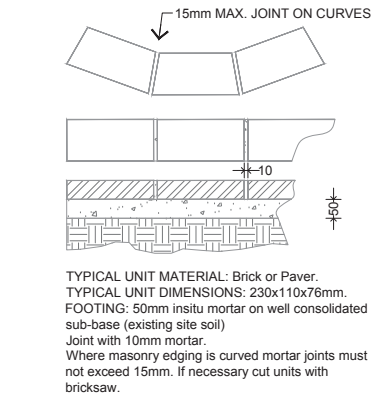
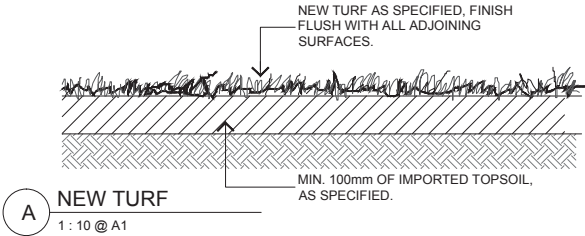
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LANDSCAPE DETAILS AND SPECIFICATIONS

SCALE - VARIES

GENERAL NOTES:
1- EACH DRAWING IS TO BE READ IN CONJUNCTION WITH LANDSCAPE WORKS SPECIFICATION AND DETAILS.
2- DO NOT SCALE OFF DRAWING. REFER TO DIMENSIONS SHOWN ON PLAN.
3- ALL SERVICES ARE TO BE CHECKED AND VERIFIED ON SITE.
4- FOR CIVIL AND STRUCTURAL DETAILS. REFER TO ENGINEER'S DRAWINGS.
5- PRIOR TO LANDSCAPE WORKS, REMOVE ALL BUILDERS DERBIS AND RIP ALL GARDEN BED AND TURF AREAS TO A MINIMUM DEPTH OF 300MM.THE AREA WITHIN THE DRIP ZONE OF EXISTING TREES AND SHRUBS TO BE RETAINED ARE TO BE HAND DUG.



LANDSCAPE SPECIFICATION with 52 WEEK MAINTENANCE PERIOD

1 GENERAL 1.1 The Contractor is to visit the site to familiarize him/herself with site conditions prior to tender. 1.2 The Contractor will be held responsible for any damage to utility services, pipes, building structures, paving surfaces, fencing, footways, kerbs, roads and existing plant material to be retained during the construction and maintenance periods. 1.3 The Contractor is to consistently maintain all Contract areas during the Contract period. 1.4 The site is to be left in a clean and tidy condition at the completion of the works to the satisfaction of the Superintendent. 1.5 No substitution of material is to be made unless written approval is given by the Superintendent.

2 SITE PREPARATION 2.1 Prepared subgrade is to be free of stones, concrete and builder's debris larger than 50mm and any other foreign matter that could hinder plant growth.

3 IMPORTED TOPSOIL MIX 3.1 Import topsoil mix comprising 50% loam topsoil, Compost 30% and D/W sand to 20% by volume for mass planted and individual plantings as specified and as detailed. 3.2 For turf areas supply topsoil mix comprising 80% sand and 20% loam by volume.

4 COMPOST 4.1 Shall be well rotted vegetative material or animal manure, or other approved material, free from harmful chemicals, grass and weed growth and with neutral pH. Provide a certificate of proof of pH on request.

5 MULCH 5.1 Application: Place mulch to the required depth and rake to an even surface finishing 25mm below adjoining levels. Ensure mulch is watered in and tamped down during installation. 5.2 Forest Mulch. For use in all garden beds other than side of building and balcony planters. 5.3 River Gravel Mulch: 10mm min. diameter sandstone coloured pebble mulch such as is available from 'Materials in the Raw' - Orange Cowra or similar.

6 PLANT MATERIAL 6.1 All plant material is to be vigorous, healthy, hardened off, disease and insect free and true to species, type and variety specified. Plants are not to be root bound. Trees are to have one leading shoot. 6.2 Do not carry out planting in extreme weather conditions. 6.3 Planting holes are to be 100mm bigger than size of plant container to the sides and bottom of the hole. Loosen the soil to the sides and bottom of the hole. Combined topsoil mix with loosened soil.

7 PLANTING 7.2 Remove all stakes and labels from the plants prior to installation 7.3 Thoroughly soak root ball, allow to drain before removing plant from container for planting. 7.4 After removing plant from the container, trim circling roots with a sharp pruning knife or sharp secateurs and gently tease out the roots to the sides of the root ball before installation.

7.5 After installation, the soil level around the plant is to be flush with the soil surface in the surrounding bed except for a shallow dish made in the soil around the plant to retain water when moisture is available. Level and gently pat soil around plant and ensure air pockets are removed. 7.6 Thoroughly water plant material immediately after planting. 7.7 Fertilize 7.8 Spread 75mm Forest Mulch as indicated on the landscape plan. All garden beds to be mulched.

8.0 FERTILIZER 8.1 GARDEN BEDS: Fertilize with suitable organic fertilizer such as 'Dynamic Lifter' or well decomposed, weed and disease free cow manure applied at the recommended rate for 'Dynamic Lift' or as a 50mm layer for cow manure. Do not use spent mushroom compost. 8.2 Turf: Shall be Shirleys No. 17 or approved equal thoroughly mixed into the topsoil prior to placing turf.

9.0 BRICK EDGE 9.1 Edge beds, not abutting hardworks, with brick edge as shown in detail.

10.0 TURF AREAS 10.1 Level and grade area to be turfed allowing for a 100mm layer topsoil and turf such that turf will finish level with the brick garden edge and hardworks. 10.2 Cultivate subsoil to 100mm. 10.3 Spread 100mm layer imported topsoil comprising 80% sand and 20% loam by volume. 10.4 Lay turf along the contours and close butted. Roll after laying. Thoroughly soak turf immediately after laying. 10.5 Water and mow turf regularly to establish and maintain the turf in healthy condition until the completion of the landscape contract period. 10.6 Fertilize turf with a turf fertilizer at the final mowing at the end of the landscape contract period.

11 IRRIGATION 11.1 Supply and install drip irrigation to all garden beds and planters in accordance with Sydney Water requirements.

12.0 PRACTICAL COMPLETION AND MAINTENANCE 12.1 At the end of the landscape construction period an inspection of the landscape works by the Superintendent is to be carried out with the contractor. Any defects or changes to the works required by the Superintendent are to be noted by the Contractor and a copy of the list is to be given to the Superintendent within 3 days. 12.2 Defects and changes listed are to be carried out immediately. 12.3 The Superintendent will issue a written notice of practical completion once the works are completed to the Superintendents satisfaction. 12.4 A 26 week maintenance period is to begin on receipt of practical completion at the end of the landscape construction period. 12.5 During the maintenance period, regularly mow turf to maintain a height of 40mm, weed turf and planted areas, and top up mulch layer as required. Prune plants as required and fertilize mass planted and turf areas and individual trees in turf with appropriate fertilizers at recommended rates. Replace dead plants with healthy new stock as indicated on the plan and plant schedule. Where existing plants are damaged and/or removed these are to be replaced with advanced specimens of the same species.

AMENDMENTS

Issue	Date	Description
A	12.08.16	CONCEPT LANDSCAPE PLAN FOR DEVELOPMENT APPLICATION



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Client

Project

1-3 ORIENTAL STREET, BEXLEY
NSW 2207
LOT36 AND 37, DP 5216



Drawing Title

LANDSCAPE DETAILS
AND SECIFICATIONS



Drawn by AB
Verified by AB
Authorised by

Scale
VARIES
Proj. No.
162106

Date
12.08.16
Drg. No.
LA-003

Issue

Issue
A

**APPENDIX B – CLAUSE 4.6 OF ROCKDALE LEP 2011: EXCEPTIONS
TO DEVELOPMENT STANDARDS – FSR VARIATION**

FOR A PROPOSED RESIDENTIAL FLAT BUILDING

AT

1 - 3 ORIENTAL STREET BEXLEY

**CLAUSE 4.4(2) OF ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011 –
FLOOR SPACE RATIO**

1. Introduction

This written Clause 4.6 variation request accompanies a Development Application (DA) submitted to Rockdale City Council for a proposed residential flat building. The subject site is legally described as Lots 36 and 37 in DP 5216 and is known as No 1-3 Oriental Street, Bexley.

Approval is sought for the following:-

- Demolition of the existing dwellings and associated structures on the site; and
- Construction of a four (4) storey residential flat building with basement parking comprising the following:-
 - Basement level – 19 car parking spaces (including 3 disabled spaces) comprising 17 residential spaces (including 2 disabled spaces), 3 visitor parking spaces (including 1 disabled space) with a space designated as a car wash bay, motorcycle parking, bicycle parking, storage areas and lift access;
 - Ground floor – 2 x 2 bedroom units and 2 x 1 bedroom units and their associated terrace areas as well as a bin storage area and access ramp in the front area of the site;
 - Level 1 - 4 x 2 bedroom units and their associated balconies;
 - Level 2 - 4 x 2 bedroom units and their balconies; and
 - Level 3 - 2 x 2 bedroom units and 1 x 3 bedroom unit and their associated balconies.

2. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the *Rockdale Local Environmental Plan 2011* (“RLEP 2011”) aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances (Clause 4.6(1)).

Clause 4.6 Exceptions to development standards states:-

- (1) *The objectives of this clause are as follows:*
 - (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.*
- (2) *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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (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, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (5) *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.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*
 - (cb) *clause 4.3A.*

Development consent may, subject to Clause 4.6(2), be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause. Clauses 4.6(6) and (8) do not specifically exclude the development standard at Clause 4.4(2) of the RLEP 2011. Accordingly, this development standard can be varied to allow the proposal. Clause 4.6(7) and (8) do not require any further consideration in this variation.

A written request from the applicant that seeks to justify the contravention of the development standard is required before development consent can be granted, demonstrating the following (Cl 4.6((3)):-

- 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.*

These matters are considered in Section 7 of this submission.

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), the proposed development will be in the public interest (proposal is consistent with the zone and development standard objectives) and the concurrence of the Secretary has been obtained (Cl 4.6(4)).

These matters are considered in Section 7 below.

The 'five part test'

The long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79 for SEPP 1 objections (the relevant requirement at the time) as:

1. *Is the planning control in question a development standard?*
2. *If so, what is the underlying object or purpose of the standard?*
3. *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
5. *Is the objection well founded?*

Webbe v Pittwater Council [2007] NSW LEC 827 shed light on this test for the assessment of a SEPP 1 objection with Chief Justice Preston in his reconsideration, setting out a new 5 part test and rephrased the assessment process as follows:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
 - a. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 - b. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Preston CJ then stated that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

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

3. *The underlying object of 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 Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
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.*

In *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90, and the subsequent appeal against the Commissioner's decision, it was established that the key elements which are required to be addressed in any Clause 4.6 written request, in order to satisfy the tests contained in clause 4.6, are:

- (a) *Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- (b) *Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?*
- (c) *Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? – is it consistent with the objectives of the development standard and the objectives of the particular zone?*

The Commissioner found that consistency with the objectives is required elsewhere (by Clause 4.6(4)(a)(ii)) and accordingly, could not be relied upon to satisfy the test in clause 4.6(3)(a). The Commissioner found that additional considerations are required in order to establish that compliance would be unreasonable or unnecessary.

The environmental planning grounds relied upon to justify the contravention of the standard must be “*particular to the proposed development on the site*”. That is, the environmental planning grounds relied upon cannot be benefits which apply to any development of the site or surrounding sites which would provide the same outcome. In the Commissioner's view, environmental planning grounds which were not particular to a site were not sufficient to justify the contravention of the standard.

Four2Five Pty Limited has established that although the first test in *Webbe v Pittwater Council* [2007] NSWLEC 827 remains a relevant consideration, it can no longer be the only basis upon which an applicant submits that compliance is unreasonable or unnecessary. Something additional needs to be established. The Court of Appeal decision has confirmed that the other *Webbe* tests (2 to 5) may still be applied and relied upon.

These matters are considered in Section 7 below.

3. The Development Standard to be varied

Clause 4.4(2) of the RLEP 2011 states the following:-

“The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#)”.

The maximum FSR for the subject site pursuant to the Floor Space Ratio Map is 1:1 or 1,045m² as illustrated in **Figure 1**.

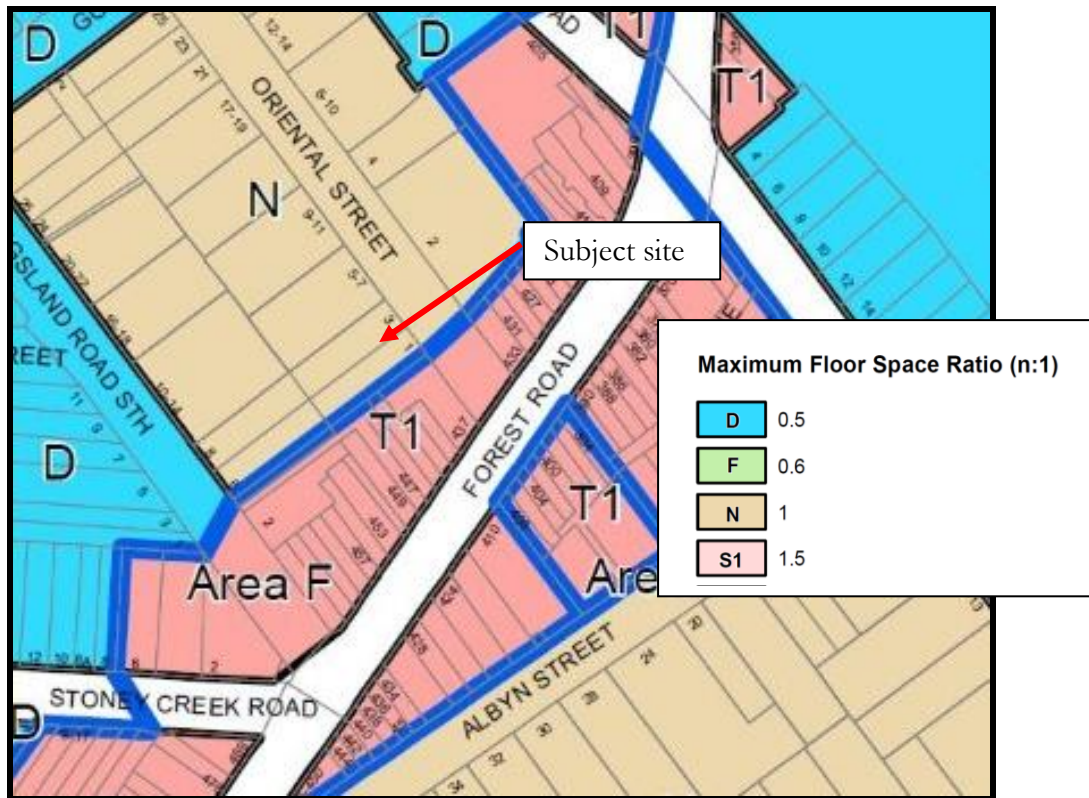


FIGURE 1: FSR MAP (SOURCE: WWW.LEGSLAITON.NSW.GOV.AU)

4. Extent of Variation to the Development Standard

The proposed development involves a gross floor area of 1,238m² on a site with a total area of 1,045m², resulting in an overall FSR of 1.18:1. Therefore, the proposal exceeds the maximum FSR development standard by 193m² representing a 18% variation to the development standard contained in Clause 4.4(2)(a) of the RLEP 2011. This variation is outlined in Table 2 of the Statement of Environmental Effects (“SEE”).

5. Objectives of the Development Standard

The objectives of the FSR development standard, pursuant to Clause 4.4(1) of the RLEP 2011, state:-

- (a) *to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic, in order to achieve the desired future character of Rockdale,*
- (b) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing or likely to undergo a substantial transformation.*

6. Objectives of the Zone

The objectives of the R4 High Density Residential zone pursuant to Clause 2.3 of the RLEP 2011 are:-

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*

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

7. Assessment

Pursuant to Clause 4.6 and following the *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 decision outlined above, the following matters are required to be considered in this assessment:-

- (a) Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- (b) Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?
- (c) Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest. – is it consistent with the objectives of the standard and zone as set out above.

These matters are considered below.

7.1 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

It is considered that the development standard is unreasonable and unnecessary in the circumstances of this case as a better planning outcome is provided by varying the standard, the non-compliance better achieves the objects of the Act and there are no significant adverse impacts to adjoining properties arising from the proposal. These reasons are discussed further below.

a) Amenity Impacts and the Streetscape

The non-complying floor space ratio of the proposed building does not result in any unreasonable impacts on the amenity of nearby properties in terms of overshadowing, privacy, loss of views and has minimal impact on the streetscape. The proposal, with the additional floor space, is consistent with surrounding development. Requiring compliance with this development standard would therefore prevent a building that does not adversely affect the amenity of the existing adjoining residential development from being achieved on the subject site.

b) Design of the Development

Compliance with the floor space ratio development standard is considered to be both unreasonable and unnecessary given the design of the proposal and its relationship to neighbouring properties. The proposal will provide a well-designed and appropriate residential development which, despite any technical non-compliance with the FSR control, is unlikely to create a significant impact on the streetscape in terms of bulk and scale and is unlikely to result in any significant adverse impact on surrounding properties in terms of overshadowing or loss of privacy.

c) Visual Impact

The visual impact of the proposal is minimised by, among other things, the proposed additional building articulation and architectural detailing proposed for the built form on the site, which is provided within the additional floor space. The additional floor space within the built form allows it to be broken up to reduce bulk and scale over the floor space limit. This assists in reducing the

potential visual impact of the proposal when viewed from adjoining properties and the street. Requiring compliance with this development standard would therefore prevent this improvement in visual impact from being achieved on the subject site. The design of the development is illustrated in **Figure 2**.



FIGURE 2: PROPOSED DEVELOPMENT

(Source: Resolut Building Solutions, August 2016)

d) Environmental Impact

There is no adverse environmental impact resulting from the FSR variation.

e) Better Planning Outcome

The proposal is considered to be a better planning outcome on the site as the proposed development allows for the provision of a variety of unit sizes within a well-designed development which generally complies with the requirements of the ADG. The proposed variation will ensure a more efficient use of the subject site. The units will achieve a high standard of accommodation given it generally accords with minimum area requirements, achieves sufficient ventilation and solar access and provides private open space areas for the enjoyment of future occupants.

The proposal seeks to increase the available floor space of the built form which is located in a convenient location close to various uses and bus services which is a preferred planning outcome given greater housing choice is provided. Overall the variation with the floor space control allows for a better planning outcome while it minimises the impacts to the surrounding properties and ensures an appropriate bulk and scale transition along Oriental Street.

f) No State or Regional Planning Implications

It is considered that the additional floor space of the proposed building on the subject site does not raise any matters of state or regional planning significance. It is considered that the public benefit of maintaining planning controls is not adversely affected by this non-compliance with floor space ratio given the site achieves the objectives of the development standard and the zone and provides much needed residential housing in the area.

g) Objects of the *Environmental Planning and Assessment Act 1979*

The proposal, notwithstanding the non-compliance with the maximum FSR development standard, achieves the objects of the *Environmental Planning and Assessment Act 1979* (“EP&A Act”). These objects pursuant to Section 5 of the EP&A Act include:-

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) *the protection, provision and co-ordination of communication and utility services,*
- (iv) *the provision of land for public purposes,*
- (v) *the provision and co-ordination of community services and facilities, and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*

The proposal is considered to be consistent with the objects of the EP&A Act, in particular Section 5(a)(ii), despite this non-compliance, as the proposed development will allow for the promotion and co-ordination of the orderly and economic use and development of land by allowing additional housing opportunities within a residential development. These objects would not be obtained if strict compliance with this development standard were required given the proposal would not be able to offer the variety of unit sizes and levels of accessibility without the additional floor space.

Furthermore, the social and economic welfare of the community would not be promoted as it would prevent the provision of additional housing catering to the needs of the local community in a location close to residential, public transport and employment.

It is therefore considered that compliance with the floor space ratio development standard would be inconsistent with the aims of the Policy, in that requiring compliance with this development standard would hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act as outlined above.

Accordingly, it is considered that the development standard is unreasonable and unnecessary in the circumstances of this case for the reasons outlined above.

7.2 Clause 4.6(3)(b) - Are there are sufficient environmental planning grounds to justify contravening the development standard?

The proposal involves additional floor space over the maximum development standard on a site which largely remains the only undeveloped site in the street. The vast majority of the street

consists of three to four storey residential flat building, with the exception of the subject site and 21, 23 and 25 Oriental Street at the north-western end of the street.

This existing site constraint, being virtually the last remaining development site in the street, provides an opportunity unique to this site, to provide for a 15 unit development which generally complies with the minimum unit sizes under the ADG and provides for a high level of amenity with a variety of unit sizes.

There are sufficient environmental planning grounds to justify varying this development standard in this instance given such a variation would allow for additional housing opportunities in a well serviced location.

Following *Four2Five Pty Limited*, it is clear that this environmental planning ground is particular to the proposed development on this site and does not apply to the development of any surrounding sites which would provide the same outcome. That is, this is a large site in the context of the locality and presents a unique opportunity to provide additional housing in area which is close to the services of the Bexley town centre and other local facilities in a development which is compatible with existing development in the street.

The provision of additional floor space which does not comply with the maximum FSR development standard allows the proposal to achieve a greater housing choice and internal areas which reduces impacts to surrounding properties.

In the circumstances of this case, there are sufficient planning grounds to justify the FSR development standard variation sought.

7.3 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and zone as set out above?

It is considered that the proposal is in the public interest given additional housing opportunities will be provided in close proximity to transport and services and within an accessible building. This will allow for the accommodation of a variety of households in terms of number of bedrooms as well as accessibility. The proposal, notwithstanding the non-compliance with the floor space ratio development standard, is consistent with the objectives of the development standard and the zone (outlined below).

This residential development provides for a high level of amenity and makes efficient use of the site area. The proposal results in an appropriate bulk and scale along Oriental Street due to the design and location of other residential flat buildings of a similar size and scale. There is also a lack of amenity impacts which further demonstrates that the proposal and its associated amount of floor space are in the public interest. The proposal is generally consistent with the remainder of the planning controls and therefore is in the public interest.

The proposal is considered to be consistent with the objectives of the FSR development standard as outlined above for the following reasons:-

- The proposal involves an amount of floor space that seeks to maximise the development density and intensity of the proposed land use on the site, given the availability of infrastructure in the area. The proposal is capable of distributing the traffic generated by it easily throughout the surrounding road network.

- The proposal with its increased floor space, does not adversely affect the environment as there are minimal trees to be removed, there is limited landform change and landscaping is proposed to soften the development and provide stormwater benefits.
- The proposal does not significantly adversely affect the amenity or enjoyment of the adjoining residential properties. There will be limited overlooking opportunities, there will be some overshadowing but will be within the planning controls and there will be no view loss arising from the additional floor space proposed on the subject site.
- The proposal will maintain an appropriate visual relationship between new development and the existing character of the area due to the prevalence of three and four storey residential flat buildings in the street, the mix of development within the locality due to the proximity to the Bexley town Centre and the range of housing densities.
- The proposal provides a high quality urban form with an appropriate level of articulation and architectural detailing achieved through the use of a variety of materials and the design of the development with changes in building alignment and use of building recesses.
- The proposed floor space will be compatible with the adjoining development to the southeast along Forest Road (No 437) and will allow for an appropriate transition along the streetscape to the adjoining three storey residential flat building to the northwest (No 5-7 Oriental Street) of the subject site. This is illustrated in **Figure 3**.

The proposal is considered to be consistent with the objectives of the R4 Zone as outlined above for the following reasons:-

- The proposal provides for the housing needs of the community in a high density environment.
- The proposal provides a variety of housing types in that there are one, two and three bedroom units proposed as well as an adaptable dwelling and accessibility throughout the proposed development. The provision of ground floor as well as upper level units allows for a variety of households to be accommodated including single person households through to families requiring ground floor with larger terrace areas.
- The proposal provides for landscaping opportunities which will assist in minimising runoff and providing an aesthetically pleasing development when viewed from the street and outdoor open space areas.

The proposal is therefore considered to be consistent with the objectives of the development standard for FSR and the objectives of the zone as outlined above, despite the non-compliance, which is consistent with the first *Webbe* test.



FIGURE 3: PROPOSED STREETScape PRESENTATION

(SOURCE: RESOLUT, DECEMBER 2015)

8. Conclusion

While the proposed development does not strictly comply with the floor space ratio development standard in Clause 4.4(2) of the Rockdale LEP 2011, it nevertheless satisfies the stated/underlying objectives of the development standard and the broader planning and zoning objectives.

The design and siting of the proposal minimises adverse impacts that may arise from the proposed additional floor space of the proposal. The non-compliance in floor space ratio does not result in any significant or unreasonable amenity impacts to the neighbouring property or any significant adverse impact in relation to visual amenity. The proposal provides for an appropriate form of development, and will make a positive contribution to the visual amenity and character of the surrounding residential locality.

It is considered that this objection is well founded in that the aims of the Policy are better served by allowing the development standard to be varied given the resulting development achieves the objects of the Act. Furthermore, the proposal, notwithstanding its non-compliance with the floor space ratio development standard, is consistent with the development standard objectives as well as the zone objectives.

As outlined above, it is considered that compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of this case and refusal of the development application as a result of the proposed non-compliance with the floor space ratio development standard is not warranted.

Steven Layman