



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

5 November 2018 - 6.00pm

Location:

**Council Chambers
Cnr Chapel Road and the Mall,
Bankstown**

ORDER OF BUSINESS

APOLOGIES AND DECLARATIONS OF INTEREST

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

BASS HILL WARD

- | | | |
|----------|---|---|
| 1 | 154 Hector Street, Chester Hill | |
| | Conversion of existing unauthorised outbuilding to a secondary dwelling | 3 |

ROSELANDS WARD

- | | | |
|----------|---|----|
| 2 | Application to amend Canterbury Local Environmental Plan 2012: 194-198 | |
| | Lakemba Street, Lakemba and 56-57 Railway Parade, Lakemba | 19 |

REVESBY WARD

- | | | |
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| 3 | 25 Dravet Street, Padstow | |
| | Existing garage as a secondary dwelling and construction of a detached carport | 53 |

Canterbury Bankstown Local Planning Panel - 5 November 2018

ITEM 1	154 Hector Street, Chester Hill
	Conversion of existing unauthorised outbuilding to a secondary dwelling
FILE	DA-655/2018 – Bass Hill
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	21 August 2018
APPLICANT	Thi My Dung Doan
OWNERS	Thi My Dung Doan
ESTIMATED VALUE	\$60,000.00
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to the Canterbury Bankstown Local Planning Panel as the application seeks to vary two development standards by more than 10%. The two development standards proposed for variation by more than 10% include total floor area for secondary dwellings and maximum wall height. The total floor area for the secondary dwelling is measured at 67m² (0.7m variation – 11.6%) and the wall height is measured at 3.4m (0.4m variation – 13%).

Development Application No. DA-655/2018 proposes the conversion of an existing unauthorised outbuilding to a secondary dwelling. The building in question is located to the west of the principal dwelling, at the rear of the site. The proposal incorporates a living area, kitchen, two bedrooms, bathroom and store room.

DA-655/2018 has been assessed against *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy 55 – Remediation of Land*, *State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

The application fails to comply in regards to *State Environmental Planning Policy (Affordable Rental Housing) 2009*, the *Bankstown Local Environmental Plan 2015* and Part B1 of the *Bankstown Development Control Plan 2015*. Non-compliances include (but are not limited to): exceeding the maximum allowable total floor area, height of buildings (maximum wall height), setbacks to the side boundary, minimum requirements for private open space and minimum requirements for direct solar access to living areas. The applicant has not submitted a request under Clause 4.6 of the BLEP 2015 to vary the maximum wall height development standard. Hence, there is no mechanism in place for any consideration of the proposed departure, nor any ability to favorably deal with the application.

During the course of the assessment of this application, the applicant also lodged a Building Certificate in relation to the unauthorised secondary dwelling. This Building Certificate application has not yet been determined.

The application was notified for a period of 14 days from 22 August 2018 to 4 September 2018. No submissions were received.

This matter was considered by the Panel on 8 October 2018, when the Panel resolved to defer the application pending further advice about the proper assessment for secondary dwellings. This advice has been provided to Panel members.

The application is recommended for refusal for the reasons outlined in Attachment B.

POLICY IMPACT

The recommendation of this report is that the Development Application be refused. Such a determination would not have any direct policy implications, as it would uphold the relevant planning and development controls.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that Development Application DA-655/2018 be refused for the reasons outlined in Attachment B.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Reasons for Refusal

DA-655/2018 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

DA-655/2018 seeks consent for the conversion of an existing unauthorised outbuilding to a secondary dwelling. The site is a regular allotment, and is zoned R2 Low Density Residential. The site contains a single storey dwelling and an outbuilding that is currently being used as a secondary dwelling. The site generally slopes to the rear with a total land area of approximately 572.2m² and a width of 13.41m. The surrounding development consists predominantly of low density residential dwellings of varying age and condition.

The existing outbuilding is situated to the rear of the principal dwelling and has maintained its built form since its unauthorised construction in 2014. The application proposes a secondary dwelling with a floor area of 67m² and a maximum external wall height of 3.4m.

The context of the site is illustrated in the following aerial photo.



PROPOSED DEVELOPMENT

DA-655/2018 proposes the conversion of an existing unauthorised outbuilding to a secondary dwelling.

The proposal incorporates the authorisation of the outbuilding's use as a secondary dwelling. The application is inclusive of proposed fire wall upgrades in accordance with the Building Code of Australia, installation of a Stormwater system and associated landscaping and site works. The external layout reflects that of the outbuilding structure that was constructed without prior approval.

SECTION 4.15(1) ASSESSMENT

The proposed development has been assessed pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

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

State Environmental Planning Policy (Affordable Rental Housing) 2009

The provisions of Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* specifies that a consent authority must not consent to the carrying out of development for the purposes of a secondary dwelling unless:

(3)

- (a) *the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
- (b) ***the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.***

The SEPP also specifies that a consent authority must not refuse consent to development to which this Division applies on either of the following grounds:

- (a) ***site area*** if:
 - a. *the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - b. *the site area is at least 450 square metres,*
- (b) ***parking*** - *if no additional parking is to be provided on the site.*

Schedule 1 Development Standards for Secondary Dwellings – Part 2, Section 4

- (3) *For the purpose of calculating the floor area in subclause (2): **floor area** means the sum of the areas of each storey of each principal dwelling or secondary dwelling and each carport, garage, balcony, deck, patio, pergola, terrace or verandah, measured at a height of 1.4 metres above each floor level, where the area is taken to be the area within the outer face of:*
 - (a) ***the external walls*** of the principal dwelling or ***secondary dwelling***, and
 - (b) *the walls of the carport, garage, balcony, deck, patio, pergola, terrace or verandah,*
but excluding any of the following:

- (c) *any part of an awning, blind or canopy that is outside the outer wall of a building,*
- (d) *an eave,*
- (e) *a lift shaft,*
- (f) *a stairway,*
- (g) *a void above a lower storey.*

An assessment of the development application has revealed that the proposal fails to comply with Clause 22(3)(b) as provided above as the total floor area of the secondary dwelling is measured at 67m² including the store area *when measured where the area is taken to be the area within the outer face of the external walls of the secondary dwelling* as stipulated in Schedule 1, Part 2, Section 4, Clause 3.

The table below is provided to demonstrate the assessment undertaken in regard to the numerical controls as set out in the Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Number of dwellings	Two	Two	Yes
Total Floor Area	286.1m ² (572.2/2)	247m ² (180 + 67)	Yes
Floor Area of Secondary Dwelling	Max. 60m ²	67m ²	No

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site has long been used for residential purposes through use of the principal dwelling. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination.

The subject site is considered suitable for the existing development and therefore satisfies the provisions of SEPP No. 55.

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

A valid BASIX Certificate accompanied the Development Application. The Certificate details the thermal, energy and water commitments which the location and associated labels are not detailed on submitted DA plans as required by the Certificate.

The proposal fails to provide the locations and specifications of the 2000L Rainwater tank and hot water system on all plans. The proposal fails to meet the requirements of the *State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004*.

Bankstown Local Environmental Plan 2015

The following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 4.1B – Minimum lot sizes and special provisions
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 5.4 – Controls relating to miscellaneous permissible uses

An assessment of the Development Application revealed that the proposal fails to comply with the provisions of *Bankstown Local Environmental Plan 2015* relating to Clause 1.2 Aims of Plan, Clause 4.3 Height of buildings, Clause 4.6 Exceptions to development standards and Clause 5.4 Controls relating to miscellaneous permissible uses.

The table below is provided to demonstrate the proposals compliance with the numerical controls as set out in the BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 3m - wall Max 6m - building	3.4m (wall height) 3.6m (building height)	No – see comments below Yes
Floor space ratio (specific site)	Max. 0.50:1	A GFA of 247m ² is proposed resulting in a FSR of 0.43:1.	Yes
Floor area of secondary dwellings	Max 60m ²	67m ²	No – see comments below

Clause 1.2 – Aims of the Plan

Council's assessment of the subject application has identified that the proposed development is inconsistent with the following relevant aim contained in Clause 1.2(2) of BLEP 2015:

- (a) *to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*

The development, as proposed is considered to not be an acceptable form of development in its current form. The development represents a built form that incorporates a total floor area of 67m² and is therefore considered to not be compatible with the prevailing suburban character of the locality.

Clause 4.3 – Height of Buildings

Clause 4.3(2B)(a) – Height of buildings of the BLEP 2015 refers to the maximum permitted height of buildings for secondary dwelling developments in an R2 Low Density Residential Zone as having a maximum building height of 6m and a maximum wall height of 3m. It reads as follows:

4.3 Height of buildings

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

- (a) ***to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,***
- (b) *to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) *to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) *to define focal points by way of nominating greater building heights in certain locations.*

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

(2A)

(2B) *Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*

- (a) ***for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,***
- (b) *for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,*

- (c) *for multi dwelling housing and boarding houses:*
 - i) *the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
 - ii) *the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.*

The proposal seeks to vary Clause 4.3(2B)(a) of the *Bankstown Local Environmental Plan 2015*. The wall height for the dwelling is measured at 3.4m (0.4m variation – 13%).

It is also of note that the applicant has not acknowledged this departure from the height of buildings development standard contained in the Bankstown Local Environmental Plan 2015.

Clause 4.6 – Exceptions to development standards

(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.*

Clause 4.3(2B)(a) prescribes the maximum permissible wall and building heights for secondary dwelling developments on the subject site.

(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.*

No Clause 4.6 Variation request has been submitted as part of this Development Application. In the absence of a Clause 4.6 variation request a departure from the abovementioned development standard could not be considered for this application.

Clause 5.4 – Controls relating to miscellaneous permissible uses

- (9) *If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*
- (a) *60 square metres,*
 - (b) *10% of the total floor area of the principal dwelling.*

An assessment of this development application has concluded that the proposal fails to comply with Clause 5.4(9) as provided above as the total floor area is measured at 67m², exceeding the maximum permissible total floor area.

It is also of note that a contravention to this development standard cannot be granted by virtue of Clause 4.6(8)(c) of the BLEP 2015 which reads as follows:

- (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 4.4, to the extent that it applies to land in Zone B4 Mixed Use that has a maximum floor space ratio of 3:1,*
 - (cb) *clause 4.4A.*

Draft environmental planning instruments [section 4.15C(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

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

Section 3 of Part B1 of the BDCP 2015 contains the following objectives:

- (a) *To ensure secondary dwellings are established in conjunction with the principal dwelling on the same allotment.*
- (b) *To ensure the building form and building design of secondary dwellings are compatible with the prevailing suburban character of the residential areas.*
- (c) *To ensure the building form and building design of secondary dwellings provide appropriate amenity to residents in terms of private open space, access to sunlight and privacy.*
- (d) *To ensure the building form and building design of secondary dwellings do not adversely impact on the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.*

- (e) *To ensure the building form of secondary dwellings in the foreshore protection area preserves the existing topography, land and rock formations, and the unique ecology of natural bushland and mangrove areas.*

The following table provides a summary of the development application against the primary development controls contained within Part B1, Section 3 of the BDCP 2015, used to achieve the objectives mentioned above.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 3.1	The subdivision of secondary dwellings is prohibited.	No subdivision is proposed as part of this Development Application.
Clause 3.2	Council must not consent to development for the purpose of secondary dwellings unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning instrument; and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under an environmental planning instrument, that greater floor area.	The total floor area of the principal dwelling and secondary dwelling is considered to comply with this provision of this clause. The following calculations are provided: Maximum allowable Floor Area = 286.1m ² (572.2/2) Total Floor Area (as built) = 247m ² (180 + 67) The total floor area of the secondary dwelling is measured at 67m ² , deemed non-compliant with this clause. Non-compliance
Clause 3.4	The storey limit for detached secondary dwellings is single storey and the maximum wall height is 3 metres.	The proposed secondary dwelling is single storey. However, the wall height exceeds the maximum height of 3m, measuring at 3.4m. Non-compliance
Clause 3.5	The siting of secondary dwellings and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.	The proposal is considered to demonstrate compliance with this clause as it compatible with the existing slope, with minimal fill presented as well as no elevated platforms or excessive excavation.
Clause 3.6	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the secondary dwelling is required	The proposal demonstrates compliance with this Clause with 100mm of fill above the NGL.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	<p>to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or</p> <p>(b) the fill is contained within the ground floor perimeter of the secondary dwelling to a height no greater than 1 metre above the ground level (existing) of the allotment.</p>	
Clause 3.8	<p>The minimum setback for a building wall to the primary road frontage is:</p> <p>(a) 5.5 metres for the first storey (i.e. the ground floor); and</p> <p>(b) 6.5 metres for the second storey.</p>	<p>32.4m</p> <p>N/A</p>
Clause 3.10	For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metre.	<p>The existing unauthorised outbuilding has a setback to the northern side boundary of 0.609m which demonstrates a non-compliance. The setback to the western side boundary is 0.9m and 0.985m to the southern side boundary.</p> <p>Non-compliance</p>
Clause 3.12	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.	<p>The total private open space for the site is measured at 72m² which therefore causes a non-compliance with Clause 2.12, Part B1 of the BDCP 2015 in accordance with the 80m² minimum requirement for private open space for the principal dwelling.</p> <p>Non-compliance</p>
Clause 3.13	At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.	<p>The proposal depicts a living area with an eastern window only which is deemed to receive less than the 3 hour minimum requirement of direct sunlight to living areas. The living area is predominantly overshadowed by the 'L' shaped 'store room' located to the north east of the living area.</p> <p>Non-compliance</p>
Clause 3.16	<p>Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</p> <p>(a) offset the windows between dwellings to minimise overlooking; or</p>	<p>It is considered that compliance is demonstrated with this Clause as the windows proposed to the western elevation are considered to be significantly offset from windows on adjoining dwellings. The windows to the eastern elevation are considered to be offset to also prevent overlooking.</p>

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	(b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council.	
Clause 3.17	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	It is considered that compliance is demonstrated with this Clause as the windows to the western elevation are to bedrooms - Clause 3.17(a).
Clause 3.23	The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling.	The roof pitch of the existing unauthorised outbuilding measures at 20 degrees, demonstrating compliance with this clause.
Clause 3.25	The change of use of outbuildings to secondary dwellings must comply with the Building Code of Australia.	The proposal has been referred to Council's Building Surveyors for assessment in accordance with the BCA from which recommended conditions are provided therefore demonstrating compliance with this Clause.
Clause 3.26	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces.	The proposal incorporates a uncovered parking space forward of the existing principal dwelling which demonstrates compliance with the minimum requirements for 1 uncovered parking space for a development of this nature. It is also of note that this site has never had the provision of a covered parking space due to the construction of the dwelling prior to the control for covered parking being introduced.

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with Clause 3.2, 3.4, 3.10, 3.12 and 3.13 Part B1 of the BDCP 2015. Accordingly, the proposed development is considered to be contrary to the desired objectives contained in Section 3, Part B1 of the BDCP 2015.

Planning agreements [section 4.15C(1)(a)(iia)]

There are no planning agreements that apply to this application.

The regulations [section 4.15C(1)(a)(iv)]

The subject application is inconsistent with Clause 50(1) and Schedule 1, Part 1 of the *Environmental Planning and Assessment Regulation, 2000* as the development application does not contain sufficient information in regards to the Statement of Environmental Effects indicating - Schedule 1, Part 1, Clause 2(4):

- (a) *the environmental impacts of the development,*
- (b) *how the environmental impacts of the development have been identified,*
- (c) *the steps to be taken to protect the environment or to lessen the expected harm to the environment,*

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

The likely impacts of the proposal have not been managed through the design of the development which demonstrates a number of non-compliances with Council's planning controls. Council's assessment of the application has identified several fundamental issues with the proposed development, which have been detailed in this report.

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

The development, as proposed is not considered to be an appropriate form of development on the subject site, and represents a built form that is not compatible with the existing and desired future character of the locality. The development proposes a variation, amongst other things, to the total floor area, wall height, setback to the side boundary, and is considered that the built form proposed is representative of a general bulk and scale that is unsympathetic to the site to which it occupies. The proposal is not an acceptable form of development based on the applicable controls and objectives, and the site is therefore not considered to be suitable for the development that has been proposed.

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

No submissions were received for or against the development.

The public interest [section 4.15C(1)(e)]

With regard to the relevant planning considerations, it is concluded that the proposed development would contravene the public interest. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and development controls, and by the consent authority ensuring that any adverse impacts associated with the development are suitably addressed. The application undermines the integrity of the controls contained in this report, with particular reference to the total floor area control contained in the SEPP (Affordable Rental Housing) 2009.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls.

The proposed development is not considered to be satisfactory in accordance with the applicable environmental planning instruments and development controls. The issues are also of a nature that would require substantial amendments to the application, with substantial demolition works required to the existing unauthorised structure.

It is recommended that the proposal development be refused in light of the justifications presented in this report.

Reasons for Refusal

1. The proposed development fails to satisfy Schedule 1, Part 1 (Clause 2)(4)(a), Part 1 (Clause 2)(4)(b) and Part 1 (Clause 2)(4)(c) of the *Environmental Planning and Assessment Regulation 2000*. The submitted Statement of Environmental Effects fails to identify potential environmental impacts caused by the development. [Pursuant to Clause 50(1)(a) of the *Environmental Planning and Assessment Regulation, 2000* and Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*];
2. The subject proposal fails to comply with Clause 22(3)(b) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* in regards to total floor area for secondary dwellings. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act, 1979*];
3. The submitted plans do not demonstrate compliance with the submitted BASIX Certificate (No.952620S) having regards to the provisions of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act, 1979*];
4. The proposed development fails to satisfy Clause 1.2(2)(d) of the *Bankstown Local Environmental Plan 2015*. The submitted plans do not demonstrate the provision of an acceptable development outcome having regard to the adjoining prevailing suburban character. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
5. The subject proposal fails to comply with Clause 4.3(2B)(a) of *Bankstown Local Environmental Plan 2015* in regards to maximum wall height for secondary dwellings. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act, 1979*];
6. The subject proposal fails to comply with Clause 5.4(9) of *Bankstown Local Environmental Plan 2015* in regards to total floor area for secondary dwellings. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act, 1979*];
7. The proposed fails to comply with Clause 3.2, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to total floor area. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
8. The proposed fails to comply with Clause 3.4, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to maximum wall height. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];

9. The proposed fails to comply with Clause 3.10, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the required side setbacks. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
10. The proposed fails to comply with Clause 3.12, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the minimum requirements for Private Open Space. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
11. The proposed fails to comply with Clause 3.13, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to minimum requirement for direct solar access to living areas. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
12. The site is considered unsuitable for the proposed development. [Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act, 1979*];
13. For the reasons stated above, it is considered that the development is not in the public interest. [Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act, 1979*].

-END-

Canterbury Bankstown Local Planning Panel - 5 November 2018

ITEM 2 **Application to amend Canterbury Local Environmental Plan 2012: 194-198 Lakemba Street, Lakemba and 56-57 Railway Parade, Lakemba**

AUTHOR **Planning**

LANDOWNER: **194 – 198 Lakemba St: Account No. 155 450 865 Pty Ltd**
56-57 Railway Parade: Railway Parade Developments Pty Ltd

PURPOSE AND BACKGROUND

This report summarises an applicant initiated Planning Proposal to enable a mixed-use development at 194-198 Lakemba Street, Lakemba (Site B) and residential development at 56-57 Railway Parade, Lakemba (Site C). A copy of the Applicant's Planning Proposal has been provided under separate cover to Panel members.

The subject sites are located within the Lakemba Town Centre and were identified as appropriate for *high-rise and or mixed-use development* in the revised draft Sydenham to Bankstown Urban Renewal Corridor Strategy (SBURCS) exhibited by the Department of Planning and Environment in 2017.

However there is now considerable uncertainty regarding the draft strategy and changes to the policy direction are being considered. In July 2018 the Minister for Planning advised the Mayor (letter from Minister of Planning has been provided under separate cover to Panel members) that the SBURCS would become a 'high level' 'principles based' strategy prepared in consultation with Council. This process is still underway, however it is at a very early stage.

On 26 July 2016 Council also resolved to defer planning proposals that primarily rely on the draft SBURCS for justification and have not received Gateway approval until the strategy is finalised and reflective of local needs.

The site is located within an identified Planned Precinct which was declared by the Minister on 1 June 2017 which aims to make changes to the planning controls in order to facilitate growth and will potentially include this site.

Council recently supported a Planning Proposal to increase existing height and density controls on land at 5-9 Croydon Street (identified as Site A). This proposal was supported on the basis that it had been initiated by the former Canterbury Council and had received a Gateway determination from the Department of Planning and Environment prior to the announcement of the draft SBURCS.

ISSUE

The proposal seeks the following:

Site B – 194 – 198 Lakemba Street, Lakemba

Area: 2,461m²	Existing	Proposed
Zoning	B2 Local Centre	B2 Local Centre
Height	18m (5 storeys)	40m (12 storeys)
FSR	NA	NA
Residential development	Shop top housing is the only form of residential development permissible in the B2 Zone.	Add Residential Flat Buildings as an Additional Permitted Use in Schedule 1 of the LEP
Ground Floor commercial/retail requirement	Shop top housing must be located entirely above ground floor retail or business premises. The ground floor of the proposed development is 1,118m ² .	Insert a site specific clause into Schedule 1 limiting the minimum ground floor commercial/retail floor space to 420m ² .

Site C – 56-57 Railway Parade, Lakemba

Area: 448m²	Existing	Proposed
Zone	R4 High Density Residential	No Change
FSR	0.9:1	1.9:1
Height	11.5m (3 storeys)	12m (3 storeys)

An image of the envisaged development outcomes is provided at Figure 9.

This report recommends that the subject Planning Proposal not proceed to Gateway and that it be deferred until the finalisation of the SBURCS for the reasons outlined in this report, including the following:

- The proposal relies on the draft SBURCS for justification and seeks to proceed ahead of its finalisation.
- This draft SBURCS is changing and the final version of the plan may not support changes to planning controls in this location. A letter received 26 July 2018 states that it will become a 'principles based', 'high level' strategy developed in collaboration with Council.
- In July 2016, Council resolved to defer Planning Proposals within the Corridor until the SBURCS is finalised and reflective of local needs (excluding Planning Proposals that commenced before the draft strategy).
- In-depth strategic analysis regarding urban design, open space, retail and commercial floor space analysis, infrastructure requirements and sequencing required to inform development within the corridor will be undertaken as part of the finalisation of the SBURCS.
- A strategic vision has not yet been established for Lakemba; this will occur through the

Planned Precinct Process.

- Proceeding to Gateway at this stage would create a precedent that would encourage the submission of other significant stand alone and ad hoc planning proposals in the SBURC.
- Proceeding to Gateway at this stage would create a precedent that would result in the incremental reduction of commercially zoned land for non-residential purposes.
- The scale of the proposal will reduce opportunities for urban renewal on the adjoining property to the west due to the 12m separation distance proposed to be accommodated entirely within this property. This will result in missed opportunities to achieve quality public domain outcomes for this part of the Town Centre.
- In addition to the above, significant urban design issues are raised including:
 - the lack of a prescribed FSR combined with a blanket 40m height limit
 - the low scale of surrounding development
 - the 40m street wall height for 34m along Lakemba Street
 - the 53m length of built form on the Croydon Street frontage without articulation
 - the significant overshadowing of the proposed communal open space by the 12 storey building on Lakemba Street
 - the lack of upper level setbacks
- If this proposal were to proceed it would unduly influence the future vision of the Lakemba Town Centre being established.
- The Proposal is inconsistent with *Objective 2 Infrastructure aligns with forecast growth*, *Objective 6 Services and Infrastructure meet communities changing needs*, *objective 12 Great Places that bring people together* and *Objective 12, Investment and business activity in centres* of the *Greater Sydney Region Plan*.
- The proposal is inconsistent with *Planning Priority S6 Creating and Renewing Great Places and local centres and respecting the District's heritage* of the *South District Plan*.
- The Proposal is inconsistent with several Ministerial Directions including: *1.1 Employment and Urban Services Land*, *3.1 Residential zones* and *6.3 Site Specific Provisions*.

RECOMMENDATION That -

- Council not proceed with the application for a Planning Proposal at 194-198 Lakemba Street, Lakemba and 56-57 Railway Parade, Lakemba at this stage.
- The proposal be re-considered by Council when a vision for the Lakemba Town Centre has been established and Council and Department of Planning and Environment have reached agreement on the approach to managing planning proposals in the corridor.
- If Council decides to proceed with the Planning Proposal, it is recommended the following studies be prepared by the applicant for the corresponding reason before it is exhibited:

Study	Purpose
Retail/commercial floor space analysis aligned with future growth in the corridor.	To ensure sufficient commercial/retail floor space is provided in the Lakemba Town Centre to meet projected demand
Analysis of community services and open space requirements in the Lakemba Planned Precinct.	To ensure that there is an understanding of the demand for community services and open space aligned with future growth in Lakemba.

Strategic traffic impact assessment based on projected growth in the Lakemba Town Centre and the corridor including intersection upgrades and staging.	To ensure required traffic upgrades are undertaken and equitably funded.
Urban design analysis of the Lakemba Town Centre including height density controls tested against the requirements of the ADG.	To ensure that the height and density of the proposed scheme will not prevent the most optimum possible development of the Lakemba Town Centre.

- Should the proposal proceed to Gateway, Council staff should also enter into negotiations with landowner with a view to dedicating site C (448m²) at Railway Parade to Council to increase the provision of local open space.

ATTACHMENTS

A. Assessment Findings

POLICY IMPACT

There will be no policy impact as the recommendation is for the Planning Proposal not to proceed to Gateway at this stage. If Council decides to proceed with this Planning Proposal it is likely to set a precedent for other planning proposals in the SBURC. This could result in an ad-hoc and uncoordinated approach to planning proposals in the corridor.

FINANCIAL IMPACT

Deferring the Planning Proposal will have no financial implications for Council.

COMMUNITY IMPACT

Deferring consideration of the Planning Proposal until after the SBURCS is finalised will ensure future development complies with the strategic vision for the Lakemba Town Centre. Should Council decide to proceed with the Planning Proposal now or in the future, Council should enter into negotiations with the applicant about dedication of 448m² (the entire site) of land at Site C to increase the size of Jubilee Reserve.

DETAILED INFORMATION

Site Description

The Planning Proposal relates to two sites, both are located on the northern side of the Lakemba Town Centre, and Lakemba Railway Station.

Figure 1. Locality Map of sites the subject of this Planning Proposal



Source: Six maps 2018 and Canterbury Bankstown Council

Site B is situated on the corner of Lakemba Street and Croydon Street, one street block west from the Haldon Street shopping strip and is occupied by the former Lakemba Community Services Centre. Site C is located on Railway Parade, east of Jubilee Reserve and is occupied by a multilevel flat building.

Council recently supported a planning proposal to increase the development potential of a contiguous parcel of land at 5-9 Croydon Street (known as Site A). This proposal was supported on the basis that it was initiated by the former Canterbury Council and it received gateway approval from the Department of Planning prior to the announcement of the draft SBURCS.

The current legal description of the sites the subject of this Planning Proposal is below:

Site	Property Address	Lot and DP Description	Site Area
B	194-198 Lakemba Street	Lot 1 DP: 839201	2,461m ²
C	56-57 Railway Parade	Lot 1 DP: 432109	448 m ²

Figure 2. Site Map (Sites B and C are the subject of this Planning Proposal)



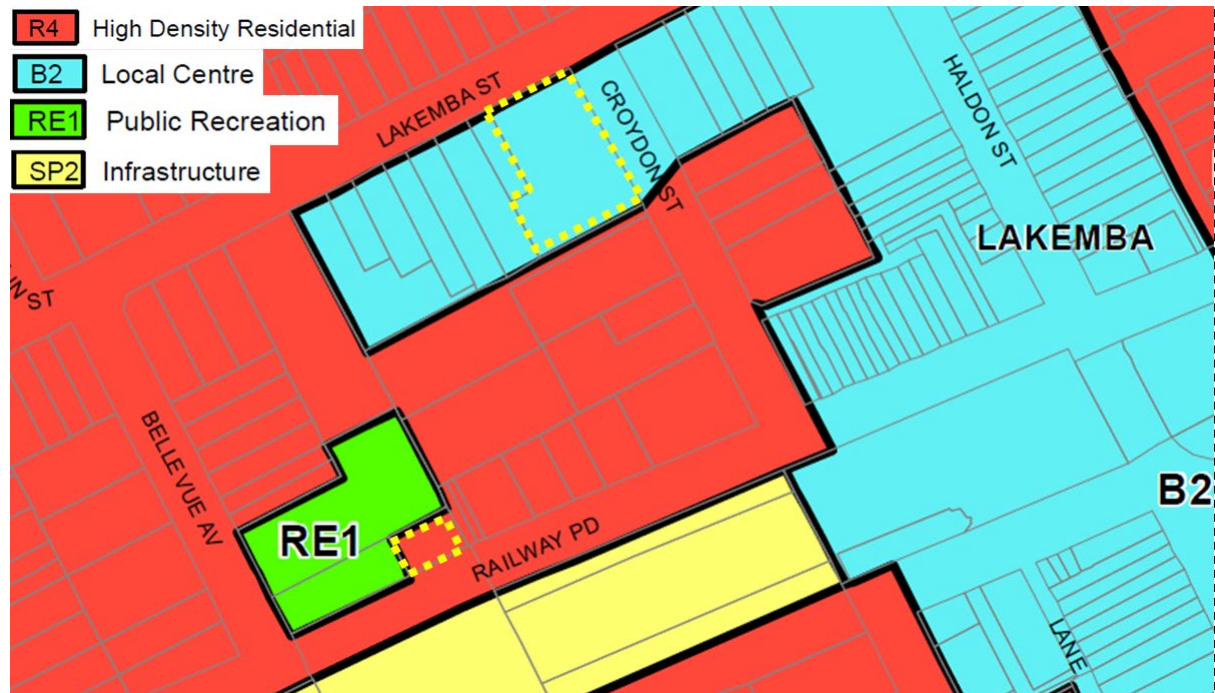
Source: Weave maps 2018

Canterbury LEP 2012

Site B is currently zoned B2 Local Centre and is subject to a maximum height control of 18m under CLEP 2012. There is currently no prescribed FSR for commercial zones in the CLEP 2012.

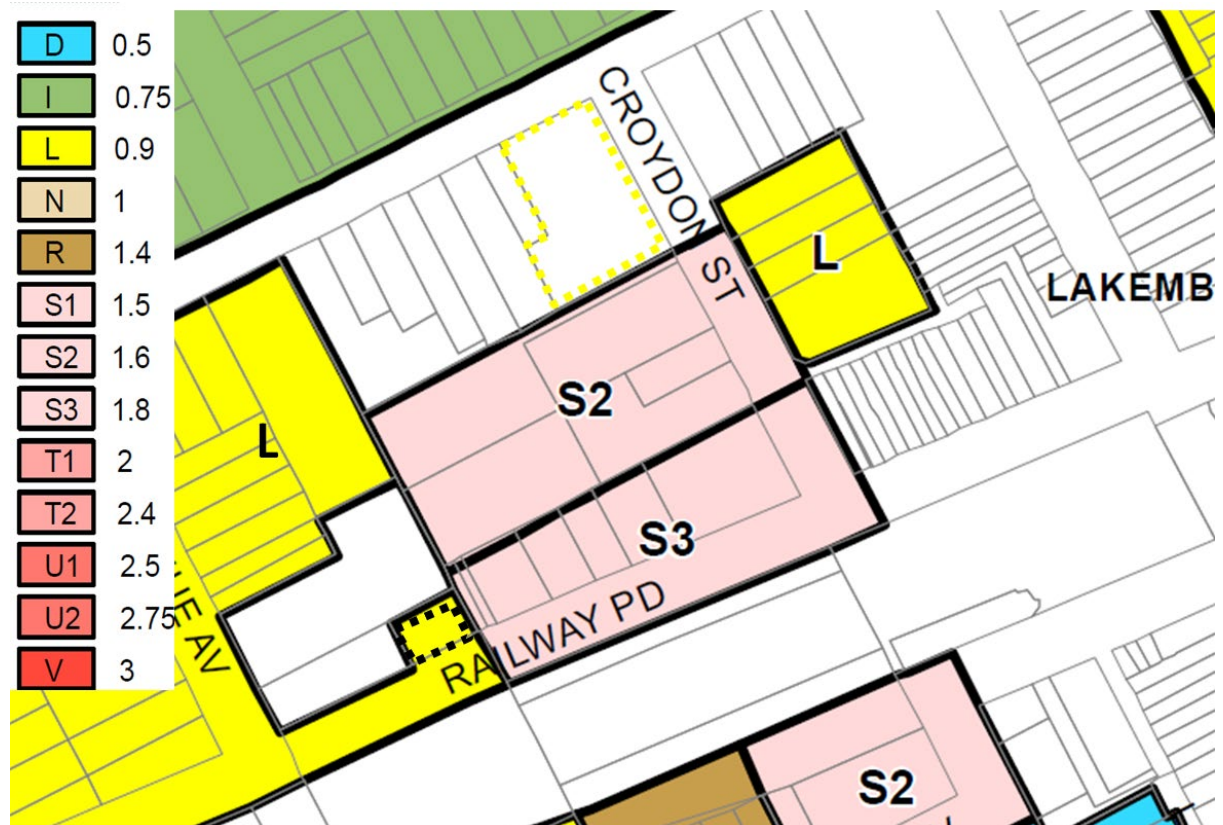
Site C is zoned R4 High Density Residential and has FSR of 0.9:1 and an 11.5m maximum height of building control under the CLEP 2012.

Figure 3. Current Land Zoning Map



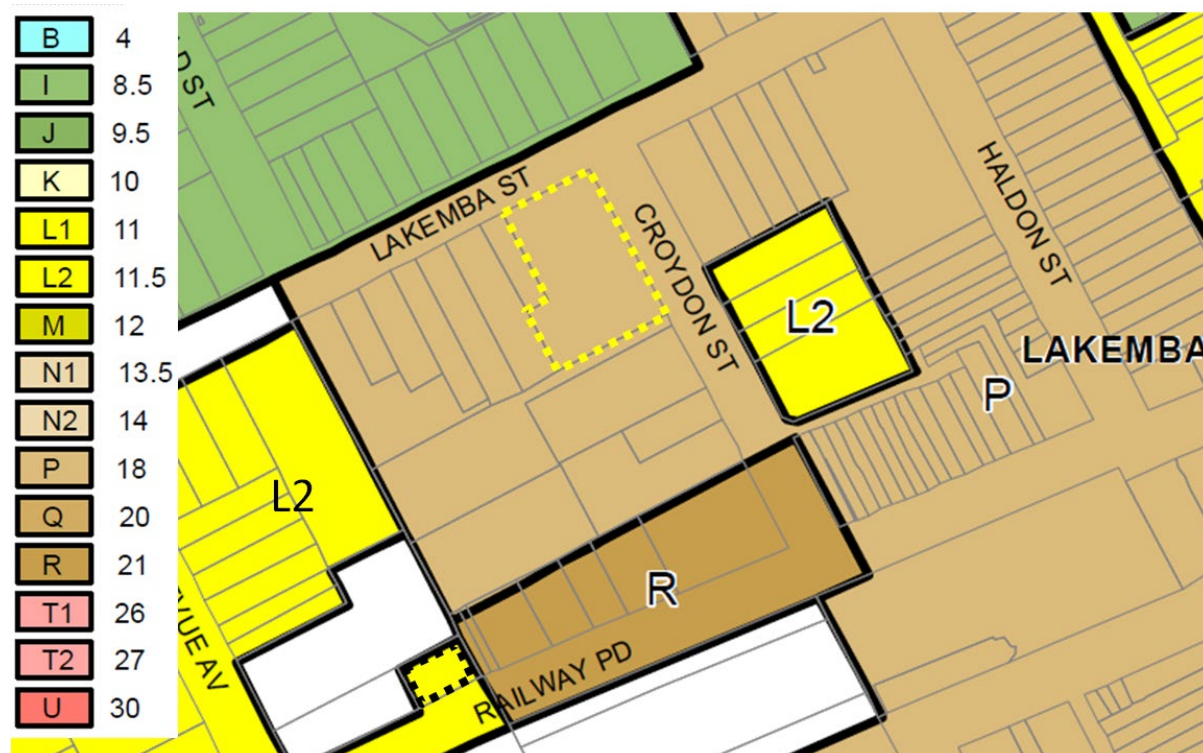
Source: Canterbury LEP 2012

Figure 4. Current Floor Space Ratio Map



Source: Canterbury LEP 2012

Figure 5. Current Maximum Height of Building Map



Source: Canterbury LEP 2012

Proposal

The proponent submitted a Planning Proposal report (prepared by TPG, dated May, 2018) and proposed scheme (prepared by Stewart Hollenstein and Matthew Pullinger, dated 8 March, 2018) and associated studies and schemes. These studies have been provided to the Canterbury Bankstown Local Planning Panel.

The Planning Proposal seeks the following amendments to Canterbury LEP 2012.

Site B – 194 – 198 Lakemba Street, Lakemba

	Current Control	Proposed	Draft SBURCS
Zone	B2 Local Centre	No change	Does not prescribe a zone. Suggests high rise/and or mixed use.
Height	18m (5 storeys)	40m (12 storeys)	Up to 12 storeys
FSR:	NA	NA (no maximum control FSR is proposed but this scheme is estimated to achieve an FSR of approximately 4:1)	NA – advises that this area ‘provides an opportunity to review the existing landuse and density controls’.
Residential development	Shop top housing is the only form of residential development permitted in the B2 Zone.	Add residential flat buildings to Schedule 1 of CLEP 12 as an additional permitted use.	NA
Non-residential	The definition of shop top housing requires	Insert a site specific clause requiring a minimum of	No prescribed control. Generally states ‘where

	Current Control	Proposed	Draft SBURCS
ground floor requirement	that dwellings are located above ground floor retail premises or business premises. The ground floor of the proposed development is 1,118m2.	420m2 of the ground floor to be designated to retail or business uses.	appropriate, incorporate active street edges and commercial uses for employment opportunities’.

Site C – 56-57 Railway Parade, Lakemba

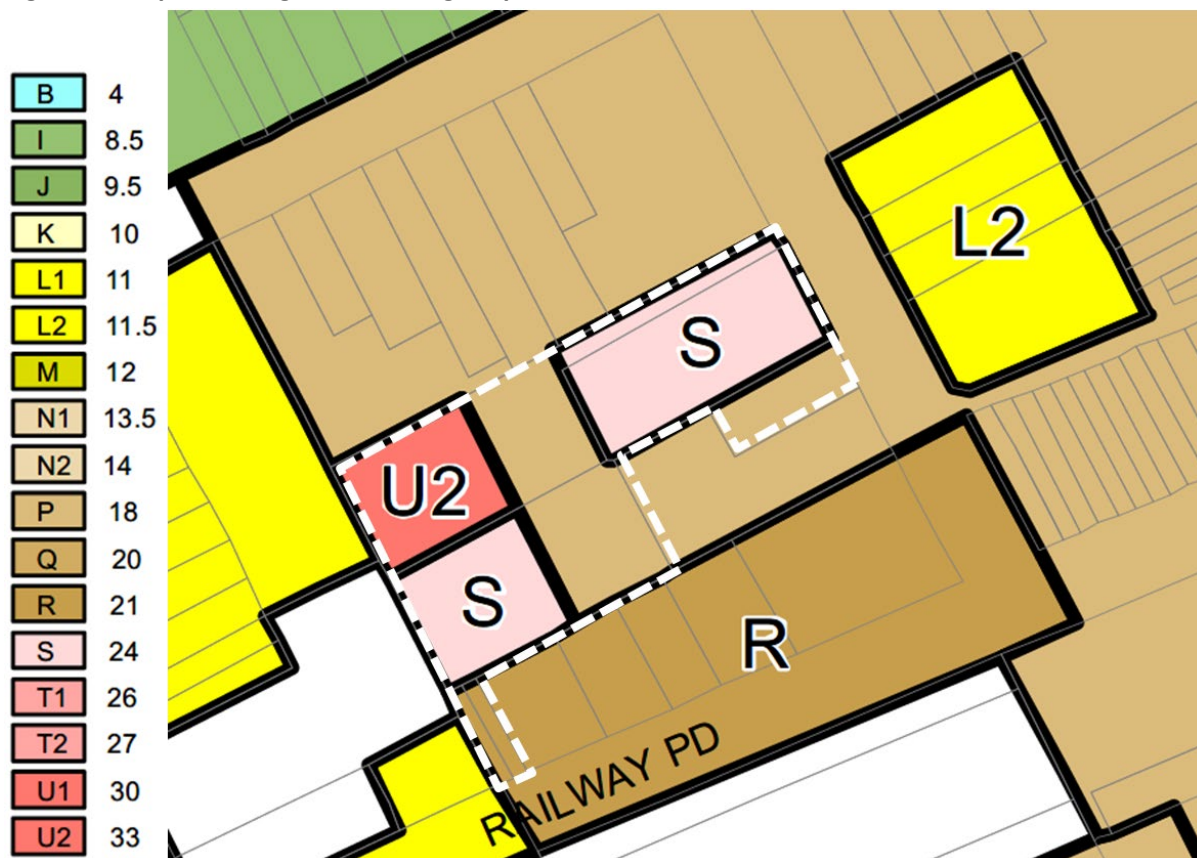
	Current Control	Proposed	Draft SBURCS
Zone	R4 High Density Residential	No change	Does not prescribe a zone. Suggests high rise/and or mixed use
Height	11.5m (3 storeys)	12m (3 storeys)	Up to 12 storeys
FSR:	0.9:1	1.9:1	NA – advises that this area ‘provides an opportunity to review the existing landuse and density controls’.

Site A - 5-9 Croydon Street, Lakemba

On 25 September, 2018 Council supported a Planning Proposal for increased development potential on a contiguous parcel of land at 5-9 Croydon Street (identified as Site A in the Planning Proposal provided under separate cover to Panel members) illustrated in Figures 6 and 7 of this report. This proposal was supported on the basis that it had been initiated by the former Canterbury Council and had received a Gateway determination from the Department of Planning and Environment prior to the announcement of the draft SBURCS.

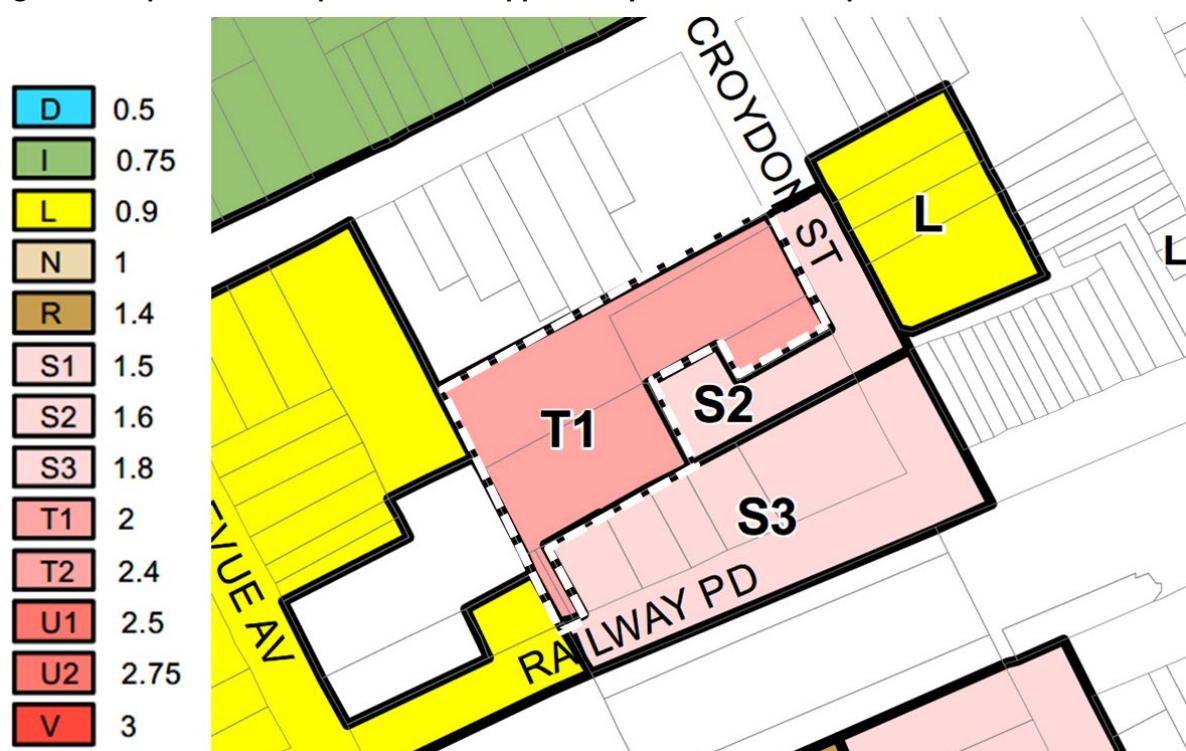
	Current Control	Proposed as supported by Council
Zone	R4 High Density Residential	Retain existing R4 High Density Residential zoning
Height	18m (5 storeys)	18-33m (5-10 storeys)
FSR:	1.6:1	2:1

Figure 6. Proposed Height of Building Map for site A



Source: Canterbury Bankstown Council 2018

Figure 7. Proposed FSR Map for site A – supported by Council on 25 September 2018



Source, Canterbury Bankstown Council, 2018

Revised Sydenham to Bankstown Urban Renewal Corridor Strategy

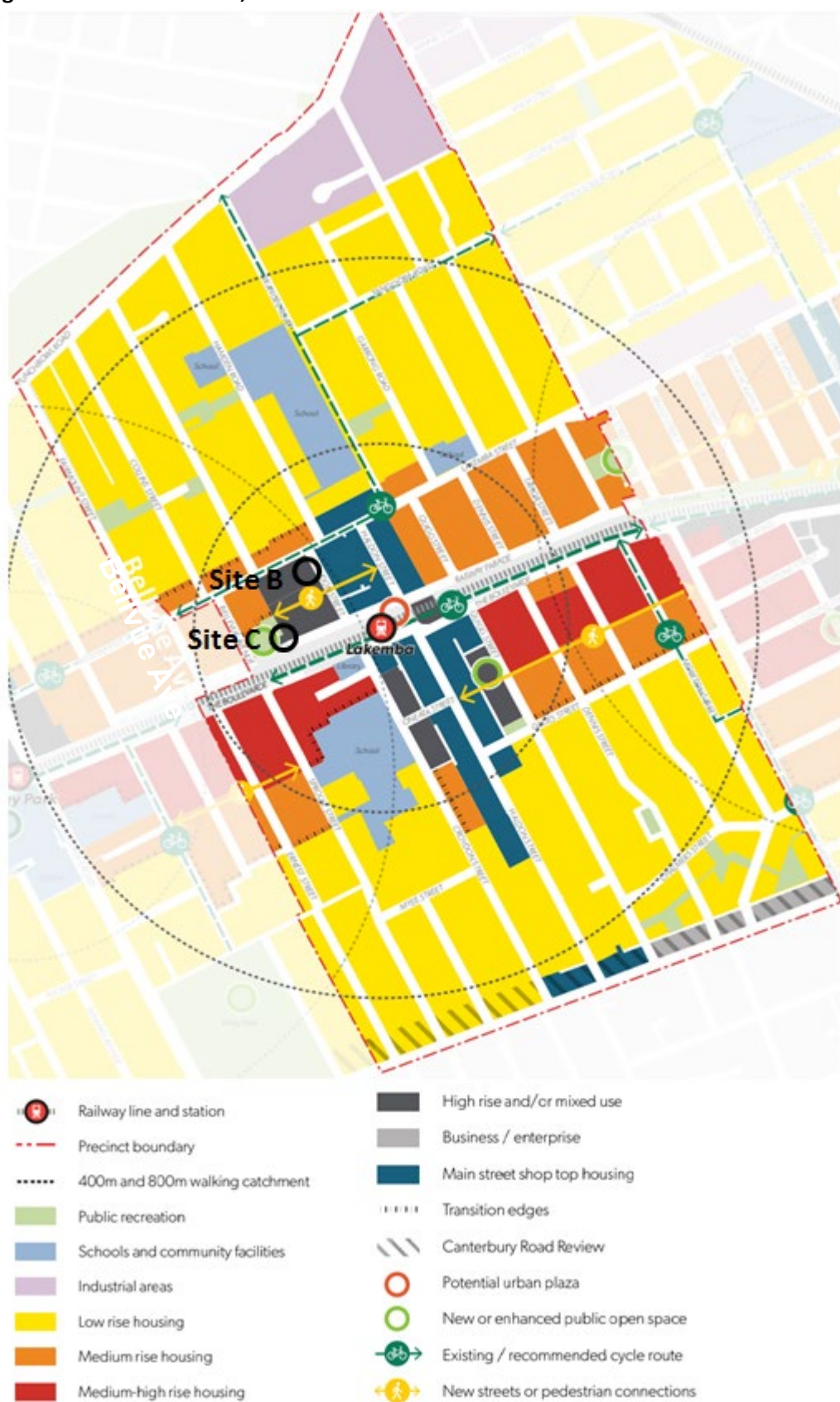
The draft SBURCS was prepared by the Department of Planning and Environment in response to the proposed Southwest Metro and placed on public exhibition between 15 October 2015 and 7 February 2016. Following this, the revised SBURCS was placed on exhibition between June and September 2017.

The revised strategy identifies Lakemba as a 'Priority Precinct' meaning that the Department of Planning and Environment will work with Council to identify areas within the Lakemba Station precinct that will be prioritized for rezoning and urban renewal. The revised SBRUCS also suggests a potential over station development and an urban plaza on both sides of Haldon Street and identifies the subject sites as suitable for *high-rise and or mixed-use development* of up to 12 storeys.

A Council endorsed submission was made to the revised strategy in November 2017 (A copy has been provided under separate cover to Panel members). This submission raised several issues regarding the inconsistency of the SBURCS with State Government strategic policy and the lack of strategic analysis around urban form, State and local infrastructure requirements, traffic impact and the lack of an affordable rental-housing target.

In July 2018 the Minister for Planning wrote to the Mayor of Canterbury Bankstown (A copy has been provided under separate cover to Panel members) and advised that the Strategy will now become a 'principles based' 'high level' strategy and that State Government would lead this process, however welcomes the opportunity for Council to play a 'major role in planning for these precincts (Canterbury, Campsie, Lakemba, Belmore)'.

Figure 8. Revised SBURCS, Lakemba Landuse Plan



Source: NSW Department of Planning and Environment, 2017

Council Resolution

On 26 July 2016, Council resolved to defer planning proposals that primarily rely on the draft SBURCS for justification as provided below:

I have decided that Council will defer planning proposals that primarily rely on the draft Sydenham to Bankstown Urban Renewal Corridor Strategy for justification and have not received Gateway Approval from the Department of Planning and Environment, until the strategy is finalised and reflective of local planning needs. Existing proposals with approval in the corridor will continue to be assessed on their individual merits and existing planning framework.

The applicant was informed of this resolution at a pre-lodgement meeting (Attachment A to this report is the pre-lodgement minutes).

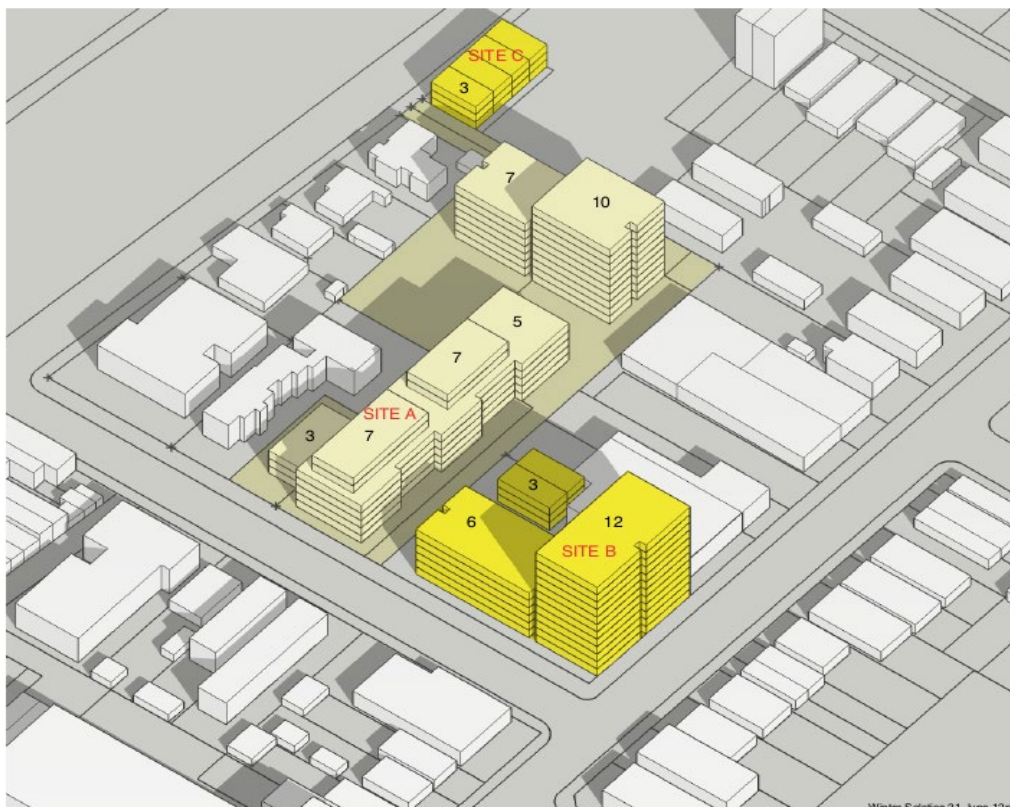
Assessment

Site B

Urban Form

The proposal seeks an amendment to the applicable landuse provisions and height controls in CLEP 2012 to permit the development of 2 buildings. One building being 12 and 6 storeys and one building being 3 storeys. The maximum proposed height is 40m.

Figure 9. Proposed Development Scheme in existing context



Source: Stewart Hollenstein & Matthew Pullinger, 2018

The proposal also seeks to allow stand-alone residential flat buildings in a commercial zone and to limit the minimum commercial/retail ground floor space required under CLEP 2012 to 420m². Whilst it does not include a proposed maximum FSR control for the site, the applicant has calculated it as achieving an FSR of approximately 4:1.

Under this concept, the amendment to the planning controls would allow for the development of 87 residential units in addition to 4 retail units on the ground floor through a 122% increase in applicable height to 40m. The proposed height is considerably higher than the current controls of surrounding development which would retain an 8.5m (2 storeys) height limit on the northern side of Lakemba Street and an 18m height limit on the eastern side of Croydon Street and immediately adjoining the western boundary of the subject site. The site adjoining the southern boundary is currently subject to an 18m (5 storeys) height limit, noting Council supported a Planning Proposal to increase height to 33m in September this year.

The calculated FSR of the proposal is approximately 4:1 which is considerably higher than maximum densities of surrounding properties including 0.75:1 on the northern side of Lakemba Street in an R4 High Density Residential Zone and 1.6:1 on the R4 High Density residential zoned land immediately adjoining the southern boundary of the site, although as previously mentioned, Council recently supported an increase in permissible FSR on this site to 2:1.

Of particular concern, the proposal appears to include a street wall height of 40m built to the property boundary for a width of 34m on Lakemba Street (Figure 9) and a built form length of 53m on Lakemba Street without any proper articulation or upper level setback which will contribute to the perception of its bulk and scale.

The proposal also includes a 12m separation distance fully within the adjacent lot on the western side of the site which does not comply with the ADG requirement to provide at least 50% of the required separation distance within the subject site and will also limit potential future development potential of this property.

The shadow diagrams submitted also indicate that the communal open space proposed within the site will be heavily overshadowed by the proposed 12 storey building fronting Lakemba Street which will cause severe amenity issues for future residents.

Traffic

The Traffic Impact Assessment submitted in support of the proposal and prepared by ARUP concludes that the proposed development will have minimal impact on the performance of the surrounding road network and all surrounding intersections will continue to operate with acceptable Level of Service and moderate delays. However, the analysis finds that when the development associated with the SBURCS is taken into account, several upgrades to existing intersections are required.

Currently a detailed traffic/parking demand impact assessment has not been undertaken to determine the traffic upgrades associated with growth in the corridor, nor is there a consideration of potential development staging and sequencing of traffic infrastructure upgrades. Development within the corridor must be considered holistically with a clear understanding of cumulative impacts rather than on an incremental and individual basis.

Site C

The proposed scheme for Site C includes an increase in height from 11.5 to 12m and a 111% increase in FSR from 0.9:1 to 1.9:1, to accommodate 4 x 3 storey town houses. Whilst this is not inconsistent with the existing character of the surrounding area, this is a considerable increase in density and given the limited size of the site (448sq.m), its dimensions (18m deep x 25m wide) and required setbacks and its isolation from the remainder of the proposal, it is unlikely to be developed.

It should also be noted that in July 2015, Council officers advised the landowner that it would not support an increase in development on this site for the above reasons.

Strategic Merit Test

In August 2016, the Department of Planning and Environment introduced the Strategic Merit Test to determine whether a proposal demonstrates strategic and site specific merit to proceed to Gateway.

Based on the Strategic Merit Test as outlined in the Department's publication, *A Guide to Preparing Local Environmental Plans*, the following issues are raised:

Is the Proposal consistent with the relevant district plan within the Greater Sydney Region, or corridor/ precinct plan applying to the site, including draft regional, district or corridor/precinct plans released for public comment?

Greater Sydney Region Plan

Under Objective 2, *Infrastructure aligns with forecast growth*, infrastructure provision is required to be aligned with the location and sequencing of growth.

The proposal seeks to proceed ahead of the finalisation of the SBURCS and prior to the identification of local and regional level infrastructure required to service future population growth within the corridor and an appropriate infrastructure funding and delivery mechanism that is aligned with the growing population of the corridor.

Objective 6, *Services and infrastructure meet communities changing needs* recognises the importance of integrated planning, including considering the provision of services for both existing and planned new communities. Proceeding ahead of the finalisation of the SBURCS would prevent the strategic and transparent consideration of the social infrastructure requirements attributed to growth within the corridor.

Objective 12, *Great Places That Bring People Together*, encourages the prioritisation of a people friendly public realm and open spaces as a central organising design principle and requires celebration of the character of a place. The proposal is inconsistent with this objective as it seeks to proceed ahead of an identified vision for the Lakemba Town Centre including a strategic consideration of the public realm and open space requirements. The scale of the proposal will reduce opportunities for urban renewal on the adjoining site to the west due to the proposed 12m separation distances proposed to be located entirely within this property. This will also result in missed opportunities to achieve quality public domain outcomes for this part of the Town Centre.

Objective 22, *Investment and Business Activity in Centres* recognises the importance of local centres in providing access to goods and services and local employment and emphasises the importance of managing the hierarchy of centres.

The proposal is inconsistent with this objective as it will reduce the potential provision of retail floor space and employment generating uses in an identified centre and is not based on a strategic consideration of future projected retail/commercial floor space demand in the corridor.

South District Plan

Planning Priority S6, *Creating and renewing great places and local centres and respecting the District's heritage*, recognises the importance of local centres as a focal point for neighbourhoods and their role in providing goods and services. Priority S6 also demonstrates place based planning principles for centres including:

- protect or expand retail and/or commercial floor space
- protect or expand employment opportunities
- augment or provide community facilities

The introduction of residential flat buildings as an additional permitted use on the site and the requirement to provide a minimum of only 420m² of ground floor area has the potential to reduce retail/commercial floor space in a local centre, however the proposal is not informed by a strategic consideration of the long term demand for commercial/retail floor space within the town centre or corridor.

This priority also requires site-specific planning proposals to be integrated with precinct wide place based and public domain outcomes. The proposal is inconsistent with this priority as it presents an isolated scheme and seeks to proceed ahead of precinct wide landuse analysis and adoption of a relevant development controls.

Revised Sydenham to Bankstown Urban Renewal Corridor Strategy

The proposal relies heavily on the revised SBURCS for justification and whilst it is generally consistent with the Strategy with regard to the suggested numerical building height, landuse and pedestrian connectivity, government position has changed significantly since it was released and it can no longer be relied as a basis for planning proposals.

As previously outlined on 25 July 2018, the Minister for Planning wrote to the Mayor advising a change in direction to the Strategy, noting that in light of significant Council and community concern, '*a principle based high level strategy in collaboration with Council*' is to be prepared, and that Council will play a '*major role*' in planning for Lakemba, Belmore, Canterbury and Campsie.

The final strategy will need to be informed by an in depth strategic planning analysis of the corridor. Site specific planning proposals within the corridor should not proceed ahead of this analysis.

Section 9.1 Directions

Under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, Council is required to consider policy directions for plan making. An assessment against relevant directions is provided below:

Ministerial Direction 1.1 relates to retaining and protecting areas and locations of existing business and industrial zones. Under this direction, clear justification must be provided for reducing the total potential floor space area for employment uses in business zones.

The proposal is supported by a Lakemba Market Assessment prepared by Hill PDA. This assessment indicates that there is limited demand for non-residential floor space in the northern part of the Lakemba Town Centre and concludes that providing an entire ground floor of non-residential development in this location may result in a high vacancy rate for the proposal.

However, this analysis does not include a consideration of the non-residential floor space demand attributed to growth associated with the SBURCS. If the proposal were to proceed with the proposed limited allocation of the ground floor retail/commercial development it may also create a precedent that would encourage the incremental loss of employment uses in centres in the LGA.

Ministerial Direction 3.1 Residential Zones relates to existing residential zones or any other zone in which significant residential development is permitted or proposed to be permitted. Under this direction Council must ensure that a planning proposal includes provisions that encourage housing that will broaden the choice of housing, make more efficient use of infrastructure services, reduce consumption of land on the urban fringe and must be of good design.

The proposal is generally consistent, however it relies on the SBURCS for justification and Government position on this strategy has now changed. Further, the scale and density sought by this application and its location substantially within a business zone raises questions regarding its suitability in this locality. It is therefore recommended that the strategic work associated with the SBURCS and comprehensive LEP be completed prior to this proposal being further considered by Council.

Ministerial Direction 6.3 Site Specific Provisions relates to the preparation of planning proposals to permit a particular development to be carried out and seeks to prevent unnecessarily restrictive development controls. Under this direction Council must allow a particular land use to be carried out in the zone in which it is situated or rezone it to an appropriate zone without imposing a particular development standard. A planning proposal may only be inconsistent with this direction where the provisions are of minor significance.

The Proposal is inconsistent with this direction as it is not of 'minor significance'. It seeks to insert a site specific clause that would allow stand-alone residential flat buildings within the B2 Local Centre zone and an additional clause that would limit the non-residential ground floor use to a minimum of only 420m² as opposed to the current requirement of the entire ground floor. Whilst this applies to one site, it has the potential to create a precedent that would allow for the incremental loss of non-residential ground floor development without a

strategic consideration of centres hierarchy or retail/commercial floor space demand aligned with growth.

Is the Proposal consistent with the relevant local strategy that has been endorsed by the Department?

Council does not have a relevant local strategy to assist with consideration of this planning proposal. A new and updated strategic framework is being prepared as part of the draft SBURCS and the Lakemba Planned Precinct.

Is the Proposal responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

The Planning Proposal is a response to the announcement of the Southwest Metro rapid transit system and the draft SBURCS. There is a high degree of uncertainty surrounding the final format of the draft strategy and the South West Metro has not yet been finalised. As such it is not appropriate to rely on the draft SBURCS for justification.

Conclusion

Whilst it is acknowledged that Lakemba will grow as a 'Planned Precinct', this Planning Proposal seeks to proceed ahead of an agreed vision being established for the corridor and the Lakemba Precinct. A strategic vision is yet to be set at both the levels and to proceed now would have implications for the provision of local and regional infrastructure including open space and community facilities as well as the future demand for commercial and retail floor space.

Accordingly, Council must have a firm understanding of how Lakemba will grow as a precinct and its relationship with the corridor before it can make an informed assessment of this and other planning proposals in the corridor.

ATTACHMENT A – Assessment Findings

Attachment A outlines the assessment findings and is based on the justification matters as set out by the *Department of Planning and Environment*.

1. Strategic Merit Test

Section 1 assesses the proposal based on the Department of Planning and Environment's publication, *A Guide to Preparing Local Environmental Plans*. The intended outcome is to determine whether a proposal demonstrates strategic and site-specific merit to proceed to the Gateway.

1.1 Is the Proposal consistent with the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional district or corridor/precinct plans released for public comment?

1.1.1 Greater Sydney Region Plan – A Metropolis of Three Cities 2018

Objective	Comment
<p>Objective 4: <i>Infrastructure use is optimised</i></p> <p>Proponent's Submission The Planning Proposal is consistent with the objectives of the Plan as it will provide for intensification and efficient use of land by co-locating services in close proximity to mass transit services.</p>	Generally consistent, noting the Southwest metro has not been approved.
<p>Objective 6: <i>Services and Infrastructure meet the communities' changing needs</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective as it will contribute to renewed civic, social and cultural infrastructure with commercial and residential opportunities to support employment, lifestyle and transport opportunities close to homes.</p>	Generally consistent, noting that local and state infrastructure requirements aligned with growth in the corridor have not been identified.
<p>Objective 7: <i>Communities are healthy, resilient and socially connected.</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective as it will facilitate development of a new mixed use destination that:</p> <ul style="list-style-type: none"> • Provides walkable places at a human scale with active street life, • Prioritises opportunities for people to walk, cycle and use public transport through the creation of new civic spaces, eat streets close to public transport services • Co-locates civic and cultural facilities, recreation spaces, employment, residential 	Generally consistent, noting the social infrastructure requirements aligned with growth in the corridor have not been identified, and a desired future vision including public realm requirements has not been established for the corridor.

Objective	Comment
and place making communities.	
<p>Objective 8: <i>Greater Sydney's communities are culturally rich with diverse neighbourhoods.</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective as it will provide for renewed commercial and residential opportunities that will cater for a diverse range of cultural and social needs, expressions and interactions.</p>	<p>Generally consistent. However the proposal seeks to proceed ahead of the identification of a desired future character of the Lakemba Town Centre and social and community facilities and it seeks to limit potential commercial floor space in an existing commercial zone reducing potential for non-residential development in this location and potentially preventing opportunities of urban renewal on other sites.</p>
<p>Objective 10: <i>Greater Housing supply</i> Objective 11: <i>Housing is more diverse and affordable</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this direction as it will increase the dwelling capacity of the subject site in close proximity to a railway station, thus allowing for greater housing supply in an area already well serviced by public transport, and which will become even better serviced in the future with the construction of the Sydney Metro City and Southwest project.</p>	<p>Consistent, noting the finding of the 'Dwelling Take up Analysis' supporting the draft SBURCS that <i>in the case of Punchbowl, Wiley Park and Lakemba, market attitudes toward higher density living is less established in the outer station precincts. The Urban Feasibility Modelling results affirm this observation, with tall buildings (greater than 10 storeys) rarely feasible to develop.</i></p>
<p>Objective 12: <i>Great Places that bring people together</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective as it will provide for renewed commercial opportunities that will facilitate community interaction and cultural expression.</p>	<p>Partially inconsistent. The proposal is of a significant scale and seeks to limit non-residential development opportunities on Site B.</p>
<p>Objective 14: <i>A Metropolis of three cities- integrated landuse and transport creates walkable and thirty minute cities.</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective in that it will intensify a diverse range of civic, cultural, commercial, retail and residential activities in a well-connected location in close proximity to existing and soon to enhanced Lakemba railway station.</p>	<p>Consistent, noting that the Southwest metro has not been approved.</p>
<p>Objective 22 <i>Investment and business activity in centres</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective as it proposes a more efficient and intensive use of an</p>	<p>Inconsistent. The proposal seeks to reduce the amount of non-residential floor space required on the ground floor, thereby reducing employment generation and potential service</p>

Objective	Comment
underutilised site in an existing local centre in close proximity to regular road and rail based public transport services.	provision on Site B.
<p><i>Objective 31: Pubic open space is accessible protected, enhanced.</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective in that it will improve the relationship with nearby Jubilee Reserve in a location that is in walking distance to the wider Lakemba Town Centre and nearby residential areas.</p>	Consistent. The proposal adjoins the pedestrian link to Jubilee Reserve provided on Site A. If the proposal proceeds to gateway, Council staff should enter into negotiations with the landowner to have the Railway Parade site dedicated to Council to increase the provision of local open space in the area.
<p><i>Objective 32: The Green Grid links parks, open space, bushland and walking and cycle paths.</i></p> <p>Proponent's Submission The Planning Proposal is consistent with this objective as it will provide for a new civic plaza on an identified Priority Green Grid Corridor.</p>	Consistent. The proposal adjoins the pedestrian link to Jubilee Reserve on Site A. A Civic plaza is proposed as part of the draft SBURCS.

1.1.2 South District Plan

The subject sites are located within the South District Plan. An assessment of the proposal against the relevant priorities of the plan is provided below.

Planning Priority	Consistency/Comment
<p>S3: Providing services and social infrastructure to meet people's changing needs.</p> <p>Actions:</p> <ol style="list-style-type: none"> Deliver social infrastructure to reflect the needs of the community now and in the future Optimise the use of available land for public infrastructure <p>Proponent's Submission The Planning Proposal will deliver on this priority and identified action as it will provide an achievable and sustainable development framework for the delivery of mixed use development adjacent to an existing town centre and transport facilities.</p>	Inconsistent, the proposal seeks to proceed ahead of the identification of the social infrastructure required to accommodate growth in the corridor and an appropriate funding/delivery mechanism.
<p>S4: Fostering healthy, creative, culturally rich and socially connected communities</p> <p>Actions</p> <ol style="list-style-type: none"> deliver inclusive places for people of all ages and abilities that support healthy, resilient and socially 	Generally consistent. Noting that the proposal seeks to proceed ahead of an adopted vision for the Lakemba Town Centre including the identification of social, cultural and other community facilities

Planning Priority	Consistency/Comment
<p>connected communities by:</p> <ol style="list-style-type: none"> Providing walkable places with active street life and a human scale Co-locating schools, social, health, sporting, cultural and shared facilities. <p>Proponent's Submission The Planning Proposal will provide more residential dwellings and new commercial floor space in a well connected location adjacent to an existing town centre, thereby promoting walking and interaction with street life. Such development will assist in further integration by providing better access to schools, social, health, sporting, cultural and shared facilities.</p> <p>This Planning Proposal will increase the availability of residential opportunities adjacent the Lakemba Town Centre and Railway Station.</p>	<p>aligned with growth in the corridor.</p> <p>The proposal to increase potential for residential development in a business zone will also reduce the potential for community facilities to be developed in this location.</p>
<p>S5: Providing Housing Supply, choice and affordability, with access to jobs and services</p> <p>Proponent's Submission The Planning Priority seeks to facilitate new dwellings on a site within the Lakemba Town Centre where people can live in proximity to employment, community, civic, cultural residential and open space opportunities.</p> <p>The site is located in close proximity to Lakemba Railway Station and the surrounding town centre, and therefore has the ability to facilitate new housing options close to public transport infrastructure with links to wider employment opportunities.</p> <p>The Proposal is also consistent with the South District's Plan's mention of investigating urban renewal on well connected, high amenity locations such as Lakemba Town Centre. The housing target for the Canterbury Bankstown LGA is 13,250 dwellings in the next 5 years to 2021.</p>	<p>Consistent. Noting the finding of the 'Dwelling Take up Analysis' supporting the draft SBURCS that <i>in the case of Punchbowl, Wiley Park and Lakemba, market attitudes toward higher density living is less established in the outer station precincts. The Urban Feasibility Modelling results affirm this observation, with tall buildings (greater than 10 storeys) rarely feasible to develop.</i></p> <p>The proposal does not include provision for designated affordable or affordable rental housing.</p>
<p>S6: Creating and renewing great places and local centres, and respecting the District's heritage.</p> <p>Proponent's Submission The Planning Proposal will deliver on this movement and place framework in that it corresponds to direct routes to local destinations, services and transport facilities, providing for an enhanced pedestrian experience with active street frontages. It will also</p>	<p>Generally consistent. The proposal is of a significant scale and seeks to proceed ahead of an adopted vision for the Lakemba Town Centre and a corresponding development control framework which may prevent other opportunities for urban renewal in this location.</p>

Planning Priority	Consistency/Comment
<p>increase residential development in or within walking distance of the centre.</p> <p>The Planning Proposal is consistent with this Priority as it will facilitate liveability for both the existing and the future Lakemba Community and residents by providing new residential opportunities on disused and underdeveloped land within well connected town centre location, with access to a wide variety of existing amenities, community facilities and local open spaces such as Jubilee Reserve.</p>	<p>The proposal also seeks residential development without density controls which has the potential to negatively impact the potential for urban renewal in surrounding areas.</p>
<p>S12: Delivering integrated landuse and transport planning and a 30 minute city</p> <p>Proponent's Submission The Planning Proposal is consistent with this priority as it will enhance the amenity and residential density of the Lakemba Town Centre. The Planning Proposal will also strengthen the relationship between the Lakemba Town Centre and Lakemba Railway Station as a key origin and destination on Sydney's evolving transport network.</p>	<p>Consistent, noting the Southwest Metro has not been approved.</p>
<p>S15: Increasing urban tree canopy cover and delivering Green Grid connections</p> <p>Proponent's Submission The Lakemba Town Centre is located on a future Green Grid Priority Corridor. The Planning Proposal is consistent with this Priority as it will enable the creation of new dwellings where residents can interrelate with the proposed green grid in this location.</p>	<p>Generally consistent.</p>

1.2 Is the proposal consistent with a relevant local strategy that has been endorsed by the Department?

Council does not have a relevant local strategy to assist with consideration of this Planning Proposal. A new updated strategic framework is being prepared as part of the draft SBURCS.

1.3 Is the proposal responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

Proponent's Submission

No comment

Council's Assessment

The Planning Proposal is a response to the announcement of the Southwest Metro Line and the draft SBURCS. Council and the Department of Planning are working on a plan for growth along the corridor so that the impacts of growth can be managed strategically. This application seeks to proceed ahead of this work.

It is not appropriate to rely on the draft SBURCS for justification as it is still in draft form and the Minister for Planning has advised that it will now become a 'principles based' strategy.

1.4 Does the proposal have regard for the natural environment (including known significant environmental values, resources or hazards)?**Proponent's Submission**

The proposal does not specifically address this question.

Council's Assessment

Not relevant, the proposal is located on urban land, given the site's urban locality and both past and existing developments, there is no likelihood that known significant environmental values, resources or hazards will be adversely affected as a result of the Planning Proposal.

1.5 Does the proposal have regard to the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to a proposal?**Proponent's Submission**

The proposal does not specifically address this question, however it includes a potential future development scenario and is located within Lakemba local centre and is within walking distance of the Railway Station.

The proposal also relies on the draft SBURCS and will be serviced by the new Southwest Metro.

Council's Assessment

The Planning Proposal does not respond to a change in circumstances, it relies on the draft SBURCS, the final form of which is now uncertain and the Southwest Metro which has not been approved.

1.6 Does the Planning Proposal have regard to the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements?**Proponent's Submission**

The proposal does not specifically address this question, however it is understood that the applicant's position is that the sites are well serviced by public transport.

Council's Assessment

The proposal seeks to proceed ahead of an understanding of the infrastructure requirements associated with growth in the corridor and an adoption of a transparent funding and infrastructure delivery mechanism. The Southwest Metro has not been approved at the time of writing this report.

2. Planning Proposal Justification matters

Section 2 assesses the proposal based on the justification matters outlined in the Department of Planning and Environment's publication '*A Guide to Preparing Planning Proposals*'. The intended outcome is to demonstrate whether there is justification for a proposal to proceed to Gateway.

2.1 Is the Planning Proposal a result of any strategic study or report?**Proponent's Submission**

Lakemba is located on the SBURC which is currently the subject of strategic urban planning initiatives and proposed major infrastructure upgrades. Lakemba will play an instrumental role in the state government's vision for land use an infrastructure along this key corridor. The Planning Proposal has therefore been prepared in response to the regional strategies along this corridor.

The Planning Proposal in underpinned by:

- The draft SBURCS; and
- The Sydney Metro and Southwest Project.

Council's Assessment

The proposal is reliant on the draft SBURCS for justification, however this strategy is in draft form and the suggested urban form is no longer relevant as the Strategy will now become principles based strategy.

2.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**Proponent's Submission**

The Canterbury LEP is the main statutory document used to restrict the height of buildings, amending the CLEP 2012 is the best way of achieving the objectives and intended outcomes of the Planning Proposal and consistency with the revised draft SBURCS.

Council's Assessment

The amendment of CLEP is the only way to achieve an increase in development potential on the subject sites. However the best way to facilitate growth and urban renewal in the corridor is to implement corridor wide landuse and development control plans, rather than through adhoc, site specific planning proposals.

2.3 Is the Planning Proposal consistent with the objectives and actions of the applicable regional, subregional or district plan or strategy (including any exhibited draft plans or strategies)?

Compliance with the Greater Sydney Region Plan and South District Plan is assessed in Section 1.1.1 and 1.1.2 of this report.

2.4 Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan

Proponent's Submission

The proposal is consistent with the former Canterbury Council's Community Strategic Plan 2014-2023 adopted in February 2014. The proposal will help achieve the goal of an 'attractive city' to facilitate 'attractive streetscapes, balanced development and prosperous economy'. The Planning Proposal will assist in achieving this by allowing for increased height and FSR to facilitate higher density residential and mixed use development, in an appropriate location close to an established town centre and public transport options. The proposal will also create enablers to attract investment into the Lakemba Town Centre and will increase the local residential population.

Council's Assessment

Council's Community strategic plan, CBCity 2028 is based on the vision of the city being 'thriving, dynamic and strong'. The proposal is generally consistent with the following high level directions of the Plan.

Safe and strong

The proposal locates residential development in close proximity to the Lakemba Town Centre, however reduces the potential for community services development on site B.

Clean and Green

The proposal seeks to increase the supply of residential development with access to Lakemba Railway and the proposed Southwest Metro.

Prosperous and Innovative

The proposal seeks to increase the supply of residential development with good access to public transport, however it also reduces the potential for the development of employment generating uses on site B.

Moving and Integrated

The proposal is locate in close proximity to Jubilee Reserve.

Healthy and Active

The proposal provides a pedestrian link to Jubilee Reserve and promotes the use of public transport.

Liveable and Distinctive

The proposal seeks to proceed ahead of an identified vision or corresponding development controls for the Lakemba Town Centre. It seeks a significant uplift in development potential has the potential to hinder future urban renewal opportunities on the site as well as reduced amenity for surrounding residents.

Leading and Engaged

The proposal seeks to proceed ahead of the finalisation of the SBURCS which prevents an informed strategic assessment to ensure it is consistent the identified future vision for Lakemba.

2.5 Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

State Environmental Planning Policy	
<p>No.55 Remediation of Land</p> <p>Proponent's Submission</p> <p>The existing development on the sites comprises residential and commercial development. The Planning Proposal does not seek to change the existing zoning of the sites from the existing R4 High Density Residential and B2 Local Centre zones and therefore will not permit any additional sensitive land uses. Noting the landuse context and the location of the sites in the existing, well established urban area of Lakemba, the potential contamination of land is considered low, consistent with SEPP 55.</p> <p>If required by a Gateway determination a site contamination report can be prepared for the sites, other side any land contamination matters can be addressed as part of a future development application if necessary.</p>	<p>Consistent. The past uses on the site are not industrial and contamination is unlikely.</p>
<p>No.65 Design Quality of Residential Flat Development</p> <p>Proponent's Submission</p> <p>The urban design study attached has been prepared with due consideration for SEPP 65. The preferred development strategy prepared for the sites as part of the Urban Design Study has informed the objectives and intended outcomes of the Planning Proposal and has been considered in terms of the requirements of SEPP 65.</p> <p>The Urban Design Study supports the Planning Proposal and demonstrates that the proposed building height and FSR controls are capable of achieving compliance with SEPP 65/ADG.</p>	<p>Consistent. The proposal includes an assessment against key provisions of the ADG.</p>

2.6 Is the Planning Proposal consistent with applicable Ministerial Directions?

Direction	
<p>1.1 Business and Industrial zones</p> <p>Proponent's Submission The Planning Proposal will affect land in the B2 Local Centre zone. The Planning Proposal is consistent with the objectives of the Direction as it seeks to retain the B2 Local Centre zoning on site B so employment opportunities within the Lakemba Town Centre and close to the railway station is maintained.</p> <p>The Planning Proposal will also enhance the viability of the town centre by proposing planning controls that facilitate higher density development providing a ready made population without proposing any new employment areas other than those already envisaged under state policy.</p> <p>The Planning Proposal seeks to allow stand along residential flat buildings in the B2, it also seeks to allow a minimum floor space of 400m² for non-residential development.</p> <p>The proposal considers the objectives of the B2 Local Centre Zone through retaining the B2 Zoning and improving the capacity of this land for other purposes due to its strategic location.</p>	<p>Inconsistent. The proposal reduces potential provision of retail floor space in an identified business zone and seeks to limit minimum non-residential ground floor area to 400m². This may also create a precedent that would incrementally reduce the provision of non-residential development in business zones.</p>
<p>3.1 Residential Zones</p> <p>Proponent's Submission The planning Proposal seeks to increase the height and FSR on land zoned for high density residential purposes, therefore increasing the capacity for dwellings on the sites and providing a greater capacity for residential apartments in a zone identified for high density residential development, located near the Lakemba Town Centre and railway station.</p> <p>The Planning Proposal is consistent with the direction as it will provide for higher quality mixed-use development and delivers on the intention of the direction.</p>	<p>Generally consistent, however, the scale and density sought by this application and its location substantially within a business zone raises questions regarding its suitability in this locality.</p> <p>It is therefore recommended that the strategic work associated with the draft SBURCS prior to this proposal being further considered by Council.</p>
<p>3.4 Integrating Land Use and Transport</p> <p>The Planning Proposal is consistent with the 'Improving transport choice – guidelines for planning and development', 'the right place for business and services – Planning Policy Document'.</p>	<p>Consistent, noting the Southwest Metro has not been approved. The proposal supports access to public transport and connections to employment centres within the local area and metropolitan region.</p>
<p>6.3 Site Specific Provisions</p>	<p>Inconsistent. The proposal</p>

Direction	
Proponent's Submission The Planning Proposal is consistent with this Direction as it does not seek to impose any development standards or requirements in addition to those already contained in the Standard Instrument.	seeks insert site specific clauses in Schedule 1 of CLEP 12 to permit residential flat buildings as an additional permitted use and to provide a minimum of only 400m ² of commercial/retail floor space on site B.

2.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Proponent's Submission

Given the site's urban locality and both past and existing developments, there is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal and the amendments to CLEP 2012.

Council Comment

Consistent. The sites that are the subject of this planning proposal are urban land used for commercial and retail purposes.

2.8 Are there any other environmental factors as a result of the proposal and how are they proposed to be managed?

Proponent's Submission

There are no direct environmental impacts as a result of the proposal especially given its existing context and both sites are currently developed. Potential environmental impacts and mitigation techniques have been demonstrated in the Urban Design Study submitted with the Planning Proposal.

Impacts on building bulk can be managed as demonstrated in the Planning Proposal and further assessed against the CLEP 2012 objectives.

The draft SBURCS predicts a change in the scale and bulk of the sites and their surrounding context.

Council Comment

Inconsistent. A more detailed strategic understanding of the effects of the proposal relating to overshadowing, visual impact, local road and traffic circulation and economic impact are required without relying on the draft SBURCS for justification.

2.9 Has the Planning Proposal adequately addressed any social and economic effects?**Proponent's Submission**

The Planning Proposal is intended to be a positive change in business, residential and transport hub which is intended to grow in terms of service level and population. The Planning Proposal provides for new residential accommodation which will support the existing and future town centre economics in terms of growth and sustainability. This will result in increased dwelling capacity for the site that will in turn increase housing supply in Sydney and contribute to greater housing choice and opportunity.

The Planning Proposal will result in a number of social and economic benefits for the site and the locality. It will support population growth which will result in greater utilisation of existing retail and transport infrastructure which is of importance given the State government's investment in the upgrade of the T3 Bankstown Line.

Council Comment

This application for a planning proposal does not adequately address the social and economic effects that are likely to arise from such a significant increase in height of building density for site B.

In this regard, the scale of the proposal may reduce opportunities for urban renewal on the adjoining site to the west as its 12m separation distance required by the ADG is entirely located within this property. This will result in missed opportunities to achieve quality public domain outcomes for this part of the Town Centre.

Accordingly, it is important that any changes in height of building for the subject site be considered strategically in the context of the whole block and with an understanding of the desired future character of the Lakemba Town Centre. This approach requires development controls to be tested and considered strategically and also ensures equity in the application of planning controls.

2.10 Is there adequate public infrastructure for the Planning Proposal?**Proponent's Submission**

The sites are well serviced by public transport, with Lakemba Railway Station and connecting bus services located within a 120-400m level walk.

Public open space is provided within the vicinity of the sites.

The sites are currently used for urban purposes and are connected to services.

Council Comment

Inconsistent. The proposal does not include an assessment of the impacts additional traffic associated with growth in the corridor nor does it identify demand for health, education, community facilities and open space associated with corridor growth.

2.11 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Proponent's Submission

No State or Commonwealth authorities have been consulted yet. It is anticipated this will occur in accordance with the Gateway determination.

Council Comment

Consistent. However relevant state and local government public authorities should comment on growth in the corridor as a whole rather than on a site specific basis.

-END-

Canterbury Bankstown Local Planning Panel - 5 November 2018

ITEM 3	25 Dravet Street, Padstow
	Existing garage as a secondary dwelling and construction of a detached carport
FILE	DA-437/2018 – Revesby
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	6 June 2018
APPLICANT	Baidaa Mohamad
OWNERS	Baidaa Mohamad
ESTIMATED VALUE	\$9,900.00
AUTHOR	Planning

SUMMARY REPORT

This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 10%. The development standard proposed for variation by more than 10% is maximum wall height. The wall height is measured at 3.65m (0.65m variation – 21%).

Development Application DA-437/2018 proposes the use of the existing garage as a secondary dwelling and construction of a detached carport. The garage that is proposed to be used as a secondary dwelling is located to the western side of the principal dwelling.

DA-437/2018 has been assessed against *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy 55 – Remediation of Land*, *State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004*, *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP)*, *Bankstown Local Environmental Plan 2015 (BLEP 2015)* and *Bankstown Development Control Plan 2015 (BDCP 2015)*. The application fails to comply in regards to BLEP 2015 Clause 4.3(2B)(a) height of buildings (maximum wall height) and Part B1 of the BDCP 2015 Clause 3.4 and 3.10 in regards to maximum wall height and setbacks to the side and rear boundaries.

Council's Building Surveyors have assessed the proposal and advise that certain works are required in order to bring the building into conformity with the relevant provisions of the Building Code of Australia, including room heights and protection from the spread of fire. A condition requiring these works is included in Attachment 'B' to this report.

As detailed in this report, the proposed non-compliances with the maximum wall height and setback to the side boundary are justified and are considered worthy of support.

The application was notified for a period of 14 days from 7 June 2018 to 20 June 2018 and then re-notified for a further period of 14 days from 10 July 2018 to 23 July 2018 in response to the application being modified to include a detached carport. No submissions were received.

This matter was considered by the Panel on 8 October 2018, when the Panel resolved to defer the application pending further advice about the proper assessment for secondary dwellings. This advice has been provided to Panel members.

POLICY IMPACT

The recommendation of this report is that the Development Application be approved. Such a determination would not have any direct policy implications, as a variation to the wall height control of this nature has been supported previously.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the conditions included at Attachment 'B'.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Conditions for Consent

DA-437/2018 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

DA-437/2018 seeks consent for the use of an existing garage as a secondary dwelling and construction of a detached carport. The site is a regular allotment that is zoned R2 Low Density Residential. The site contains a single storey dwelling and detached garage. The site has an area of 590m², a width of 15.24m and generally slopes to the rear. The surrounding development consists predominantly of low density residential dwellings and dual occupancies of varying age and condition.

The existing garage is situated at the western side of the site, to the rear of the principal dwelling in a form that has been maintained since construction. The application proposes a secondary dwelling with a floor area of 41.28m² and with a maximum external wall height of 3.5m.

The context of the site is illustrated in the following aerial photo.



PROPOSED DEVELOPMENT

DA-437/2018 proposes the conversion of an existing garage (outbuilding) to a secondary dwelling and construction of a detached carport forward of the existing garage.

The proposal will reflect the same building envelope, with the addition of the carport to the north of the existing garage. The proposal incorporates a living area, kitchen, and bedroom with an adjoining bathroom. The external layout reflects that of the outbuilding structure that was originally constructed with the same architectural style and building footprint.

SECTION 4.15(1) ASSESSMENT

The proposed development has been assessed pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental planning instruments [section 4.15(1)(a)(i)]***Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment***

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of Clause 7 of *State Environmental Planning Policy No. 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site has long been used for residential purposes and this will not change as a result of the proposed development application. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination.

The subject site is considered suitable for the development and therefore satisfies the provisions of SEPP No. 55.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The provisions of Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* specifies that a consent authority must not consent to the carrying out of development for the purposes of a secondary dwelling unless:

- (a) *the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
- (b) *the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The SEPP also specifies that a consent authority must not refuse consent to development to which this Division applies on either of the following grounds:

- (a) **site area** if:
 - a. *the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - b. *the site area is at least 450 square metres,*
- (b) **parking** - *if no additional parking is to be provided on the site.*

An assessment of the development application has revealed that the proposal complies with the matters raised above. Additional covered parking is proposed to be provided by way of a carport forward of the proposed secondary dwelling in accordance with the applicable provisions of the BDCP 2015.

The table below is provided to demonstrate the proposals compliance with the numerical controls as set out in the Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Number of dwellings	Two	Two	Yes
Total Floor Area	295m ² (590/2)	128.88m ² (87.6 + 41.28)	Yes
Floor Area of Secondary Dwelling	Max. 60m ²	41.28m ²	Yes

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

A valid BASIX Certificate accompanied the Development Application. The Certificate details the thermal, energy and water commitments which are also detailed on the submitted plans. The proposal satisfies the requirements of the *State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004*.

Bankstown Local Environmental Plan 2015

The following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table

Clause 4.1B – Minimum lot sizes and special provisions
 Clause 4.3 – Height of buildings
 Clause 4.4 – Floor space ratio
 Clause 4.5 – Calculation of floor space ratio and site area
 Clause 4.6 – Exceptions to development standards
 Clause 5.4 – Controls relating to miscellaneous permissible uses

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015, with the exception of a variation proposed to Clause 4.3 Height of buildings (wall height).

The table below is provided to demonstrate the proposals compliance with the numerical controls as set out in the BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 3m - wall Max 6m - building	3.5m (wall height) 3.6m (building height)	No – see justification below Yes
Floor space ratio (specific site)	Max. 0.50:1	A GFA of 128.88m ² is proposed resulting in a FSR of 0.21:1.	Yes

Clause 4.3 – Height of Buildings

Clause 4.3(2B)(a) – Height of buildings of the BLEP 2015 refers to the maximum permitted height of buildings for secondary dwelling developments in an R2 Low Density Residential Zone as having a maximum building height of 6m and a maximum wall height of 3m. It reads as follows:

4.3 Height of buildings

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

- (a) *to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) *to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) *to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) *to define focal points by way of nominating greater building heights in certain locations.*

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

(2A)

(2B) *Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*

- a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,***
- b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,***
- c) for multi dwelling housing and boarding houses:***
 - i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and***
 - ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.***

The proposal seeks to vary Clause 4.3(2B)(a) of the *Bankstown Local Environmental Plan 2015*. The wall height for the dwelling is measured at 3.65m (0.65m variation – 21%).

In response to the non-compliance with Clause 4.3 the applicant has prepared and submitted a Clause 4.6 submission for Council's consideration. An assessment of the Clause 4.6 submission is provided below.

Clause 4.6 – Exceptions to development standards

(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.***

The aim of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. Extracts from the applicant's submission are provided below:

The proposed development consist of a maximum wall height of 3.65 metres, and therefore exceeds the maximum wall height for secondary dwelling development within Zone R2 Low Density Residential.

The portion of the development that exceeds the 3.0 metre wall height relates to an exposed roof gable wall. The wall is located along the rear of the site with a minimum setback of 8.5 metres to the rear southern boundary. The roof gable wall arises as a result of a land slope towards the rear. Hence the floor to ceiling heights of 2.38 metres for the ground floor result in the overall wall height exceeding 3.0 metres above natural ground.

As the non-compliance relates to the gable roof wall with a minor breach of 21% and is sufficiently setback from the rear boundary it is considered that the proposed non-compliant development represents that of a compliant development when perceived from the street. The proposed noncompliance does not result in any additional impact with regard to overshadowing, visual privacy, bulk or scale.

The proposal is limited to single-storey and will be consistent with future adjoining development that will be constructed in accordance with the building height requirements of the locality.

It can be considered that the height remains compatible with the character, amenity and landform and maintains the prevailing suburban character of the Bankstown area. Therefore the objectives of the Height of buildings standard are achieved.

In summary, the variation to the maximum wall height as required by Clause 4.3 of the BLEP 2015 warrants support for the following reasons;

- *The proposal is consistent with the objectives of the Height of buildings standard. The non-compliance cannot be perceived when viewed from the street, maintaining the prevailing suburban character of the Bankstown area.*
- *The development proposes standard floor to ceiling heights and reducing these heights to achieve strict compliance would result in poor internal amenity.*
- *The non-compliance is minor with the portion of non-compliance restricted to the rear of the site with a maximum exceedance of 21%.*
- *The proposed non-compliance does not result in any additional impact beyond that of a compliant development with regards to overshadowing, visual privacy, bulk or scale. For the above reasons the proposal has adequately demonstrated that the non-compliance will facilitate a better development outcome. Therefore, it is considered pursuant to Clause 4.6 of the BLEP 2015 this written request has adequately addressed that strict compliance with the minimum wall height requirement is unreasonable and unnecessary particular to the circumstance of the case and that there are sufficient environmental planning grounds to justify the contravention.*

(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.*

Clause 4.3(2B)(a) prescribes the maximum permissible wall and building heights for secondary dwelling developments on the subject site.

(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.***

An extract of the applicant's Clause 4.6 submission has been reproduced above, as have the objectives for the maximum wall and building height controls as contained in Clause 4.3 of the BLEP 2015.

In addressing the proposed variations to the wall height, consideration must be given primarily to whether the built form is consistent with objective (a) of the control.

The building controls applicable to this site under the BLEP 2015 and BDCP 2015 provide the framework that regulates the overall built form outcome expected on site. The LEP controls the site by the application of a minimum lot size as well as height restrictions and floor space ratio controls. The DCP goes further and identifies minimum setbacks, private open space, parking, visual privacy and solar access which contribute to the overall built form and achievement of the character expected in a locality.

The relevant objectives of the R2 Low Density Residential zone are to *"provide for the housing needs of the community within a low density residential environment"*... whilst *"To allow for the development of low density housing that has regard to local amenity"* and ensuring *"landscape as a key characteristic in the low density residential environment"*. It is considered that the proposal is generally consistent with the existing built form in that the general bulk and scale remains the same. The development remains compliant with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with what was originally constructed on the site.

The wall height of the proposed secondary measures at 3.65m, causing a non-compliance of 0.65m above the maximum allowable wall height of 3m. The non-compliance arises due to the nature of the existing roof form / gable end wall found on the southern elevation.

It is considered that enforcing compliance with the abovementioned clause in relation to wall height would be unreasonable. The wall height control is like for like in terms of wall height for secondary dwellings and outbuildings, as such, the outbuilding's wall height non-compliance has existed since it's construction.

As such, it is considered that there are sufficient environmental planning grounds to justify a contravention to the development standard, given the proposed development does not result in any significant changes to the original built form.

Given the nature of the non-compliance, the development's consistency with all other relevant requirements under BLEP 2015 and on the basis of the applicant's submission, it is considered that compliance with the standard are unnecessary in this instance and that there are sufficient environmental planning grounds to support the variation.

(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.**

On the basis of the applicant's submission, it is considered that compliance with the standard is unnecessary in this instance and that the proposed development is within the public interest. Therefore, it is considered that there is sufficient environmental planning grounds to support a variation in accordance with the above criteria.

Draft environmental planning instruments [section 4.15C(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

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

The following table provides a summary of the development application against the primary numerical controls contained within Part B1 of BDCP 2015.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 3.1	The subdivision of secondary dwellings is prohibited.	<p>After completion of a site inspection, it was noted that this development had created an informal subdivision by way of construction of an unauthorised internal fence.</p> <p>It is important to note that Condition 3 is recommended to read:</p> <p><i>All internal fencing at 25 Dravet Street, Padstow must be removed in accordance with the approved plans.</i></p>
Clause 3.2	<p>Council must not consent to development for the purpose of secondary dwellings unless:</p> <p>(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning</p>	<p>The total floor area of the principal dwelling and secondary dwelling is considered to comply with this provision of this clause. The following calculations are provided:</p> <p>Total Floor Area = 295m² (590/2) Gross Floor Area = 128.88m² (87.6 + 41.28)</p>

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	instrument; and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under an environmental planning instrument, that greater floor area.	The total floor area of secondary dwelling is measured at 41.28m ² , deemed compliant with this clause.
Clause 3.4	The storey limit for detached secondary dwellings is single storey and the maximum wall height is 3 metres.	The secondary dwelling is single storey. As mentioned previously, the wall height exceeds the maximum height of 3m. See Justification below
Clause 3.8	The minimum setback for a building wall to the primary road frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey.	20.1m N/A
Clause 3.10	For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metre.	The existing garage has a setback to the side boundary of 0.562m which demonstrates a non-compliance. Non-compliance – See Justification below
Clause 3.13	At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.	The proposal depicts a north facing living area which is deemed to receive greater than the 3 hour minimum requirement of direct sunlight to living areas therefore demonstrating compliance with this clause.
Clause 3.16	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres	It is considered that compliance is demonstrated with this Clause as no windows have been proposed to the western elevation (adjoining the neighbour), the window facing south is to a bedroom and does not adjoin any windows and the windows to the east faces the private open space of the principal dwelling.

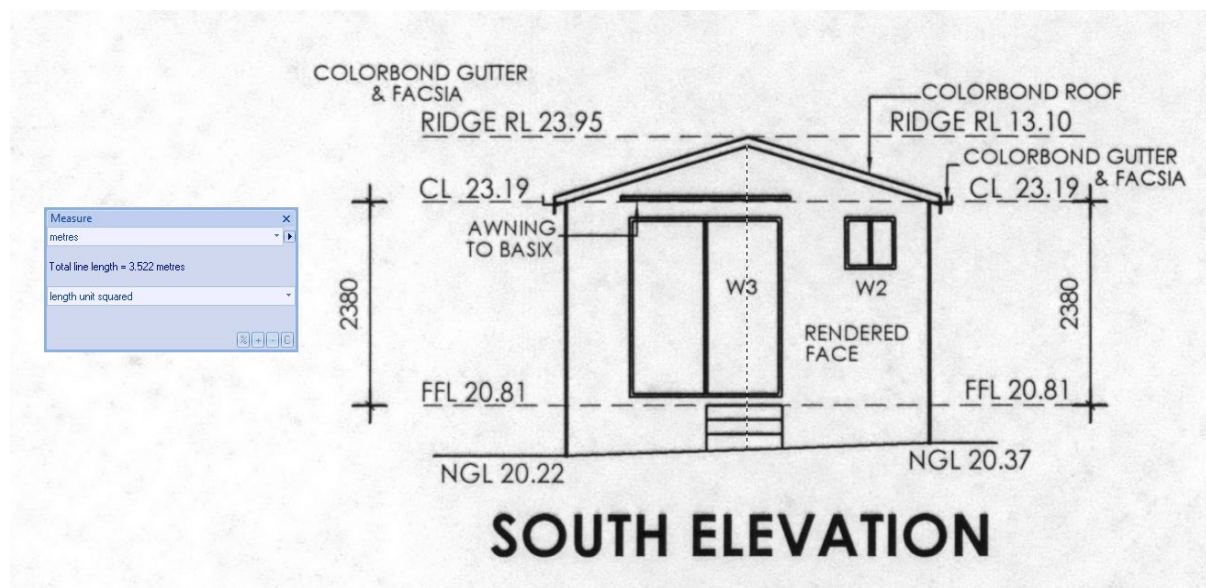
STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	above floor level; or (d) use another form of screening to the satisfaction of Council.	
Clause 3.17	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	It is considered that compliance is demonstrated with this Clause as the window to the southern elevation is to a bedroom while no windows are proposed along the western elevation.
Clause 3.23	The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling.	The roof pitch of the existing garage measures 19 degrees, demonstrating compliance with this clause.
Clause 3.26	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces.	The proposal incorporates a carport forward of the existing garage which demonstrates compliance with the minimum requirements for 1 covered parking space for a development of this nature.
Clause 13.4	The maximum building height for outbuildings is 4.8 metres and the maximum wall height for outbuildings is 3 metres.	The building height for the carport is measured at 2.6m demonstrating compliance with this clause.
Clause 13.7	Outbuildings must locate behind the front building line.	The proposed carport is located behind the front building line.
Clause 13.8	The minimum setback to the side and rear boundaries of the allotment is: (a) zero setback for carports or masonry walls that do not contain windows, eaves and gutters provided the structures comply with the Building Code of Australia; or (b) 0.45 metre for non-masonry walls that do not contain a windows, eaves and gutters; or	A setback of 613mm is provided from the carport to the side boundary, meeting the minimum requirements of this clause.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	(c) 0.9 metre for walls with windows, or outbuildings that are or are intended to be used for recreation purposes.	

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with Clause 3.4 and 3.10, Part B1 of the BDCP 2015. Below are the listed reasons as to why the wall height and setback to the side boundary should be supported.

Wall Height

Clause 3.4 of Part B1 of the BDCP 2015 requires the secondary dwelling to have a maximum wall height of 3m. The wall height of the proposed secondary dwelling measures at 3.5m, causing a non-compliance of 0.5m above the maximum allowable wall height of 3m. The non-compliance arises due to the nature of the roof form / gable end wall found on the southern (rear) elevation.



It is considered that enforcing compliance with the abovementioned clause in relation to wall height would be unreasonable. The wall height control is like for like in terms of wall height for secondary dwellings and outbuildings, from which in this case the wall height for the existing outbuilding displays an existing non-compliance.

It is also noted that the impact to the neighbour is of negligible value as no windows adjoin the property to the west (western elevation) and the existing garage has existed with the same wall height since its construction. It is considered that the non-compliance of the wall height being over 3m has arisen from the change of use to a secondary dwelling is of minor nature.

Side setback

Clause 3.10 of Part B1 of BDCP 2015 requires the secondary dwelling to have a minimum side and rear boundary setback of 0.9 metre for the portion of the building with wall height less than or equal to 7 metres. The existing garage that is to be converted into a secondary dwelling has an existing western boundary setback of 0.562m. The eave overhang is setback 0.362m from the boundary.

Council's Building Surveyor has identified that certain works will be required to bring the building into conformity with the Building Code of Australia. Conditions requiring these works are included in Attachment 'B'.

It is considered that compliance with clause 3.10 of Part B1 of BDCP 2015 in relation to the setback is unreasonable because the impact to the neighbour is negligible as the garage has existed with the same setback since it's construction and there are no windows adjoining the western elevation (facing the neighbouring Dwelling).

Planning agreements [section 4.15C(1)(a)(iia)]

There are no planning agreements that apply to this application.

The regulations [section 4.15C(1)(a)(iv)]

The proposal does not raise any issues with respect to the Regulations.

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

The likely impacts of the proposal have been managed through the design of the development which is compliant with Council's planning controls, with the exception of the wall height as contained within BDCP 2015 and the setback to the side boundary control contained within the BDCP 2015. These non-compliances have been addressed previously within this report, and it is concluded that there would be no adverse impacts on the locality as a result.

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

The proposal is a permissible form of development on the subject site, and represents a built form that is compatible with the existing and desired future character of the locality. Whilst the development proposes a variation to the wall height and setback to the side boundary, it is considered that the built form proposed is representative of the bulk and scale of the outbuilding development as originally constructed. The proposal is a development that can be expected in a Low Density Residential zone and is capable of accommodating the proposed development. Accordingly, the site is considered to be suitable for the proposed development.

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

No submissions were received for or against the development.

The public interest [section 4.15C(1)(e)]

With regard to the relevant planning considerations, it is concluded that the proposed development would not contravene the public interest. The matters raised have been satisfactorily addressed, and it is considered that there will be no unreasonable impacts on the locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls.

The proposed development complies with all applicable planning controls, with the exception of wall height in accordance with the BLEP 2015 and the setback to the side boundary in accordance with the BDCP 2015. It is recommended that the variations be supported in light of the justifications presented in this report.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No.DA-437/2018, submitted by Baidaa Mohamad, accompanied by Drawing No. A 1/2, A 2/2 revision A dated 2 July 2018 prepared by ACM Civil & Structural Engineers Pty Ltd, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder.
- 3) All internal fencing at 25 Dravet Street, Padstow must be removed in accordance with the approved plans.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 4) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 5) A detailed landscape plan prepared by a qualified landscape architect or designer is to be approved prior to the issue of a Construction Certificate. The landscape plan is to be prepared in accordance with the relevant DCP and is to show all features, built structures including retaining walls, irrigation, mulch and natural features such as significant gardens, landscaping, trees, natural drainage lines and rock outcrops that occur within 3 metres of the site boundary. The landscape plan shall consider any Stormwater, hydraulic or overland flow design issues where relevant.
- 6) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.
- 7) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 8) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional

requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

For Sydney Water's Guidelines for building over or next to assets, visit www.sydneywater.com.au 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPIN.

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 9) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 10) The existing building must be brought into conformity with Performance Requirement P2.2.3(Dampness), P2.3.1(Protection from spread of fire), P2.4.2(Room Heights), P2.4.3(Facilities) and P2.5.1((Stairways) of the Building Code of Australia (BCA), to protect persons using the building, and to restrict the spread of fire from the building to other buildings nearby. Details indicating compliance with the Performance Requirements of the BCA must be provided to the certifying authority prior to the issue of a construction certificate.
- 11) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 12) A Work Permit shall be applied for and obtained from Council for the following engineering works in front of the site, at the applicant's expense:
 - a) Drainage connection to Council's system. The existing dwelling's storm water drainage also to be connected to the Council drainage system.
 - b) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
 - c) Repair of any damage to the public road including the footway occurring during development works.
 - d) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.
- 13) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX

Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. 18033, H 1/1, Revision B dated 17/07/2018 prepared by ACM Civil & Structural engineers P/L. The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.

- 14) The development is to be carried out in accordance with the commitments shown on the BASIX Certificate. The BASIX commitments approved with this Development Application are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 15) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

The retaining wall shall be located so that it will not impede or obstruct the natural flow of stormwater. Retaining walls exceeding 600mm in height shall be designed by a qualified professional Civil/Structural Engineer. Plans and details prepared and signed by the Engineer are to be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

All works associated with the construction of the wall, including backfilling and drainage, is to be located wholly within the allotment boundaries.

- 16) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,

- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

Assessment of Works Permits (a to e) includes the preparation of footway design levels, vehicular crossing plans, dilapidation reports and issue of a Road Opening Permit.

All proposed works within the public road and footway shall be constructed under the supervision and to the satisfaction of Council. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress.

For commercial or multi-unit residential developments within the designated CBD or an urban village area, footway design and construction and street tree supply, installation and tree hole detailing shall be as per the Council master plan for that area. Full width footways are to be supplied and installed at full cost to the developer to specification as supplied by Council. Layout plan of pavement to be submitted to Council for approval prior to the issue of the Works Permit.

All Council fees applicable, minimum restoration charges and inspection fees shall be paid prior to the assessment of the Work Permit in accordance with Council's adopted fees and charges. Note: Additional fees after approval will be charged where the Work Permit requires occupation of the Road or Footpath ie Hoardings, Work Zones etc.

In determining a Works Permit, Council can impose conditions and require inspections by Council Officers.

Forms can be obtained from Council's Customer Service counter located on the ground floor of Council's administration building at 66 - 72 Rickard Road, Bankstown or Council's website www.bankstown.nsw.gov.au

Part of any approval will require the person or company carrying out the work to carry public liability insurance to a minimum value of ten million dollars. Proof of the policy is to be provided to Council prior to commencing any work approved by the Work Permit including the Road Opening Permit and must remain valid for the duration of the works.

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit.

All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 17) The building work in accordance with the development consent must not be commenced until:
- a. a construction certificate for the building work has been issued by the council or an accredited certifier, and
 - b. the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c. the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d. the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 18) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and

retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.

- 19) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 20) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 21) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 22) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 23) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 24) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 25) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - a. in the case of work for which a principal certifying is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of the Act,

- b. in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- 26) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 27) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 28) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 29) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 30) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 31) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for

drainage. Separate approval may be required for retaining walls should they be required.

- 32) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 33) The carport is approved as an open structure only and shall not be enclosed by a wall, roller door or similar obstruction.
- 34) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 35) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 36) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 37) Landscaping is to be installed in accordance with the approved landscape plan. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.
- 38) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 39) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted. An official "house numbering" letter will be sent to the applicant indicating the proposed house numbers of the new development.

- 40) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 41) A registered surveyor shall prepare a Work As Executed Plan, and a suitably qualified Hydraulic Engineer shall provide certification of the constructed on-site stormwater system.

The Work As Executed information shall be shown in red on a copy of the approved stormwater plan and shall include all information specified in Council's Development Engineering Standards. The Work As Executed plan shall be submitted to the Hydraulic Engineer prior to certification of the stormwater system.

A copy of the Work As Executed Plan and Hydraulic Engineer's Certification shall be submitted to Council for information prior to issue of the final occupation certificate.

SCHEDULE A: ADVICE TO APPLICANTS

Inspection of building works shall be undertaken as determined by the PCA. If Bankstown Council has been nominated as the PCA then details of inspection type and number required will be determined prior to the issue of a construction certificate.

Where a combined development consent is issued for demolition of buildings and construction of new work, a Construction Certificate must be obtained for the work, including demolition.

Also, before you dig, call "Dial before you Dig" on 1100 (listen to the prompts) or facsimile 1300 652 077 (with your street no. /name, side of street and distance to nearest cross street) for underground utility services information for any excavation areas.

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