



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

8 October 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 |

CANTERBURY WARD

- | | | |
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| 2 | 54 Riverview Road, Earlwood | |
| | Construction of a granny flat at the rear of the existing dwelling | 19 |

REVESBY WARD

- | | | |
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| 3 | 25 Dravet Street, Padstow | |
| | Existing garage as a secondary dwelling and construction of a detached carport | 47 |

Canterbury Bankstown Local Planning Panel - 8 October 2018

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|--------------------------|--------------------------------------------------------------------------------|
| 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.

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 it's built form since it's 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 to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or | The proposal demonstrates compliance with this Clause with 100mm of fill above the NGL. |

| STANDARD | BDCP 2015 PART B1 | |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | REQUIRED | COMPLIANCE |
| | (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. | |
| 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. | 32.4m 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 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. Non-compliance |
| 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. | The total private open space for the site is measured at 72m ² which therefore causes a non-compliance with Clause 2.12, Part B1 of the BDCP 2015 in accordance with the 80m ² minimum requirement for private open space for the principal dwelling. Non-compliance |
| 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 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. Non-compliance |
| 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 above floor level; or | 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. |

| STANDARD | BDCP 2015 PART B1 | |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | REQUIRED | COMPLIANCE |
| | (d) use another form of screening to the satisfaction of Council. | |
| Clause 3.17 | <p>Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where:</p> <ul style="list-style-type: none"> (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.

RECOMMENDATION

It is recommended that the development application DA-655/2018 be refused, for the reasons contained in Attachment B.

Michael Bonnici
CADET TOWN PLANER

Recommendation Endorsed

Ian Woodward
MANAGER DEVELOPMENT SERVICES

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 - 8 October 2018

| | |
|--------------------------|---------------------------------------------------------------------------|
| ITEM 2 | 54 Riverview Road, Earlwood |
| | Construction of a granny flat at the rear of the existing dwelling |
| FILE | DA-270/2018 – Canterbury |
| ZONING | R4 High Density Residential |
| DATE OF LODGEMENT | 22 June 2018 |
| APPLICANT | John Beckinsale |
| OWNERS | Mrs J Beynon and Mr D Beynon |
| ESTIMATED VALUE | \$125,000.00 |
| 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 proposal results in a 55% variation to the rear setback.

Development Application No.270/2018 proposes the construction of a secondary dwelling to the rear of the existing dwelling.

The proposed secondary dwelling will consist of two bedrooms, kitchen, laundry, open plan living and dining room and a patio.

DA-270/2018 has been assessed against the Canterbury Local Environmental Plan (CLEP) 2012, Canterbury Development Control Plan (CDCP) 2012 and State Environmental Planning Policy (Affordable Rental Housing) (SEPP ARH) 2009 and the application generally complies with the exception of setbacks from rear boundaries.

As detailed in this report, the non-compliance with the required rear setback for the proposed secondary dwelling is justified and is considered worthy of support due to the circumstances of the site and the proposed design.

The application was notified for a period of 14 days from 2 July 2018 to 16 July 2018. No submissions were received.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to conditions of consent

ATTACHMENTS

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

DA-382/2015 ASSESSMENT REPORT

SITE ANALYSIS

The property is located at No.54 Riverview Road, Earlwood and is legally known as Lot 4 in Deposited Plan 172229. The property is located on the western side of the street with a frontage of 12.01m and an area of 569.7sq.m (by Survey Plan). The site slopes from the rear of the site towards the street with a total level difference of 4.4 metres (highest point RL – 12.65 in the north western corner of the site and the lowest being RL – 8.25 in the south eastern corner of the site). Existing on site is a single storey brick cottage with a driveway the side of the site. Surrounding the site is a mixture of single and two storey residential dwellings sharing similar design and characteristics.



Figure 1. Street view of subject property (looking west at the property)

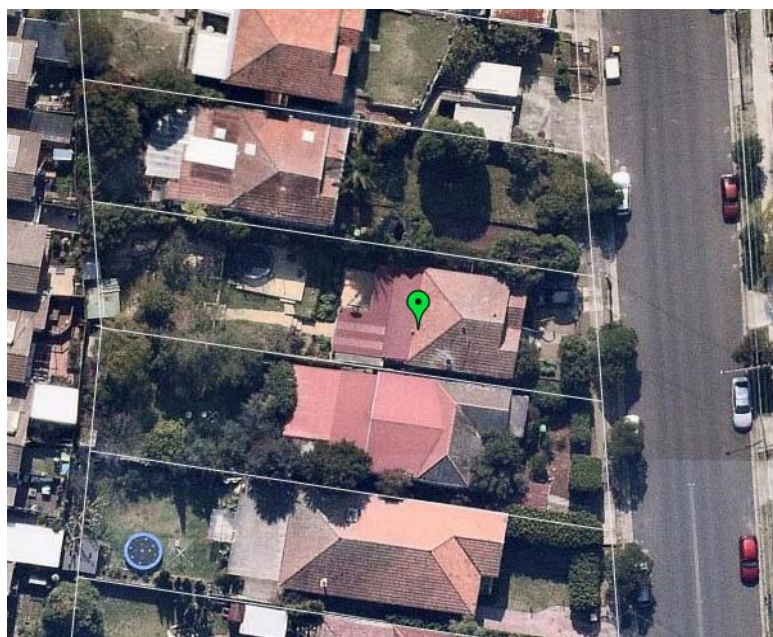


Figure 2. Aerial view of subject property



Figure 3. Rear yard subject property (looking west at the property)

PROPOSAL

The proposal involves the construction of a single storey detached secondary dwelling consisting of 2 bedrooms, kitchen, laundry, open plan living and dining room and a patio. The proposed secondary dwelling will be located to the rear of the existing single dwelling on the site.

STATUTORY CONSIDERATIONS

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

- (a) State Environmental Planning Policy 55 – Remediation of Land (SEPP 55).
- (b) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (c) Canterbury Local Environmental Plan 2012 (CLEP 2012).
- (d) Canterbury Development Control Plan 2012 (CDCP 2012).
- (e) Canterbury Development Contributions Plan 2013.

SECTION 4.15 ASSESSMENT

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

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

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

A BASIX certificate (No.937826S), dated 19 June 2018 accompanies the development application outlining several sustainability commitments including the provision of a 2100 litre rainwater tank. These commitments have been shown on the relevant architectural plans. The proposal meets the water, thermal comfort and energy targets and is deemed to be satisfactory.

- **State Environmental Planning Policy No. 55 Remediation of Land**

State Environmental Planning Policy 55 - Remediation of Land aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment. Clause 7 of SEPP 55 states that a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated. If the land is contaminated, it must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

The applicant has not provided any information that would categorise the subject site as having contaminated land. Given that the site has been used for only residential purposes and that there is no proposed excavation, the site is considered to be consistent with State Environmental Planning Policy 55 – Remediation of Land.

- **Canterbury Local Environmental Plan 2012**

This site is zoned R4 High Density Residential under Canterbury LEP 2012. The controls applicable to the proposed secondary dwelling are as follows:

| Standard | Requirement | Proposal | Complies |
|--------------------------|-----------------------------|-----------------------------------------------------------------------------------|----------|
| Zoning | R4 High Density Residential | Secondary dwellings are permissible by virtue of ARH SEPP. | Yes |
| Building height | Maximum 8.5m | 4.8m | Yes |
| Floor Space Ratio | Maximum 0.55:1 | Primary Dwelling 102.32sq.m Secondary Dwelling 60sq.m Proposed FSR = 0.28:1 | Yes |

Permissibility

The site is zoned R4 High Density Residential under Canterbury Local Environmental Plan 2012. Secondary dwellings are not a permissible land use within the R4 High Density Residential zone. However, secondary dwellings are permissible by virtue of the State Environmental Planning Policy (Affordable Rental Housing) 2009 if development for the purposes of a dwelling house is permissible on the land. As a dwelling house is permissible in the R4 High Density Residential zone, a secondary dwelling is a permissible land use. The objectives of the R4 High Density Residential Zone are stated below;

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

The proposal provides housing within a high density residential environment that provides adequate facilities for future occupants and is consistent with the above objectives.

• **State Environmental Planning Policy – Affordable Rental Housing 2009 (ARH SEPP)**

On 15 October 2009 (CDC Minute 295), Council adopted to rely upon the secondary dwelling controls in the ARHSEPP given the CDCP 2012 did not contain specific controls for secondary dwellings. This decision is reflected in Part C6 (Secondary Dwellings) of CDCP 2012. Accordingly the application has been assessed against the relevant controls as outlined in Schedule 1 of the ARHSEPP.

Clause 20 of SEPP ARH 2009 stipulates that the controls provided under the ARH SEPP for a secondary dwelling apply if development for the purposes of a dwelling house is permissible on the land. Dwelling houses are permissible within R4 high Density Residential Zones under Canterbury Local Environmental Plan 2012 and, as such, the development standards provided in Clause 22 and Schedule 1 apply to the subject proposal. An assessment against the provisions of Clause 22 is as follows:

| Standard | Requirement | Proposed | Complies |
|-----------------------------------------|-----------------------------------------------------------------|-----------------------------------------|----------|
| Number of dwellings on the site | No more than one primary and one secondary dwelling on the site | One primary and one secondary dwelling. | Yes |
| Floor Area of Secondary Dwelling | Max. 60m ² | 60sq.m | Yes |
| Minimum Site Area | 450m ² | 569.7sq.m | Yes |
| Required Parking for Secondary Dwelling | No additional parking required | No additional parking | Yes |

The following design standards also apply for secondary dwellings as contained in Schedule 1 of the ARH SEPP:

| Standard | Requirement | Proposed | Complies |
|------------------------------------|----------------------------------------------------------------------|-----------------------------------------|----------|
| Part 2 Site Requirements | | | |
| 2 Lot Requirements | | | |
| Number of dwellings on site | Primary and secondary dwelling only | One primary and one secondary dwelling. | Yes |
| Boundary with primary road | Site shall have a boundary with a primary road of at least 12 metres | 12.01m frontage to Riverview Road. | Yes |

| Standard | Requirement | Proposed | Complies |
|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Access to primary road | A lot on which a new secondary dwelling is erected must have lawful access to a public road | The subject site has lawful access to Riverview Road. | Yes |
| 3 Maximum site coverage of all development | | | |
| Site coverage | No more than 50% if the lot has an area of at least 450 sq.m but not more than 900 sq.m | 29% (primary dwelling, secondary dwelling and cubby house). | Yes |
| 4 Maximum floor area for principal and secondary dwelling | | | |
| Maximum floor area | 60m ² | 60sq.m | Yes |
| Total floor area | 380 sq.m if the lot has an area of more than 600 sq.m but less than 900 sq.m | 162.32sq.m | Yes |
| 5 Setbacks and maximum floor area for balconies, decks, patios, terraces and verandahs | | | |
| Total floor area | The total floor area of all balconies, decks, patios, terraces and verandahs on a lot must not be more than 12sqm if: (a) any part of the structure is within 6 metres from a side, or the rear, boundary, and (b) the structure has any point of its finished floor level more than 2 metres above ground level (existing). | The proposed development includes a 15sq.m verandah that wraps around 50% of the northern elevation and 100% of the eastern elevation. The finished floor level of the verandah is a maximum of 1.38m on the south eastern corner therefore this control is not applicable. | N/A |
| | The balcony, deck, patio, terrace or verandah must not have any point of its finished floor level: (a) if it is located within 3 metres of a side, or the rear, boundary—more than 2 metres above ground level (existing), | The proposed patio does not have a finished floor level above 2 metres from natural ground level. | Yes |
| Part 3 Building heights and setbacks | | | |
| 6 Building height | Development for the purposes of a secondary dwelling must not result in a new building or a new part of an existing building having a building height above ground level (existing) of more than 8.5 metres. | 4.8m | Yes |
| 7 Setbacks from roads, other than classified roads | The average distance of the setbacks of the nearest 2 dwelling houses having the same primary road and located within 40m of the lot. | The proposed secondary dwelling is located behind the principal dwelling and therefore the front setback remains unchanged. | Yes |
| | Development for the purpose of a secondary dwelling on a lot must result in a new building or a new part of an existing building having a setback from a | Not applicable. | N/A |

| Standard | Requirement | Proposed | Complies |
|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------|
| | boundary of the lot with a parallel road that is not a classified road of at least 3 metres | | |
| 9. Setbacks from side boundaries | | | |
| Side setbacks | 900mm plus an amount that is equal to one-quarter of the additional building height above 3.8 metres for sites 450 sq.m – 900 sq.m. The side setback required for a building height of 4.8m is 1.15m. | North – 2.1m South – 1.2m | Yes Yes |
| 10. Setbacks from rear boundaries | | | |
| Rear setbacks | 3m plus an amount that is equal to three times the additional building height above 3.8m for sites 450 sq.m – 900 sq.m or a maximum setback of 8m. The rear setback required for a building height of 4.8m is 6m | 2.7m 55% variation | No, see comment [1] found at the end of this table |
| 13. Building Articulation | | | |
| | Principal dwelling or the secondary dwelling must have a front door and a window to a habitable room in the building wall that faces a primary road. | Principal dwelling has windows to a habitable room and the front door facing Riverview Road. | Yes |
| | Development for the purpose of a secondary dwelling must result in either the principal dwelling or the secondary dwelling having a window to a habitable room in the building wall that faces a parallel road | Neither the principle dwelling nor the secondary dwelling faces a parallel road. | N/A |
| | On a corner lot either the principal dwelling or the secondary dwelling having a window in a habitable room that is at least 1m ² in area and that faces and is visible from a secondary road. | Not on a corner lot. | N/A |
| 15. Privacy | | | |
| Privacy relating to habitable room windows | A window in a new secondary dwelling, or a new window in any alteration or addition to an existing principal dwelling for the purpose of a new secondary dwelling, must have a privacy screen for any part of the window that is less than 1.5 metres above the finished floor level if: (a) the window: (i) is in a habitable room that has a finished floor level that is more than 1 metre above ground level (existing), and (ii) has a sill height that is less than 1.5 metres above that floor | The finished floor level to the habitable rooms is not more than 1m above existing ground level. | N/A |

| Standard | Requirement | Proposed | Complies |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|----------|
| | level, and (iii) faces a side or rear boundary and is less than 3 metres from that boundary | | |
| Privacy | A new balcony, deck, patio, terrace or verandah for the purpose of a secondary dwelling and any alteration to an existing balcony, deck, patio, terrace or verandah of a secondary dwelling that has a floor area of more than 3m ² must have a privacy screen if the balcony, deck, patio, terrace or verandah is: (a) Within 3m of a side or rear boundary and has a floor level that is more than 1m above existing ground floor | The proposed patio is not have a floor level of more than 1m above existing ground floor | N/A |
| Part 4 Landscaping | | | |
| 16 Landscaped area | Minimum landscaped area of 20% for lots between 450 m ² – 600 m ² | 26% | Yes |
| | At least 50% of the landscaped area must be located behind the building line to the primary road boundary. | 66% | Yes |
| | The landscaped area must be at least 2.5 metres wide. | Achieved. | Yes |
| 17 Principal private open space | Minimum principal private open space of 24sqm required on the lot | 24m ² is provided for the secondary dwelling. | Yes |
| | Principal private open space must be: (a) directly accessible from, and adjacent to, a habitable room, other than a bedroom, and (b) more than 4 metres wide, and (c) is not steeper than 1:50 gradient. | POS accessible from the living room/dining room. The space is more than 4m wide and is not steeper than 1:50 gradient. | Yes |
| Part 5 Earthworks and drainage | | | |
| 18 Earthworks, retaining walls and structural support | Excavation for the purposes of a secondary dwelling or ancillary development must not exceed a maximum depth, measured from ground level (existing), of: (a) if located not more than 1m from any boundary—1m, and (b) if located more than 1m but not more than 1.5m from any boundary—2m, and if located more than 1.5m from any boundary—3m. (2) Despite subclause (1), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on | The proposed excavation is less than 1m. | Yes |

| Standard | Requirement | Proposed | Complies |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| | an Acid Sulfate Soils Map or is within 40m of a waterbody (natural). | | |
| | <p>Fill must not exceed a maximum height, measured from ground level (existing), of:</p> <ul style="list-style-type: none"> (a) if the fill is for the purposes of a secondary dwelling—1m, and (b) if the fill is for the purposes of ancillary development—600mm. (4) Despite subclause (3), the height of fill contained wholly within the footprint of a secondary dwelling or ancillary development is not limited. (5) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a secondary dwelling or ancillary development is limited to 50% of the landscaped area of the lot. | The proposed fill does not exceed 1m | Yes |
| | <p>Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that:</p> <ul style="list-style-type: none"> (a) a professional engineer has certified is structurally sound, including the ability to withstand the forces of lateral soil load, and (b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and (c) has adequate drainage lines connected to the stormwater drainage system for the site, and (d) does not result in a retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and (e) is separated from any other retaining wall or structural support on the site by at least 2m, measured horizontally, and (f) has been installed in accordance | The development proposes an 800mm cut into the sandstone in the north western corner of the site. Should the application be recommended for approval, a condition of consent will be placed requiring a Structural Engineers Report and a Dilapidation Report for the adjoining dwellings. | Yes, via condition requiring a dilapidation survey. |

| Standard | Requirement | Proposed | Complies |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-------------------------------------------------------------------|
| | with any manufacturer's specifications, and (g) if it is an embankment or batter—must have its toe or top more than 1m from any side or rear boundary. | | |
| 21 Drainage | All stormwater collecting as a result of development for the purposes of a secondary dwelling must be conveyed by a gravity fed or charged system to: (a) a public drainage system (b) an inter-allotment drainage system (c) an on-site disposal system. | The proposal meets the stormwater requirements subject to conditions of consent. | Yes, via condition requiring compliance with stormwater controls. |
| Setbacks from a protected tree | Development for the purpose of a secondary dwelling, all ancillary development and any associated excavation on a lot, must have a setback from any protected tree on the lot of at least 3 metres. | No protected trees have been identified. | N/A |

[1] Rear Setback

The development proposes to vary the rear setback control contained within the SEPP ARH 2009. The rear setback required for a building height of 4.8m is 6m. This is calculated to be the 3m, plus an amount that is equal to three times the additional building height above 3.8m for sites 45 sq.m – 900sq.m. The applicant proposes a rear setback of 2.7m. This presents a variation of 55% from the development standard

The increase in the required setback from 3m to 6m is brought about by the topography of the site and the roof form. The site is steeply sloping and tiered from rear to front and also has a crossfall. The roof form is proposed to be a low pitch.

The SEPP ARH 2009 does not contain any objectives for the setback controls, therefore the following setback objectives contained within the Part C1.3.3 of the CDCP 2012 are used as a guide:

- To establish the desired spatial proportions of the street and define the street edge.
- To limit the scale and bulk of development by retaining landscaped open space around.
- To contribute to the natural landscape by retaining adequate space for new trees and conserving existing visually prominent trees.
- To provide sufficient separation between buildings and adjacent land to limit the visual, environmental and likely potential amenity impacts of new development.

The requirement to increase the setbacks in line with any part of the building height above 3.8m is designed to limit the bulk and scale of the development and provide sufficient separation between buildings to offset any additional visual, environmental and amenity impacts as a result of the increased building height. The proposal provides the required side

setback of 1.2m from the north and south boundary. The proposal does not provide the required rear setback, however given that the land adjoining the rear of the subject property is situated approximately 3.5m higher than the existing ground level on the subject site, the proposal will not impact on the neighbours visual privacy or increase bulk and scale as viewed from the rear. Further, no windows to habitable rooms such as bedrooms or living rooms are proposed on the western elevation, thereby protecting visual privacy.

The proposal satisfies the objective to retain adequate space for new trees as it provides sufficient open space to the rear and front of the proposed secondary dwelling. The proposal provides the minimum 20% landscaping and proposes to plant 2 major canopy trees to the front and rear of the secondary dwelling. Given the splay angle of rear boundary, the majority of the western side of the proposed secondary dwelling is setback 3m with the exception of a small portion in the south western corner of the proposed dwelling. Further, to increase the setback would not result in a better outcome. The site significantly slopes and to increase the setback would result in either:

- a. An awkward architectural design or internal layout; or
- b. Due to the topography the site, achieving compliance would result in a significant increase in the setback which would impact upon the usability and nature of the site.

The overall height of the proposal would need to be significantly reduced to achieve the required setback. Options have been explored with the applicant to reduce the overall height, however due to the topography of the site, reducing the slope of the roof to a flat roof would require changes to the wall height, for example, which does not result in a reduction in the in the overall height to make the proposal compliant with the rear setback. In addition, the proposed roof form is consistent with the existing dwelling and also is preferable in terms of design.

Whilst this presents a variation of 55% from the development standard, for the reasons outlined above.

The variation is supported for the following reasons:

- The proposal does not result in any privacy impacts on the rear adjoining dwelling
- The proposed setback maintains sufficient open space and landscaping capable of accommodating canopy trees
- Relocating the building further east to accommodate the required rear setback of 6.78m will result in an increase to the building height given that the level difference at this location is approximately 1.5m as a result of the slope of the land
- Relocating the building further east to accommodate the required rear setback will result in an encroachment into the sewer easement
- The proposed pitched roof maintains a similar façade to the existing dwelling and reduces the bulk and scale of the secondary dwelling. This is important considering that the secondary dwelling is situated on land approximately 2.5m higher than the ground floor of the secondary dwelling.

Proposed Environmental Planning Instruments [Section 4.15(1)(a)(iii)]

There are no proposed environmental planning instruments that impact on the proposed development.

Development Control Plans [Section 4.15(1)(a)(iii)]

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

The majority of the development controls regarding this DA are found within the ARH SEPP. The proposed development has been compared to the relevant provisions of CDCP 2012 as follows:

Part B1 – Transport and Parking

The parking provision rate for a dwelling house is 2 spaces. The primary dwelling can accommodate two car spaces to the side of the property behind the front building line. There is no requirement to provide car parking for a secondary dwelling therefore the current car parking arrangement is acceptable. In addition, the proposal is not displacing any existing car parking on site, and the existing dwelling will utilise the existing arrangement.

Part B2 – Landscaping

The following table provides an assessment of the relevant controls of Part B2:

| Standard | Control | Proposed | Complies |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-----------------|
| B2.2 Landscape plan | There is no requirement for a landscape plan to be provided for a dwelling house. | A Landscape plan prepared by the Architect has been provided with the development application. | Yes |
| B2.3 Landscape Design | Integrate and screen utility areas with appropriate planting | Achieved. | Yes |
| | Provide planted setbacks adjacent to driveways and paths | Achieved. | Yes |
| | Landscaping of deep soil areas shall: <ul style="list-style-type: none"> - Provide sufficient depth for trees - use ground covers, shrubs and tress - plant canopy trees that are capable of achieving mature height of >5m | Achieved. | Yes |

| Standard | Control | Proposed | Complies |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|----------|
| | Where buffer/screen planting is required screen planting must have min pot size of 25L and Min mature height of 2m. | Screen planting provided on the southern boundary with a minimum pot size of 25L and min height of 2m | Yes |
| B2.3.3 Trees and Canopy Coverage | Provide canopy tree planting particularly in deep soil areas surrounding new buildings | 2x major canopy trees proposed in the rear yard. | Yes |
| | Provide street trees where possible | 1x existing street tree. | N/A |
| | Canopy Trees must have minimum 75L Pot size | Proposed canopy trees have a minimum pot size of 75L | Yes |
| | Front and rear setbacks must have minimum 1 major canopy tree. | Achieved. | Yes |
| | 1 major canopy tree to be planted (at a suitable location on site) for first 45m of side setback, then 1/20m after that. | 2x major canopy trees proposed in to the rear of the property | Yes |
| <u>Retention of Existing Trees</u> | Existing trees should be retained by appropriate siting and construction of buildings | 1x property tree is proposed to be removed, however it is not classified as significant and can be removed without approval. | Yes |
| | Applicants may be required to replace removed trees with other suitable trees | 2x canopy trees proposed to the rear of the property | Yes |
| B2.4 Environment and Biodiversity | Sites adjoining bushland require referral to Landscape Architect to review environment and biodiversity matters | The site does not adjoin bushland. | Yes |

Part B5 - Stormwater and Flood Management

The application has been assessed against Council's Engineering Checklist as follows:

The subject site has not been identified as being affected by mainstream or overland flooding. The natural ground level of the site falls to the street and the stormwater discharges to Council's kerb and gutter.

There is an existing easement running through the middle of the site, however, the proposed location of the secondary dwelling does not encroach on the easement and is unaffected by the development. Standard conditions of consent will be imposed should the application be recommended for approval.

The development proposes retaining walls near the boundary line greater than 600m. A standard condition requiring a Structural Engineer's Report will be imposed should the application be recommended for approval.

Part B7– Crime Prevention Through Environmental Design (CPTED)

The development has been assessed against the provisions of this Canterbury Development Control Plan 2012. The CPTED elements of natural surveillance and access points require special consideration and are summarised below:

| Requirements | Proposal | Complies |
|---------------------------|--------------------------------------------------------------------------------------------------------------|----------|
| Surveillance | Windows to the primary dwelling are visible to the street and other properties. | Yes |
| Access control | A fence at the front boundary line is provided to control access to the property. | Yes |
| Territorial Reinforcement | The ownership is assumed as a result of the proposed secondary dwelling being located in a residential zone. | Yes |

Part B9– Waste Management Plan

A Waste Management Plan has been provided, detailing the demolition, construction and operational phases of the proposed development and is deemed to be satisfactory.

Canterbury Development Contributions Plan 2013

Canterbury Development Contributions Plan 2013 applies to the site. The proposed development attracts a contribution of \$4631.51 under the Development Contributions Plan and will be enforced via a condition of consent.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

| Referral Body | Comments Received |
|-------------------|---------------------------------------|
| Building Surveyor | No objections – subject to conditions |

Planning Agreements [section 4.15(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

The Regulations [section 4.15(1)(a)(iv)]

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

Any Coastal Zone Management Plan [section 4.15(1)(a)(v)]

There is no coastal zone management plan that applies to the subject site.

The Likely Impacts of the Development [section 4.15(1)(b)]

The likely impacts of the proposal have primarily been discussed, where appropriate, within the body of this report. In light of the assessment against the relevant development controls, the proposed development is not likely to result in any substantial adverse environmental, social or economic impacts on the locality.

Suitability of the Site [section 4.15(1)(c)]

The proposed secondary dwelling 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 rear setback, the site retains a sufficient amount of landscaping and does not impact on the privacy of the adjoining neighbours. Accordingly, the site is considered to be suitable for the proposed development.

Submissions [section 4.15(1)(d)]

In accordance with Part A3 of the Canterbury Development Control Plan 2012 the proposed development was notified to adjoining and nearby properties and was placed on public exhibition for a period of 14 days. No submissions were received by Council in response.

The Public Interest [section 4.15(1)(e)]

The public interest is served through the detailed assessment of this application under the Environmental Planning and Assessment Act 1979, Environmental Planning Instruments, Development Control Plans and policies. Based on the above assessment, the proposed development is consistent with the public interest.

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and all relevant development control plans, codes and policies.

The proposal does not contravene any development standards and is unlikely to have any significant impacts on the local natural, social or economic environments. The proposed variation to the rear setback is considered to be acceptable based on the site characteristics.

The site is suitable for the development and by virtue the proposal is permissible within the zone. Therefore, the application is worthy of support and is recommended for approval subject to conditions.

RECOMMENDATION

THAT Development Application DA-270/2018 be **APPROVED** subject to the following conditions.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

1. The following must be submitted to either Council or an Accredited Certifier prior to the issuing of a Construction Certificate:
 - 1.1. Details of:
 - Structural Engineering Plan
 - Building Specifications
 - Landscape Plan
 - Hydraulic Plan
 - Soil and Waste Management Plan
 - BASIX Certification
 - 1.2. Evidence of an Owner Builder Permit (Class 1 & 10 buildings only); or Evidence of a Home Building (Private) Insurance Certificate.
 - 1.3. Payment of the Long Service Leave Levy to the Long Service Leave Corporation or to Council.

BEFORE COMMENCING THE DEVELOPMENT

2. Before the erection of any building in accordance with this Development Consent;
 - 2.1. detailed plans and specifications of the building must be endorsed with a Construction Certificate by the Council or an Accredited Certifier, and
 - 2.2. you must appoint a Principal Certifying Authority (either Canterbury City Council, or an Accredited Certifier) and notify the Council of the appointment (see Attachment – Notice of Commencement copy), and
 - 2.3. you must give the Council at least 2 days notice of your intention to commence erection of the building (see Attachment – Notice of Commencement copy).
 - 2.4. In the case of work which includes residential development, you must inform us in writing before the commencement of work of the following:
 - 2.4.1. The name and contractor or licence number of the licensee who has contracted to do or intends to do the work; or
 - 2.4.2. The name and permit number of the owner-builder who intends to do the work.

INSURANCE

3. If it is intended to engage a builder or licensed contractor to do the work where it is valued over \$20,000 and is not a multi storey building then this person must take out home building insurance with a private insurer. The builder or person doing the work must also satisfy Council that they have taken out an insurance policy by producing evidence of the insurance certificate or other documentation. Further information on insurance requirements is available from the Department of Fair Trading (NSW Consumer Protection Agency) on 1800 802 055.

SITE SIGNAGE

4. A sign shall be erected at all times on your building site in a prominent position stating the following:
 - 4.1. The name, address and telephone number(s) of the principal certifying authority for the work, and
 - 4.2. The name of the person in charge of the work site and a telephone number at which that person may be contacted during and outside working hours, and
 - 4.3. That unauthorised entry to the work site is prohibited.

GENERAL

5. The development being carried out in accordance with the following stamped approved plans except where modified by the conditions of this consent:

| Plan name | Plan Number | Prepared by | Received by Council |
|------------------------------------------------|----------------|-------------------------|---------------------|
| Site Plan | 21-2018 1 of 8 | Architectural Solutions | 6/9/2018 |
| Floor Plan | 21-2018 4 of 8 | Architectural Solutions | 6/9/2018 |
| Section Plan | 21-2018 6 of 8 | Architectural Solutions | 6/9/2018 |
| Elevations | 21-2018 5 of 8 | Architectural Solutions | 6/9/2018 |
| Landscape Plan | 21-2018 7 of 8 | Architectural Solutions | 6/9/2018 |
| Site Analysis and Construction Management Plan | 21-2018 3 of 8 | Architectural Solutions | 6/9/2018 |
| Cut and Fill Plan | 21-2018 8 of 8 | Architectural Solutions | 6/9/2018 |
| Stormwater Management | 21-2018 2 of 8 | Architectural Solutions | 6/9/2018 |

6. The minimum rear setback permitted under this consent is 2.7m. No part of the secondary dwelling may encroach into this setback. Any changes to the wall thickness must not result in changes to the minimum rear setback.
7. A photographic survey must be prepared of the adjoining properties at known as 56 Riverview Road & the two town houses located directly to the west of the subject site that form part of the complex at 3-3A Bass Road detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, shall be submitted to the Principal Certifying Authority and Canterbury Bankstown Council if Council is not the Principal Certifying Authority, prior to the issue of the relevant Construction Certificate. On completion of the excavation and building works and prior to the occupation of the building, a certificate stating to the effect that no damage has resulted to adjoining premises is to be provided to the Principal Certifying Authority and Canterbury Bankstown Council if Council is not the Principal Certifying Authority. If damage is identified which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person(s) as soon as possible and prior to the occupation of the development. All costs incurred in achieving compliance with this condition shall be borne by the persons entitled to act on this Consent.
8. A dilapidation report prepared by an Accredited Engineer, detailing the structural adequacy of the adjoining properties known as 56 Riverview Road & the two town houses located directly to the west of the subject site that form part of the complex

at 3-3A Bass Road and their ability to withstand the proposed excavation, and any measures required to be incorporated into the work to ensure that no damage will occur during the course of the works, shall be submitted to Council, or the Principal Certifying Authority prior to the issue of a Construction Certificate. All costs to be borne by the applicant.

9. This condition has been levied on the development in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979 and in accordance with Canterbury Development Contributions Plan 2013 after identifying the likelihood that this development will require or increase the demand on public amenities, public services and public facilities in the area.

The amount of the contribution (as at the date of this consent) has been assessed as **\$4631.51**. The amount payable is based on the following components:

| 2013 Contribution Element | Contribution |
|---------------------------|------------------|
| Community Facilities | \$418.84 |
| Open Space and Recreation | \$4,095.04 |
| Plan Administration | \$117.63 |
| Total | \$4631.51 |

Note: The contributions payable will be adjusted, at the time of payment, to reflect Consumer Price Index increases which have taken place since the development application was determined. The contribution is to be paid to Council in full prior to the release of the Construction Certificate, (or for a development not involving building work, the contribution is to be paid to Council in full before the commencement of the activity on the site) in accordance with the requirements of the Contributions Plan.

10. All materials must be stored wholly within the property boundaries and must not be placed on the footway or roadway.
11. All building operations for the erection or alteration of new buildings must be restricted to the hours of 7.00 a.m. - 5.00 p.m. Monday to Saturday, except that on Saturday no mechanical building equipment can be used after 12.00 noon. No work is allowed on Sundays or Public Holidays.
12. All building construction work must comply with the National Construction Code.
13. Provide a Surveyor's Certificate to the Principal Certifying Authority prior to walls being erected more than 300mm above adjacent ground surfaces to indicate the exact location of all external walls in relation to allotment boundaries.
14. Provide a Surveyor's Certificate to the Principal Certifying Authority at all floor levels and roof indicating the finished level to a referenced benchmark. These levels must relate to the levels indicated on the approved architectural plans and/or the hydraulic details.
15. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled.

In this condition:

- a) relevant BASIX Certificate means:
- i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, A BASIX Certificate that is applicable to the development when this development consent is modified); or

- ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
 - b) BASIX Certificate has the meaning given to that term in the Environmental Planning and Assessment Regulation 2000."
- 16. Council's warning sign for Soil and Water Management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign must be displayed throughout construction.
- 17. The capacity and effectiveness of erosion and sediment control devices must be maintained at all times.
- 18. Concrete pumping contractors must not allow the discharge of waste concrete to the stormwater system. Waste concrete must be collected and disposed of on-site.
- 19. Materials must not be deposited on Council's roadways as a result of vehicles leaving the building site.
- 20. Drains, gutters, roadways and accessways must be maintained free of soil, clay and sediment. Where required, gutters and roadways must be swept regularly to maintain them free from sediment. Do not hose down.
- 21. Stormwater from roof areas must be linked via a temporary downpipe to a council approved stormwater disposal system immediately after completion of the roof area.

PRIOR TO THE COMMENCEMENT OF WORKS

- 22. 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.cbcity.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.

23. 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.

24. 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.

ENGINEERING - PRIOR TO CONSTRUCTION CERTIFICATE

25. A stormwater drainage design prepared by a qualified practicing Civil Engineer must be provided prior to the issue of a Construction Certificate. The stormwater design must be prepared in accordance with Council DCP2012 Part B5. In this regard, the following provisions must be included:
- a) Stormwater runoff from all roof and paved areas within the property must be collected in a system of gutters, pits and pipelines and be discharged together with overflow pipelines from any rainwater tank(s) to the kerb and gutter of Riverview Road.
 - b) Stormwater runoff from paved areas that cannot physically be drained to Riverview Road may be drained to an absorption pit(s). Designed in accordance with Part B5 of Canterbury Council's DCP 2012. The total paved areas on the site draining to absorption pits must not exceed 25m².
 - c) A clean out pit designed in accordance with Appendix 1 of Canterbury Council's DCP 2012, must be located on the nadir of each charged line.
 - d) Plans must specify that any components of the existing system to be retained must be checked during construction to be in good condition and of adequate capacity to convey the additional runoff generated by the development, and be replaced or upgraded if required.
 - e) If total impervious areas exceed 75% of the lot area an on-site detention designed in accordance with Part B5 of the Canterbury Council DCP 2012 must be provided.
 - f) All stormwater must pass through a silt arrestor pit prior to discharge to kerb and gutter. Silt arrestor pit is to be sized in accordance with the Canterbury Council DCP 2012.

The design must be prepared by a qualified Civil Engineer and be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

26. All downpipes, pits and drainage pipes shall be installed to ensure that stormwater is conveyed from the site and into Council's stormwater system in accordance with AUS-SPEC Specification D5 "Stormwater Drainage Design", AS/NZS3500.3 and Part B5 of Canterbury Council's DCP 2012.

RETAINING WALLS – PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

27. Retaining walls greater than 1000 mm high or retaining more than 600 mm of cut or fill proposed to be located within one metre of a boundary are to be designed by a

Structural Engineer and must have subsoil drainage connected to the site stormwater system. Design plans prepared by an appropriately qualified and practising structural engineer must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority.

All components of any retaining walls, including subsoil drainage, must be located entirely within the property boundary. The subsoil drainage lines of the retaining walls must be shown on the stormwater drainage concept plan.

ENGINEERING - PRIOR TO CONSTRUCTION

28. The applicant to arrange with the relevant public utility authority the alteration or removal of any affected services in connection with the development. Any such work being carried out at the applicant's cost.
29. Any existing component of the stormwater system that is to be retained must be checked and certified by a Licensed Plumber or qualified practicing Civil Engineer to be in good condition and operating satisfactorily. If any component of the existing system is not in good condition and /or not operating satisfactorily, it must be upgraded.

ENGINEERING - PRIOR TO OCCUPATION CERTIFICATE

30. That the stormwater system be constructed in general, in accordance with the plans, specifications and details submitted with the Construction Certificate and as amended by the following conditions.
31. Certification from an accredited engineer must be provided to certify that all works has been carried out in accordance with the approved plan(s), relevant codes and standards. The accredited engineer must specifically certify achievement of total impervious areas being less than 75% of the lot area.
32. The granting of service easements within the properties to the satisfaction of Council or private certifier. Costs associated with preparation and registration of easements to be borne by the developer.

CRITICAL INSPECTIONS

33. Class 1 and 10 Buildings
The following critical stage inspections **must be** carried out by the Principal Certifying Authority (either Council or the Accredited Certifier):
 - 33.1. after excavation for, and prior to the placement of any footings, and
 - 33.2. prior to paving any in-situ reinforced concrete building element, and
 - 33.3. prior to covering of the framework for any floor, wall, roof or other building element, and
 - 33.4. prior to covering waterproofing in any wet areas, and
 - 33.5. prior to covering any stormwater drainage connections, and
 - 33.6. after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
34. The EP&A Act 1979 requires that a person having the benefit of a development consent, if not carrying out the work as an owner-builder, **must notify the principal contractor for the building work of any critical stage inspections and other inspections that are to be carried out in respect of the building work**, as nominated in this development consent.

To arrange an inspection by Council please phone 9789-9300 during normal office hours.

COMPLETION OF DEVELOPMENT

35. Obtain an Occupation Certificate/Interim Occupation Certificate from the Principal Certifying Authority before partial/entire occupation of the development.
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.

WE ALSO ADVISE:

37. If you appoint a Principal Certifying Authority other than Council, any certificate provided to us must be accompanied by a \$36 registration fee.
38. This application has been assessed in accordance with the National Construction Code.
39. You should contact Sydney Water prior to carrying out any work to ascertain if infrastructure works need to be carried out as part of your development.
40. Where Council is appointed as the Principal Certifying Authority, you will be required to submit Compliance Certificates in respect of the following:
 - Structural engineering work
 - Waterproofing
 - Glazing
 - Protection from termites
 - Smoke alarms
 - BASIX completion
41. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
42. 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 from the nearest cross street) for underground utility services information for any excavation areas.
43. In granting this approval, we have considered the statutory requirements, design, materials and architectural features of the building. No variation to the approved design and external appearance of the building (including colour of materials) will be permitted without our approval.
44. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
45. Our decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
46. If you are not satisfied with this determination, you may:
 - 46.1. Apply for a review of a determination under Section 8.2 of the Environmental Planning and Assessment Act 1979. A request for review must be made and

determined within 6 months of the date of the receipt of this Notice of Determination.; or

- 46.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 8.7 or Section 8.9 of the Environmental Planning and Assessment Act 1979.

-END-

Canterbury Bankstown Local Planning Panel - 8 October 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.

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 of 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 its 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 instrument; and</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> |

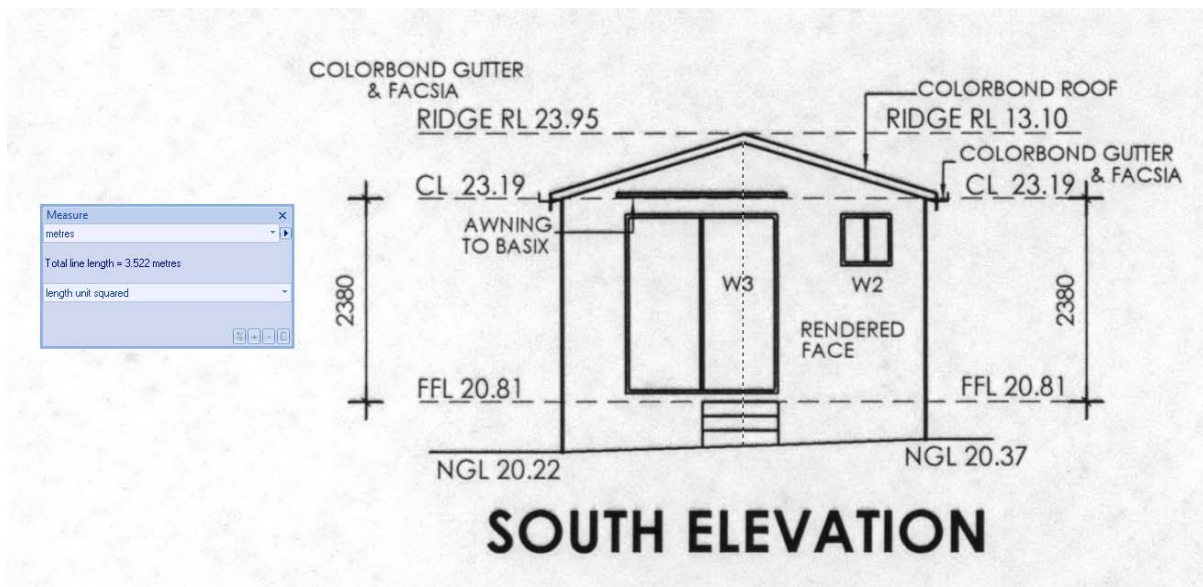
| STANDARD | BDCP 2015 PART B1 | |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | REQUIRED | COMPLIANCE |
| | (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 above floor level; or (d) use another form of screening to | 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 |
| | 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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 (c) 0.9 metre for walls with windows, or outbuildings that are or are intended to be used for recreation purposes. | A setback of 613mm is provided from the carport to the side boundary, meeting the minimum requirements of this clause. |

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 it's 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 its 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 BLEP 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.

RECOMMENDATION

It is recommended that:

1. The Clause 4.6 submission in relation to wall height under Clause 4.3(2B)(a) of BLEP 2015 be supported; and
2. Development Application No. DA-437/2018 be approved subject to the conditions included at Attachment B.

Michael Bonnici
CADET TOWN PLANNER

Recommendation Endorsed

Ian Woodward
MANAGER DEVELOPMENT SERVICES

Notice of Determination of a Development Application
Environmental Planning and Assessment Act, 1979. Section 4.18(1)(a)

Development Application No. DA-437/2018

Baidaa Mohamad
30 Turvey St
REVESBY NSW 2212

Date of Determination: 8 October 2018

Determination Notice No.: DA-437/2018

Property: Lot 13 DP 28293, No. 25 Dravet Street, PADSTOW NSW 2211

Canterbury-Bankstown Council hereby Consents to the above described land being developed for the following purpose, subject to compliance with the conditions and requirements set out in the attached schedules.

Description of Development: Use of Existing Garage as a Secondary Dwelling and Construction of a Detached Carport

Planning Instrument: Bankstown Local Environmental Plan 2015 Published 5 March 2015

Zoning of Property: R2 Low Density Residential

Consent to Operate From: 8 October 2018

Consent to Lapse On: 8 October 2023

These conditions are imposed taking into account the matters for consideration in determining a Development Application pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 and other relevant Acts and Regulations.

Notes:

1. This Determination Notice does not constitute permission to begin works associated with the development. A Construction Certificate (where applicable) must be obtained prior to the commencement of any development works.

2. This Determination Notice operates or becomes effective from the endorsed date of Consent.
3. If you are dissatisfied with this decision, you may apply for a review of determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act, 1979 or appeal to the Land and Environment Court pursuant to Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act, 1979. Any application for a review of determination pursuant to Division 8.2 must be received, assessed and determined by Council within 6 months after the date of receipt of this Notice.
4. Sections 9.37 and 9.50 of the Environmental Planning and Assessment Act, 1979 confers the authority to direct any person to comply with the terms and conditions of any Consent and any person failing to comply with such a direction shall be guilty of an offence under that Act.
5. This consent will lapse 5 years from the endorsed date of consent unless the use has commenced, or any building works have physically commenced.
6. The applicant or any other person entitled to act on this Consent may apply to modify the Development Consent in accordance with Section 4.55 of the Environmental Planning and Assessment Act, 1979.
7. Failure to comply with a condition contained within this Development Consent may result in a fine or prosecution by Council.

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 inTM.

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.

For further information regarding (DA-437/2018) this notice please contact Michael Bonnici in Development Services on 9707 9772.

Yours faithfully,

Samantha Mitchell
EXECUTIVE PLANNER

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