



# **AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING**

**4 March 2019 - 6:00pm**

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

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**ORDER OF BUSINESS**

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## APOLOGIES AND DECLARATIONS

## CONFIRMATION OF MINUTES OF PREVIOUS MEETING

## BANKSTOWN WARD

**1 114 Wattle Street, Punchbowl**

Conversion of an existing unauthorised outbuilding to a secondary dwelling with associated alterations and additions and the construction of a carport 3

## BASS HILL WARD

## 2 2 Willow Place, Bass Hill

Demolition of existing structures, construction of an attached dual occupancy with in ground swimming pool to proposed Lot 8, front fence and Torrens title subdivision 21

**REVESBY WARD**

**3 20-22 Ely Street, Revesby**

Demolition of existing site structures, consolidation of existing lots into one allotment and construction of a boarding house development comprising of five separate buildings containing a total of 22 boarding rooms, communal living rooms, a managers room and associated on-site parking 39

**4      5 and 7 Hydrae Street, Revesby**

Demolition of existing structures, consolidation of two lots to create one lot and construction of a multi-dwelling housing development comprising of six units, front fence and strata subdivision 81

**5            81 Malvern, Panania**

Use and associated fitout of the premises as health consulting rooms for dental and general medical practices and associated signage	99
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## Canterbury Bankstown Local Planning Panel - 4 March 2019

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<b>ITEM 1</b>	<b>114 Wattle Street, Punchbowl</b>
	<b>Conversion of an existing unauthorised outbuilding to a secondary dwelling with associated alterations and additions and the construction of a carport</b>
<b>FILE</b>	<b>DA-848/2018 – Bankstown Ward</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>9 November 2018</b>
<b>APPLICANT</b>	<b>Charbel Rahme</b>
<b>OWNERS</b>	<b>Charbel Rahme</b>
<b>ESTIMATED VALUE</b>	<b>\$46,200.00</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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This matter is reported to Council's Local Planning Panel in accordance with the Panels delegation from the Minister as the application seeks to vary a development standard by more than 10%. The development standard the applicant seeks to vary relates to the maximum permissible wall height as contained in Clause 4.3(2B)(a) of the Bankstown Local Environmental Plan 2015. The applicant proposes a maximum wall height of 3.85 metres, resulting in a 28% variation to the development standard.

Development Application No. DA-848/2018 proposes the conversion of an existing unauthorised outbuilding to a secondary dwelling with associated alterations and additions and the construction of a carport. The outbuilding in question is located to the south of the principal dwelling, at the rear of the site. The outbuilding has already been converted to a secondary dwelling and incorporates a living area, kitchen, bedrooms and a bathroom.

DA-848/2018 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 with State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004, the Bankstown Local Environmental Plan 2015 and Part B1 of the Bankstown Development Control Plan 2015.

Non compliances include (but are not limited to): failure to accommodate appropriate site landscaping, height of buildings (maximum wall height), private open space and setbacks to the side boundary.

The outbuilding has existed without approval with further unauthorised works to the eastern adjoining alfresco area taking place between 2007 and 2010 (as evidenced by satellite images). Works to the adjoining 'sunroom' and extension of the carport covered area took place in 2012 (again as evidenced by satellite images). The proposal provides for an unacceptable level of residential amenity, with respect to a lack of ventilation, BCA non-compliances and issues relating to solar access.

The applicant also lodged a Building Certificate in relation to the unauthorised secondary dwelling.

The application was notified for a period of 14 days from 13 November 2018 to 26 November 2018. No submissions were received.

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

## **POLICY IMPACT**

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The recommendation of this report is that the development application be refused. Such a determination would ensure that the relevant objectives for the R2 Low Density Residential Zone are maintained by way of ensuring that an appropriate level of residential amenity is provided for future occupiers of secondary dwellings.

## **FINANCIAL IMPACT**

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This matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that Development Application DA-848/2018 be refused for the reasons outlined in Attachment B.

## **ATTACHMENTS**

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- A. Assessment Report
- B. Reasons for Refusal

## **DA-848/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The site is a regular shaped allotment, and is zoned R2 Low Density Residential. At present, the site contains a single storey dwelling, attached rear covered sun room and an outbuilding that has been converted to a secondary dwelling. The site generally slopes to the street with a total land area of 518.5m<sup>2</sup> and a width of 14.325m. 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 undergone a number of alterations and additions since its construction. The secondary dwelling has a floor area of 51m<sup>2</sup> and a maximum external wall height of 3.85 metres. A large hardstand area has been provided within the front setback accommodating on-site car parking.

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

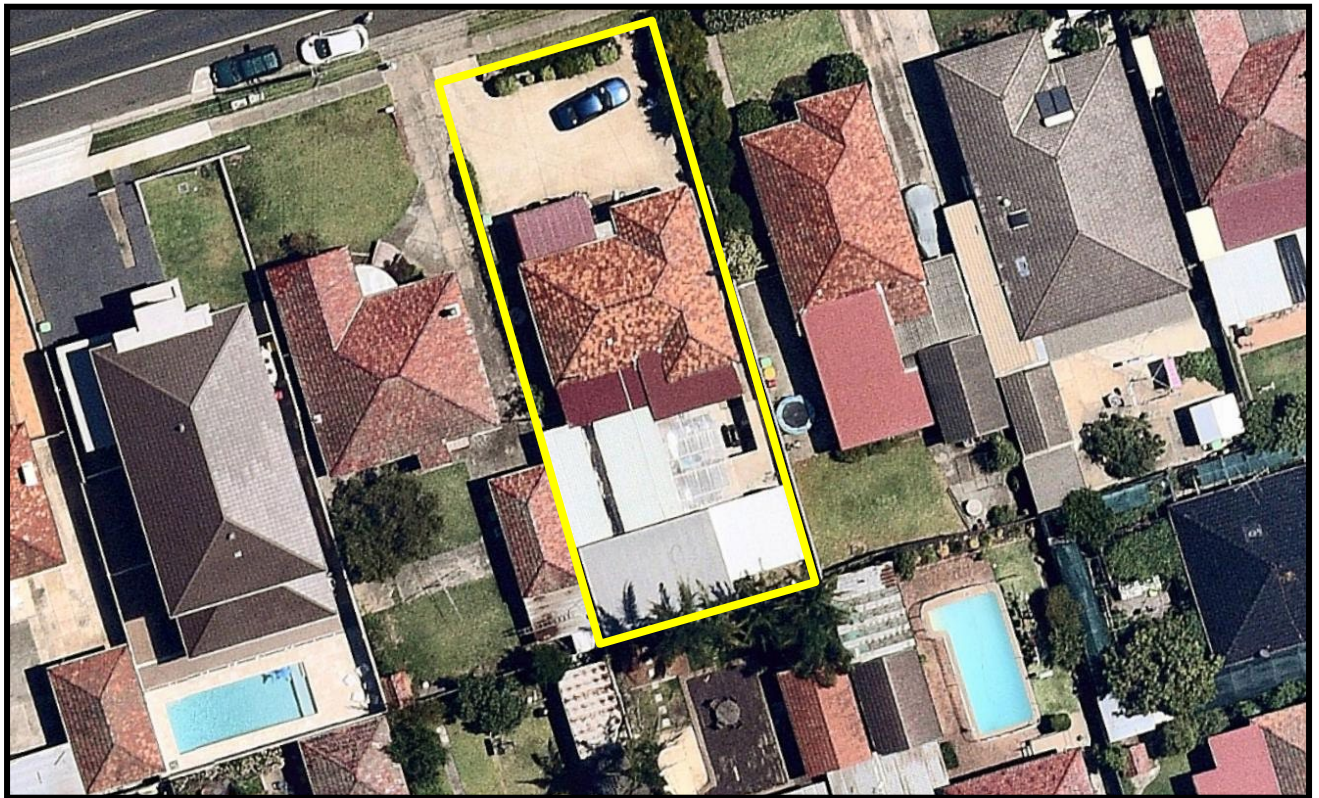


Figure 1 - Near map 2019





Figure 2 - Near map 2019

### **PROPOSED DEVELOPMENT**

DA-848/2018 proposes the conversion of an existing unauthorised outbuilding to a secondary dwelling with associated alterations and additions and the construction of a carport.

The proposal incorporates the authorisation of the outbuilding's use as a secondary dwelling. The application is inclusive of the demolition of all rear roof sheeting and the covered rear sunroom, proposed skylight for bedroom, a side carport and associated site works.

### **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:

- (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. It is noted that the western side setback (adjoining the dwelling) leading to the rear carport is not capable of functioning as a driveway due to having a width of only 2 metres.

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

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Number of dwellings	Two	Two	Yes
Total Floor Area	259.25m <sup>2</sup> (518.5/2)	202m <sup>2</sup> (151 + 51)	Yes
Floor Area of Secondary Dwelling	Max. 60m <sup>2</sup>	51m <sup>2</sup>	Yes

### ***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. 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.

### ***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 with the location and associated labels referenced on submitted DA plans as required by the Certificate. Notwithstanding the above, the submitted plans reference an additional bedroom compared to the number of bedrooms listed on the submitted BASIX certificate. Additional requirements potentially would be required by an amended BASIX certificate reflecting the updated number of bedrooms.

### ***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 for certain dwellings
- 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 and Clause 4.3 Height of buildings.

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	3.85m (wall height) 3.85m (building height)	No – see comments below Yes
Floor space ratio (specific site)	Max. 0.50:1	A GFA of 202m <sup>2</sup> is proposed resulting in a FSR of 0.39:1.	Yes
Floor area of secondary dwellings	Max 60m <sup>2</sup>	51m <sup>2</sup>	Yes

#### **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 aims contained in Clause 1.2(2) of BLEP 2015:



- (d) to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (i) to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*
- (k) to consider the cumulative impact of development on the natural environment and waterways and on the capacity of infrastructure and the road network,*
- (l) to enhance the quality of life and the social well-being and amenity of the community.*

The development represents a built form that is absent of building amenity and functionality by way of providing low levels of sunlight, poor ventilation and poor urban design. The proposal does not consider the functionality of the open space and site layout / building access. The development is not considered to be compatible with the prevailing suburban character and amenity and that envisaged for the residential environments of Bankstown.

### **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:***

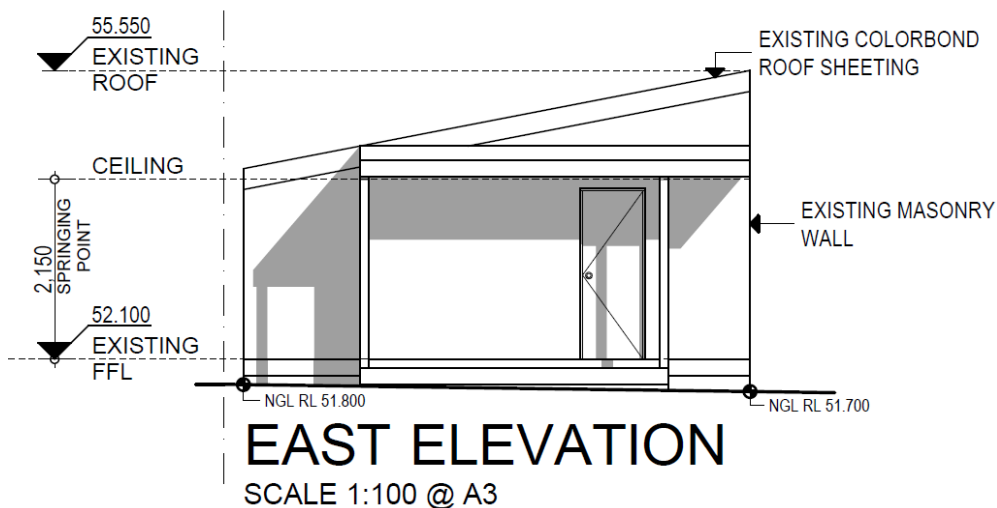
- i) *the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
- ii) *the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.*

...

The proposal seeks to vary Clause 4.3(2B)(a) of *Bankstown Local Environmental Plan 2015*. The maximum wall height for the dwelling is measured at 3.85m (a 0.85m variation – 28%).

It is noted that the applicant's Clause 4.6 submission states a maximum wall height of 3.3m (referring to the western elevation), however the wall height in accordance with Clause 4.3(2C) of BLEP 2015 (mentioned below) is measured at 3.85m on the eastern elevation.

*(2C) In this clause, wall height means the vertical distance between ground level (existing) and the underside of the eaves at the wall line or the top of the parapet or the flat roof (whichever is the highest).*



#### Clause 4.6 – Exceptions to development standards

The applicant has provided a written request under the provisions of Clause 4.6 of BLEP 2015. Extracts from the applicant's submission are provided below in italics. Clause 4.6 imposes three preconditions which must be satisfied to enable the proposed variation to the maximum wall height development standard. The preconditions are listed below:

*(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.*

*"This statement requests that flexibility in the application of this particular standard be provided so that a better overall outcome for the development may in turn result".*

- (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.*

*“Consent subject to this clause can be granted as it does not relate to a development standard that has been expressly excluded from the operation of this clause”.*

The application seeks a variation to the wall height development standard under Clause 4.3(2B)(a) of the BLEP 2015. In order to assess whether the development standard should be varied, the following provisions of Clause 4.6 of the BLEP 2015 are relevant.

- (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.*

*"This statement of objection is a written request made on behalf of the applicant to justify contravention of the development standard outlining that in this particular case, the development standard is unnecessary in this instance and that there are sufficient environmental planning grounds to justify its contravention.*

*The existing structure generally complies with the maximum 3m wall height control with the exception of a portion of the building that has a 3.3m wall height. This portion is along the northern side, and is located at the rear of the site. The proposal development is consistent with the objectives of Clause 4.3 in that:*

- It is an existing single storey building located at the rear of the site with a raked roof and is sympathetic to the character of Wattle St.  
It has an existing wall height of 2.7m adjacent the rear southern neighbours boundary and rakes up to 3.3m towards the private open space.*
- It is well within the 6m maximum building height control and does not create adverse amenity impacts to neighbouring properties.*

*Is compliance with the development standard consistent with the aims of the Policy, and in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(1) and (ii) of the Environmental Planning and Assessment Act?*

*It is considered that strict compliance with the maximum wall height control of 3m in no way hinders the objects of the Act as noted above.*

*Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

- In this circumstance, compliance with the 3m wall height control is unreasonable due to this being an existing single storey building.*
- In addition to the proposal's consistency with the objectives of the height standard, there are sufficient environmental planning grounds to justify contravening the development standard.*
- The proposed development complies with the overall 6m height control shown on the Height of Buildings Map in the Bankstown LEP 2015. The proposal also complies with the maximum Floor Space Ratio (FSR) of 0.5:1. The site area and Gross Floor Area (GFA) of both primary and secondary dwelling is detailed on the submitted architectural plans.*
- The proposal's compliance with the principal building envelope development standards of the LEP (height and FSR), demonstrates that the secondary dwelling is of a scale and form envisioned by Council. The development's-built form and scale is appropriate to the site and surrounding area".*

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 fall of the site to the street is approximately 470mm with the highest existing natural ground level being at 51.81 AHD being in the sites south eastern corner. The site is not constrained by any level of flood affectation.

The breach in wall height has occurred as a result of the construction of the unauthorised structure prior to any issued Council approval rather than in response to the sites characteristics. It is noted that all development applications lodged with Council for the construction of a secondary dwelling are subject to the maximum wall height requirements (unless otherwise justified) therefore it is considered unnecessary, based on minimal site constraints, to support a variation to the above.

The design put forward is not conservative in its approach and seeks an additional wall height of 3.85m (850mm variation), thereby resulting in a built form outcome that is considered incompatible with, and not characteristic of, new residential development in the area.

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 applicant Clause 4.6 submission misrepresents the extent of the breach therefore inferring that the submission cannot be relied upon. Furthermore, the proposal is inconsistent with the objectives of the R2 zone, in that the proposal does not provide a low density residential development that has regard to local amenity and is of a built form that is inconsistent with those structures in the immediate locality. The exceedance in wall height is not a result of any site specific constraints.

#### **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 revealed that the proposal complies with Clause 5.4(9) as provided above as the total floor area is measured at 51m<sup>2</sup>, less than the maximum permissible total floor area.

#### **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 relating to secondary dwellings:

- (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.*

In order to assess the proposals compatibility with the objectives, an analysis of the proposals consistency with the applicable controls is necessary. The following table provides a summary of the development application against the primary development controls contained within Part B1, Section 3 of BDCP 2015.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
<b>Clause 3.1</b>	The subdivision of secondary dwellings is prohibited.	No subdivision is proposed as part of this Development Application
<b>Clause 3.2</b>	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 <sup>2</sup> 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 = 259.25m <sup>2</sup> (518.5/2) Total Floor Area (as built) = 202m <sup>2</sup> (151 + 51)  The total floor area of the secondary dwelling is measured at 51m <sup>2</sup> , deemed compliant with this clause.
<b>Clause 3.4</b>	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 3.85m.
<b>Clause 3.5</b>	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.
<b>Clause 3.6</b>	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:	The proposal demonstrates compliance with this Clause with 400mm of fill above the NGL (at its highest point).

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	<p>(a) the secondary dwelling is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or</p> <p>(b) the fill is contained within the ground floor perimeter of the secondary dwelling to a height no greater than 1 metre above the ground level (existing) of the allotment.</p>	
<b>Clause 3.8</b>	<p>The minimum setback for a building wall to the primary road frontage is:</p> <p>(a) 5.5 metres for the first storey (i.e. the ground floor); and</p> <p>(b) 6.5 metres for the second storey.</p>	<p>30.3m</p> <p>N/A</p>
<b>Clause 3.10</b>	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 proposal fails this requirement as the existing unauthorised outbuilding has a setback to the southern side boundary of 0.2m. The setback to the western side boundary is 0.12m and 3.6m to the eastern side boundary.
<b>Clause 3.12</b>	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 77m <sup>2</sup> which therefore causes a non-compliance with Clause 2.12, Part B1 of the BDCP 2015 in regard to the minimum requirements for private open space for the principal dwelling. It is noted that sections of the private open space do not meet the minimum required 5 x 5 dimension.
<b>Clause 3.13</b>	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 a northern window which will receive the minimum requirement of direct sunlight to living areas.
<b>Clause 3.16</b>	<p>Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</p> <p>(a) offset the windows between dwellings to minimise overlooking; or</p> <p>(b) provide the window with a minimum sill height of 1.5 metres above floor level; or</p> <p>(c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or</p> <p>(d) use another form of screening to the satisfaction of Council.</p>	It is considered that compliance is demonstrated with this Clause as the windows proposed to the northern elevation are considered to be significantly offset from windows on adjoining dwellings. The window to the southern elevation is considered to be offset to also prevent overlooking.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
<b>Clause 3.17</b>	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	It is considered that compliance is demonstrated with this Clause as the windows to the northern / southern elevations are to bedrooms and bathrooms with the living area window considered to not overlook private open space of an adjoining dwelling.
<b>Clause 3.23</b>	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 13 degrees, demonstrating compliance with this clause.
<b>Clause 3.25</b>	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 non-compliances relating to natural light and ventilation for the room labelled 'ST' were raised.
<b>Clause 3.26</b>	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces.	The proposal incorporates an 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. The proposal also incorporates a covered parking space with the inclusion of the carport.

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with Clause 3.4, 3.10 and 3.12 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. Accordingly, the proposed development is likely to result in adverse environmental, social and economic impacts on the locality.

**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 variations, amongst other things, to the wall height, setback to the side boundary, and it is considered that the built form proposed is representative of a general amenity and design that is unsympathetic to the site and locality to which it falls within. 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 objectives and controls of Council's controls relating to this form of development, with particular reference to the overall amenity of the structure, general landscape and urban design.

**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 result in a low levels of overall amenity, the general landscape and urban design.

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-848/2018 be refused, for the reasons contained in Attachment B.



## **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 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*];
3. 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*];
4. The proposed development fails to satisfy Clause 1.2(2)(i) of the *Bankstown Local Environmental Plan 2015*. The submitted plans do not demonstrate the provision of an acceptable development outcome that achieves good urban design. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
5. The proposed development fails to satisfy Clause 1.2(2)(k) of the *Bankstown Local Environmental Plan 2015*. The submitted plans do not demonstrate the provision of an acceptable development outcome having regard to the cumulative impact of development on the natural environment. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
6. The proposed development fails to satisfy Clause 1.2(2)(l) of the *Bankstown Local Environmental Plan 2015*. The submitted plans do not demonstrate the provision of an acceptable development that enhances the quality of life and the social well-being and amenity of the community. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
7. 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*];
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 3.25, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to demonstrating compliance with the Building Code of Australia. [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-

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## Canterbury Bankstown Local Planning Panel - 4 March 2019

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<b>ITEM 2</b>	<b>2 Willow Place, Bass Hill</b>
	<b>Demolition of existing structures, construction of an attached dual occupancy with in ground swimming pool to proposed Lot 8, front fence and Torrens title subdivision</b>
<b>FILE</b>	<b>DA-842/2018 – Bass Hill</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>7 November 2018</b>
<b>APPLICANT</b>	<b>Khodr Ali El-Zebde</b>
<b>OWNERS</b>	<b>Khodr Ali El-Zebde</b>
<b>ESTIMATED VALUE</b>	<b>\$500,000</b>
<b>AUTHOR</b>	<b>Development Services</b>

### REPORT

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This matter is reported to the Canterbury Bankstown Local Planning Panel as the application seeks to vary a development standard by more than 10%. The development standard that the applicant seeks to vary relates to the minimum site width at the front building line for a dual occupancy development as contained in Clause 4.1A(2)(a) of Bankstown Local Environmental Plan 2015. The non-compliance represents a variation of approximately 16% to the development standard.

Development Application No. DA-842/2018 proposes the demolition of existing structures, the construction of an attached dual occupancy with in ground swimming pool to proposed Lot 8, front fence and Torrens title subdivision.

The Development Application has been assessed against the matters for consideration contained within Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*, requiring an assessment against, amongst other things, State Environmental Planning Policy No 55—Remediation of Land (SEPP 55), State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX), Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment, Bankstown Local Environmental Plan 2015 (BLEP 2015), as well as Bankstown Development Control Plan 2015 (BDCP 2015).

The application fails to comply with BDCP 2015, BLEP 2015, SEPP 55 and SEPP BASIX. Specifically, the non-compliances relate to the width of the site at the front building line for dual occupancies, setbacks, fencing, location of the swimming pool forward of the front building line, visual privacy and the requirement for each dwelling to face a different frontage. In addition to these non-compliances, the plans/information submitted with the application is inconsistent with BASIX Certificate and no information was submitted to demonstrate compliance with SEPP 55.

The application was notified to the adjoining properties for a period of 14 days from 8 November 2018 until 21 November 2018 during which time no submissions were received.

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

## **POLICY IMPACT**

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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 and be consistent with Council's previous decisions.

## **FINANCIAL IMPACT**

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This matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that Development Application DA-842/2018 be refused for the reasons outlined in Attachment B.

## **ATTACHMENTS**

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- A. Assessment Report
- B. Reasons for Refusal

## **DA-842/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is formally known as No. 2 Willow Place Bass Hill, Lot 8 in Deposited Plan 238203 and is zoned R2 Low Density Residential under the Bankstown Local Environmental Plan 2015 (BLEP 2015). The site contains a single storey dwelling, sheds and an inground swimming pool which has been filled in.

The site is an irregular shaped allotment with a total site area of 621.3m<sup>2</sup> and generally slopes to the rear north-western corner. The site is a corner allotment with two frontages (and an arc) as shown on the site survey being 1.79m and 27.515m. The shorter of the two frontages, being 1.79m, is defined as the primary frontage under BLEP 2015.

The surrounding development consists predominately of low density residential brick and fibro dwellings with a dual occupancy development adjoining the site immediately to the west.

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





## **PROPOSED DEVELOPMENT**

Development Application No. DA-842/2018 proposes the demolition of existing structures, the construction of an attached dual occupancy with inground swimming pool to proposed Lot 8, front fence and Torrens title subdivision.

## **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 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 on 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 proposed works are consistent with the relevant planning principles outlined in Clause 8 of the GMREP No 2 and the proposal does not include any of the specific development types that have specific planning requirements as listed under the 'planning control table'.

#### ***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 part of the development application. However, there is an existing pool that has been filled in during 2013 and there is no evidence to confirm that such fill is clean and free of contamination. In order to satisfy the provisions of SEPP 55, a preliminary site investigation report with soil sampling would need to be undertaken and submitted as part of the assessment process. In the absence of such an investigation. The application cannot proceed in a positive manner.

### **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 for the proposal. However, the plans submitted with the application fail to show the details of the indigenous or low use water species of vegetation throughout 40m<sup>2</sup> of the site for proposed Lot 8B and 50m<sup>2</sup> for proposed Lot 8 as required by the submitted certificate. The proposal therefore fails to meet the requirements of 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 2.7 – Demolition requires development consent
- Clause 4.1A – Minimum lot sizes and special provisions for dual occupancies
- 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 6.2 – Earthworks

An assessment of the development application against BLEP 2015 has revealed that the proposal is inconsistent with Clause 1.2 – Aims of Plan and with Clause 4.1A – Minimum lot sizes and special provisions for dual occupancies (which requires a minimum site width of 15m at the front building line for dual occupancies).

The table below is provided to demonstrate the assessment of the proposal against the numerical controls set out in BLEP 2015.

STANDARD	PERMITTED/REQUIRED	PROPOSED	COMPLIANCE
Minimum lot size for dual occupancies	Minimum 500m <sup>2</sup> lot area	621.3m <sup>2</sup>	Yes
Minimum width of the lot at the front building line	Minimum 15m width at front building line	Approximately 12.6m width at the front building line	No
Minimum lot size post subdivision	Minimum 250m <sup>2</sup> lot area post subdivision	Lot 8 – 341.85m <sup>2</sup> Lot 8B – 279.28m <sup>2</sup>	Yes
Height of Buildings	<ul style="list-style-type: none"> <li>• Maximum wall height 7m</li> <li>• Maximum building height 9m</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed wall height 6.9m at highest point</li> </ul>	Yes

		<ul style="list-style-type: none"> <li>Proposed building height 8.401m at the highest point</li> </ul>	
Floor space ratio (prior to subdivision)	Maximum 0.5:1	0.5:1	Yes
Floor space ratio (post subdivision)	Maximum 0.5:1	Lot 8 – 0.5:1 Lot 8B – 0.49:1	Yes

*Clause 1.2 – Aims of the Plan and Clause 4.1A – Minimum lot sizes and special provisions for dual occupancies*

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

1.2 Aims of Plan

(2) *The particular aims of this Plan are as follows:*

- (a) ...
- (b) ...
- (c) ...
- (d) *to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (e) ...
- (f) ...
- (g) ...
- (h) ...
- (i) *to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*
- (j) ...
- (k) ...
- (l) ...

As previously mentioned, the assessment of the development application has identified that the site fails to meet the minimum lot width at the front building line contained within Clause 4.1A(2)(a) of BLEP 2015 and is inconsistent with the objectives of this clause. Clause 4.1A(2)(a) of BLEP 2015 provides as follows:

4.1A Minimum lot sizes and special provisions for dual occupancies

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

- (a) *to ensure that lot sizes are sufficient to accommodate development that is consistent with the objectives and planning provisions for dual occupancies,*
- (b) *to minimise any likely adverse impact of development on the amenity of the area.*

(2) *Development consent must not be granted to development for the following purposes:*

- (a) *a dual occupancy (attached) on a lot in Zone R2 Low Density Residential unless the lot has an area of at least 500 square metres and is at least 15 metres wide at the front building line,*

In this regard, the subject site has two frontages (and an arc) as shown on the site survey of 1.790m and 27.515m. The shorter of the two frontages, being 1.790m is the frontage where the front building line is calculated at the 5.5m building setback. This interpretation is consistent with the definition of front building line as defined under BLEP 2015, which reads as follows:

front building line means:

- (a) for a lot that has only one road frontage—the line the consent authority is satisfied is the minimum setback a building should be from the road alignment, or
- (b) for a lot that has more than one road frontage—the shortest of the lines (excluding an access handle or right of way for access) that can be calculated under paragraph (a).

At the front building line the site has a width of approximately 12.6m (which has not been confirmed by a surveyor) being 2.4m short of the required 15m, representing a variation of approximately 16% to the development standard.

The prevailing suburban character of the residential areas in Bankstown are set and shaped by the relevant development standards in BLEP 2015, one of which, is a minimum site width at the front building line of 15m for dual occupancies. The site fails to meet the minimum site width at the front building line and the site does not have the adequate dimensions to allow or accommodate a suitable dual occupancy design.

Typically on corner allotments one of the dwellings within a dual occupancy development faces the primary frontage and the other dwelling would face the secondary frontage as required by BDCP 2015 – Part B1. However, the proposed dwelling on Lot 8B does not face the primary frontage. The result is a substandard presentation to both frontages, with an elongated structure extending over 30m along the secondary frontage - with the two storey component being over 26m in length. The elevation dominates the secondary frontage, is unnecessarily bulky with no break in the façade to provide spatial relief.

The non-compliance with the minimum lot width at the front building line in this case results in a development which is not compatible with the prevailing suburban character and amenity of the residential areas of Bankstown. Supporting a variation would undermine the aims of BLEP 2015 and be inconsistent with the objectives of the minimum lot size controls for dual occupancies contained within BLEP 2015, being the adopted legislation for controlling and shaping the character and amenity of the area.

*Clause 4.6 – Exceptions to development standards*

The applicant has provided a written request under the provisions of Clause 4.6 of BLEP 2015 – Exceptions to development standards in support of the non-compliance with Clause 4.1A(2)(a) of BLEP 2015. The Clause 4.6 submission has been attached to this report.

In considering the applicant's Clause 4.6 submission, an assessment was carried out against the relevant requirements of this clause, in which the following must be considered:

#### *4.6 Exceptions to development standards*

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) the concurrence of the Secretary has been obtained.*

An extract of the applicant's Clause 4.6 submission has been reproduced below:

*As will be detailed further within this request to vary the standard, it is considered that the proposal is appropriate for the site and given its context and location at the arch or of Willow Place, it is not considered unreasonable to vary the development standard.*

*As defined within the BLEP15, front building line means:*

***"front building line means:***

- (a) for a lot that has only one road frontage—the line the consent authority is satisfied is the minimum setback a building should be from the road alignment, or*
- (b) for a lot that has more than one road frontage—the shortest of the lines (excluding an access handle or right of way for access) that can be calculated under paragraph (a)."*

*In the first instance it should be recognised that the subject site is not a corner allotment, with Willow Place being the sites only street frontage. Whilst the subject site is located in a position where the street arches, it is not considered reasonable to deem the remaining 1.790m of the frontage as being the front building line width, as this relates to the same street.*

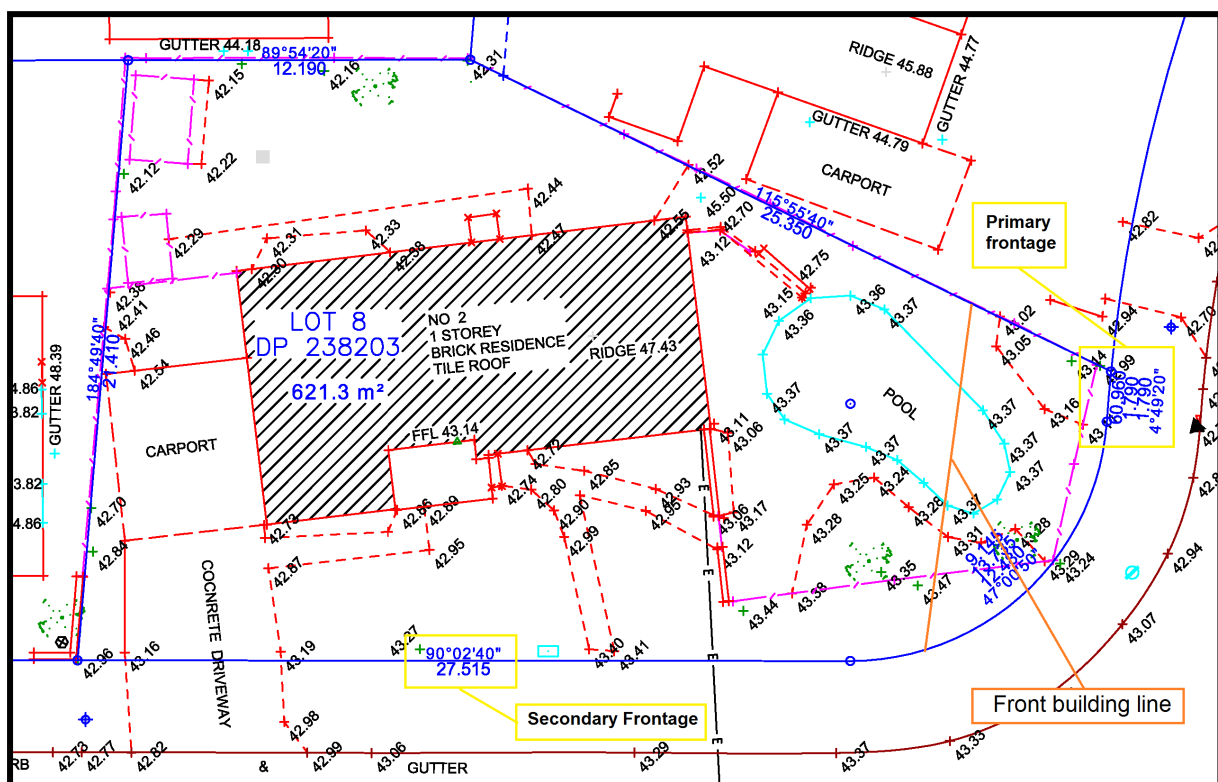
*It is our strong submission that there is no planning sense nor merit to consider this distance of 1.790m as being the front building line given its narrow width, notwithstanding the fact that this presents to the same street and is not a corner allotment.*



*It is considered that this control would apply to a more traditional corner allotment, where there is a distinct primary and secondary frontage. In this context, this is none exhibited as the site is located on an arching portion of the Willow Place. There are no other streets which bound the site.*

Despite the applicant's submission arguing that the site only has one frontage, the site has two road frontages (and an arc) as shown on the site survey of 1.790m and 27.515m. This approach is consistent with the definition of front building line as defined under BLEP 2015 and is consistent with Council's previous interpretation and decisions on this matter.

Refer to an extract from the site survey below prepared by Ensure Consulting Pty Ltd 5/8/2018 with the primary and secondary frontages highlighted in yellow and the approximate position of the front building line shown in orange (approximately 12.6m wide).



Site Survey – Ensure Consulting Pty Ltd

It is considered that the applicant's submission fails to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development is not considered to be an appropriate form of development for the subject site, and represents a built form that is not compatible with the existing and desired future character of the locality as set by the relevant planning controls in BLEP 2015 and BDCP 2015. The issues are such that they cannot be addressed via the submission of amended plans and additional information.

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 relevant environmental planning instruments and development controls by the consent authority, in order to ensure that any adverse impacts associated with the development are suitably addressed. The application undermines the integrity of the Council's planning controls and is inconsistent with the objectives of the development standard.

Refusal of the application based on the sites inadequate dimensions and associated non-compliance with Clause 4.1A(2)(a) of the BLEP 2015 would be consistent with Council's previous decisions with regard to inadequate site width at the front building line for dual occupancies.

It is therefore recommended the applicant's Clause 4.6 request is not supported and that the proposed development be refused.

*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 BDCP 2015 – Part B1.

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Storey Limit	2 storeys.	Maximum 2 storeys	Yes
Fill	Less than 600mm of fill proposed.	Any reconstituted ground level of an allotment is not to exceed 600mm above the natural ground level of adjoining allotments.	Yes
Front Setback	<ul style="list-style-type: none"> <li>Ground floor 5.129m</li> <li>First floor 5.129m</li> </ul>	<ul style="list-style-type: none"> <li>Ground floor minimum 5.5m</li> <li>First floor minimum 6.5m</li> </ul>	NO
Secondary Setback	Ground floor 5.5m and first floor 5.5m	Ground floor and first floor minimum 3m	Yes
Side setbacks	Ranges from 900mm – 1161m	Minimum 900m	Yes
Setback to covered car parking space	<ul style="list-style-type: none"> <li>Dwelling A - garage 6.5m</li> <li>Dwelling B – garage 5.5m</li> </ul>	Minimum 6m	No
Private open space	<ul style="list-style-type: none"> <li>Dwelling A – 80m<sup>2</sup></li> <li>Dwelling B – 80m<sup>2</sup></li> </ul>	Minimum 80m <sup>2</sup> of private open space per dwelling behind the front building line.	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Swimming pool location	<ul style="list-style-type: none"> <li>Dwelling A proposes a swimming pool forward of the front building line.</li> </ul>	Swimming pools and spas must locate behind the front building line.	No
Solar access (site)	> 3 hours solar access to each dwelling	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of both proposed dwellings.	Yes
Solar access (private open space – site)	> 3 hours achieved to the private open space of both dwellings.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space for both dwellings.	Yes
Solar access (adjoining properties)	> 3 hours solar access maintained to private open space of adjoining dwellings.	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of a dwelling on an adjoining allotment.	Yes
Visual Privacy (living areas)	The kitchen window to dwelling B lines up with the window on the adjoining property at No. 9 Carysfield Road which does not achieve the intention of this control.	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling the development must offset the windows; provide a minimum sill height of 1.5 metres above floor level; provide fixed obscure glazing; or use another form of screening.	No

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Visual Privacy (private open space)	The first floor windows to both dwellings facing side and rear boundaries are associated with bedrooms and bathrooms and are considered to comply with the control.	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where the window is to a bedroom, bathroom, toilet, laundry or storage room; the window has a minimum sill height of 1.5 metres above floor level; the window has obscure glazing to a minimum height of 1.5 metres above floor level; or the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	Yes
Roof pitch	22°	Maximum roof pitch 35 degrees.	Yes
Car parking	Two spaces provided for each dwelling. Each dwelling has one space provided within a garage.	Minimum 2 car parking spaces per dwelling, 1 of which must be covered space.	Yes
Design of a dual occupancy	Both dwellings face the secondary frontage with no presentation to the primary frontage. Substandard presentation to both frontages, with an elongated structure extending over 30m along the secondary frontage.	The design of dual occupancies must ensure the two dwellings on a corner allotment each face a different frontage.	No
Landscaping	> 45%  2 x 75L trees have been provided on the landscape plan.	Min. 45% of the area between the primary road frontage and the dual occupancy is to be landscaped.  1 x 75L tree between the dual occupancy and the primary road frontage.	Yes
Front fences	The proposed fence on the primary frontage is a 1.776m high solid fence.	The maximum fence height for a front fence is 1.8 metres.	No

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
		<p>The external appearance of a front fence along the front boundary of an allotment or facing a classified road must ensure:</p> <p>(a) the section of the front fence that comprises solid construction (not including solid piers) must not exceed a fence height of 1 metre above natural ground level; and</p> <p>(b) the remaining height of the front fence must comprise open style construction such as spaced timber pickets or wrought iron that enhance and unify the building design.</p> <p>Despite this clause, the solid construction of a fence behind the front building line of dwelling houses and dual occupancies on corner allotments may achieve a fence height up to 1.8 metres.</p>	

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with BDCP 2015 with regard to the required minimum setbacks (to the ground & first floor and to the stacked parking space), fencing controls, location of the swimming pool forward of the front building line, visual privacy and the requirement for each dwelling to face a different frontage.

The non-compliance with these clauses result in a reduced level of amenity for the adjoining properties and a development which is inconsistent with the character of the low density residential area. Accordingly, the proposed development is inconsistent with the objectives contained in Section 4 of BDCP 2015 – Part B1.

*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 54 of the *Environmental Planning and Assessment Regulation, 2000* as the applicant has not resolved the matters of non-compliance raised by Council's assessment officers. However, while several matters could be resolved through amended plans/and information, it is noted that the non-compliant lot width at the front building line cannot be addressed through the submission of additional information.

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

Council's assessment of the application has identified several fundamental issues with the proposed development, which have been detailed in this report. It is considered that the likely impacts of the proposal cannot be addressed via the submission of amended plans and additional information.

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

The proposed development is not considered to be an appropriate form of development for the subject site, and represents a built form that is not compatible with the existing and desired future character of the locality as set by the relevant planning controls in BLEP 2015 and BDCP 2015.

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

No submissions were received during the notification period.

*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 relevant environmental planning instruments and development controls by the consent authority, in order to ensure that any adverse impacts associated with the development are suitably addressed.

**CONCLUSION**

The Development Application has been assessed in accordance with the matters for consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*. The proposed development is not considered to be satisfactory in accordance with the applicable environmental planning instruments and development controls. The issues are such that they cannot be addressed via the submission of amended plans and additional information.

Refusal of the application based on the sites inadequate dimensions and associated non-compliance with Clause 4.1A(2)(a) of the BLEP 2015 would be consistent with Council's



previous decisions in regard to inadequate width at the front building line for dual occupancies.

It is therefore recommended that the proposed development be refused.

#### RECOMMENDATION

It is recommended that the development application DA-842/2018 be refused and Clause 4.6 not supported, for the reasons contained in Attachment B.



## **Reasons for Refusal**

1. The development fails to comply with Clause 4.1A(2)(a) of the Bankstown Local Environmental Plan 2015 in relation to the minimum width of the site at the front building line [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*].
2. The development fails to meet the objectives of Clause 4.1A of the Bankstown Local Environmental Plan 2015 –Minimum lot sizes and special provisions for dual occupancies [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*].
3. The development fails to meet the objectives of Clause 4.4 of the Bankstown Local Environmental Plan 2015 –Floor space ratio, in terms of the bulk and scale of the built form [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*].
4. The development fails to comply with Clause 4.8 and 4.30(b) of the Bankstown Development Control Plan 2015 - Part B1, with regard to the minimum building and car parking setbacks [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*].
5. The development fails to comply with Clause 4.14 of the Bankstown Development Control Plan 2015 - Part B1, with regard to the location of private open space forward of the front building line [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*].
6. The development fails to comply with Clause 4.24 of the Bankstown Development Control Plan 2015 - Part B1, with regard to the requirement for each dwelling on a corner allotment to each face a different frontage [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*].
7. The development fails to comply with Clause 4.2 of the Bankstown Development Control Plan 2015 - Part B1, with regard to fencing forward of the front building line [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*].
8. The plans do not demonstrate compliance with the submitted BASIX Certificate 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*].
9. The development application fails to satisfactory address the relevant provisions of *State Environmental Planning Policy No. 55 – Remediation of Land* [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*].

10. The development application fails to comply with the Environmental Planning & Assessment Regulation, 2000 Clause 54 in regards to Council's letter raising issues with the proposal and request for additional information [Pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*].
11. The development application does not demonstrate a suitable level of impact to the locality [Pursuant to Section 4.15(1)(b) of the *Environmental Planning and 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. The development is not considered to be in the public interest [Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*].

-END-

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## Canterbury Bankstown Local Planning Panel - 4 March 2019

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<b>ITEM 3</b>	<b>20-22 Ely Street, Revesby</b>
	<b>Demolition of existing site structures, consolidation of existing lots into one allotment and construction of a boarding house development comprising of five separate buildings containing a total of 22 boarding rooms, communal living rooms, a managers room and associated on-site parking</b>
<b>FILE</b>	<b>DA-537/2018 – Revesby</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>6 July 2018</b>
<b>APPLICANT</b>	<b>ES Engineering &amp; Design</b>
<b>OWNERS</b>	<b>Paul, Alex and Robert Torbay and Mary Mardini</b>
<b>ESTIMATED VALUE</b>	<b>\$1,644,591</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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This matter is reported to Council's Local Planning Panel in response to the number of public submissions received. At the time of preparing this report, Council was in receipt of a total of 75 submissions.

Development Application No. DA-537/2018 seeks to demolish the existing site structures, consolidate the existing lots into one allotment and construct a boarding house development comprising of five separate buildings containing a total of 22 boarding rooms, two communal living rooms, a managers room and associated on-site parking.

DA-537/2018 has been assessed against the provisions contained within *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy No 55 – Remediation of Land*, *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

An assessment of the development against the matters for consideration contained in Section 4.15 of the EP&A Act 1979 (which includes an assessment against the above planning controls) reveals that the application fails to comply in regards to the discretionary standard contained in clause 29(2)(e)(iia) of SEPP ARH (re the number of on-site car parking spaces) and clause 10.38 of Part B1 of BDCP 2015 (re the design of on-site car parking). As the report demonstrates, these departures are sufficiently justified and are not likely to result in any adverse impacts on the surrounding properties or the broader locality.

The application was neighbour notified and advertised in The Torch and The Express newspapers consistent with the provisions contained in BDCP 2015. The application was on exhibition for a period of 21 days from 18 July 2018 to 7 August 2018. At the time of preparing this report, Council had received a total of 75 submissions. Concerns raised in the public submissions related to a lack of on-site car parking, the development being out of character with the area, an increase in crime, impact on traffic flows, the bulk and scale of the development, impact on street parking, lack of footpaths being provided along the street, and the fact that the width of the street does not allow for the free flow of vehicles along the street.

The concerns raised in the submissions have been addressed in this report and do not warrant refusal or further modification of the development.

## **POLICY IMPACT**

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This matter has no direct policy implications.

## **FINANCIAL IMPACT**

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This matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that the application be approved subject to the attached conditions.

## **ATTACHMENTS**

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



## **DA-537/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject sites are legally described as Lot 43 and 44 Section 5 in DP 2343, however are more commonly referred to as Nos 20 and 22 Ely Street, Revesby. The development site is located on the western side of Ely Street, approximately 75 metres north of the intersection with Gordon Parker Street.

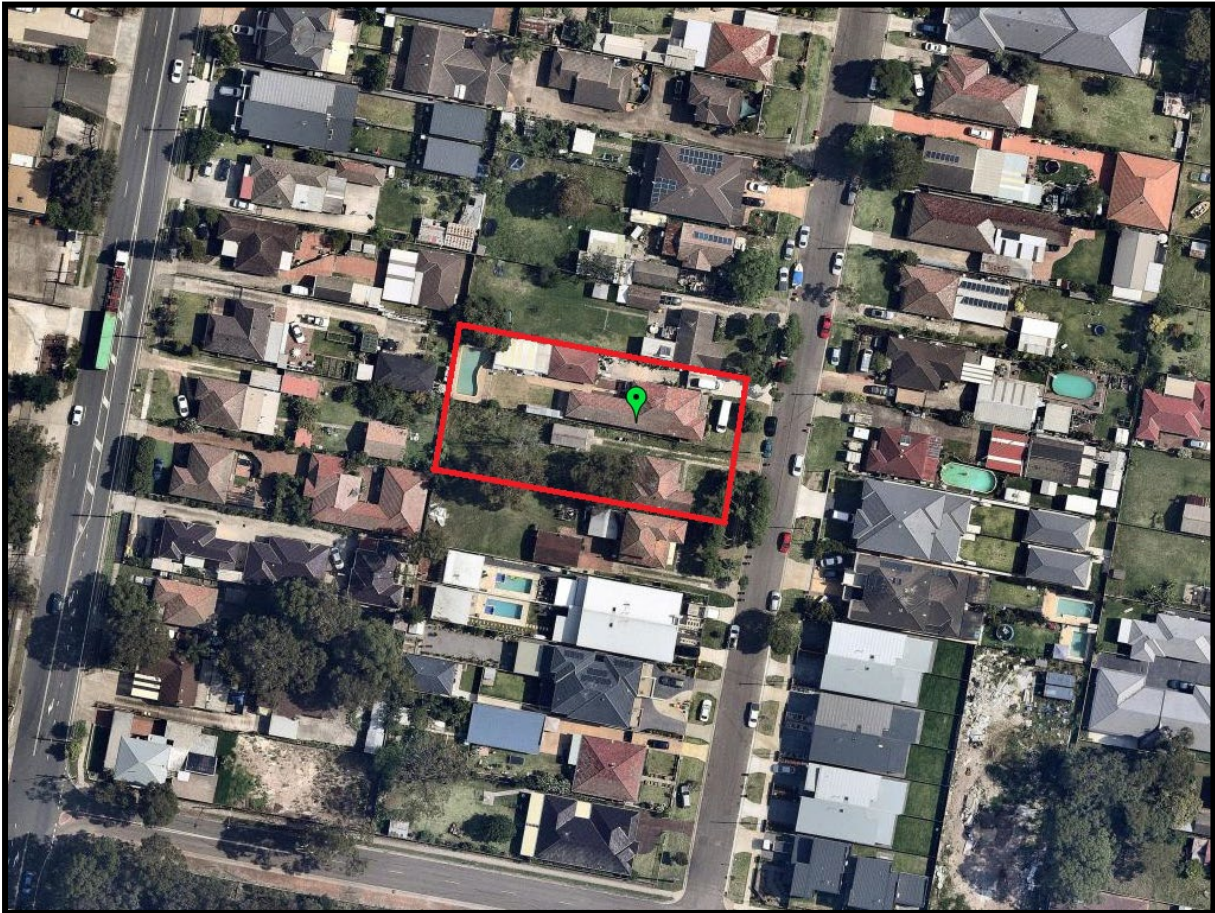
The development site comprises two regular rectangular shaped allotments with a combined frontage of 30.48 metres to Ely Street, southern and northern boundaries of 60.96 metres and a total site area of 1858m<sup>2</sup>. The site has a gentle fall from south to north, with the low point provided in the site's north western corner. Occupying the sites are two single storey detached dwellings with associated outbuildings while an in-ground swimming pool abuts the rear boundary of No 20 Ely Street.

Site vegetation consists of three eucalypt species (two of which currently display poor health while the third tree is dead) and there are three brushbox street trees, situated on the nature strip forward of the development site.

Adjoining the site to the north (No 18 Ely Street) is a free standing single storey dwelling while occupying the site to the south (No 24 Ely Street) is a two storey PVC clad cottage. Low scale residential developments, accessible off Queen Street, adjoin the sites western boundary.

Historical records confirm that Ely Street was dominated by detached dwelling houses with the vast majority of these dwellings being single storey. More recently Ely Street has undergone change with a number of newer two storey dual occupancy developments and multi-dwelling developments being introduced. While these are initially seen as 'interruptions' to the streetscene, over time these existing older detached dwellings are likely to be replaced with newer building stock particularly given the generous size of the properties in the street.

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



### **PROPOSED DEVELOPMENT**

The applicant is seeking approval to demolish the existing site structures, consolidate the existing lots into one allotment and to construct a boarding house development comprising of five separate buildings containing a total of 22 boarding rooms, two communal living rooms, a managers room and associated on-site parking.

Building A - is a two storey building located in the site's south eastern corner and contains three ground floor and three first floor boarding rooms.

Building B - is a two storey building and is situated in the site's north eastern corner. The ground floor contains a double garage, a managers room, a communal living room and a boarding room while the first floor contains a further four boarding rooms.

Building C - is a single storey building located midway along the site's northern boundary and contains five boarding rooms and a communal living room.

Buildings D and E - are single storey buildings that extend along the rear or western boundary, each of which contain three boarding rooms.

Four of the boarding rooms are 'accessible' (Rooms 3, 14, 17 and 20) while the manager's room is also identified as being an accessible room

In addition to the car parking spaces provided within the double garage of Building B, are six at grade car parking spaces accessible via a driveway that extends along the sites southern boundary. The driveway also provides access to motor cycle parking spaces and an area dedicated for bicycle parking.

### **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 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 part of the 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 proposed development and therefore the development application satisfies the provisions of SEPP 55.

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

Valid BASIX certificates accompanied the development application. The Certificates detailed the thermal, energy and water commitments which are also detailed on the submitted plans. Accordingly the proposal satisfies the requirements of *State Environmental Planning Policy (Building Sustainability: BASIX) 2004*.

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

The following table provides a summary of the development application against the relevant numerical controls contained in Division 3 'Boarding houses' of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH).

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Accessible area (Clause 27(2))	For the application of the controls contained in Division 3, the land must be located within an 'accessible area' as defined by clause 4 of the SEPP	The site is located within 275 metres of a bus stop on the southern side of Milperra Road which is serviced by Bus Route No M90 providing access to Milperra, Moorebank and Liverpool	Yes
Floor space ratio (Clause 29(1)(a))	Consistent with the maximum FSR for any form of residential accommodation permitted on the land (Clause 4.4(2) of BLEP 2015 identifies a maximum permitted FSR of 0.5:1)	0.43:1 (804.73m <sup>2</sup> :1858m <sup>2</sup> )	Yes
Building height (Clause 29(2)(a))	Consistent with the maximum building height permitted under another EPI (Clause 4.3(2) of BLEP 2015 identifies a maximum permitted building height of 9 metres)	A maximum building height of 8 metres is proposed	Yes
Landscaped area (Clause 29(2)(b))	The landscape treatment of the front setback area is to be 'compatible with the streetscape'	64% of the front setback area is landscaped, which not only exceeds that required under Council's residential control (of 45%) but is consistent with the existing landscape setting provided along Ely Street	Yes
Solar access (Clause 29(2)(c))	Where the development provides more than one communal living room, one of these rooms is to receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	The communal living room provided within Building C receives direct sunlight between 9am and 12 noon in mid-winter	Yes
Private open space (Clause 29(2)(d)(i) and (ii))	One area of at least 20m <sup>2</sup> with a minimum dimension of 3 metres is provided for the use of the lodgers  One area of at least 8m <sup>2</sup> with a minimum dimension of 2.5 metres is provided for use for the boarding house manager	59.05m <sup>2</sup> of open space with a minimum dimension of 3 metres is provided for the use of the lodgers	Yes  Yes



STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
		13.77m <sup>2</sup> of private open space with a minimum dimension of 2.5 metres has been provided for use for the boarding house manager	
Parking (Clause 29(2)(e)(ia))	At least 0.5 car parking spaces are provided for each boarding room hence 11 spaces required  Not more than one parking space provided for each person employed in connection with the development and who is a resident on site	Six at grade car parking spaces and two spaces within the double garage	<b>No (see below)</b>
Size of boarding rooms Clause 29(2)(f)(ii)	Each boarding room to have a GFA (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least 12m <sup>2</sup> (for single lodgers) and 16m <sup>2</sup> in any other case	The GFA of the boarding rooms range from 17.45m <sup>2</sup> to 24.76m <sup>2</sup> (excluding the kitchen and bathroom facilities)	Yes
Communal living room (Clause 30(1)(a))	If a boarding house has five or more boarding rooms, at least one communal living room is to be provided	Two communal living rooms are proposed (one within Building B, the other within Building C)	Yes
GFA of each boarding room (Clause 30(1)(b))	No boarding room is to have a GFA (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m <sup>2</sup>	No boarding room has a GFA of more than 25m <sup>2</sup> (excluding the kitchen and bathroom facilities)	Yes
Number of lodgers (Clause 30(1)(c))	No boarding room is to be occupied by more than two adult lodgers	Given that the maximum permitted GFA of a boarding room is satisfied, it is unlikely that any of the rooms are able to accommodate more than two adult lodgers. The Plan of Management, dated October 2018, also specifies the maximum number of lodgers per boarding room, and this is reflected in the conditions of consent.	Yes

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Boarding house manager (Clause 30(1)(e))	If the boarding house has the capacity to accommodate 20 or more lodgers, a boarding room is to be provided for a boarding house manager	A boarding room is provided on the ground floor of Unit B, which has been made available for a boarding house manager	Yes
Bicycle / motor cycle parking (Clause 30(1)(h))	At least one parking space will be provided for a bicycle and a motor cycle for every five boarding rooms hence four motor cycle spaces and four bicycle spaces are required	Five motor cycle spaces and eight bicycle spaces have been provided	Yes

As the above table indicates, the development satisfies the provisions contained in the SEPP ARH except with regard to 'parking'.

With respect to this matter, there are key legislative considerations that have informed Council's car parking assessment. Firstly, the above provision in SEPP ARH is a discretionary standard, therefore it is not a standard that requires a development to provide the amount of car parking specified in the provision. Secondly, there are controls in BDCP 2015 that identify minimum car parking rates for boarding house developments. These considerations are outlined in further detail below.

The "*Schedule: Off-street parking requirements*", that follows Clause 2.1 of Part B5 of BDCP 2015, specifies "*1 car space per three bedrooms*" for the land use described in the table as "*Boarding houses*". Including the boarding house managers room, a total of 23 bedrooms are proposed hence, according to the provisions contained within the BDCP 2015, a minimum of 7.7 (i.e. 8) car parking spaces are required.

Clause 29(2)(e)(iia) of SEPP ARH relevantly provides that a consent authority **must not refuse** a development application for a boarding house on the ground of parking if:

*"(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room,..."*

It is important to recognise that the above provision in SEPP ARH is a discretionary standard and is not a standard that requires a development to provide the amount of car parking specified in the provision. This is made clear by clause 29(4) of SEPP ARH which states:

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

In other words, if a development for a boarding house to which SEPP ARH applies is proposed to be carried out by or on behalf of someone other than a social housing provider and does not provide the amount of parking specified in clause 29(2)(e)(iia) of SEPP ARH, Council is not



prohibited from approving the application. The provision only operates where the development provides at least 0.5 parking spaces for each boarding room – in which case it cannot be refused on the grounds of parking.

Where a development control plan also applies to a development application for a boarding house to which SEPP ARH applies and the development control plan sets a standard with respect to the provision of car parking for the boarding house development that requires the provision of less than 0.5 parking spaces for each boarding room, section 4.15(3A)(a) of the EP&A Act would operate to prohibit Council from requiring the development to provide a higher rate of car parking than the rate specified in the DCP. Section 4.15(3A)(a) of the EP&A Act relevantly states:

*“If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:*

*(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development,...”*

It is noted that a development control plan is not an “environmental planning instrument” as defined in section 1.4 of the EP&A Act. It is also noted that section 3.43(5) of the EP&A Act provides that a provision of a development control plan (whenever made) has no effect to the extent that:

*“(a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or  
(b) it is inconsistent or incompatible with a provision of any such instrument.”*

A provision of a DCP that sets a minimum standard for the provision of car parking for a boarding house development that is less than 0.5 spaces per boarding room is not a provision that is the same or substantially the same as the provision in clause 29(2)(e)(iia) of SEPP ARH that operates to prohibit Council from refusing a development application if 0.5 or more spaces per boarding room are provided. Whilst both provisions are dealing with car parking, they do not have the same effect. The development control plan provision is a provision requiring a minimum amount of car parking whilst the SEPP ARH provision, in effect, specifies a maximum amount of car parking that can be required.

The provisions are not inconsistent if the minimum amount of car parking specified in the development control plan is less than the amount specified in clause 29(2)(e)(iia) of SEPP ARH because the provisions can be read together and operate without conflict.

The requirement in clause 2.1 of Part B5 of BDCP 2015 to calculate the amount of parking required for a boarding house at one car space per three bedrooms (which equates to 0.33 spaces per bedroom), would be effective because it is neither incompatible nor inconsistent with clause 29(2)(e)(iia) of SEPP ARH.

It therefore follows, pursuant to section 4.15(3A)(a) of the EP&A Act, that Council cannot require more than 0.33 spaces per bedroom in respect of a boarding house development in the former Bankstown LGA to which clause 2.1 of Part B5 of BDCP 2015 applies.

As detailed later in this report, the development provides on-site car parking consistent with the provisions contained in Part B5 of BDCP 2015.

#### Character of the local area

Clause 30A of Division 3 of ARH SEPP reads as follows:

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

The key element of the clause is the reference to “...whether the design of the development is compatible with the local area.” The ‘design of the development’ is considered to be compatible with the character of the local area for the following reasons;

- The bulk and scale of the development is in keeping with that envisaged for the immediate locality, reinforced by the fact that the development satisfies the permissible FSR and height controls as contained in the BLEP 2015 and those built form controls relating to boarding house development in BDCP 2015.
- The development’s presentation to Ely Street is not unlike that of a multi-dwelling housing development with the two storey built form confined to the front portion of the site with the rear of the site to accommodate single storey built elements.
- The development has been designed to protect the visual amenity of the adjoining dwellings through the use of highlight windows to a number of the rooms along the side elevations of the upper rooms.
- The finishes and materials chosen are in keeping with those of the newer developments in the street.
- The front, side and rear setbacks of the development are compatible and consistent with the multi-dwelling developments that have been approved and constructed in the street.

The ‘design of the development’ is therefore considered to be compatible with the local area.

#### 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 from 1 July 2009 under the then Clause 120 of Schedule 6 of the EP&A Act 1979. The GMREP No 2 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 is generally consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of the GMREP No 2.

#### 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 for certain dwellings

Clause 4.3 – Height of buildings

Clause 4.4 – Floor Space Ratio

Clause 4.5 – Calculation of floor space ratio and site area

Clause 6.1 – Acid sulfate soils

Clause 6.3 – Flood planning

An assessment of the Development Application revealed that the proposal complies with the matters raised in each of the above clauses of *Bankstown Local Environmental Plan 2015*. The following table provides a more detailed assessment against the zoning, environmental and numerical development standards contained in the abovementioned clauses.

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Zoning	The subject site is zoned R2 Low Density Residential.	Boarding houses are permitted with consent in the R2 Low Density Residential zone.	Yes
Minimum lot size	A minimum lot area of 1,200sqm and a minimum lot width at the front building line of 20m is required for boarding houses in the R2 Low Density Residential zone.	The subject site has a combined lot area of 1,858sqm and a combined width of 30.48m at the front building line.	Yes

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Height of buildings	For boarding houses in the R2 Low Density Residential zone, the maximum building height for a dwelling facing the road is nine metres and the maximum wall height is seven metres, and the maximum building height for all other dwellings at the rear of the lot is six metres and the maximum wall height is three metres.	The proposed development comprises five separate building envelopes, two of which (Buildings A and B) face the street and three of which (Buildings C, D and E) are positioned to the rear of the lot. Buildings A and B are two storey with a maximum building height of 8.0m and a maximum wall height of 6.1m. Buildings C, D and E are single storey with a maximum building height of 5.4m and a maximum wall height of 3.0m.	Yes
Floor space ratio	Max. 0.50:1	0.43:1	Yes
Acid sulfate soils	The subject site is affected by Class 5 acid sulfate soils, which requires further assessment for works on land that is below five metres Australian Height Datum and by which the watertable is likely to be lowered below one metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	The subject site is on the perimeter of the Class 5 acid sulfate soils zone and is positioned at 15.98m AHD at the lowest point (along the northern boundary of the site). The development requires minimal excavation (up to 600mm below the existing natural ground level) to level the site in certain areas and to accommodate the building footings. Accordingly, no further assessment of acid sulfate soils is required.	Yes
Flood planning	<p>This clause applies to land at or below the flood planning level, and requires consideration of the development with respect to its compatibility with the flood hazard of the land, affects on flood behavior, risk to life and property, environmental impacts, and social and economic costs.</p> <p>A small portion of the subject site (in the north-eastern corner of No. 20 Ely Street) is affected by medium risk stormwater flooding.</p>	The proposed buildings are wholly clear of the area of the site that is affected by medium risk stormwater flooding, and as such there will be no impact on habitable floor levels. There are no further considerations in this regard.	Yes

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

There are no draft environmental planning instruments applicable.

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

The following table provides a summary of the development application against the applicable controls contained in Section 10 of Part B1 of *Bankstown Development Control Plan 2015* where the controls have not been addressed or included in the Affordable Rental Housing SEPP.

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Number of storeys	Maximum two storey facing the street and single storey for all other dwellings	Buildings A and B at the front of the site are two storey while Buildings C, D and E are single storey	Yes
Site conditions	The siting of boarding houses and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property	The development responds appropriately to the fall of the land	Yes
Front setback	Ground floor – min. 5.5 metres First floor – min. 6.5 metres	5.5 metres 6.5 metres	Yes Yes
Side setback	For building walls <7 metres, a minimum setback of 900mm is required	Minimum 2 metre setback to the northern and southern side boundaries and 5 metres to the rear or western boundary	Yes
Private open space	Development must locate the private open space behind the front building line	All private and communal open space is located behind the front building line	Yes
Access to sunlight (proposal)	At least 70% of boarding rooms must receive a minimum of 3 hours of sunlight between 8am and 4pm at the mid-winter solstice	73% of the boarding rooms receive a minimum of 3 hours of sunlight (as required)	Yes
Access to sunlight to a living area of an adjoining dwelling	At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice	Given the setback of Building A to the sites southern boundary and that Building D is only single storey in excess of 3 hours sunlight will be maintained to an adjoining living room window	Yes
Access to sunlight to	A minimum 50% of the private open space required for boarding houses and a	Given the setback of Building A to the sites southern boundary and that Building D	Yes

the POS of an adjoining site	minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox	is only single storey in excess of 50% of the adjoining POS will receive sunlight	
Access to sunlight to an adjoining hot water system	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties	No overshadowing will occur of an adjoining solar hot water system, photovoltaic panel or other type of solar collector	Yes
Visual privacy to an adjoining development	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 the satisfaction of Council	3 of the 4 first floor windows provided along the southern elevation of Building A have a minimum sill height of 1.5m while the 4 <sup>th</sup> window (off the hallway) has fixed opaque glazing up to a height of 1.5m.  3 of 4 first floor windows provided along the northern elevation of Building B have a minimum sill height of 1.5m. Although the 4 <sup>th</sup> window is setback 9m from the northern boundary, a condition is recommended to be imposed requiring it to also have a minimum sill height of 1.5m above the floor level.  Due to the ground floor levels of the buildings siting at or near NGL no overlooking or privacy issues will arise.	Yes (subject to a condition of consent)
Visual privacy to an adjoining POS	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5	In addition to the comments provided above, first floor west facing living room windows are proposed off Rooms 6 and 10. The window off Room 6 overlooks the on-site car parking area while the window off Room 10 overlooks Building C.	Yes



	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		
Roof pitch	Max. roof pitch of 35 degrees	Roof pitches vary between 20 and 25 degrees	Yes
Demolition	Development for the purpose of boarding houses must demolish all existing dwellings (not including any heritage items) on the allotment	Existing dwellings and associated outbuildings are proposed to be demolished	Yes
Adaptable boarding room	Boarding houses with ten or more boarding rooms must provide at least one adaptable boarding room plus an adaptable boarding room for every 50 boarding rooms in accordance with AS 4299—Adaptable Housing	Four of the boarding rooms are accessible (Rooms 3, 14, 17 and 20) while the manager's room is also identified as being an accessible room	Yes
Design of on-site car parking	The design and siting of car parking structures and driveways must ensure vehicles can leave the allotment in a forward direction Development must locate the car parking spaces behind the front building line Garage is to 'architecturally' integrate with the development and not dominate the street facade	Sufficient manoeuvring area is available to enable vehicles to enter and exit the site in a forward direction other than those spaces provided in the double garage to Building B The car parking spaces are located behind the front building line  The double garage does not dominate the street façade	<b>No (see below)</b>  Yes  Yes
Tree retention	Development must retain and protect any significant trees on the allotment and adjoining allotments	The Arboricultural Impact Assessment that accompanied the DA identified the three eucalypts currently on the site as being in poor health. Suitable measures have been implemented ensuring the preservation of vegetation on the adjoining sites	Yes

The following comments are offered having regard to the departure identified in the above table.

Design of on-site car parking

Clause 10.38 of Part B1 of BDCP 2015 reads as follows:

*The design and siting of car parking structures and driveways must ensure vehicles can leave the allotment in a forward direction.*

While sufficient area has been provided to the rear of Building A for vehicles to manoeuvre and exit the site in a forward direction, the two car parking spaces provided within the double garage (in Building B) will need to reverse onto the street. Support is given to this arrangement for the following reasons;

- Ely Street is provided with a straight and flat alignment which would not compromise sight distance to the north and south.
- The subject vehicle access is located 100 metres from the closest public intersection.
- The traffic generation associated with the Building B garage parking spaces will be negligible and in the order of one vehicle movement during peak periods.
- The garage parking arrangements are, more or less, identical to that of every other residential dwelling along Ely Street which requires vehicles to enter garages in a forward direction and exit in a reverse direction.

The following table provides a summary of the development application against the car parking controls contained in Part B5 of the *Bankstown Development Control Plan 2015*.

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Off-street car parking	One car space per three bedrooms  Total bedrooms: 23 (which includes the managers room)  Required spaces: 7.7 (i.e. 8)	A double garage and six (on-site car parking spaces   Proposed spaces: 8	Yes

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

A planning agreement has not been entered into under section 7.4 of the EP&A Act 1979 nor has the applicant offered to enter into a draft planning agreement.

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

The development remains consistent with the provisions contained in the Environmental Planning and Assessment Regulation 2000.

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

The proposed development is not likely to result in any significant adverse environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development controls occur, these are sufficiently justified. As such, it is considered that the impact of the proposed development on the locality is acceptable.

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

The site is considered suitable for the proposed development. The development results in an appropriate built form for the site, which is consistent with the existing and desired future character of the locality as reflected in Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

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

The application was neighbour notified and advertised in the local newspapers consistent with the provisions contained in the 'Introduction and List of Amendments' of BDCP 2015. The application was on exhibition for a period of 21 days from 18 July 2018 to 7 August 2018. At the time of preparing this report Council has received a total of seventy-five (75) submissions. 71 of these submissions were 'pro forma' submissions – 65 of them being received from occupiers of Ely Street (from a total of 25 households).

The concerns (dot points) raised in the pro forma submissions are identified below;

**Objection:** *How are these residents going to park if there are only five car spaces in the building who will be used by staff. The residents will need a car each as the public transport network around that area is very poor. There is little to no transport links to the train stations with the exception of one bus located 200m away that goes to Bankstown train station. There are no bus networks in the immediate area that go to Revesby station. These residents will need to walk to Revesby station which is a 20min walk and 2.5km away.*

**Comment:** Considerable attention has been given in this report to the issue of car parking. The development satisfies the car parking requirements as contained in Part B5 of BDCP 2015. Notwithstanding the distances as identified above, the site is located within an 'accessible area' having regard to clause 4 of SEPP ARH. It must therefore be accepted that the proposed development is acceptable with respect to car parking and access to public transport.

**Objection:** *There is also the issue of safety and our residents. We feel that there will be safety issues with the creation of a boarding house development. Research suggests that boarders living in a boarding house are low income earners, students and those in transit. We will not have any certainty or visibility in who will be living in these units and it impacts on the character of the area and also the value of our homes. As the immediate area does not have any recreational activities, entertainment activities, poor links to transport we feel that these residents will be forced to loiter around the street.*

**Comment:** There are no particular design aspects of this development that would suggest, following its construction and it being occupied, that the development will result in an increase in crime in the area. Accompanying the development application was a Crime Prevention Through Environmental Design assessment which was reviewed by Council's CPTED Officer and has been found to be satisfactory. The assessment had suitable regard to the handling of complaints, the 'house rules', visitors to the site, identification of lodgers, caretaker/managers responsibilities, etc.

With respect to the suggestion that the residents will 'loiter around the street', the development does accommodate 'landscaped area' and 'private open space' as nominated by SEPP ARH in addition to providing two communal rooms. It would be hard to justify that what has been provided is insufficient in this instance, particularly as the application satisfies the controls contained in SEPP ARH, with the 'landscaped area' and 'private open space' controls being discretionary standards.

**Objection:** *This boarding house development will create increased congestion in our street which is already congested from multiple duplexes in the streets, townhouse development and villa development. We have had 6 new duplexes built in the street who use on street parking.*

*Over 50% of the dwellings in Ely Street (between Milperra Rd and Gordon Parker St) are duplex/townhouse development.*

**Comment:** It is recognised that a number of the properties along Ely Street have been redeveloped with the older building stock being replaced with newer dual occupancy and villa/townhouse style developments. While the street is currently undergoing a period of change, there are no restrictions/controls (in any relevant planning legislation) limiting the number of developments within a particular street. Each application is considered on its merits (in light of what's existing in the street), as has been undertaken with this DA. To this end, consideration has been given to the cumulative traffic impacts. Council's assessment has determined that Ely Street and the surrounding road network have the capacity to accommodate the additional vehicle movements generated by this development without impacting the efficiency of the existing nearby intersection treatments.

**Objection:** *This has put increased congestion in the street and added pressure to parking. We absolutely cannot accommodate a 22 unit boarding house.*

**Comment:** The issue of 'parking' has been discussed within the report. The development has been found to comply with Council's car parking requirements for boarding house developments. With respect to 'increased congestion in the street', Ely Street allows for the free movement of vehicles travelling north and south along the street, even with vehicles being parked along both sides of the road.

**Objection:** *A boarding house is not a suitable type of development for this suburban street. 22 units will be developed over 4 buildings which will be bulky and not contributing to the street scape.*

**Comment:** There are two elements for discussion here. Firstly whether the development is out of character with the surrounding built form and secondly whether the development itself is an inappropriate form of development for the site.

In response to the first issue, the development is of a bulk, scale and built form that is not unlike that of a similarly permissible multi-dwelling housing development with two storey buildings provided to the front of the site and the single storey buildings provided to the rear. The development complies with the floor space ratio, height, setback, solar access, private open space and landscaped area controls relevant for this type of development. The development was also found to have no unreasonable impacts on the adjoining and nearby resident's amenity by reason of loss of privacy, loss of solar access, etc.

In response to the second issue, not only is the development permissible with consent in the R2 Low Density Residential zone, the site is located within an accessible area as defined by SEPP ARH in addition to satisfying the 'character test' as provided in clause 30A.

It would therefore be hard to justify an argument that the development is not suitable for this particular site.

Of the four individual submissions that were received, a petition was attached to one containing 36 signatures. A response to the concerns (not already discussed above) in the four individual submissions is provided below;

**Objection:** *This section of Ely Street is quite narrow and is impossible for vehicles traveling in opposite directions to pass each other, not to mention the danger to pedestrians, residents and their children due to the many blind spots that will be created as a direct result of insufficient street parking space.*

**Comment:** The street is sufficient in width for motorists to pass each other travelling in opposite directions including when vehicles are parked adjacent the kerb. The vehicle crossings provided for the development are not located in the vicinity of an intersection and are not located at a crest or bend in the road that would suggest that vehicles exiting the site would impact on pedestrian safety or motorists using the street.

**Objection:** *Street parking has already reached its capacity...no doubt will further impact the street parking.*

**Comment:** The applicant has provided on-site parking as required by Council's relevant DCP. There is no requirement for the applicant to provide an uninterrupted kerb (along the site's frontage) to accommodate street parking.

**Objection:** *This proposal clearly falls short of this [SEPP ARH parking requirement] as well not to mention the inclusion of one disabled spot and one of the spots would be occupied to the "site manager".*

**Comment:** Compliance with the SEPP ARH car parking requirement has been discussed in detail throughout this report, where it has been noted that the development application achieves compliance with the car parking control contained in BDCP 2015.

With respect to the requirement for an employee car parking space, SEPP ARH specifies that a consent authority must not refuse consent to a boarding house development if 'not more than one parking space is provided for each person employed in connection with the development and who is resident on site'. In this instance, the application proposes one on-site manager, therefore if one (or less than one) car parking space(s) are provided for the manager, the consent authority cannot refuse the application on this basis. No car parking spaces are proposed to be allocated to the on-site manager, therefore the consent authority is unable to refuse the application on these grounds.

The application proposes one accessible car parking space.

**Objection:** *How can a DA get to a point of being passed by Council when those living in Ely Street between Milperra Road, and Gordon Parker Street, have not been consulted or informed in any fashion.*

**Comment:** It is not a requirement of BDCP 2015 for all residents of the street to be individually consulted or informed of the development. The development application was both neighbour notified and advertised in The Torch and The Express newspapers consistent with the provisions contained in the 'Introduction and List of Amendments' of BDCP 2015 with the application being on exhibition for a period of 21 days from 18 July 2018 to 7 August 2018.

**Objection:** *There are no concrete pathways (sidewalks on either side) of this part of Ely Street.*

**Comment:** There is no requirement that concrete pathways be provided within the road reserve. Given the topography of the site and its immediate surrounds, opportunity exists for future residents of the development to access public transport.

Note: The development has been modified from that which was exhibited. Originally the applicant sought to accommodate the boarding rooms into four separate buildings. The development now provides for five separate buildings, achieved by splitting the building along the rear of the site into two separate buildings. Given the extent of the change that was undertaken, the application was not re-notified / re-exhibited.

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

The proposed development would not contravene the public interest. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by ensuring that any adverse impacts on the surrounding area and the environment are avoided. As the report has demonstrated, the design of the development appropriately responds to the development standards contained in State Environmental Planning Policy (Affordable Rental Housing) 2009 and Bankstown Local Environmental Plan 2015, in addition to the development controls contained in Bankstown Development Control Plan 2015. The matters raised in the public submissions have been satisfactorily addressed, and there is not likely to be any unreasonable impacts on the locality.

**CONCLUSION**

The development application has been assessed against the matters for consideration contained in Section 4.15 of the EP&A Act 1979 requiring, amongst other things, an assessment against the provisions contained in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy No 55 – Remediation of Land*, *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

The proposed development results in an appropriate built form for the site which is consistent with the existing and likely future character of the locality. The applicable development standards and controls have been satisfactorily addressed and no significant or unresolved matters have been raised in the public submissions. Approval of this development application would facilitate the provision of affordable rental housing on the subject site in an ‘accessible area’ without an unacceptable or unreasonable impact on the surrounding properties or broader locality.

**RECOMMENDATION**

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





## 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-537/2018, submitted by Elie Sleiman, accompanied by Drawing No. 17243-04 – 17243-25, Issue B, dated 16 October 2018, and Drawing No. 17243-24 (Front Fence Details), Issue A, dated 29 June 2018, prepared by ES Engineering & Design, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

The development plans shall be amended as follows:

- a) The window on the first floor northern elevation of Block B that services the kitchenette of Room 10 shall have a minimum sill height of 1.5 metres above the floor level, as marked in red by Council. The Construction Certificate plans shall reflect this requirement.
  - b) The vehicular footway crossing (VFC) to Building B shall have a minimum setback of 3.0 metres to the northern street tree (T4) and a minimum setback of 2.2 metres to the southern street tree (T5), as marked in red by Council. The Construction Certificate plans shall reflect this requirement.
- 3) The premises must comply with the requirements of:
  - a) *Local Government (General) Regulation 2005*, Schedule 2, Part 1 Standards for places of shared accommodation;
  - b) *Boarding Houses Act 2012*; and
  - c) *Boarding Houses Regulation 2013*.
- 4) The acoustic report submitted in support of the development application prepared by Rodney Stevens Acoustics Pty Ltd, titled '*Noise Impact Assessment, Proposed Boarding House, 20-22 Ely Street, Revesby*' dated 13 February 2019 forms part of the development consent.
- 5) The Plan of Management prepared by ABC Planning Pty Ltd titled '*Plan of Management, Demolition of existing dwellings and associated outbuildings to enables the construction of a Boarding House, 20-22 Ely Street, Revesby*' dated October 2018 forms part of development consent.
- 6) The boarding house is required to be registered on a register administered by NSW Fair Trading within 28 days, where an operator/proprietor takes over an existing, or begins operating a new, registrable boarding house.

Council will carry out initial inspection (within the first twelve months) in accordance with the *Boarding Houses Act 2012* and ongoing annual inspections, subject to payment of inspection fees as detailed in Council's Fees and Charges schedule.

## **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:*

- 7) 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.
- 8) The developer must register, with NSW Land Registry Services, an Easement to Drain Water 0.9m wide over No. 27 Queen Street to benefit both Lots 43 & 44 Section 5 DP 2343, prior to the issue of any Construction Certificate for the development.
- 9) The developer must register, with NSW Land Registry Services, the consolidation of Lots 43 & 44 Section 5 DP 2343, prior to the issue of any Construction Certificate for the development.
- 10) 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.
- 11) The landscape plan shall include the provision for the replacement of all boundary fencing. A new 1.8m fence is to be erected along all side and rear boundaries of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material unless the type of material is stipulated in any flood study prepared for the site. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 12) 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.

- 13) 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.
- 14) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to [www.sydneywater.com.au/tapin](http://www.sydneywater.com.au/tapin)

For Sydney Water's Guidelines for building over or next to assets, visit [www.sydneywater.com.au](http://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.

- 15) 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.
- 16) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 17) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$16,445.91 shall be paid to Council.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.

**Note:** The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 18) 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.
- 19) The developer shall apply for a Work Permit and obtain approval from Council, for the following engineering works in front of the site, at the applicant's expense:
- a) A Heavy Duty VFC of maximum width of 5.5 metres at the property boundary for the driveway leading to the common parking area and a Light Duty VFC of maximum width of 3.0 metres at the property boundary for Building B. The VFC to Building B shall have a minimum setback of 3.0 metres to the northern street tree (T4) and a minimum setback of 2.2 metres to the southern street tree (T5).
  - b) Direct Drainage connection, utilizing a Conconnect® or approved equal, to Council's piped drainage system in Queen Street.
  - c) 1.2 metre wide concrete footway paving along the sites entire frontage to Ely Street to the satisfaction of Council's Tree Preservation Officer.
  - d) Street tree replacement to the satisfaction of the Council's Tree Preservation Officer.
  - e) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
  - f) Repair of any damage to the public road including the footway occurring during development works.
  - g) 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.

**Note:** Council is required to prepare a site survey and design in order to determine the necessary information. The developer should make application and payment for the Work Permit at least twenty one (21) days prior to the information being required and prior to the issue of the Construction Certificate. The Work Permit must be approved prior to any works commencing within the Council Road Reserve or on Council's assets.

- 20) For this development, Council requires that the stormwater runoff from within the development site shall be collected and controlled by means of an **on-site stormwater detention system**, in accordance with Council's Development Engineering Standards. The developer shall engage a suitably qualified Engineer to prepare a final stormwater drainage and on site detention system plan to be generally in accordance with the concept plan H686, Revision B, dated 16 October 2018, by TAA Consulting Engineers, and in accordance with the requirements contained in Council's Development Engineering Standards. The

Engineer shall certify that the design and plans comply with Council's Development Engineering Standards and the relevant Australian Standards.

- 21) 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.

- 22) An all weather pavement shall be designed to withstand the anticipated wheel loads for all areas subjected to vehicular movements. Internal pavements specification prepared and certified by all qualified professional Civil Engineer to comply with the relevant Australian Standards, shall be submitted to the Principal Certifying Authority (PCA) for approval prior to the issue of a construction certificate.
- 23) 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.
- 24) The Construction Certificate plans shall include details of the garbage receptacle area. The garbage receptacle area shall not be visible from the street.
- 25) 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 the developer to obtain a Works Permit and or a Roadway/Footpath Building Occupation Permit prior to issue of any Construction Certificate for this development being issued 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.

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

The developer shall ensure the person or company carrying out the work will carry public liability insurance to a minimum value of twenty million dollars. The developer shall provide proof of the policy, to Council, prior to commencing any work approved by the Work Permit including the Road Opening Permit. The policy must remain valid for the duration of the works.

- 26) The sum of the impervious areas associated with the car parking area, driveway and paths must not exceed 55% of the area between the front blocks and the primary frontage.

## **CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION**

- 27) 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 / subdivision 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 work.
- 28) 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.
- 29) Street Tree Protection Measures

The following street trees shall be retained and protected from removal and damage for the duration of the development:

Tree Species	Location	Protection Zones*
(T4) <i>Lophostemon confertus</i> , (Brush box)	18 Ely Street	TPZ: 8.5m SRZ: 3.0m
(T5) <i>Lophostemon confertus</i> , (Brush box)	20 Ely Street	TPZ: 3.12m SRZ: 2.13m
(T6) <i>Lophostemon confertus</i> , (Brush box)	22 Ely Street	TPZ: 5.52m SRZ: 2.51m
(T8) <i>Lophostemon confertus</i> , (Brush box)	24 Ely Street	TPZ: 8.5m SRZ: 3.0m
as signified in the applicant's Aboricultural Impact Assessment, dated 25 June 2018, by N.S.W Tree Services P/L)		

\* TPZ and SRZ in metres measured from the centre of the trunk of the tree.

Tree protection measures shall comply with Australian Standard AS4970-2009 Protection of trees on development sites, together with the following conditions:

- The tree to be retained and protected together with its relevant Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) shall be marked on all demolition and construction drawings.
- All contractors and workers on-site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on-site.
- The area of Council's nature strip, excluding the concrete footpath, shall be fenced off for a distance of 3.0 metres radius measured from the trunk of each retained *Lophostemon confertus* (*Brush box*) tree located forward of number 18 & 24 Ely Street prior to the commencement of demolition / construction.
- The tree protection fencing is to be constructed of chain wire mesh 1.80 metres high, supported by steel posts and shall remain in place throughout the duration of site works.
- The applicant will display in a prominent location on the fencing of each tree protection zone a durable, weather resistant sign of a similar design, layout and type size as per Appendix C, Australian Standard AS4970-2009 Protection of trees on development sites clearly showing:
  - The Development Consent number;
  - The name and contact phone number of the site manager;
  - The purpose of the protection zone;
  - The penalties for disregarding the protection zone;
- No vehicular access, excavations for construction or installation of services shall be carried out within the fenced off Tree Protection Zone.
- All utility services, pipes, stormwater lines and pits shall be located outside the fenced off Tree Protection Zone.
- Building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced off Tree Protection Zone.
- Tree marked for retention must not to be damaged or used to display signage, or as fence or cable supports for any reason.
- Pruning of a Council street tree can only be carried out under the authority of a Works Permit approving tree pruning and in accordance with the conditions imposed.

### 30) Tree Removal: On-Site

Approval is granted for the removal of the following trees:

- i. Any tree/s growing within the building footprint of the approved structures;
- ii. Any tree/s where the base of the trunk of the tree is located within 3 metres of the external wall of an approved dwelling on the same property;
- iii. Any declared noxious plant. The applicant, builder and all contractors are to ensure that all noxious plants are properly identified, controlled and/or removed on this site without injury or death of any protected plants;
- iv. Any tree species listed under clause 2.4 of Bankstown Development Control Plan 2015 Part B11 – Tree Management Order.

Tree Species	Location
(T1) <i>Eucalyptus crebra</i> , (Narrow-leaved Ironbark)	Rear yard of Nos. 20-22 Ely Street Revesby
(T2) <i>Eucalyptus longifolia</i> , (Woollybutt)	

All tree removal works must comply with the Amenity Tree Industry – Code of Practice, 1998 (Workcover, NSW) and Guide To Managing Risks of Tree Trimming and Removal Work (Safe Work Australia 2016).

All other vegetation not specifically identified above, and protected by Council's Tree Management Order, is to be retained and protected from construction damage and pruning. The Tree Management Order protects trees over 5m in height.

31) Tree Removal: Nature Strip

Approval is granted for the removal of the following trees:

Tree Species	Location
(T7) <i>Lophostemon confertus</i> , (Brush box) tree, as signified in the applicant's Aboricultural Impact Assessment, dated 25 June 2018, by N.S.W Tree Services P/L)	Forward of No. 22 Ely Street

The tree removal works are subject to the following conditions:

- All tree works must be carried out by a qualified arborist (minimum qualifications AQF Level 3 or equivalent);
- The tree removal contractor must hold a Public Liability Insurance Certificate of Currency with a minimum indemnity of \$20 million, together with a NSW Workers Compensation Insurance Certificate of Currency;
- The tree removal work must comply with the Amenity Tree Industry – Code of Practice, 1998 (Workcover, NSW) and the Guide to Managing Risks of Tree Trimming and Removal Work (Safe Work Australia 2016);
- The tree stump is to be ground to 300mm below ground level. Investigation to locate underground services shall be the responsibility of the applicant.
- All tree material shall be removed from site, and the nature strip shall be backfilled, compacted and restored to the original level.
- The site must be maintained in a safe condition at all times;
- Appropriate hazard signage to be in place at all times during the tree works.

All other street vegetation not specifically identified above is to be retained and protected from construction damage and pruning.

32) Tree Planting: Nature Strip

The applicant is to plant the following trees on the nature strip forward of the properties. The trees shall have a container size not less than 100 litres, shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), or Australian Standard AS 2303 – 2015 Tree stock for landscape use, and be planted and maintained in accordance with Council's street tree planting specifications Standard Drawing No. S-201:

Tree Species	Location: 22 Ely Street frontage
1 x <i>Tristanopsis laurina</i> 'Luscious' (Watergum) trees	The tree shall be planted between the two proposed crossings at no closer than 2.5 metres from the edge of the vehicular crossings including (layback) 4.0 metres from any electricity pole.

Investigation to locate underground services shall be the responsibility of the applicant. Should such services be located and there is a reasonable belief that damage may occur to those services by the new plantings, the applicant is to:

- Carry out engineering works to protect those services from damage; or
- Relocate the planting to a more suitable location following written approval from Canterbury Bankstown Council; or
- Substitute the approved tree species with an alternative species following written approval from Canterbury Bankstown Council.

The trees shall be planted by a qualified landscape contractor with experience in handling advanced sized tree stock, and in accordance with the tree delivery, planting preparation – general, planting, mulching and staking specifications included in Standard Drawing No. S-201.

Once the trees have been planted, tree protection fences located at a 2.0 metre radius from the trunk of each tree shall be installed to protect the tree during the demolition and construction phases. The fences shall be constructed of chain wire mesh 1.80 metres high supported by steel posts, shall not be removed or altered, and are to remain in place for the duration of the site works.

During the construction phase the trees shall be watered and maintained in accordance with the tree establishment and maintenance requirements included in Standard Drawing No. S-201.

The Applicant shall contact Council to book an inspection by the Tree Management Officer of the completed tree planting once the tree protection fences have been installed, and again once the works have been completed prior to the installation of issue of an occupation certificate. Inspections must be booked at least 5 working days prior to being required.

- 33) 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.
- 34) 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.
- 35) 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.
- 36) A section 73 compliance certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and Developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

- 37) 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.

- 38) 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.
- 39) 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.

- 40) The demolition of all structures currently existing on the property must be undertaken, subject to strict compliance with the following:
- a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.
  - b) Written notice is to be given to Canterbury-Bankstown Council for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections shall be undertaken by Canterbury-Bankstown Council:
    - (i) A *precommencement* inspection shall be carried out by Council when all the site works required as part of this consent are installed on the site and prior to demolition commencing.
    - (ii) A *final* inspection shall be carried out by Council when the demolition works have been completed to ensure that the site is left in a satisfactory manner, in accordance with the conditions of this consent.

**Note:** Payment of an inspection fee at Council's current rate will be required prior to each inspection. Council requires 24 hours notice to carry out inspections. Arrangements for inspections can be made by phoning **9707 9410, 9707 9412 or 9707 9635.**

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, license number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence or hoarding between the work site and any public place. Access to the site shall be restricted to Authorised Persons Only and the site shall be secured against unauthorised entry when the building work is not in progress or the site is otherwise unoccupied. Where demolition is to occur within 3m of a public place a Work Permit application for the construction of a Class A or Class B hoarding shall be submitted to Council for approval.
- e) The demolition plans must be submitted to the appropriate Sydney Water Office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the demolition plans will be stamped indicating that no further requirements are necessary.

- f) Demolition is to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001.
- g) The hours of demolition work shall be limited to between 7.00am and 6.00pm on weekdays, 7.00am and 1.00pm on Saturdays and no work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- h) Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.
- i) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.
- j) Demolition procedures shall maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- k) During demolition, the public footway and public road shall be clear at all times and shall not be obstructed by any demolished material or vehicles. The public road and footway shall be swept (NOT hosed) clean of any material, including clay, soil and sand. (NOTE: If required, Council will clean the public road/footway at the applicant's expense). On the spot fines may be levied by Council against the demolisher and or owner for failure to comply with this condition.
- l) All vehicles leaving the site with demolition materials shall have their loads covered and vehicles shall not track soil and other material onto the public roads and footways and the footway shall be suitably protected against damage when plant and vehicles access the site. All loading of vehicles with demolished materials shall occur on site.
- m) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- n) Care shall be taken during demolition to ensure that existing services on the site (ie. sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services shall be repaired by the relevant authority at the applicant's expense.
- o) Suitable erosion and sediment control measures shall be erected prior to the commencement of demolition works and shall be maintained at all times.
- p) Prior to the demolition of any building constructed before 1970, a Work Plan shall be prepared and submitted to Council in accordance with Australian Standard AS2601-2001 by a person with suitable expertise and experience. The Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.



- 41) The existing swimming pool shall be removed off site and the void space filled with select material in accordance with the relevant Australian Standard, including but not limited to AS 3798-2007 and/or AS 2870-2011. All fill material imported to the site shall be clean fill in accordance with Council's specification and free of contamination. Fill material shall be placed in minimum 150mm deep layers with a compactive effort of 95% standard compaction. Testing of the fill material shall be carried out by a NATA registered Geotechnical Testing Authority. Testing of the fill material shall be conducted at a frequency of 1 test per 2 layers per 50m<sup>2</sup> (square metres).

### **CONDITIONS TO BE SATISFIED DURING CONSTRUCTION**

- 42) 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.
- 43) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 44) Prior to the ground floor slab being poured, an identification report by a Registered Surveyor must be submitted to the principal certifying authority verifying that the proposed buildings finished ground floor level and siting to the property boundaries conforms to the approved plans.
- 45) 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.
- 46) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 47) 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.
- 48) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- protect and support the adjoining premises from possible damage from the excavation, and
  - where necessary, underpin the adjoining premises to prevent any such damage.

- 49) All boundary fencing behind the building line shall be replaced by a 1.8m high lapped and capped timber or sheet metal fence, or as stipulated in a flood study prepared for the site, or as determined in consultation with the adjoining property owners at the developer's expense. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 50) 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.
- 51) A suitably qualified Professional Civil or Structural Engineer shall be engaged by the developer to carry out inspections relating to construction of internal driveways and parking areas. The work shall be carried out in accordance with the approved plans and specifications and certification from the Civil or Structural Engineer is to be provided upon completion.
- 52) 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**

- 53) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 54) 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.
- 55) Eight (8) off street car spaces being provided in accordance with the submitted plans. This shall comprise:

Six spaces in the car park area adjacent to the southern boundary  
Two spaces in the double garage of Block B

One of the above car parking spaces (in the car park area) is to be provided for people with mobility impairment in accordance with AS 2890.1. All car parking spaces shall be allocated and marked according to these requirements.

- 56) 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.

57) Tree Planting: On-Site

The applicant shall plant trees on the subject site as per the applicant's landscape plan dated 4<sup>th</sup> July 2018, by B+E Landscape Architects subject to the following conditions;

- Tree species used are not to include conifers, Casuarinaceae, palms or any of the exempted species listed under clause 2.4 of Bankstown Development Control Plan 2015 Part B11 – Tree Preservation Order.
  - Tree species used shall be locally occurring indigenous tree species – refer to Section 14 and Appendix C – Locally Occurring Indigenous Tree Species, in the Bankstown City Council Tree Management Manual;
  - The trees shall have a container size not less than 100 litres, shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003) or Australian Standard AS 2303 – 2015 Tree stock for landscape use
  - The trees are to be planted no closer than 3.5 metres from the wall of any approved dwelling on the property.
  - The trees shall be maintained for the life of the development.
- 58) A suitably qualified Professional Civil Engineer shall certify that the driveways, parking bays, and service areas have been constructed in accordance with the approved plans and specifications. Such Certification shall be submitted prior to the issue of the Occupation Certificate or occupation of the site.
- 59) 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.
- 60) 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. Note: The house numbers of the development are subject to change depending of the type on subdivision that may occur at a later stage.
- 61) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 62) 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 detention 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 on-site stormwater detention system.

The engineer's certification of the on-site stormwater detention system should be carried out similar to Council's standard form "On-Site Stormwater Detention System - Certificate of Compliance", contained in Council's Development Engineering Standards.

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.

- 63) The developer shall register, on the title of the subject property, a Restriction on the Use of Land and Positive Covenant, in accordance with the standard terms for "Registration of OSD on title", as outlined in Council's Development Engineering Standards and in accordance with the appropriate provisions of the Conveyancing Act. Where subdivision is not proposed, the surveyor shall show the location of the "On-Site Stormwater Detention System" on an A4 size site plan attached to the Section 88E Instrument to be registered, on the title of the subject property, prior to the issue of the Final Occupation Certificate. The developer shall submit evidence of the final registration of the Restriction and Positive Covenant on the title of the property, to Council, prior to the issue of the Occupation Certificate.
- 64) The Section 73 compliance certificate under the Sydney Water Act 1994 must be submitted to the principal certifying authority before occupation of the development / release of the plan of subdivision.
- 65) The Principal Certifying Authority shall obtain an acoustic validation report from an appropriately qualified acoustic consultant, stating that the recommendations outlined in the acoustic report prepared by Rodney Stevens Acoustics Pty Ltd, titled '*Noise Impact Assessment, Proposed Boarding House, 20-22 Ely Street, Revesby*' dated 13 February 2019 have been implemented and that relevant noise criteria as well as the recommendations has been satisfied, prior to the issue of any Occupation Certificate. A copy of the acoustic validation report shall be provided to Canterbury Bankstown Council prior to the issue of any Occupation Certificate.
- 66) A qualified engineer shall certify that all fill material meets Council's specification, is free of contamination and all geotechnical testing has achieved the minimum compactive effort of 95% standard compaction. The Engineers certification shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of an Occupation Certificate.

## USE OF PREMISES

- 67) The site shall be operated in accordance with the Plan of Management, prepared by ABC Planning Pty Ltd titled '*Plan of Management, Demolition of existing dwellings and associated outbuildings to enables the construction of a Boarding House, 20-22 Ely Street, Revesby*' dated October 2018.
- 68) The premises shall operate in accordance with the Outdoor Communal Area Mitigation Recommendations contained in the acoustic report submitted in support of this application prepared by Rodney Stevens Acoustics Pty Ltd, titled '*Noise Impact Assessment, Proposed Boarding House, 20-22 Ely Street, Revesby*' dated 13 February 2019.
- 69) The development shall not be used as '*hotel or motel accommodation*' or '*serviced apartment*', as defined by Bankstown Local Environmental Plan 2015.
- 70) All tenants shall enter into a residential tenancy agreement before occupation of any room in the development.
- 71) All tenants are to be provided with a copy of the Plan of Management.
- 72) Appropriate security measures, including security doors and CCTV cameras, shall be installed at the main pedestrian and vehicular entrances and exits. All CCTV cameras shall have the capacity to store footage for a minimum of twenty-one (21) days.
- 73) Information and contact details on local medical and social support services shall be made available to the residents of the boarding house in the predominant languages of the local demographic.
- Boarding house rules, evacuation procedures and the Plan of Management shall also be made available in these languages.
- 74) The premises shall be operated so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby premises. In the event of Canterbury Bankstown Council receiving complaints and if it is considered by Council that excessive and/or offensive noise is emanating from the premises, the boarding house operator shall arrange for an acoustic investigation to be carried out (by an accredited acoustic consultant) and submit a report to Council detailing the proposed methods for the control of noise emanating from the premises. The measures shall be approved by Council prior to implementation and shall be at full cost to the boarding house operator.
- 75) The boarding house operator shall ensure that the operation of the premises complies with the relevant sections of the *Protection of the Environment Operations Act 1997* and the Noise Policy for Industry (2017) and shall not give

rise to “offensive noise” as defined under the provisions of the *Protection of the Environment Operations Act 1997*.

- 76) No more than two lodgers shall occupy each boarding room.
- 77) The total number of lodgers residing in the boarding house at any one time shall not exceed 44 lodgers.
- 78) The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.
- 79) All waste generated on the site is to be stored, handled and disposed of in such a manner as to not create offensive odour, offensive noise or pollution of land and/or water as defined under the *Protection of the Environment Operations Act 1997*. All waste generated shall be removed and disposed of by an authorised waste removal contractor. A copy of the waste removal agreement and receipts shall be made available to Council on request.
- 80) Any lighting of the premises shall be installed in accordance with *Australian Standard AS 4282: Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. The intensity, colour or hours of illumination of the lights shall be varied at Council’s discretion if Council considers there to be adverse effects on the amenity of the area.

-END-





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## Canterbury Bankstown Local Planning Panel - 4 March 2019

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<b>ITEM 4</b>	<b>5 and 7 Hydrae Street, Revesby</b>
	<b>Demolition of existing structures, consolidation of two lots to create one lot and construction of a multi-dwelling housing development comprising of six units, front fence and strata subdivision</b>
<b>FILE</b>	<b>DA-1007/2017 - Revesby</b>
<b>ZONING</b>	<b>Zone R2 – Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>30 October 2017</b>
<b>APPLICANT</b>	<b>Chris Khoury</b>
<b>OWNERS</b>	<b>Joseph Malouf</b>
<b>ESTIMATED VALUE</b>	<b>\$1,825,312.00</b>
<b>AUTHOR</b>	<b>City Development</b>

### REPORT

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This matter is reported to Council's Local Planning Panel in accordance with the Panel's delegation from the Minister as the application seeks to vary development standards by more than 10 percent. The development standards the application seeks to vary relate to the maximum permissible wall and building height requirements as contained in Clause 4.3(2B)(c)(ii) of the Bankstown Local Environmental Plan 2015. The applicant proposes a maximum wall height (to the rear dwellings) of 3.89m resulting in a 29.6% variation to the standard in addition to proposing a maximum building height of 7.07m (again to the rear dwellings) which result in a 17.8% variation.

The application also seeks a variation to the siting control for multi-dwelling housing developments as provided in Clause 7.3 of Part B1 of Bankstown Development Control Plan 2015 and the visitor car parking requirements as provided in the Off-street Parking Requirements Schedule of Part B5 of the Bankstown Development Control Plan 2015.

The development application proposes the construction of six multi-dwelling housing units and has been assessed in accordance with the provisions contained in Section 4.15 of the Environmental Planning and Assessment Act 1979 requiring, amongst other things, an

assessment against the provisions contained in the Bankstown Local Environmental Plan 2015, the Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy No 55—Remediation of Land and Bankstown Development Control Plan 2015.

The application was first lodged and neighbour notified for a period of 14 days from 1 November 2017 to 14 November 2017 for the construction of seven multi-dwelling housing units. Following an initial assessment, which was undertaken by Council, the applicant was advised of a number of concerns relating to the development. Amended plans were subsequently submitted for the construction of six multi-dwelling housing units and re-notified for a further 14 days from 31 July 2018 to 13 August 2018. During the notification periods, two objections were submitted to Council. A summary of the issues raised have been included in the report. The comments raised primarily related to the management of stormwater, visual privacy impacts and the associated traffic impacts resulting from the development.

With the subject proposal failing Clause 4.3(2B)(c)(ii) of the Bankstown Local Environmental Plan 2015, Clause 7.3 of Part B1 of the Bankstown Development Control Plan 2015 and the Off-street Parking Requirements Schedule of Part B5 of the Bankstown Development Control Plan 2015 the application is recommended for refusal.

## **POLICY IMPACT**

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If the development application were to be approved, it would result in direct policy implications given the development remains inconsistent with previously granted approvals and will have a perceived impact on the application and integrity of the standards and controls contravened. Refusal of the application in accordance with the recommendation would not have any policy implications.

## **FINANCIAL IMPACT**

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The matter will not result in any financial implications.

## **RECOMMENDATION**

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It is recommended that the application be refused for the reasons outlined in the attached determination notice.

## **ATTACHMENTS**

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

**DA-1007/2017 SECTION 4.15 ASSESSMENT REPORT****SITE & LOCALITY DESCRIPTION**

The proposed development site is known as 5 and 7 Hydrae Street Revesby. The site is legally described as Lot 212 DP 1072039 and Lot 10 DP 16779. The consolidated site generally consists of a regular shape, with a small mid-block step and splay to the rear boundary. The development site accommodates a frontage of 27.38 metres to Hydrae Street.

The side boundary lengths consist of 70.22 metres along the northern boundary and a stepped 90.93 metres along the southern boundary with an eastern boundary (rear) width of 37.105 metres. The total area is approximately 2269.3m<sup>2</sup> (by survey). Noteworthy characteristics of the land is the existing cross-fall in excess of 4.35 metres from the western boundary (front) to the eastern boundary (rear) and Little Salt Pan Creek that meets towards the rear boundary resulting in medium to high risk flooding affectations on the site.

The development site is currently occupied by two single storey dwellings consisting of weather-board and masonry construction. Located to the rear of each property are single storey structures previously used as detached garages and ancillary storage areas.

The immediate locality is defined by low density residential development, with the streetscape of Hydrae Street largely consisting of single and two storey dwelling houses. In recent times, new development within the area also consists of a mix of dual occupancies, multi-dwelling housing developments and aged care facilities to the south of Hydrae Street.

In consideration of the existing urban environment and recent development within the area, the provision of a multi-dwelling housing development would remain consistent with the changing residential characteristics of the area. The proposed design and site specific constraints, being the medium to high risk flooding affectation and cross fall of the allotment, however has resulted in a development siting and layout not suitable for the allotment or as a development outcome intended for the area.

Figure 1: Aerial photograph of development site (source: nearmap images)



## PROPOSED DEVELOPMENT

The proposal seeks consent for the consolidation of existing lots, the demolition of the existing site structures and the construction of six multi-dwelling housing units, front fence and strata subdivision. The development specifically consists of:

- Two storey detached multi-dwelling housing units, each containing 4 bedrooms, associated private open space and landscaping.
- Three, One storey multi-dwelling housing units with attic, each attached and containing 3 bedrooms, associated private open space and landscaping.
- One, One storey attached multi-dwelling housing unit, containing 4 bedrooms, associated private open space and landscaping.

## SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A 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 (deemed SEPP)*

The proposed development is considered to be consistent with the aims and objectives of the deemed SEPP.

The development is not considered to adversely impact the environment of the Georges River, either in a local or regional context, and does not propose a form of development that is inconsistent with the general and specific aims and strategic actions plans recommended in the Plan.

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

An updated BASIX Certificate is required to accompany the amended development plans. The Certificate is to certify that the thermal, energy, and water commitments of the proposal satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

*State Environmental Planning Policy No 55—Remediation of Land*

Under the provisions of Clause 7 of SEPP 55, 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.*

In this instance, it is considered that the consent authority can be satisfied that the development site is suitable for the proposed development, in accordance with Clause 7 of SEPP 55. The site has a history of use for low density residential purposes and there is no evidence to suggest that the site has been subject to any contaminating land uses.

In accordance with the Managing Land Contamination Planning Guidelines, the historical uses of the site would not warrant the need for further consideration of contamination and testing.

*Bankstown Local Environmental Plan, 2015*

The following core clauses of the Bankstown Local Environmental Plan 2015 (BLEP 2015) were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 1.3 – Land to which Plan applies
- 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 for Certain Dwellings
- 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 5.9 – Preservation of Trees or Vegetation
- Clause 6.1 – Acid Sulfate Soils
- Clause 6.3 – Flood Planning

A comprehensive assessment of the proposal revealed that the development does not meet the requirements of Clause 4.3(2B)(c)(ii) of the Bankstown Local Environmental Plan 2015 as discussed below:

### ***Height of Buildings***

Clause 4.3(2B)(c)(ii) reads as follows:

- 2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*
- (c) for multi dwelling housing and boarding houses:*
- (i) ...*
- (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 development consists of the construction of two detached two storey multi-dwelling housing units fronting Hydrae Street, three single storey attached multi-dwelling housing units with attics and one single storey attached multi-dwelling housing unit serviced by a common driveway to the rear of the site.

In this layout, the development consists of four dwellings marked Unit 3, Unit 4, Unit 5 and Unit 6 that exceed the building height and wall height controls permitted as summarised in the table below.

Table 1: Summary of the wall height and building height non-compliances.

<b>Dwelling Number</b>	<b>Wall Height (Maximum)</b>	<b>Overall Height (Maximum)</b>	<b>Extent of Non-compliance Wall/Overall (NGL's)</b>	<b>Non-Compliance as a percentage</b>
Dwelling three (3)	3.23m	6.585m	230mm/585mm	7.6%/9.75%
Dwelling four (4)	3.345m	6.7m	345mm/700mm	11.5%/11.6%
Dwelling five (5)	3.720m	7.07m	720mm/1.07m	24%/17.8%
Dwelling six (6)	3.89m	6.4m	890mm/400mm	29.6%/6.6%

In this case, consideration must be given to the matters that have resulted in the non-compliances.

Firstly, the development site is impacted by medium to high risk flood affectations. The Council generated Stormwater System Report (SSR) provides information on the site specific items and acknowledges the following:

- An open, unlined Stormwater channel located along the eastern site boundary.
- Overland flowpath (floodway) for excess stormwater runoff from the catchment associated with the drainage system.
- 100 year water surface levels in the Little Salt Plan Creek



In accordance with the SSR, the development must provide a minimum freeboard above the 1 to 100 inundation event (RL 3.9m) of at least 500mm and recommends a minimum requirement of RL 4.4m. In response, the applicant has provided a Flood Study Report that assists to determine the post development 100 year flood extent and the water surface level flooding at the site. In order to satisfy the recommendations of the Flood Study Report and the SSR, a freeboard of RL 4.50 to RL 4.85 has been provided to the habitable areas of dwellings 3, 4, 5 and 6. As a consequence the finished floor level of the rear multi-dwelling housing units are significantly elevated, with the finished ground floor level of unit 6 being up to 1.63 metres above natural ground level.

While it is acknowledged the use of platforms and pier construction methods assist to address the requirements of the SSR and the Flood Study Report, the built form that results does not appropriately respond to the site specific constraints or represent a suitable development outcome intended for rear multi-dwelling housing units.

In addition to the matters above, the proposal fails to comply with the objectives contained in Clause 4.3 – Height of Buildings as provided below:

#### **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.*

#### **Objective 4.3(1)(a)**

The intended character of multi-dwelling housing units to the rear of an allotment in Zone R2 Low Density Residential is to be single storey with a design and siting that responds to the existing site characteristics. This intended future character is achieved through the application of planning provisions that include, among other things, development controls requiring a single storey built form for rear multi-dwelling housing units and maximum wall and building height standards as per the BLEP 2015.

In this instance, the proposed siting and design of the rear multi-dwelling housing units is a direct result of the need to address the requirements of the flood affectation and consequently results in a height inconsistent with the planning provisions and the existing built environment of surrounding properties.

The design and siting of the dwellings to the rear are not considered to represent a development that is compatible or respects the intended future character of rear multi-



dwelling housing units in the zone R2 Low Density Residential. The potential for additional impacts on the amenity of the immediate area are also evident with the resulting increase in visual bulk and overshadowing.

#### **Clause 4.6 – Exception to Development Standards**

In accordance with the Bankstown Local Environmental Plan 2015, the applicant has submitted a variation statement to be considered under Clause 4.6 to justify the contravention of the development standards 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.

Below is a summary of the environmental planning grounds provided to justify the variation of the height control (complete Clause 4.6 Variation Statement attached):

- *the development has been designed to minimise impacts where practicable on neighbouring properties and future adjoining properties;*
- *the proposed development results in a floor space ratio of 0.34:1 or 790m<sup>2</sup> well below the allowable 0.5:1 or 1134.2m<sup>2</sup>. In this regard, there is not tangible nexus between the height noncompliance and the density capacity of the site.*
- *strict compliance with the building height standards would result in no material built form benefits;*
- *given the siting of the development and generous levels of spatial building separation provided between this and existing neighbouring development, the extent of non-compliance will be imperceptible to the casual observer when viewed from the adjacent street frontage or from private properties;*
- *the non-compliant sections of the building do not contribute to any notable increase to overshadowing or loss of privacy of neighbouring properties; and*
- *the non-compliant sections of the building do not result in view loss.*

In considering the Clause 4.6, it is good practice to assess the objection having regard to the following matters:

1) *Is the objection to the planning control well-founded?*

Under the circumstances, the objection is not considered well founded since the departure is not minor in nature. As indicated earlier, the variations seek a wall height exceedance up to 29.6% and overall building height exceedance up to 17.8%.

In consideration of the key constraints and characteristics of the site, it is not unreasonable to accept that the nature of flood affected allotments are such that compliance with the development standards may lead to design constraints that could reduce the development yield for the site.

A revised layout with a modified yield could be provided that significantly reduces the elevated platforms and columns/piers and could better moderate amenity impacts to adjoining residential land.

2) *Is there sufficient environmental planning grounds to justify contravening the development standard?*

The proposed development fails to demonstrate sufficient environmental planning grounds to justify the contravention of the development standard. The proposal fails to satisfy the objectives contained in Clause 4.3 of the BLEP 2015 and remains inconsistent with the existing and desired emerging urban character of Hydrae Street.

The contravention to the development standard will result in an undesirable environmental outcome and compromise the standards future application and therefore is not considered to be in the public interest.

In this instance, the submitted variation statement is not considered well founded given the inconsistencies with the building height objectives and that of Zone R2 Low Density Residential and fails to provide sufficient environmental planning grounds to justify the contravention the standards to be worthy of Council support.

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

There is no proposed or draft environmental planning instrument applicable to the development.

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

The development has been assessed against the following provisions of the Bankstown Development Control Plan, 2015. The outcomes of the assessment are provided below:

Part B1	Requirement	Proposal	Complies
<b>Section 1 – Preliminary</b>	The desired character of the residential zones is to retain low density development where typical features include multi dwelling housing within a generous landscaped setting with high quality urban design in terms of building form, bulk, architectural treatment and visual amenity.	The proposal is not compatible with the desired future character of the Zone R2 Low Density Residential for the purposes of multi-dwelling housing units. It is not considered to provide a suitable outcome in terms of bulk, scale and height for the locality.	<b>No</b>
<b>Section 7 – Multi dwelling housing</b>			
<b>7.1 Storey Limit</b>	Storey limit is 2 storeys for front dwellings facing the street and single storey for	Development proposes 2 storey dwellings at the front	Yes

	the remaining dwellings at the rear.	and single storey at the rear.	
<b>7.2</b>	Applicable to Nos. 81–83 and 105 Wattle Street in Punchbowl.	N/A	N/A
<b>7.3 Siting</b>	Siting of multi dwelling housing 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 rock excavation, retaining walls or reclamation.	While the ground floor levels have been designed to accommodate the flooding freeboard, the development involves the use of elevated platforms and columns/piers.	<b>No</b>
<b>7.4</b>	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 multi dwelling housing are required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the multi dwelling housing to a height no greater than 1 metre above the ground level (existing) of the allotment.	The development consists of elevated platforms and piers/columns to achieve the freeboard required. No fill or reconstituted levels are proposed given the overland flow impacts on the allotment.	N/A
<b>7.5 Setback Restrictions</b>	The erection of multi dwelling housing is prohibited within 9 metres of an existing animal boarding or training establishment.	N/A – not located within 9 metres of an existing animal boarding or training establishment.	N/A
<b>7.6 Setbacks</b>	Primary frontage – minimum setbacks: - 5.5m for ground floor - 6.5m for first floor	Unit 1 and 2 (front facing dwellings) provide the minimum 5.5 and 6.5m setback.	Yes
<b>7.7 Secondary Road Frontages</b>	Sets minimum setbacks to the secondary road frontage.	N/A	N/A

<b>7.8 Side/Rear Setbacks</b>	Side and rear setbacks: <ul style="list-style-type: none"> <li>- 5m for a building wall which contains a living area window or door</li> <li>- 2m for building wall which does not contain a living area window or door</li> <li>- 0.9m for a garage or carport</li> </ul>	<ul style="list-style-type: none"> <li>- Unit 1 to 2 - 0.9m to 6.580m side setback</li> <li>- Unit 3, 4 and 5 – 5.10 to 7.380m to side setback</li> <li>- Unit 6 - 2.0 to 4.880m to side setback</li> <li>- 12.667 to 14.415m to rear setback</li> </ul>	Yes  Yes  Yes
<b>7.9</b>	Minimum setback for a driveway to side and rear boundaries is 1m.	Achieves setback for the driveways to Unit 1 and 2.  Common driveway proposes nil setback to the southern boundary	Yes  <b>No</b>
<b>7.10 Open Space</b>	A minimum of 60sqm of private open space provided per dwelling behind the front building line.	Unit 1: 69sqm Unit 2: 65sqm Unit 3: 66sqm Unit 4: 60sqm Unit 5: 60sqm Unit 6: 398sqm	Yes
<b>7.11 Access Sunlight</b>	At least one living area to each dwelling must receive minimum 3 hours solar access between 8.00am and 4.00pm at midwinter solstice.	All units achieve minimum 3 hours solar access.	Yes
<b>7.12</b>	At least one living area of dwelling on adjoining allotment must receive minimum 3 hours solar access between 8.00am and 4.00pm at mid-winter solstice.	Shadow diagrams demonstrate adjoining dwellings receive a minimum of 3 hours solar access.	Yes
<b>7.13</b>	A minimum of 50% of private open space for each dwelling and adjoining is to receive at least 3 hours solar access between 9am and 5pm at the equinox.	Shadow diagrams demonstrate solar access received for subject and adjoining allotment achieves minimum requirements to private open space.	Yes
<b>7.14</b>	Development should avoid overshadowing any existing solar hot water systems or	Development does not overshadow any existing solar hot	Yes

	other solar collectors on allotment and adjoining.	water systems or other solar collectors.	
<b>7.15 Visual Privacy</b>	Where development proposes windows, which overlook living area or bedroom windows of existing dwellings, the development must offset windows to minimise overlooking, or provide the window with minimum sill heights of 1.5m above floor level or ensure the window cannot open and has obscure glazing or use another form of screening to the satisfaction of Council.	The development is not considered to pose any significant privacy concerns in accordance with Clause 7.15.	Yes
<b>7.16</b>	Where development proposes a window that directly looks into the private open space of an adjoining property, windows do not require screening where the window is to a bedroom, bathroom or other non-habitable room.	Screening required (as noted on plans) to unit 3, 4, 5 and 6.	Yes, subject to condition.
<b>7.17</b>	Upper floor balconies may require screening where the open space overlooks more than 50% of adjoining private open space.	Nil proposed	N/A
<b>7.18</b>	Council does not allow roof top balconies.	Nil proposed	N/A
<b>7.19 Building Design</b>	Development proposed for the purpose of multi-dwelling housing developments must demolish all existing on the allotment	Demolition proposed.	Yes
<b>7.20</b>	Design of front dwellings must ensure a street façade where architectural elements are compatible with asymmetric appearance of neighbouring dwellings, ensure the front porch and windows are street facing and ensure any garage,	Units 1 and 2 provide for an asymmetric design with suitable architectural elements.  The dwellings provide front windows and porch.	Yes

	driveway and front fence do not dominate the appearance of the development		
<b>7.21</b>	The maximum roof pitch for multi dwelling housing is 35 degrees	Maximum 26 degrees.	Yes
<b>7.22</b>	Council may allow multi dwelling housing to have an attic	Proposed for Units 3, 4 and 5.	Yes
<b>7.23 Dormers</b>	7.23 The design of dormers must: (a) be compatible with the form and pitch of the roof; and (b) must not project above the ridgeline of the main roof; and (c) must not exceed a width of 2 metres; and (d) the number of dormers must not dominate the roof plane.	Poor roof design and exposed wall for unit 3.  Yes  Yes  Yes	<b>No</b>  Yes  Yes  Yes
<b>7.24</b>	Multi dwelling housing with 10 or more dwellings must provide one adaptable dwelling per 10 dwellings in accordance with AS 4299–Adaptable Housing.	N/A	N/A
<b>7.25</b>	Development in the foreshore protection area (refer to map in Appendix 1) must use non-reflective materials that are compatible with the natural characteristics and colours of the area (such as olive green, grey and dark brown).	N/A	N/A
<b>7.26</b>	Applies to development on land bounded by Birdwood Road, Bellevue Avenue and Rex Road in Georges Hall.	N/A	N/A
<b>7.27</b>	Design and siting of car parking structures must ensure vehicles can leave the allotment in a forward direction.	Vehicles accessing the common carriageway can enter and leave in a forward direction.	Yes

<b>7.28</b>	Car parking must be provided behind the front building line.	Car parking located behind the front building line.	Yes
<b>7.29</b>	A garage with up to two car parking spaces per dwelling facing the street must ensure the garage architecturally integrates with the development and does not dominate the street facade.	Single garage provided to Unit 1 and Unit 2.	N/A
<b>7.30 Landscaping</b>	Development must retain and protect any significant trees on the allotment and adjoining.	Yes	Yes
<b>7.31</b>	Development must landscape areas in accordance with the following: - 45% of area between front dwellings and primary setback to be landscaped - Plant one 75L tree in the primary setback	This development control could be imposed as a condition of consent.	Yes
<b>Part B5 – Parking</b>	1 space per 1 bed 1.5 spaces per 2 bed 2 spaces per 3 bed	12 spaces for the multi-dwelling housing units.	Yes
	1 visitor space per 5 dwellings	No visitor space provided	<b>No</b>

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

There are no planning agreements applicable to the proposed development.

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

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

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

An assessment of the likely impacts of the proposed development as detailed in the report are such that it is not considered suitable for approval.

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

The site is considered unsuitable for the development.



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

The application was first lodged, and neighbour notified for a period of 4 days from 1 November 2017 to 14 November 2017 for the construction of seven multi-dwelling housing units. Following an initial assessment, which was undertaken by Council, the applicant was advised of a number of concerns relating to the development. Amended plans were subsequently submitted for the construction of six multi-dwelling housing units and re-notified for a further 14 days from 31 July 2018 to 13 August 2018. During the notification periods, two objections were submitted to Council. The issues raised have been grouped below for consideration:

***Privacy Impacts on Adjoining Properties***

The visual privacy concerns were raised with regard to the potential of windows looking directly into the private open space of adjoining properties and concern of outside light impacts. In review, the proposed window locations and terrace area of unit 6 of the development overlooks the property and a 1.8 metre boundary fence is unlikely to screen a height of a minimum of 1.5 metres above floor level of the development.

***Traffic and Parking Impacts***

As discussed above, the development consists of the construction of six multi-dwelling housing units. The provision of on-site car parking within the development consists of:

- Unit 1 and Unit 2 (front facing units) - Provide x1 car space in a single garage and x1 in a stacked arrangement on the vehicle crossing.
- Unit 3 to Unit 6 (front facing units) – Provide x 2 in tandem garages.

The submissions have raised concern with the current provision of on-street car parking within Hydræ Street and potential increase in traffic to the surrounding street network. Given the above, the provision of parking within the proposed development has been assessed in accordance with Part B5 – Parking of the Bankstown Development Control Plan 2015 and requires twelve car parking spaces for the multi-dwelling housing units.

The proposal however fails to provide an on-site visitor car space and therefore does not provide the required on-site car parking spaces.

In review of the street access to the site and driveway design the proposed development remains acceptable, however will require revision to accommodate the additional visitor car space.

***Stormwater Management***

Council's development engineers have assessed the drainage plan against the relevant provisions of the Bankstown Development Engineering Standards and Australian Standards and has found the design to be adequate.

**The public interest [section 4.15(1)(e)].**

The proposed development does not demonstrate the provision of an acceptable development outcome and is not considered to be in the public interest.

**Recommendation**

The subject proposal fails Clause 4.3(2B)(c)(ii) of the Bankstown Local Environmental Plan 2015, Clause 7.3 of Part B1 of the Bankstown Development Control Plan 2015 and the Off-street Parking Requirements Schedule of Part B5 of the Bankstown Development Control Plan 2015 and remains unsuitable for approval.

In consideration of the key constraints and characteristics of the site, it is not unreasonable to accept that nature of flood affected allotments are such that compliance with the development standards may lead to design constraints that could reduce the development yield for the site. A revised layout could reduce the elevated platforms and columns and better moderate amenity impacts to adjoining residential land.

Furthermore, it is Council's view that the variation statement has not successfully demonstrated that development has merit that sufficient environmental planning grounds exist or that strict compliance with such development standards is unreasonable or unnecessary.

**Reasons for Refusal**

PROPERTY: Lot 212 DP 1072039, Lot 10 DP 16779, No. 5 Hydrae Street, REVESBY NSW 2212, 7 Hydrae Street, REVESBY NSW 2212

DESCRIPTION OF DEVELOPMENT: Demolition of existing structures, consolidation of existing lots and construction of a multi-dwelling housing development comprising of six dwellings, front fence and strata subdivision.

The development application has been determined by refusal of consent. The reasons for the refusal are set out below:-

1. The proposed development does not satisfy the wall and building height requirements as contained in Clause 4.3(2B)(c)(ii) of the Bankstown Local Environmental Plan 2015. The submitted plans do not demonstrate the provision of an acceptable development outcome. [Pursuant to Section 4.15(1)(a)(i) and (b) of the Environmental Planning and Assessment Act, 1979];
2. The proposal fails to achieve the zone objectives as stipulated by Clause 2.3 and Zone R2 Low Density Residential of the Bankstown Local Environmental Plan 2015. [Pursuant to Section 4.15(1)(a)(i), (b) and (c) of the Environmental Planning and Assessment Act, 1979];
3. The proposed development does not satisfy the siting control for multi-dwelling housing developments as provided in Clause 7.3 of Part B1 of Bankstown Development Control Plan 2015. [Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979];
4. The proposed development does not satisfy the visitor car parking requirements as provided in the Off-street Parking Requirements Schedule of Part B5 of the Bankstown Development Control Plan 2015. [Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979];
5. The site is considered unsuitable for the proposed development. [Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979];
6. The proposed development does not demonstrate the provision of an acceptable development outcome. [Pursuant to Section 4.15(1)(e) Environmental Planning and Assessment Act, 1979].

NOTES: (1) Sections 8.7 and 8.10 of the Act confer on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 6 months after receipt of this notice.

- (2) As the applicant, if you are not satisfied with this determination, Division 8.2 allows applicants to request a review of the determination. 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. (Fee applicable please enquire at Council's Customer Service Centre)

-END-

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## Canterbury Bankstown Local Planning Panel - 4 March 2019

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<b>ITEM 5</b>	<b>81 Malvern, Panania</b>
	<b>Use and associated fitout of the premises as health consulting rooms for dental and general medical practices and associated signage</b>
<b>FILE</b>	<b>DA-787/2018 – Revesby</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>11 October 2018</b>
<b>APPLICANT</b>	<b>ACM Civil &amp; Structural Engineers P/L</b>
<b>OWNERS</b>	<b>Nihad H F Abu-Kishk</b>
<b>ESTIMATED VALUE</b>	<b>\$113,531.00</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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This matter is reported to Council's Local Planning Panel in accordance with the Panel's delegation from the Minister as more than 10 unique submissions were lodged with Council. At the time of preparing this report Council was in receipt of 15 submissions.

Development Application No. DA-787/2018 proposes the use and associated fitout of the premises (existing detached, single storey dwelling at No. 81 Malvern Street, Panania) as a health consulting room for dentistry and general medical practices.

DA-787/2018 has been assessed against the matters for consideration contained within Section 4.15 of the *Environmental Planning & Assessment Act 1979* requiring, amongst other things, an assessment against the *Bankstown Local Environmental Plan 2015* and the *Bankstown Development Control Plan 2015*. The development was found to fully comply with all relevant controls in all respects.

The application was initially notified for a period of 14 days. The application was subsequently renotified in response to the submission of an amended statement of environmental effects amended architectural plans and an amended parking plan. 15 submissions were received which raised concerns relating to parking, neighbour amenity, traffic, pedestrian safety and proposed commercial use within a residential zone.

The concerns raised in the submissions have been addressed in this report and do not warrant refusal or further modification of the development.

## **POLICY IMPACT**

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This matter has no direct policy implications.

## **FINANCIAL IMPACT**

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This matter has no direct financial implications

## **RECOMMENDATION**

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It is recommended that the application be approved subject to the attached conditions.

## **ATTACHMENTS**

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- A. Assessment Report
- B. Conditions of Consent

## **DA-787/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is known as 81 Malvern Street, Panania and is located on the eastern side of Malvern Street, approximately 120 metres south of the street's intersection with Tate Street and approximately 150 metres north of the street's intersection with Phillip Street. The site is a regular and rectangular-shaped allotment that is zoned R2 Low Density Residential.

The site contains an existing single storey dwelling house and associated detached garage. The surrounding development predominantly consists of detached dwelling houses, in-ground swimming pools and outbuildings, exhibiting the character typical of an R2 Low Density Residential zone.



### **PROPOSED DEVELOPMENT**

The Development Application proposes internal and external alterations to an existing dwelling house, associated with the fitout of a health consulting room containing a treatment room, consultation room, sterilization room, reception room, staff areas, bathroom and storeroom. An accessible entrance is proposed to be constructed at the front entrance of the existing structure, facing Malvern Street.

On-site car parking for the proposal is to be provided in front of the structure, within the front and side setbacks and is to consist of three car parking spaces, one of which is an accessible space, meeting relevant Australian Standards.



## **SECTION 4.15 ASSESSMENT**

The proposed development has been assessed pursuant to Section 4.15 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)]**

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

- 1.2 Aims of Plan
- 1.3 Land to which Plan applies
- 1.4 Definitions
- 1.7 Maps
- 2.1 Land use zones
- 2.2 Zoning of land to which Plan applies
- 2.3 Zone objectives and Land Use Table
- 4.4 Floor space ratio

An assessment of the Development Application revealed that the proposal complies with the matters raised in each of the above clauses of the *Bankstown Local Environmental Plan 2015*.

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

No draft EPI's are applicable to this matter.

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

The following table provides a summary of the development application against the controls contained in Section 17 Part B1 of the *Bankstown Development Control Plan 2015*.

STANDARD	BDCP 2015 Part B1		Compliance
	REQUIRED	Proposal	
<b>Parking</b>	Three off-street car parking spaces with one of the spaces to be suitable for persons with disabilities	Three off-street car parking spaces, one of which is suitable for persons with disabilities	YES
<b>Acoustic Privacy</b>	Health consulting rooms must operate within the hours of 7.00am to 7.00pm Monday to Saturday and 9.00am to 6.00pm on a Sunday and not at any time on a public holiday	Monday to Friday: 9am – 5pm Saturday: 10am – 4pm Sunday: Closed	YES

<b>Business Identification Signs</b>	<p>Business identification signs must comply with the following controls:</p> <ul style="list-style-type: none"> <li>(a) Council permits only one sign per allotment;</li> <li>(b) the total sign area must not exceed 0.65 metre x 0.65 metre;</li> <li>(c) sign is to be affixed either to the building or front fence;</li> <li>(d) if the sign is painted or attached to a building, the sign must not screen windows and other significant architectural features of the building;</li> <li>(e) the sign is to be non-illuminated;</li> <li>(f) Council does not permit flashing signs, flashing lights, signs which incorporate devices which change colour, signs where movement can be recognised by a passing motorist, signs that are not permanently fixed to the site, and signs made of canvas, calico or the like; and</li> <li>(g) Council may allow standard doctors' and dentists' signs.</li> </ul>	<p>One sign proposed, to be affixed to the front façade of the structure</p> <p>Sign dimensions are 0.65 metre by 0.65 metre</p> <p>Sign will not screen a window (via condition of consent)</p> <p>Sign is not to be illuminated (via condition of consent)</p> <p>Sign is not to flash (via condition of consent)</p>	YES
<b>Waste Storage Areas</b>	<p>The design, location and screening of the waste storage areas must be to the satisfaction of Council.</p> <p>Health consulting rooms must dispose medical wastes in accordance with the NSW Ministry of Health requirements.</p>	<p>Waste storage area is to be located at rear of property.</p> <p>Medical wastes to be disposed of in accordance with requirements (via condition of consent)</p>	YES

The above table demonstrates that the proposal complies with the relevant matters in each of the above clauses of Section 17 of Part B1 the *Bankstown Development Control Plan 2015*.

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

No planning agreements are applicable to this matter.

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

The proposal is consistent with the *Environmental Planning and Assessment Regulation 2000*.

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

It is considered that the proposal will result in acceptable environmental impacts on the site and the surrounding locality.

The existing bottlebrush street tree is to be retained and protected via conditions of consent (attached to this report). Landscaping works will involve the removal of vegetation classified as exempt from Council's Tree Preservation Order (*Bankstown Development Control Plan 2015*, Part B11). A landscape plan that includes a fully landscaped rear yard, 1.0 metre wide landscaped side setbacks and two landscaped planting areas at the front entrance has been submitted with this application. The landscape plan proposes the use of native vegetation as is consistent with the *Bankstown Development Control Plan 2015*.

It is considered that the proposal will bring about minor social impacts on the residents of adjoining properties and on the street as a whole, as a result of the vehicular and pedestrian traffic volume and trip generation being above what would be expected for a dwelling house. These impacts will be limited to the hours of operation. Additional noise and light impacts can be expected from the use of this site for a commercial purpose, owing to the close proximity to neighbouring residential uses. Again, these impacts will be limited to the operating hours of the premises. The proposal is a permitted use within the zone and complies with all relevant controls. As such it is considered that the impacts from the proposal are acceptable.

It is not considered that the proposal will bring about any economic impacts on the surrounding locality.

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

It is considered that the site is suitable for the proposed use as a health consulting room, subject to the included conditions of consent.

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

The application was initially notified for a period of 14 days. The application was subsequently renotified in response to the submission of an amended statement of environmental effects amended architectural plans and an amended parking plan. submissions were received which raised concerns relating to parking, neighbour amenity, traffic, pedestrian safety and proposed commercial use within a residential zone.

**1. Parking:** Insufficient car parking has been provided.

Comment: Three on-site car parking spaces, including one accessible space achieves compliance with Parts B1 and B5 of the *Bankstown Development Control Plan 2015* and relevant Australian Standards.

**2. Traffic:** Increase in traffic on a neighbourhood street.

Comment: Malvern Street is of sufficient carriageway width (10 metres) to accommodate the level of vehicle movements generated by the proposal.

**3. Pedestrian Safety:** Increase in vehicular traffic resulting in conflicts with pedestrians, specifically children attending Panania Public School (340 metres to the south of the site)

Comment: Council will condition for a wider (5.0 metres) vehicle crossing to allow for improved pedestrian and driver sightlines. The proposed car parking spaces comply with all relevant BCA standards and via a condition of consent, vehicles are to enter and exit the site in a forward direction. The likely level of traffic generated by the development is not considered to create safety issues.

**4. Hours of Operation:** Hours of operation will be inconsistent with prevailing residential land use.

Comment: The proposed hours of operation are consistent with the provisions contained within Clause 17.3 of Part B1 of the *Bankstown Development Control Plan 2015*.

**5. Noise:** Noise generated will be inconsistent with prevailing residential land use and will pose a detriment to amenity of residents on neighbouring allotments.

Comment: Noise emissions will be limited to the approved hours of operation. The use is permitted within the R2 Low Density Residential Zone as it is considered to be an appropriate non-residential use within the zone.

**6. Light:** Light generated will be inconsistent with prevailing residential land use and will pose a detriment to amenity of residents on neighbouring allotments.

Comment: Light emissions will be limited to the approved hours of operation which do not include evening hours. Conditions of consent in regards to lighting are considered appropriate.

**7. Signage:** The proposed sign is excessive and not in keeping with the prevailing residential character of the area.

Comment: Any signage is to be limited via conditions of consent to comply with Council's controls relating to maximum signage area, location, lighting and materials.

**8. Landscaping:** A paved front setback is not in keeping with the prevailing residential land use.

Comment: The latest landscape plan includes for 1.0 metre wide side setbacks, a fully-landscaped rear yard, as well as two feature planting beds located at the front entrance of the structure. In total, site cover for the proposal amounts to 56% of the 557.40 square metre site.

- 9. Objection (Safety):** The proposal will attract any variety of visitors, who may pose a threat to residents and their children.

Comment: The actions of future patients to the facility are not a matter for consideration for this application.

- 10. Objection (Character):** A medical / commercial use is not in keeping with the prevailing residential character of the area.

Comment: A health consulting room is a permitted land use within the R2 Low Density Residential land use zone.

- 11. Objection (Privacy):** The number of people visiting the site is likely to impact privacy of residents on neighbouring allotments.

Comment: While plans indicate a provision for 300mm of privacy screening to be installed atop side boundary fences, via a condition of consent 600mm of solid privacy screening is to be affixed to the side boundary fences (north and south boundaries) for the duration of the existing dwelling on site. This will bring the height of the fencing above the existing finished floor level to 1.80 metres, satisfying privacy controls contained within the *Bankstown Development Control Plan 2015* aimed at minimising direct overlooking into neighbouring properties.

- 12. Objection (Necessity):** There is no need for a health consulting room within this locality.

Comment: The proposal is a permitted land use within the R2 Low Density Residential Zone. The necessity of such a use is not a matter for consideration by Council.

- 13. Objection (Property Value):** The proposal will result in a loss of property value for nearby dwellings.

Comment: No evidence has been provided to demonstrate that the proposal will have any impact on property values.

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

It is considered that the proposal remains within the public interest.

**CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, requiring amongst other things, an assessment against the provisions contained within the *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

The proposal has been assessed as being consistent with the aims of the *Bankstown Local Environmental Plan 2015*, as well as with the objectives of the R2 Low Density Land Use Zone and the requirements found within the *Bankstown Development Control Plan 2015*.

**RECOMMENDATION**

It is recommended that the application be approved subject to the attached conditions.





## 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-787/2018, submitted by ACM Civil & Structural Engineers P/L, accompanied by Drawing No. A 1/2 dated 07/02/2019 (Revision E), A 2 dated 07/02/2019 (Revision E) and L 1/1 dated 07/02/2019 (Revision A) prepared by ACM Civil & Structural Engineers P/L, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

The development plans shall be amended as follows:

- a) Privacy screening is to be provided along the northern and southern property boundary fences for the duration of the dwelling on site, as shown marked in red on approved plans. This screening shall prevent direct looking from within any windows or elevated patios/terraces of the approved health consulting room, into windows or private open spaces of adjoining properties known as 79 Malvern Street and 83 Malvern Street. Such privacy screening may be in the form of up to 600mm high self-supporting lattice structure immediately atop the existing boundary fencing, or other suitable methods that achieve the objective of this condition. Such screening is to be determined in consultation with the adjoining property owners, nominated on plans submitted with the construction certificate, and installed prior to the issue of the occupation certificate. All costs associated with compliance with this condition are to be borne by the applicant/ developer.
- 3) The building must comply with the Category 1 fire safety provisions as are applicable to the building's proposed use.

Note: The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

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

- 5) 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.
- 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) Landscaping shall be installed in accordance with the approved landscape plan.

The approved landscape plan is amended to include the following:

- a) 1x tree known to attain a minimum height of 15 metres at maturity in the rear yard of the subject site.

Tree species used are not to include any of the exempted plant species listed under clause 2.4 of Bankstown Development Control Plan 2015 Part B11– Tree Management Order.

The tree is to be a minimum container size of 75 litres. It shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003) or Australian Standard AS 2303 – 2015 Tree stock for landscape use.

The tree is to be planted no closer than 3.5 metres from the wall of any approved dwelling on the property.

All new plantings shall be located so future growth will not be in conflict with electricity wires. Consideration should be given to the location of new electricity poles and wires so that sufficient space is provided.

The tree is to be planted prior to the issue of an occupation certificate.

The tree shall be maintained for the life of the development.

- 8) 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.
- 9) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 10) Prior to issue of a Construction Certificate, a contribution shall be made for the purpose of providing and/or embellishing the open space system, community facilities and stormwater works in accordance with Council's Section 94 Contributions Plans. The contribution is to be paid to Council prior to the release of the Construction Certificate at the rate applicable at the time of payment. At the current rate, the contribution would be \$567.66 (five hundred and sixty-seven dollars and sixty-six cents).

**Note:** The Section 94 Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 11) 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) A medium duty VFC of maximum width of 5.0 metres at the property boundary.

- 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.

**Note:** As a site survey and design is required to be prepared by Council in order to determine the necessary information, payment for the Work Permit should be made at least 21 days prior to the information being required and must be approved prior to the issue of the Construction Certificate.

- 12) The Construction Certificate plans shall include details of the garbage receptacle area. The garbage receptacle area shall not be visible from the street. The garbage receptacle area shall be located within the building or screened from the street by dense landscaping. As shown in Drawing No. A 1/2 containing Council's approval stamp.
- 13) 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.

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](http://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.

- 14) A Trade Waste Agreement shall be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Wastewater treatment equipment is to be bunded and where systems are placed outside, they are to be roofed to ensure that no rainwater can enter the bund. All wastewater treatment devices shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device must be disposed of in accordance with the Protection of the Environment Operations Act 1997.

## CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 15) 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.
- 16) 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.

The following tree shall be retained and protected from removal and damage for the duration of the development:

Species	Location
<i>Callistemon</i> (Bottlebrush)	Council nature strip, forward of the property line

TPZ and SRZ in metres measured from the centre of the trunk of the tree.

Tree protection measures shall comply with Australian Standard AS4970-2009 Protection of trees on development sites; along with the following conditions:

- a) The tree to be retained and protected together with the relevant Tree Protection Zone (TPZ) of 2.0m is to be marked on all demolition and construction drawings.

- b) All contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.
  - c) A designated Tree Protection Zone shall be created on site by erecting a tree protection fence at 2.0 metre radius from the trunk of the tree. The fence is to be constructed of chain wire mesh 1.80 metres high supported by steel posts. The fence is to be installed prior to demolition / construction, shall not be removed or altered, and is to remain in place for the duration of the site works;
  - d) The applicant will display in a prominent location on the tree protection fence a durable, weather resistant sign of a similar design, layout and type size as per Appendix C, Australian Standard AS4970-2009 Protection of trees on development sites clearly showing:
    - i. The Development Consent number;
    - ii. The name and contact phone number of the consultant arborist;
    - iii. The purpose of the protection zone;
    - iv. The penalties for disregarding the protection zone;
  - e) No vehicular access, excavations for construction or installation of services shall be carried out within the fenced Tree Protection Zone.
  - f) All utility services, pipes, stormwater lines and pits shall be located outside the fenced Tree Protection Zone.
  - g) Building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone.
  - h) Trees marked for retention must not be damaged or used to display signage, or as fence or cable supports for any reason.
  - i) If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery. Tree roots greater than 25mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 4 or equivalent – before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.
- 17) 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.
- 18) 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.
- 19) 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.
- 20) 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.

- 21) 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.
- 22) 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**

- 23) 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.
- 24) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 25) 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.
- 26) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 27) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.



- 28) 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**

- 29) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 30) 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.
- 31) 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.
- 32) The operator of the premises must register the business with the Compliance Unit of Council and arrange an inspection with Council's Environmental Health Officer.
- 33) 3 (three) off-street car parking spaces shall be provided/maintained for the use of visitor and employees to the premises in accordance with the submitted plans. Such spaces are to be sealed and line marked and maintained.
- 1 (one) off-street car parking space is to be used exclusively for accessible parking. This space is to be sign-posted and marked as such.
- 34) The car parking area shall be designed and signposted to ensure all vehicular access to and egress from the site can be in a forward direction.
- 35) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.

### **USE OF THE SITE**

- 36) Car parking spaces for 3 (three) vehicles shall be provided in marked spaces in the manner generally shown on the approved site plan. The car parking spaces, driveways and manoeuvring areas are to be used for visitors vehicles only and not for the storage of new or used materials, finished goods or commercial vehicles.
- 37) The car parking area shall be maintained and signposted to require all vehicles to enter and exit the site in a forward direction.

- 38) The hours of operation of the use shall be limited to between:
- a) Monday – Friday: 9:00am – 5:00pm
  - b) Saturday: 10:00am – 4:00pm
  - c) Sunday: Closed
- 39) All loading and unloading of goods shall take place within the site or from the adjoining service lane in a manner that does not interfere with parking areas, driveways or landscaping.
- 40) There shall be no emissions of noise, smoke, smell, vibration, gases, vapours, odours, dust, particulate matter, or other impurities which are injurious or dangerous to health, or the exposure to view of any unsightly matter or otherwise.
- 41) All waste materials associated with the use shall be stored in containers located either within the building or behind screen walls in accordance with the approved plans.
- 42) Clinical waste must be separated from general waste, and placed in a suitable leak proof bag ready for appropriate disposal. Clinical waste includes microbiological waste or pathological waste, or any other material or item that is soiled or contaminated with blood or other body substances and that is likely to cause infection or injury to any other person.
- Disposable sharps must be discarded into a clearly labelled, puncture-resistant container which complies with Australian Standard AS4031.
- Clinical and sharps waste must be collected and disposed of by an authorized contractor in accordance with the Protection of the Environment Operations (Waste) Regulation 2014 Dockets/receipts of hazardous waste disposal must be kept on site for five (5) years and presented to Council when required.
- 43) All patient consultation rooms shall be fitted with a hand wash basin that has an adequate supply of potable water from a hot and cold water supply.
- 44) A wash up basin and adequate space for sterilisation facilities must be provided to ensure medical and dentistry equipment can be effectively washed and sterilised onsite. Hand wash basins must not be used for washing equipment.
- 45) Any activity carried out in accordance with this approval shall not give rise to offensive odour, offensive noise or pollution of air, land or water as defined in the *Protection of the Environment Operations Act 1997* and Regulations.
- 46) The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

The use of air conditioner units shall not give rise to 'offensive noise' as defined within the Protection of the Environment Operations Act 1997, and Protection of the Environment Operations (Noise Control) Regulation 2000.

- 47) Any lighting of the premises shall be installed in accordance with *Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting* so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. Flashing, moving or intermittent lights or signs are prohibited. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if Council considers there to be adverse effects on the amenity of the area.
- 48) No signs or goods are to be displayed or trading of any description is to be carried out on the public road, public footway, utility service land, customer and/or employee parking area or the driveways or pedestrian walkways outside or in the immediate vicinity of the premises.
- 49) Identification numbers are to be conspicuously displayed at the front of the premises.
- 50) Instructions concerning procedures to be adopted in the event of an emergency are to be clearly displayed on the premises for both public and staff information at all times.
- 51) Medical wastes shall be disposed of by an authorised waste disposal contractor. Contractor details are to be submitted to the PCA before the occupation of the premises.
- 52) Signage shall display advertising relating only to the usage of the site and shall be maintained in good order at all times.
- 53) The maximum dimensions for the business identification sign are limited to .65 metres by .65 metres. The sign is to be affixed to the existing structure on site, conspicuously displayed as viewed from the street.
- 54) Signage shall not flash or contain flashing lights or devices that enable the signs to change colour or create movement
- 55) The sign shall only be illuminated during the trading hours associated with the use of the premises (shown below). The intensity of the lights illuminating the sign shall be limited to 120 watts per square metre of glass.
  - a) Monday – Friday: 9:00am – 5:00pm
  - b) Saturday: 10:00am – 4:00pm
  - c) Sunday: Closed
- 56) The applicant shall enter into a commercial contract for the collection of wastes and recycling. A copy of the commercial waste and recycling contract shall be lodged with Council and invoices should be available for inspection at any time.

- 57) All commercial contract waste collection services are to be scheduled to occur during standard business hours Monday – Saturday. No collection services are to be scheduled for Sundays or public holidays.

### **SCHEDULE A: ADVICE TO APPLICANTS**

Inspection of building works shall be undertaken as determined by the PCA. If Canterbury-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.

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.

-END-