



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

**5 August 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 OF INTEREST

### CONFIRMATION OF MINUTES OF PREVIOUS MEETING

### BANKSTOWN WARD

- |          |   |    |
|----------|---|----|
| <b>1</b> | <b>S4.55(2) 5 French Avenue, Bankstown</b><br>Demolition of Existing Site Structures and Construction of an Eleven Storey Mixed Residential/Commercial Flat Building Comprising of 81 Residential Units and Basement Car parking. |    |
|          | S4.55(2) AMENDMENT: Extension to Level 01 retail area   | 3  |
| <b>2</b> | <b>30 Omega Place, Greenacre</b><br>Conversion of existing double garage at rear into a secondary dwelling and construction of a carport  | 19 |
| <b>3</b> | <b>73-75 Brancourt Avenue, Yagoona</b><br>Demolition of existing structures, consolidation of existing allotments, and construction of a four storey residential flat building comprising 17 apartments and basement car parking  | 47 |

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## Canterbury Bankstown Local Planning Panel - 5 August 2019

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<b>ITEM 1</b>	<b>S4.55(2) 5 French Avenue, Bankstown Demolition of Existing Site Structures and Construction of an Eleven Storey Mixed Residential/Commercial Flat Building Comprising of 81 Residential Units and Basement Car parking.</b>
	<b>S4.55(2) AMENDMENT: Extension to Level 01 retail area</b>
<b>FILE</b>	<b>DA-738/2015/A - Bankstown</b>
<b>ZONING</b>	<b>R4 High Density Residential and B4 Mixed Use</b>
<b>DATE OF LODGEMENT</b>	<b>26 April 2019</b>
<b>APPLICANT</b>	<b>Statewide Planning Pty Ltd</b>
<b>OWNERS</b>	<b>French Apartments Pty Limited</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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The application is reported to Council's Local Planning Panel for determination as the applicant seeks to modify, through the provisions of Section 4.55(2) of the EP&A Act 1979, a development application previously determined by elected Council.

In February 2016, Council approved DA-738/2015 for the demolition of all structures on site and construction of an eleven storey mixed residential/commercial flat building comprising of 81 residential units, a ground floor retail premises and basement car parking.

On 9 July 2018, Council's Local Planning Panel approved a S4.55 application to amend the original application by way of increasing the height of the building (being an increase to the height of the lift overrun by 500mm). Additional works associated with this modification included the addition of a lobby area to the roof top communal open space, reallocation of areas within the roof top to private open space for unit 1103, the addition of bi-fold doors to the commercial tenancy, rearranging of the ground floor waste areas and the addition of a toilet facility, the installation of louvers to the façade, a new awning proposed to the French Avenue frontage, and the installation of an electricity substation fronting Conway Road.

This modification seeks approval for an additional 38sqm to the previously approved retail premises. The modified development causes the development to contravene the Floor Space Ratio development standard. Further, the development as modified is considered to have a negative impact on the streetscape and results in a reduction in legibility of the development from the street and the residential component.

The proposed modification has been assessed in accordance with the provisions contained in section 4.15 and section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, requiring, amongst other things, an assessment *against State Environmental Planning Policy No. 55- Remediation of Land, State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* and the associated Apartment Design Guide, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (a deemed SEPP), Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015*.

The application was advertised and notified for a period of 21 days. No submissions have been received.

## **POLICY IMPACT**

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The matter has no direct policy implications.

## **FINANCIAL IMPACT**

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The matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that the application be refused, for the following reasons:

1. The development fails to comply with the provisions of Clause 4.4 and 4.4A of Bankstown Local Environmental Plan 2015 (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
2. The site is not suitable for the development as proposed (Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979).
3. The development is not in the public interest (Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979).

## **ATTACHMENTS**

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- A. 4.15 Assessment
- B. Reasons for Refusal

## **DA-738/2015/A ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is now known as 5 French Avenue, however was formerly identified as 5 to 9 French Avenue and 2 Conway Road, Bankstown.

The attached maps show the location of the site and its zoning. As can be seen from the attached maps, Nos. 5-9 French Avenue are zoned B4- Mixed Use and 2 Conway Road is zoned R4- High Density Residential, both under the provisions of Bankstown Local Environmental Plan 2015.

The site is located on the northern fringe of the Bankstown CBD, and this is evident in the split of the business and residential zonings that apply to the site. The site is “L” shaped in nature and has an area of 2,018m<sup>2</sup> with frontages to Conway Road of 47.24 metres and to French Avenue of 35.05m (plus splay). Construction on site is nearing completion and a strata subdivision certificate has been issued by a private certifier.

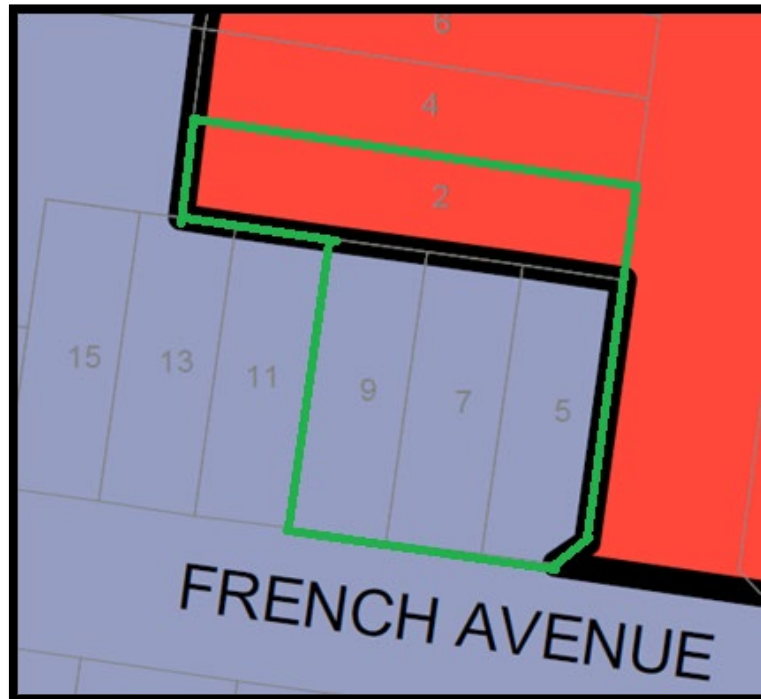
The site has a moderate fall from north- west to south east of 3.61 metres, with the lowest point of the site being at the intersection of French Avenue and Conway Road. The site is free from constraints such as flooding, contamination, and the like, but is affected by a height limit associated with Bankstown Airport’s obstacle limitation surface of 15.24 metres above the site’s ground level.

**Image 1- Aerial photo of the subject site**



In general terms, it could be said that the area in the vicinity of the site is currently undergoing transition and contains a mix of development types and scales, consistent with the mix of zonings that apply in the area, coupled with the site's location on the fringe of the Bankstown CBD.

**Image 2- Extract of LEP 2015 zoning map**



### **BACKGROUND/HISTORY**

Council, at its Ordinary Meeting of 23 February 2016 resolved to approve DA-738/2015 for the demolition of all structures on site and construction of an eleven storey mixed residential/commercial flat building comprising 81 residential units, a ground floor retail premises and basement car parking (on a deferred commencement basis).

The resolution of Council was as follows:

*RESOLVED that Council accept the applicant's submission made under clause 4.6 of the Bankstown LEP 2015 and approve DA 738/2015 on a deferred commencement basis. The deferred commencement matters that must be satisfied within 12 months of the date of determination of the development application are:*

- 1. The applicant will alter the plans (Substantially the same) to reduce the FSR to 3.5:1 (calculated as "ratio of the gross floor area of all buildings within the site to the site area") adopting the definitions from clause 4.5 of the Bankstown LEP 2015.*
- 2. The applicant will alter the plans (Substantially the same) of setbacks to balconies, resulting in the non-compliance with clause 3F-1 of the Apartment Design Guide, to achieve full compliance with the clause of the Apartment Design Guide.*

3. *The applicant will alter unit sizes of 505, 605, 705, 805, 504, 604, 704, 804, 904, 1004, 1104, to meet the minimum sizes required by the Apartment Design Guide in accordance with clause FD-1 of the Apartment Design Guide. These changes may include removal of ensuites or other internal minor design changes.*
4. *Approval from Bankstown Airport Limited for breach of Airport's Obstacle Limitation Surface level.*
5. *Satisfaction of basement manoeuvring and car parking layout to meet the requirements of the relevant Australian Standard.*
6. *Resolution of waste storage areas and waste collection provisions to the satisfaction of Council's Resource Recovery Team.*

In response to the submission of amended plans addressing the above matters, an operative consent was issued by Council on 12 September 2016.

On 9 July 2018, Council's Local Planning Panel approved a S4.55 application to amend the original application by way of increasing the height of the building (being an increase to the height of the lift overrun by 500mm). Additional works associated with this modification included the addition of a lobby area to the roof top communal open space, reallocation of areas within the roof top to private open space for unit 1103, the addition of bi-fold doors to the commercial tenancy, rearranging of the ground floor waste areas and the addition of a toilet facility, the installation of louvers to the façade, a new awning proposed to the French Avenue frontage, and the installation of an electricity substation fronting Conway Road.

### **PROPOSED DEVELOPMENT**

This application is submitted under the provisions of section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*. The application seeks to amend Determination Notice No.738/2015, and involves the following modifications:

- Creation of an additional 38sqm to the previously approved ground floor retail premises by extending into the undercroft approved to the north of the commercial tenancy.

As part of the assessment of the development application a site inspection was undertaken. Upon inspection it was identified that the ground floor (being level 01) had not been constructed in accordance with the approved plans. The ground floor had not included the plant room as shown on the plans adjacent to the commercial tenancy. An additional wall to the north and north west of the approved commercial area, has been constructed providing for an 'extended' commercial tenancy. These walls now form the northern and north western wall of the area under this modification that is proposed to be enclosed.



The plans approved (as modified) did not provide for a solid constructed wall within the residential undercroft to the north or north west of the commercial tenancy. The construction of these walls form an enclosure to the area shown as the ground floor retail extension. The proposed extension of the commercial space within this area includes a level change to the rear 12sqm (steps within the area) and a rear access door to the residential interface of the building.

The extension of the commercial area into the approved undercroft is considered to result in poor functionality and design layout as a result of the limited space and existing level change within the area. The proposed rear access door and wall serve to close off the area and direct people through the commercial space into the residential domain. The approved plans showed this area as an open area with direct access from the commercial space into this area, this was considered functional as the design and built form made clear distinctions between the residential and public domain. The proposed modification will undo this functionality.

The proposed modification and the proposal as built result in a development that would now exceed the maximum 3.5:1 FSR on site. The ordinary maximum floor space for the subject site is 3:1 however Clause 4.4A to the LEP permits a bonus of 0.5:1 to promote improved sustainability in commercial development. Clause 4.6 of the Bankstown Local Environmental Plan 2015 does however not operate with respect to Clause 4.4A of the BLEP 2015. In this regard, the clear intent of the LEP is to limit floorspace within the CBD Core to 3.5:1. Council has no power to approve development beyond this floor space. It would be inappropriate for a larger FSR to be permitted by way of a S4.55 and inconsistent with the provision set out in the LEP.

#### **SECTION 4.55(2) ASSESSMENT**

The proposed modifications have been assessed pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*.

- (a) *the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

The development remains substantially the same development to that which was originally approved in so far as the modification provides for a development of a comparable scale and intensity.

- (b) *it has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

**Comment:** The original application was referred to Sydney Metro Airport and required approval from the Department Infrastructure and Regional Development (Civil Aviation



Safety Authority). The modification does not change the heights as previously approved. A referral was not required to be undertaken.

***(c) it has notified the application in accordance with the regulations or a development control plan, and***

**Comment:** The application was advertised and notified for a period of 21 days. The exhibition and notification process was consistent with that which occurred with the original development application as required by the provisions contained in Bankstown Development Control Plan 2015.

***(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan.***

**Comment:** No submissions have been received.

**SECTION 4.15(1) ASSESSMENT**

The proposed modifications have 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*

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.*

Having regard to the modifications proposed, no further assessment is required to be undertaken against this planning instrument. It is therefore considered that the consent authority can be satisfied that the development site will remain suitable for the proposed development, as modified, in accordance with Clause 7 of SEPP 55.

### ***Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment***

It is considered that the proposed development as modified will not significantly impact upon the environment of the Georges River, either in a local or regional context, and that the development is not inconsistent with the general and specific aims, objectives, planning principles, planning considerations and policies and recommended strategies contained within the GMREP No.2.

### ***State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65), and the Apartment Design Guide (ADG)***

SEPP No. 65 applies to residential flat buildings having four or more units and three or more storeys. Accordingly, the SEPP applies, and an assessment against the Design Quality Principles in SEPP 65 and the accompanying Apartment Design Guide (ADG) was carried out as part of the original application. The proposed modification enclosing of the area north of the approved commercial tenancy is considered to be inconsistent with the design guidance provided within Objective 3G 2-3 in regards to pedestrian access and entries. The proposed modification restricts visibility from the public domain and pedestrian links moving through the site. It is considered that the enclosing of this area is not consistent with the objectives of Part 3G of the ADG.

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

The proposed modifications to the development do not alter compliance with the SEPP as established under the original application.

### ***Bankstown Local Environmental Plan 2015***

The following clauses of *Bankstown Local Environmental Plan (BLEP) 2015* are relevant to the proposed development and 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 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.4A – Additional gross floor area for more sustainable development in Bankstown CBD commercial core
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 6.2 – Earthworks

The proposed modification has been assessed against the relevant controls as provided below.

STANDARD	BLEP 2015 COMPLIANCE	PROPOSED
Clause 4.4 FSR	Maximum 3:1	No, 3.508:1 across the development site
Clause 4.4A Additional gross floor area for more sustainable development in Bankstown CBD commercial core	Maximum of 3.5:1 permitted on B4 only pursuant to clause 4.4A.  R4 is not eligible for the bonus, therefore the FSR must comply with: 3.5:1 on the B4 (if the provisions of Cl4.4A are met) and 3:1 on the R4.	No, 3.508:1 across the development site

The following comments are offered in response to the details provided in the above compliance table.

*Floor space ratio (Clause 4.4) and Additional gross floor area for more sustainable development in Bankstown CBD Commercial core (Clause 4.4A)*

Firstly Clause 4.4(2) of the Bankstown LEP states that the “... maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”

The Floor Space Ratio Map identifies the development site as having a maximum permissible floor space ratio of 3:1.

Clause 4.4A(3) of the Bankstown LEP states “Despite any other provision of this Plan, the consent authority may grant development consent to development to which this clause applies if the gross floor area of the buildings on the development site exceeds the gross floor area otherwise permitted by this Plan by no more than 0.5:1.”

Council resolved to approve the development subject to a resolution to allow a maximum FSR across the overall site of 3.5:1.

This modification proposes additional floor area by enclosing the open area adjoining the north of the approved commercial unit. The additional floor area totals 38sqm.

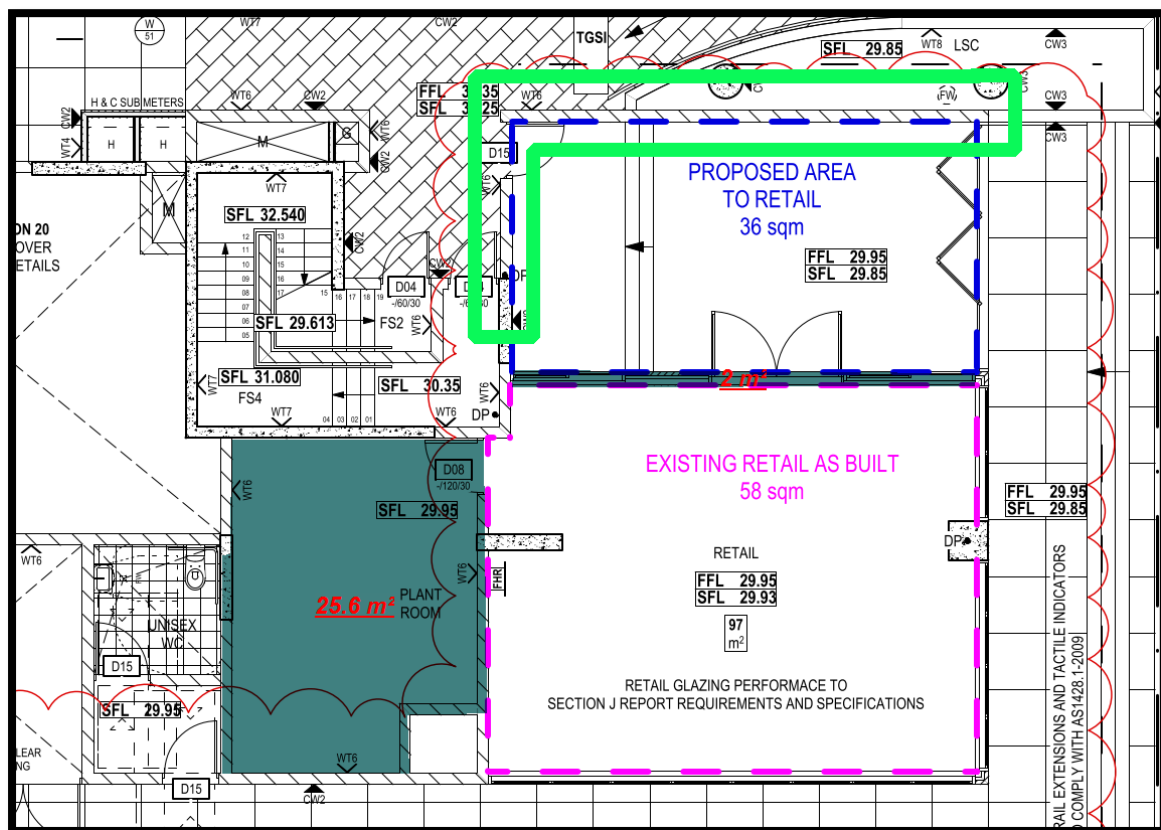
Inspection of the site has shown that building works have occurred that are not consistent with the approved plans (as modified). The ground floor plant room has not been constructed and now forms part of the approved commercial tenancy. A solid wall has been built to the north of the commercial unit partially enclosing the area proposed to be extended as part of the commercial tenancy.

The ‘plant room’ approved to the west of the commercial area, now results in an additional 25.6sqm of floor space that has not been accounted for in the gross floor area calculations of

the development. The issue of the plant room was raised with the applicant who has advised that the plant room wall between the commercial tenancy and the plant room is not required at present and will be built once a tenancy use is identified. This is not considered a viable or likely occurrence, given the building is at completion and 'plant' to facilitate a commercial tenancy cannot be retrofitted in a way that isn't considered floor area.

Accepting the as constructed calculations provided, with the addition of the ground floor extension proposed and the 'plant room', the proposal results in a FSR of 3.508:1 across the site.

**Image 3 – Excerpt of floor plan noting north and north western walls already built in green box (north to top of page)**



The proposed extension of the commercial space to the north of the approved retail area seeks to extend into a portion of the approved ground floor undercroft that contains a level change to the rear 12sqm (steps within) and a rear access door to the residential interface of the building. As approved, the undercroft and the incorporated level change within the undercroft, served the development by providing a distinction between the public accessible spaces and the transition into the residential component of the development. This provided a particular legibility in the streetscape and at pedestrian level in terms of navigating the development.

The extension of the commercial area into the approved undercroft is considered to be poor in terms of functionality and design layout for the proposed commercial tenancy, as a result of the limited space and existing level change within the area. The proposed built form and the walls as constructed serve to reduce the legibility of the development from the street level, and the solid wall and single door to the north western wall, as built, serve to close off the area and direct people through the commercial space into the residential domain with no clear separation of the spaces.

The approved plans showed this area as an open area with direct access from the commercial space into this area, this was considered functional as the design and built form made clear distinctions between residential and public domain.

The enclosing of these areas and the inclusion of the walls and single door reduce the legibility of the ground floor plan and provide seemingly direct access into the residential portion of the development. The construction of the walls to the north of the commercial area has resulted in a less desirable outcome for the area north of the commercial tenancy as it has resulted in a visual obstruction, preventing pedestrians identifying the residential component and legible access to the development.

The modification as built on site has not been constructed in accordance with the approved plans. Should this modification be supported it would result in a development with an FSR of 3.508:1. This would be non-compliant with the resolution of elected Council on 23 February 2016 ensuring that the FSR across the overall site does not exceed 3.5:1.

Further, it should be noted that Clause 4.6 of the Bankstown Local Environmental Plan 2015 does not operate with respect to Clause 4.4A of the BLEP 2015. The result is that if floor space greater than 3.5:1 had been proposed as part of the original DA, Council would have no power to approve the DA. It would be inappropriate for a larger FSR to be permitted by way of a S4.55 application and would be inconsistent with the object and intent of removing the ability to use Clause 4.6 beyond the obtaining of the bonus floor space ratio.

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

There are no draft environmental planning instruments that are applicable in this instance.

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

The following table provides a summary of the development application as modified against the applicable controls contained in B5 of the Bankstown Development Control Plan 2015.

STANDARD	PROPOSED	PART B5 of BDCP 2015		BLEP 2015 COMPLIANCE
		REQUIRED	COMPLIANCE	
Part B5 Parking Controls				
Car Parking				

STANDARD	PROPOSED	PART B5 of BDCP 2015		BLEP 2015 COMPLIANCE
		REQUIRED	COMPLIANCE	
(Part B5 of BDCP 2015)	<b>Commercial area</b> Commercial area 132sqm $132 / 40 = 3.35$	<b>Bankstown CBD</b> One car space per 40m <sup>2</sup> of half the gross floor area of the premises; and a planning agreement is considered on the remaining 50% of parking requirements for the purpose of Public parking.	Yes – approved strata plan by a private certifier allocated four spaces within level one basement to the commercial use.	N/A

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

There are no planning agreements applicable to the modification application.

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

The proposed amendments are considered to satisfactorily address the relevant provisions of the regulations.

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

The proposed expansion of the ground floor commercial tenancy is not supported as it is considered that the extension of the ground floor commercial tenancy will have a detrimental impact upon the streetscape and pedestrian legibility.

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

The suitability of the site for the proposed modification is considered to remain as assessed in the original development application.

Although the proposed modification appears minor in nature it would detrimentally impact the legibility of the ground floor interface of the building with the street. The development as approved included clear and delineated access for residential separate to that of the commercial patronage. The proposed amendment would erode this.

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

The application was advertised/notified for a period of 21 days. No submissions were received.

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

The proposed modifications are considered to contravene the public interest in that the legibility of public and private components of the development are reduced as a result of the modification.

**CONCLUSION**

The proposed modifications have been assessed in accordance with the provisions of section 4.55 and section 4.15 of the *Environmental Planning and Assessment Act 1979*, requiring, amongst other things, assessment against State Environmental Planning Policy No. 55—Remediation of Land, State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the associated Apartment Design Guide, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (a deemed SEPP), Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

The assessment of the application has found that the development as modified cannot be supported and it is recommended that the modification application should be refused.





**Reasons for Refusal**

1. The development fails to comply with the provisions of Clause 4.4 and 4.4A of Bankstown Local Environmental Plan 2015 (Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
2. The site is not suitable for the development as proposed (Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979).
3. The development is not in the public interest (Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979).

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## Canterbury Bankstown Local Planning Panel - 5 August 2019

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<b>ITEM 2</b>	<b>30 Omega Place, Greenacre</b>
	<b>Conversion of existing double garage at rear into a secondary dwelling and construction of a carport</b>
<b>FILE</b>	<b>DA-331/2019 – Bankstown Ward</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>29 May 2019</b>
<b>APPLICANT</b>	<b>Klaus Carson Studio Pty Ltd</b>
<b>OWNERS</b>	<b>Con Pothas and Joumana Therese Pothas</b>
<b>ESTIMATED VALUE</b>	<b>\$30,800</b>
<b>AUTHOR</b>	<b>Aidan Harrington</b>

### REPORT

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This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 30%. The development standard the applicant seeks to vary relates to the maximum permissible wall height for a detached secondary dwelling as contained in Clause 4.3(2B)(a) of the Bankstown Local Environmental Plan 2015. The applicant proposes a maximum wall height of 4.085 metres, resulting in a 36.2% variation to the development standard.

Development Application No. DA-331/2019 proposes the conversion of the existing double garage at the rear of the site into a secondary dwelling and the construction of a carport.

DA-331/2019 has been assessed against State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP), Bankstown Local Environmental Plan 2015 (BLEP 2015) and Bankstown Development Control Plan 2015 (BDCP 2015). The application fails to comply in regards to BLEP 2015 Clause 4.3(2B)(a) height of buildings (maximum wall height) and BDCP 2015 - Part B1 Clause 3.4 and 3.10 in regards to maximum wall height and the setbacks to the side and rear boundary.

It is considered that there are sufficient environmental planning grounds to support the proposed variation and the compliance with the development standard is unreasonable and unnecessary.

The application was notified in accordance with the BDCP 2015 for a period of 14 days during which time no submissions were received.

## **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
- B. Conditions of Approval

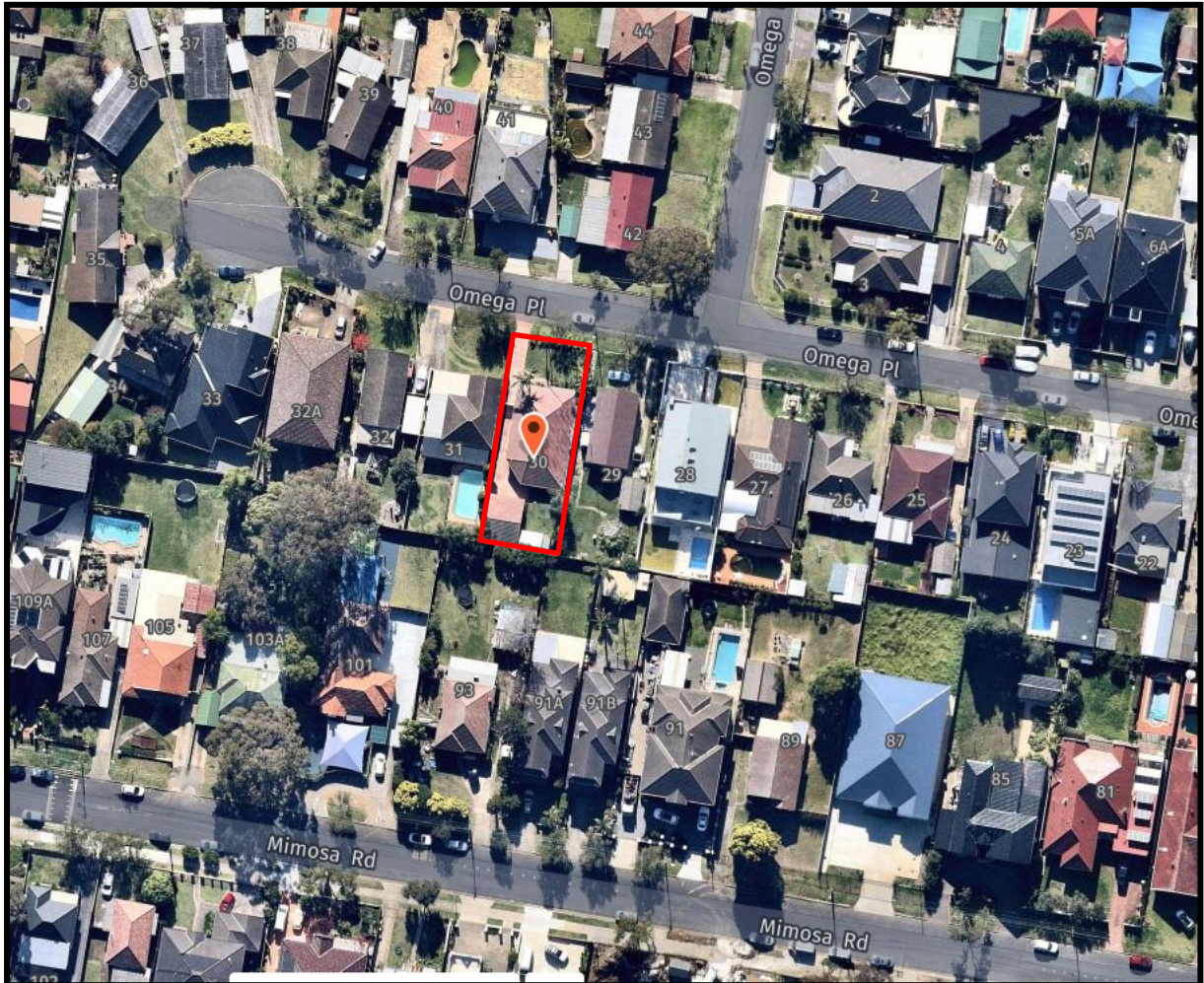
## **DA-331/2019 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is rectangular in shape with a frontage of 14.63m to Omega Place and has a total site area of 580.30m<sup>2</sup>. Currently occupying the site is a single storey dwelling with a hipped tile roof and a detached double garage with a gable end roof which were approved under DA-1238/1999.

The surrounding developments include a variety of single and two storey residences. Adjoining the site to the east, west and south are single storey dwelling houses of varying age and condition.

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



**Figure 1:** Aerial of subject site. **Source:** NearMaps 2019

**PROPOSED DEVELOPMENT**

DA-331/2019 proposes the conversion of the existing detached garage into a secondary dwelling and the construction of a carport.

The proposal will reflect the same building footprint with works being confined to the fit out of the structure for habitable purposes. The proposal includes one bedroom, a kitchenette, living/dining room, study, bathroom and a concealed laundry room, all separate to that of the principal dwelling.

The external appearance and built form remains largely the same for the southern elevation with the exception of a skylight. The western elevation remains unchanged. The works proposed to the northern elevation include the removal of the existing door and roller shutter and the installation of glass bi-fold doors. Works proposed to the eastern elevation include the removal of the existing window and the installation of three new windows.

The construction of the carport is proposed along the western boundary of the property and will be of an open style, a flat lightweight roof with a timber gate to the rear. The proposed development also includes the provision of a retaining wall adjacent the eastern wall of the existing garage.

**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 there is no evidence to suggest that the site is contaminated. It is not 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 satisfies the provisions of SEPP No. 55.

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

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

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

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

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

An assessment of the development application has revealed that the proposal complies with the matters raised above. Covered parking is provided by way of a proposed carport forward of the proposed secondary dwelling (adjacent the principal dwelling).

The table below is provided to demonstrate the proposals 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	Max. 290.15m <sup>2</sup> (580.30/2)	186m <sup>2</sup> (136m <sup>2</sup> + 50m <sup>2</sup> )	Yes
Floor Area of Secondary Dwelling	Max. 60m <sup>2</sup>	50m <sup>2</sup>	Yes

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

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

### **Bankstown Local Environmental Plan 2015**

The application was assessed against the Bankstown Local Environmental Plan 2015 with the following clauses being of particular relevance to the proposed development:

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 4.3 – 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  
 Clause 6.2 – Earthworks

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses, with the exception of Clause 4.3(2B)(a) Height of buildings (wall height).

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

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings for Secondary Dwellings	Maximum 3m – wall	Maximum 4.085m	No – see justification below
	Maximum 6m - building	Maximum 4.340m (building height)	Yes
Floor space ratio (specific site)	Maximum 0.50:1	A GFA of 186m <sup>2</sup> is proposed resulting in a FSR of 0.32:1.	Yes

### **Clause 4.3 – Height of Buildings**

Clause 4.3(2B)(a) – Height of buildings of BLEP 2015 refers to the maximum permitted height of buildings for secondary dwelling developments in the R2 Low Density Residential Zone and provides as follows:

#### **4.3 Height of buildings**

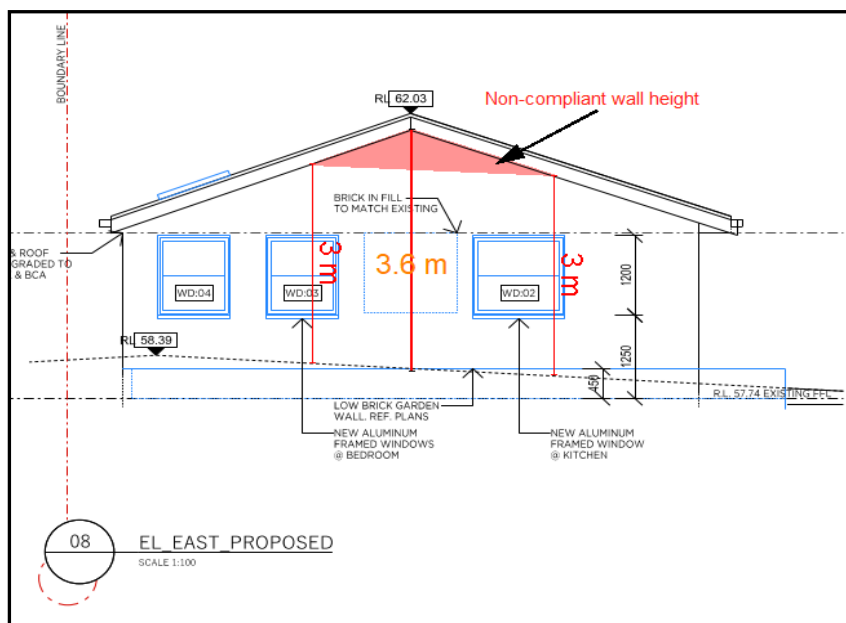
(1) *The objectives of this clause are as follows:*

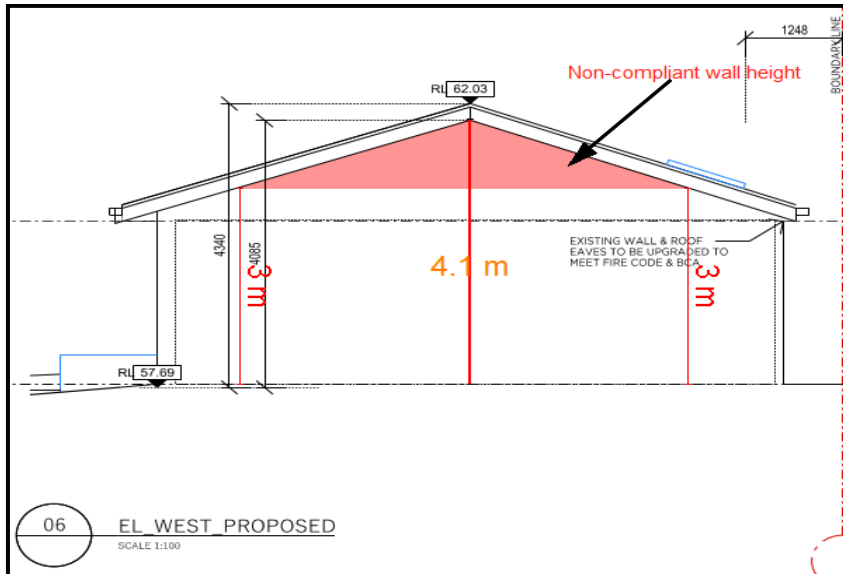
(a) *to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*

- (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,**
- ...

The proposal seeks to vary Clause 4.3(2B)(a) of Bankstown Local Environmental Plan 2015. The non-compliant portion of the dwelling wall is measured at 4.085m at the highest point on the western elevation, which represents a variation of 1.085m or 36.2%. The other breach occurs on the eastern elevation where the non-compliant portion of the wall measures 3.6 metres at the highest point, which represents a variation of 600mm or 20%.

It is relevant to note that the non-compliant wall height of 4.085m on the western elevation and 3.6m on the eastern elevation is confined to the peak of the existing gable end wall. See elevations below:





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

Clause 4.6 of the Bankstown Local Environmental Plan 2015 provides as follows;

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- a. *the consent authority is satisfied that:*
  - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b. *the concurrence of the Secretary has been obtained*

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

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

...

The applicant has submitted a written request which seeks to justify the contravention of the development standard. The written request has been considered, thus satisfying Council's requirements, acting as the consent authority, of Clause 4.6(3).

In regard to Clause 4.6(4)(a)(i) the applicant has provided justification within their submission relating to why compliance with the development standard is unreasonable and unnecessary. It is noted that the applicant is only required to demonstrate that compliance is unreasonable or unnecessary however the written request addresses both aspects.

The applicant states in their written submission the following reasons that compliance is unreasonable and unnecessary:

- The existing garage received approval from Council and the change of use to a Secondary Dwelling does not alter its building envelope.
- The structure is existing and the change of use of the building will not significantly impact the amenity of the surrounding locality.

It is considered that this adequately addresses the requirements of Clause 4.6(3)(a) as the applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

The applicant has also provided written justification relating to there being sufficient environmental planning grounds to justify contravening the development standard which are as follows:

- Noting the orientation of the site and retention of the existing building envelope, there is no adverse or additional impact towards adjoining sites in respect to overshadowing.
- With respect to the streetscape, the structure is contained adjacent to the rear boundary of the site and is not readily apparent from the public domain with the general form and finishes also remaining unaltered.

- The retention of the existing building envelope of the garage results in the absence of any adverse or unreasonable impacts upon amenity.

It is considered that the applicant has adequately addressed the matters specified in Clause 4.6(3)(b) as it has been demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

In regard to Clause 4.6(4)(a)(ii), discussion of the proposed developments consistency with the objectives of the development standard provide as follows:

*(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,*

The overall building height of the structure is compliant with the maximum permissible building height for secondary dwellings of 6 metres. The non-compliance is related specifically to the wall height, with the non-compliance being isolated to the extent of the gable end walls. As the structure, and in turn the now non-compliant wall height (compliant when originally approved), is existing and was approved by council, it is considered that the height of the development is in fact compatible with the character of the area and that there will be no impact on the amenity of the adjoining residents due to the non-compliance.

*(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,*

The prevailing suburban character is maintained as the structure is existing and will remain single storey.

*(c) to provide appropriate height transitions between development, particularly at zone boundaries,*

An appropriate height transition from the primary dwelling to the proposed secondary dwelling at the rear of the property will be maintained.

*(d) to define focal points by way of nominating greater building heights in certain locations.*

Not applicable.

In regard to Clause 4.6(4)(a)(ii), discussion of the proposed developments consistency with the objectives of the zone provide as follows:

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

The proposed development and the non-compliant wall height will not result in a development which is inconsistent with the housing needs of the community. The provision of affordable rental housing in the form of secondary dwellings will in fact increase the provision of housing to satisfy the needs of the community.

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

Not applicable.

*To allow for certain non-residential development that is compatible with residential uses and does not adversely affect the living environment or amenity of the area.*

Not applicable.

*To allow for the development of low density housing that has regard to local amenity.*

The proposed development is considered to be low density and as previously discussed, the change of use of the garage to a secondary dwelling is considered to be a form of development which has regard to the local amenity.

*To require landscape as a key characteristic in the low density residential environment*

The proposed development is considered to have sufficient landscaping which is consistent with other similar development in the low density zone.

For the reasons above, it is considered that Clause 4.6(4)(a)(ii) has been adequately addressed.

It is considered that the applicants written submission has adequately addressed the relevant provisions of Clause 4.6 and that both Council, acting as the consent authority, and the Local Planning Panel, acting as the determining authority, can be satisfied that the proposed variation to Clause 4.3(2B)(a) is acceptable and worthy of support in this instance.

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

There are no applicable draft environmental planning instruments.

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

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



STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
<b>Clause 3.1</b>	The subdivision of secondary dwellings is prohibited.	No subdivision proposed.  <b>Complies.</b>
<b>Clause 3.3</b>	Council must not consent to development for the purpose of secondary dwellings unless: (b) 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 (c) 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 complies with the provisions of this clause. The following calculations are provided:  Total Floor Area permissible = 290.15m <sup>2</sup> (580.3m <sup>2</sup> /2)  Gross Floor Area = 186m <sup>2</sup> (136m <sup>2</sup> + 50m <sup>2</sup> )  The total floor area of the secondary dwelling is 50m <sup>2</sup>  <b>Complies.</b>
<b>Clause 3.5</b>	The storey limit for detached secondary dwellings is single storey and the maximum wall height is three metres.	The secondary dwelling is single storey.  As mentioned previously, the wall height exceeds the maximum height of 3 metres  <b>See Justification below.</b>
<b>Clause 3.11</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 existing garage has a minimum setback to the southern boundary of 0.728m and to the western boundary of 0.18m.  <b>See Justification below.</b>
<b>Clause 3.13</b>	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.	A dwelling house is to provide a minimum 80m <sup>2</sup> of POS behind the front building line with a minimum width of 5 metres throughout.  The proposal maintains compliance with this clause with 107m <sup>2</sup> of POS provided through a combination of two areas.  <b>Complies.</b>

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
<b>Clause 3.14</b>	At least one living area must receive a minimum three 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 includes a north facing living area which will achieve in excess of the required three hours of solar access.  <b>Complies.</b>
<b>Clause 3.17</b>	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.	No windows have been proposed that overlook adjoining properties living area or bedroom windows. All windows have been designed and orientated so as they look into the subject property itself.  <b>Complies.</b>
<b>Clause 3.18</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.	No windows have been proposed that overlook adjoining properties private open space. All windows have been designed and orientated so as they look into the subject property itself.  <b>Complies.</b>

[illegible]

As demonstrated in the table above, an assessment of the development application has revealed that the proposal fails to comply with Clause 3.5 and 3.11 of Part B1 of BDCP 2015. Below are reasons as to why the proposed wall height and proposed setback to the side and rear boundary should be supported.

## Wall Height

Clause 3.5 of Part B1 of the BDCP 2015 requires the secondary dwelling to have a maximum wall height of 3m. The maximum wall height of the proposed secondary dwelling measures at 4.085m, causing a non-compliance of 1.085m above the maximum allowable wall height on the western elevation. The non-compliance arises due to the nature of the roof form / gable end wall found on the east and west elevations.

The justification to support the variation of Clause 3.5 of Part B1 of the Bankstown Development Control Plan 2015 is consistent with the justification above for Clause 4.3 of the Bankstown Local Environmental Plan. It is considered that there are sufficient environmental planning grounds to support the proposed variation to the wall height of the secondary dwelling and that the proposed variation would not contravene objectives of the R2 Low Density residential zone.

#### Side and rear setbacks

Clause 3.11 of Part B1 of BDCP 2015 requires the secondary dwelling provide a minimum side and rear boundary setback of 0.9 metres for the portion of the building with a wall height less than or equal to seven metres. Clause 3.10 provides as follows;

***3.11 For the portion of the building wall that has a wall height less than or equal to seven metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metres.***

The existing outbuilding that is to be converted into a secondary dwelling has an existing western boundary (side) setback which ranges from 0.186m to 0.203m and an existing southern boundary (rear) setback which ranges from 0.728m to 0.754m. No further encroachment toward the boundaries is proposed.

No loss of amenity will occur by way of retaining these setbacks given that there are no openings proposed along the western and southern elevations and that the visual bulk of this building is not proposed to be altered.

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

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

There are no planning agreements that apply to this application.

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

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

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

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

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

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

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

No submissions were received for or against the development.

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

With regard to the relevant planning considerations, it is considered that the proposed development would not contravene the public interest.

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

**RECOMMENDATION**

It is recommended that:

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

## 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:*

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.

- 5) 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.
- 6) 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.
- 7) 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.

- 8) 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.

- 9) 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.
- 10) 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) Repair of any damage to the public road including the footway occurring during development works.
  - b) 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 twenty one days prior to the information being required and must be approved prior to the issue of the Construction Certificate.

- 11) 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, evidence of lodgement of an application for a Works Permit and or a Roadway/Footpath Building Occupation



Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

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

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

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

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

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

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

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

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

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

- 12) Stormwater runoff from all areas proposed for development shall be collected and connected to the existing stormwater system within the site, subject to the existing system being evaluated by a qualified professional Civil Engineer and found to be structurally adequate and to have the required hydraulic capacity, as required in Council's Development Engineering Standards. The existing system shall be upgraded or replaced as necessary to comply with the requirements above.

The plan for the proposed drainage system together with the hydraulic evaluations shall be submitted to the PCA for approval with the application for the Construction Certificate.

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

- 13) 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 / subdivision work.
- 14) 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.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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.

- 19) 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.
- 20) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 21) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - a) in the case of work for which a principal certifying is required to be appointed:
    - i. the name and licence number of the principal contractor, and
    - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
  - b) in the case of work to be done by an owner-builder:
    - i. the name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- 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.

23) The undertaking of demolition works is 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.

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

- 24) 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.
- 25) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 26) 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.
- 27) 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.
- 28) The existing internal stormwater drainage system, and the stormwater drainage system draining the site shall be cleaned out, tested for leaks and repaired as necessary. A licensed plumber is to certify that the work has been carried out.
- 29) 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.
- 30) The carport is approved as an open structure only and shall not be enclosed by a wall, roller door or similar obstruction for the lifetime of the development.
- 31) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 32) 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.

- 33) 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.

### **CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION**

- 34) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 35) 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.
- 36) 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.
- 37) 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.
- 38) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.

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

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

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



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

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## Canterbury Bankstown Local Planning Panel - 5 August 2019

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<b>ITEM 3</b>	<b>73-75 Brancourt Avenue, Yagoona Demolition of existing structures, consolidation of existing allotments, and construction of a four storey residential flat building comprising 17 apartments and basement car parking</b>
<b>FILE</b>	<b>DA-723/2018 – Bankstown</b>
<b>ZONING</b>	<b>R4 – High Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>21 September 2018</b>
<b>APPLICANT</b>	<b>VJE Group Pty Ltd</b>
<b>OWNERS</b>	<b>VJE Group Pty Ltd, J. V. Essey and R. A. Essey</b>
<b>ESTIMATED VALUE</b>	<b>\$4.46 million</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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According to the Local Planning Panels Direction made by the Minister for Planning, the Canterbury-Bankstown Local Planning Panel is required to determine applications involving development to which *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* applies and is four or more storeys in height. The development proposed under DA-723/2018 meets this criteria and is therefore reported to the Canterbury-Bankstown Local Planning Panel for determination.

DA-723/2018 proposes to demolish two existing dwellings and ancillary improvements and construct a four storey residential flat building over a consolidated site. A total of 17 apartments are proposed, with basement parking for 24 cars.

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy No. 55 (Remediation of Land)*, *State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)*, *State Environmental Planning Policy (BASIX) 2004*, *Bankstown Local Environmental Plan 2015*, and *Bankstown Development Control Plan 2015*. The application seeks a departure from the minimum lot area standard in the BLEP, however despite the non-compliance represents an appropriate response to the context of the site.

The application was advertised and notified for 21 days. One submission was received, raising concerns relating to impacts during construction and potential damage to adjoining properties. The concerns raised can be addressed via conditions of consent, and do not warrant refusal or modification of the proposed development.

## **POLICY IMPACT**

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As discussed in the attached Assessment Report, the potential policy implications of the proposed lot area departure are limited to the adjoining properties 69 – 71 Brancourt Avenue and 77 – 79 Brancourt Avenue.

## **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 conditions included at Attachment 'B'.

## **ATTACHMENTS**

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- A. Assessment Report
- B. Conditions of Consent

## **DA-723/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site, known as 73 – 75 Brancourt Avenue, Yagoona, is zoned R4 – High Density Residential and has a consolidated area of 1,394m<sup>2</sup>. It comprises two existing allotments and contains detached, single and two-storey dwellings with ancillary improvements including an in-ground swimming pool.

Detached dwellings are located to the north and south of the site. These dwellings are an important element of the site context, which is discussed in detail later in this report. Public open space (Alice Reserve) adjoins the site to the east.

Residential flat buildings are characteristic of the broader locality, with the majority of properties in the surrounding area already developed for this purpose. Commercial uses, including a service station and various retail offerings, are located along the Hume Highway which is less than 100m to the north. Yagoona Public School is located approximately 150m to the west.

The context of the site is illustrated in the following aerial photo (the development site is highlighted in blue).



## **PROPOSED DEVELOPMENT**

DA-723/2018 proposes the following works:

- Demolition of existing dwellings and ancillary improvements.
- Construction of a four storey residential flat building containing 17 self-contained dwellings (two x three bedroom, 12 x two bedroom, three x one bedroom).
- Basement level parking for 24 cars.
- Civil works and site landscaping.

The proposed residential flat building is located at the centre of the site. Dwellings are generally arranged in two 'wings' (an eastern 'wing' and a western 'wing'), connected by a common circulation and access core. Communal open space is located toward the rear, eastern boundary.

A contemporary built form with a flat roof is proposed. The finishes schedule includes a mix of facebrick and painted render and is representative of the emerging character of similar developments recently completed in vicinity of the site.

Access to the proposed basement parking area is proposed via a driveway at the southern end of the Brancourt Avenue frontage. Pedestrian access is located away from this driveway, at the northern end of the site.

## **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***

Clause 7 of SEPP No. 55 requires the consent authority to consider whether the development site is contaminated and, if it is, whether it is suitable for the proposed development either in its contaminated state or following remediation works.

The site carries a residential zoning and is understood to have not ever been used for any potentially contaminating activities (commercial, industrial, agricultural uses or the like). Notwithstanding this, and to ensure that any unexpected issues encountered during construction are appropriately managed, it is recommended that a condition be included in any consent granted by the Panel that requires investigation and evaluation by a qualified environmental consultant should any unexpected contaminants be encountered during excavation or construction works. Subject to this requirement, the Panel can be satisfied that the requirements of clause 7 of the SEPP have been met.

### **State Environmental Planning Policy (BASIX) 2004**

SEPP (BASIX) encourages sustainable residential development, and sets water and energy targets, as well as minimum performance levels for thermal comfort. The application is accompanied by a BASIX Certificate that demonstrates a range of commitments that comply with the specified BASIX requirements.

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

SEPP 65 applies to residential flat buildings having four or more units and three or more storeys. The proposed development meets this criteria, and an assessment against the relevant provisions of the *Apartment Design Guide* (ADG) has been undertaken.

The proposal has adequate regard for the design quality principles under the SEPP, and responds appropriately to the site's context. Moreover, the proposed development generally complies with the key ADG design criteria as outlined in the table below.

DESIGN CRITERIA	PROPOSED	COMPLIANCE
<b>Communal open space</b> Minimum 25% of the site with a width of at least 3m and a minimum two hours sunlight to 50% of the principal usable space between 9am – 3pm on 21 June	20% of the site area, with at least two hours solar access to more than 50% of the communal open space	<b>No</b> – however the site is located adjacent to Alice Reserve which provides approximately 0.7Ha of open space and children's playgrounds
<b>Deep soil zones</b> Minimum 7% of the site	10% of the site is proposed as deep soil zones with a minimum 3m width	Yes
<b>Building separation</b> For buildings up to four storeys a minimum 6m separation is required from habitable rooms/balconies to site boundaries	6m separation from building walls to the side boundaries and 8m to the rear (balcony balustrades encroach to minor extent however they provide articulation so are acceptable)	Yes
<b>Building depth</b> Maximum apartment depth of 12m – 18m with greater depths demonstrating acceptable amenity	Building depths do not exceed 18m and achieve appropriate ventilation and solar access	Yes
<b>Ceiling height</b> Minimum 2.7m for habitable rooms	All floors are 2.75m	Yes
<b>Solar access</b> Living rooms and POS of at least 70% apartments must receive minimum two hours		Yes



<p>direct sunlight between 9am – 3pm on 21 June</p> <p>Maximum 15% of apartments receive no direct sunlight between 9am – 3pm on 21 June</p>	<p>100% of apartments achieve the required solar access (exclusion of the five apartments where the 11am sun angle is almost parallel with the window would still yield a compliant 70%)</p> <p>There are no apartments that would receive no direct sunlight</p>	Yes
<p><b>Cross ventilation</b></p> <p>At least 60% apartments to be naturally cross ventilated</p>	94% of apartments would receive compliant cross ventilation	Yes
<p><b>Apartment size</b></p> <p>1 bed – Minimum 50m<sup>2</sup> 2 bed – Minimum 70m<sup>2</sup> 3 bed – Minimum 90m<sup>2</sup> (Add 5m<sup>2</sup> per additional bathroom)</p>	<p>Minimum 53m<sup>2</sup> (no additional baths) Minimum 78m<sup>2</sup> Minimum 95m<sup>2</sup></p>	<p>Yes Yes Yes</p>
<p><b>Room layout</b></p> <p>Minimum 10m<sup>2</sup> for master bed and 9m<sup>2</sup> for other beds with minimum 3m dimension (exc. robes).</p> <p>Minimum 4m width for living rooms in two/three bedroom apartments.</p>	<p>Minimum 10m<sup>2</sup> master bed and 9m<sup>2</sup> other beds (not including study nooks or halls)</p> <p>Minimum 4m living area width</p>	<p>Yes</p> <p>Yes</p>
<p><b>Balcony size</b></p> <p>1 bed – 8m<sup>2</sup> (2m depth) 2 bed – 10m<sup>2</sup> (2m depth) 3 bed – 12m<sup>2</sup> (2.4m depth)</p>	<p>Minimum 19m<sup>2</sup> and 3.3m depth Minimum 10m<sup>2</sup> and 2m depth Minimum 14m<sup>2</sup> and 2m depth</p>	<p>Yes Yes Yes</p>
<p><b>Ground level POS</b></p> <p>Minimum 15m<sup>2</sup> with min. 3m depth.</p>	Minimum 19m <sup>2</sup> with min. 3m depth	Yes
<p><b>Circulation</b></p> <p>Maximum eight apartments from a circulation core.</p>	Maximum five apartments accessible from each lift and corridor.	Yes

### ***Bankstown Local Environmental Plan 2015***

The proposed development is satisfactory with regard to the relevant provisions of the *Bankstown Local Environmental Plan 2015*, including the following:

#### *Clause 1.2 Aims of Plan*

The proposed development is consistent with the relevant aims of the BLEP:

- (a) *to manage growth in a way that contributes to the sustainability of Bankstown, and recognises the needs and aspirations of the community,*



- (d) *to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (f) *to provide a range of housing opportunities to cater for changing demographics and population needs,*
- (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.*

#### Clause 2.3 Zone objectives and Land Use Table

The site is located in Zone R4 – High Density Residential, which permits, with consent, development for the purposes of '*residential flat buildings*'. The proposal is consistent with the relevant objectives of the R4 zone, being:

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

#### Clause 4.1B Minimum lot sizes and special provisions for certain dwellings

According to clause 4.1B(2)(b) of the BLEP, development for the purposes of a '*residential flat building*' in Zone R4 – High Density Residential requires a minimum lot area of 1,500m<sup>2</sup>. The consolidated development site has an area of 1,394m<sup>2</sup> and fails to comply with this standard.

The applicant has submitted a written request under the provisions of clause 4.6 of the BLEP in support of the proposed lot area departure. This is discussed below. The applicant's request adequately addresses the relevant matters under clause 4.6 and the proposed lot area departure is deemed to be worthy of the Panel's support.

#### Clause 4.3 Height of buildings

According to the BLEP Height of Buildings Map, the maximum permitted building height at the development site is 13 metres. The proposed development has a compliant maximum height of 12.83 metres, measured from existing ground level to the top of the flat roof at the north-western corner of the building.

#### Clause 4.4 Floor space ratio

According to the BLEP Floor Space Ratio Map, the maximum permitted floor space ratio at the development site is 1:1. The proposed development has a total '*gross floor area*' of 1,394m<sup>2</sup>. With a site area of 1,394m<sup>2</sup> this equates to a compliant floor space ratio of 1:1.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the BLEP allows consent to be granted for development despite the contravention of a development standard. However, consent may only be granted where a satisfactory written request has been provided by the applicant.

The applicant has submitted a request to vary the minimum 1,500m<sup>2</sup> lot area required under clause 4.1B(2)(b) of the BLEP. The request submits that compliance with the lot area standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify a contravention. The following specific points are made as part of the applicant's submission:

- *Not permitting the departure sought would sterilise the development potential of these sites as monetary offers made by the applicant (above market prices) to adjoining property owners (either side of the subject site) have not been accepted. Owners of the adjoining properties have advised that they did not wish to sell their properties under any circumstances.*
- *The long standing isolation of land Planning Principles were used to demonstrate that all efforts have been made to purchase adjoining land to achieve the 1,500m<sup>2</sup> lot size.*
- *The proposal demonstrates that all other planning controls governing residential flat buildings can still be complied with notwithstanding the minimum lot size is not achievable in these circumstances.*
- *There are seven lots on the eastern side of Brancourt Avenue, inclusive of the two lots that form the development site. However the southern-most lot is owned by Council, is zoned for open space and forms part of the public reserve at the rear. The remaining six lots are zoned R4 – High Density Residential and none are yet to be developed as residential flat buildings.*
- *A 'potential development plan' has been submitted and demonstrates that the 6 lots can be developed in pairs, with each pair yielding a total of 17 units. Each pair, like the proposed development, could fully comply with the design standards for residential flat buildings.*

The context of the development site is a key consideration when determining the appropriateness of the proposed lot area departure. The 'pairs' of sites noted in the applicant's 4.6 request are illustrated below, each comprising two of the six allotments on the eastern side of Brancourt Avenue. Land immediately east and south of the three 'pairs' is zoned RE1 – Public Recreation and is a public reserve under Council ownership. Land immediately north of the three pairs is zoned B2 – Local Centre.

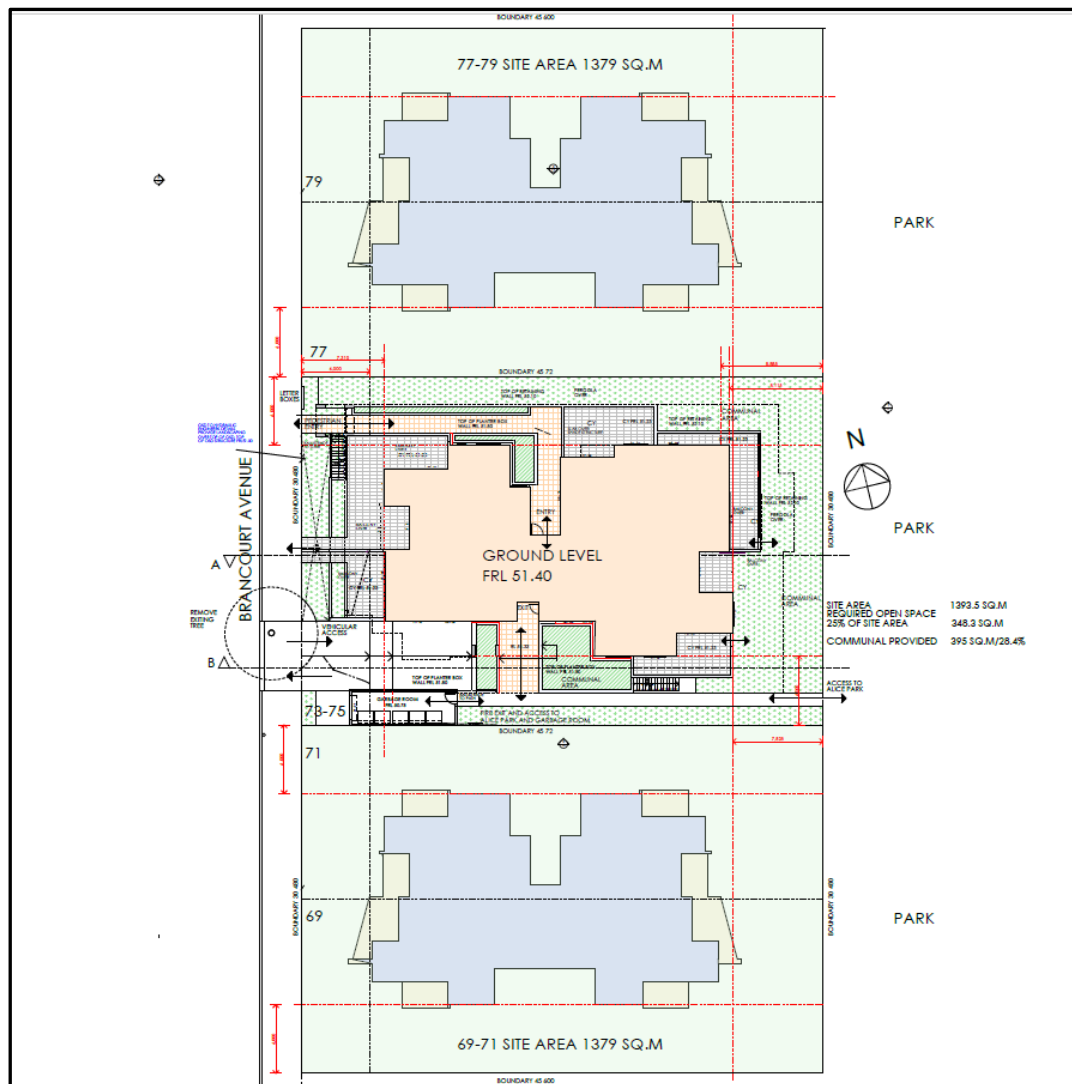


There are various scenarios under which these six lots could be developed; however, the applicant has demonstrated an inability to consolidate with the neighbouring properties immediately to the north and south of the development site. Hence, the only scenario that needs to be considered is the one involving the development of the sites as 'pairs', grouped as follows:

- 69 – 71 Brancourt Avenue (the two properties to the south – *yellow outline*)
- 73 – 75 Brancourt Avenue (the consolidated development site – *blue outline*)
- 77 – 79 Brancourt Avenue (the two properties to the north – *yellow outline*)

It must be noted that all three 'pairs' of sites have similar, non-compliant consolidated lot areas (1,379m<sup>2</sup> and 1,394m<sup>2</sup>). This essentially means that, under the current LEP, support for the proposed lot area departure at 73 – 75 Brancourt Avenue would in turn extend to each of the neighbouring parcels.

Given that all three 'pairs' of sites have similar attributes (i.e. lot area, lot width and orientation), it is reasonable to assume that they are each capable of accommodating similarly appropriate building envelopes. This is illustrated in a 'Potential Development Plan' that has been prepared by the applicant and is copied below.



Although the building envelopes shown on the neighbouring properties are identical to that proposed for the subject site, the proposed development exceeds the minimum front and rear setbacks. Hence there is opportunity for these indicative envelopes to be massaged to respond appropriately to individual site conditions, and to ensure that any potential impacts to neighbouring properties are minimised.

Despite the BLEP lot area departure, the development proposed at 73 – 75 Brancourt Avenue achieves compliance with the balance of applicable LEP and DCP controls, and in most cases exceeds the requirements of the SEPP 65 Apartment Design Guide. Acceptance of the proposed lot area departure in this case would therefore not have any adverse or unreasonable impact on the ability of the neighbouring sites to be developed as anticipated by the objectives of the R4 zone (reproduced earlier in this report) and the controls that apply to residential flat buildings.

Having regard to the objectives of the lot area standard, it is held that the proposed development and the associated departure from clause 4.1B(2)(b) of the BLEP is in the public interest and is recommended to the Panel for approval.

Clause 5.10 Heritage conservation

According to Part 1 in Schedule 5 of the BLEP, a shop ('former Brancourt's Garage and Motor Showroom') at 401 Hume Highway is listed as having local heritage significance. This item is located approximately 100m north-east of the development site.

Clause 5.10 of the BLEP states that the consent authority may require the preparation of a heritage management document to assess the extent to which the proposed development would affect the heritage significance of the item. In this case, the heritage item presents to the Hume Highway, is not within the direct visual catchment of the proposed development, and would not be substantively impacted by the proposed built form.

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

There are no draft EPI's applicable to the proposed development.

Development control plans [section 4.15(1)(a)(iii)]**Part B1 – Residential Development**

The following table provides a summary of the development application against the key numerical controls contained in *Part B1 – Residential Development* of the *Bankstown Development Control Plan 2015*.

CONTROL	BDCP 2015 PART B1	
	PROPOSED	COMPLIANCE
<b>Isolation of allotments</b> Must not have the effect of isolating land with an area of less than 1,200m <sup>2</sup> <b>and</b> a width of less than 20m at the front building line so as to preclude reasonable development	Neighbouring land to the north and to the south can achieve a consolidated width of more than 20m at the front building line	Yes – this control only requires that one of the criteria (i.e. lot area or lot width) be met
<b>Storey limit</b> Maximum four storeys (with no attic)	Four storeys	Yes
<b>Front setback</b> Minimum 6m	7.31m	Yes
<b>Side and rear setbacks</b> Minimum 4.5m with an average of 0.6m x wall height	6m setback to side boundaries (average 7.5m and 8.0m) and 7.8m to rear boundary (average 10.3m)	Yes
<b>Basement setback</b> Minimum 2m to the side and rear boundaries	2.5m – 3.5m to the side and rear boundaries	Yes
<b>Private open space</b>		Yes

CONTROL	BDCP 2015 PART B1	
	PROPOSED	COMPLIANCE
Must locate behind the front building line (except for balconies that provide articulation to the street façade)	All private open space areas are provided behind the front building line with the exception of the splayed outer edge of balconies on the southern side of the Brancourt Avenue facade	
<b>Roof pitch</b> Maximum 35 degrees	Five degrees	Yes

### **Part B5 – Parking**

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

CONTROL	BDCP 2015 PART B5	
	PROPOSED	COMPLIANCE
<b>Car parking spaces</b> 1 per 1-bed (3 spaces) 1.2 per 2-bed (14 spaces) 1.5 per 3-bed (3 spaces) One visitor per five apartments (three spaces) TOTAL – 23 spaces	Three spaces 14 spaces Four spaces Three spaces Total – 24 spaces	Yes Yes Yes Yes Yes
<b>Stacked parking</b> Allowed for a range of development types where residents reside in the same dwelling ('residential flat buildings' not listed)	Stacked parking is proposed for both three-bedroom apartments, and one of the two bedroom apartments	<b>No</b> – however the spaces for the three-bedroom apartments would be used by residents of the same dwelling, and the stacked space for the two-bedroom apartment is surplus to the minimum DCP parking requirements

### **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 development [section 4.15(1)(b)]**

As discussed in this report, the proposed development is acceptable with regard to its likely environmental, social and economic impacts on the locality.

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

The site is suitable for the development. Despite the deficient lot area, the proposal responds well to the context of the site and would not have any adverse or unreasonable impacts on neighbouring properties.

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

The application was advertised and notified for 21 days. One submission was received, raising the following concerns relating to impacts during construction:

- *There should be no damage to adjoining properties. An inspection report should be provided, detailing the current condition of buildings and at the conclusion of works see if any damage has been made.*
- *Details of the developer, their insurance, construction hours and date of demolition works should be provided to neighbouring owners.*
- *Neighbouring driveways should be kept clear of any vehicles or construction materials.*
- *All site fencing, rubbish and material stockpiles should be kept within the development site.*

**Comment**

The above requests are all reasonable given the extent of the proposed works. Should the Panel resolve to approve the application, it is recommended that each of the requests be included as conditions of consent. Specifically, the preparation of a dilapidation report for the adjoining dwellings and improvements to the north and to the south, the provision of contact details for the demolition contractor, and the requirement to contain all construction activities to the development site and not interfere unreasonably with any neighbouring properties. Recommended conditions of consent covering the above matters are included at Attachment 'B'.

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

Approval of this application would not contravene the public interest. '*Residential flat buildings*' are permitted with consent in Zone R4 – High Density Residential and the proposed development has adequate regard to the provisions of the *State Environmental Planning Policy No. 65 Apartment Design Guide*. The proposed departure from the *Bankstown Local Environmental Plan 2015* lot area standard is well-founded and matters raised in public submission can be addressed via conditions of consent.

**CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *State Environmental Planning Policy No. 55 (Remediation of Land)*, *State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)*, *State Environmental Planning Policy (BASIX) 2004*, *Bankstown Local Environmental Plan 2015*, and *Bankstown Development Control Plan 2015*.

All relevant matters for consideration have been satisfactorily addressed. The proposed development represents an appropriate built form that complements the medium – high density residential character of the surrounding locality.



### **DA-723/2018 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-723/2018 submitted by VJE Group Pty Ltd, accompanied by the drawings as listed in the table below 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.

Dwg.	Drawing Title	Rev.	Dated	Prepared by
4	Site Plan	C	8.5.19	Building Environments P/L
5	Basement	C	8.5.19	Building Environments P/L
6	Ground Level	C	8.5.19	Building Environments P/L
7	Level 1	C	8.5.19	Building Environments P/L
8	Level 2	C	8.5.19	Building Environments P/L
9	Level 3	C	8.5.19	Building Environments P/L
11	Roof	C	8.5.19	Building Environments P/L
16	West / South Elevation	C	8.5.19	Building Environments P/L
17	East / North Elevation	C	8.5.19	Building Environments P/L
18	Sections	C	8.5.19	Building Environments P/L

### **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:*

- 3) 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.
- 4) 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 generally in accordance with Drawing No. 002045/TM Issue D dated 28 June 2019 prepared by Urban Landscape Planners P/L, shall be 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.
- 5) 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.

- 6) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.
- 7) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with Council's Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 8) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

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

- 9) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 10) 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.
- 11) Pursuant to section 4.17 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 **\$44,550.39** 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.

- 12) 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.
- 13) 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 at the property boundary.
  - b) Drainage connection to Council's system.
  - c) Concrete footway paving along the sites entire frontage.
  - d) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
  - e) Repair of any damage to the public road including the footway occurring during development works.
  - f) 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.

- 14) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. C18105 – SW01, rev D dated 10/05/2019 prepared by CAM CONSULTING Structural & Civil Engineers. The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.
- 15) Where Council approved cut or fill exceeds 200mm and stable batter of one vertical to three horizontal maximum grade cannot be achieved, then a masonry

or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

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

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

- 16) 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.
- 17) Prior to the issue of any Construction Certificate for this development, the applicant must obtain approval from Council's Traffic Section for a Site, Pedestrian and Traffic Management Plan (SPTMP). This Plan must address the measures that will be implemented for pedestrian safety and traffic management as specified below.

**A PRIVATE CERTIFIER CANNOT APPROVE YOUR SITE, PEDESTRIAN & TRAFFIC MANAGEMENT PLAN**

This plan shall include details of the following:

- a) Proposed ingress and egress points for vehicles to and from the construction site;
- b) Proposed protection of pedestrians, adjacent to the constructions site;
- c) Proposed pedestrian management whilst vehicles are entering/exiting the construction site;
- d) Proposed method of loading and unloading excavation machines, building material, construction materials and waste containers during the construction period;
- e) Proposed traffic control measures such as advanced warning signs, barricades, warning lights, after hours contact numbers etc. are required to be displayed and shall be in accordance with Council's and the NSW Roads and Maritime Services requirements and AS1742.3.
- f) Proposed route for transportation of bulk and excavation materials to and from the development site.

The route for transportation to and from the development site of bulk and excavation materials shall generally be by the shortest possible route to the nearest "State Road" via "Regional Roads", with every effort to avoid school zones on public roads. Alternate longer routes will only be considered in order to bypass school zones during school zone hours. If school zones cannot be avoided **no heavy construction vehicle movements are to arrive or depart the site during signposted school zone periods 8:00am - 9:30am and 2:30pm - 4:00pm on school days.**

An Agreement to Council's satisfaction, signed by the applicant/owner specifying the approved route and acknowledging responsibility to pay Council to rectify damages to public property adjacent to the site as a consequence of building works shall be lodged with Council prior to release of any Construction Certificate. Damage will be rectified as required by Council to remove unsafe conditions. All damage must be rectified upon completion of work to the satisfaction of Council.

The approved Site, Pedestrian and Traffic Management Plan is to be implemented prior to the commencement of any works on the construction site.

In addition a RMS Approval / Road Occupancy Licence will be required for works on Regional or State Roads or within 100m of a traffic facility including roundabouts and traffic signals. Refer to Council's Development Engineering Standards for a list of Regional and State Roads.

- 18) Prior to the issue of any Construction Certificate for this development, the Principal Certifying Authority must approve a Site Operations Management Plan (SOMP). This Plan must address the measures that will be implemented for the ongoing management of operations on and around the construction site, the protection of adjoining properties, and other requirements as specified below.

This plan shall include details of the following:

- a) Proposed hoardings, scaffolding and/or fencing to secure the construction site;
- b) Proposed measures to be implemented, under the separately approved Works Permit issued by Council, for the protection of all public roads and footway areas surrounding the construction site from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like;
- c) Proposed method of support of any excavation, adjacent to adjoining buildings or the public road. The proposed method of support is to be certified by a Civil Engineer with National Professional Engineering Registration (NPER) in the construction of civil works.

- d) Proposed measures to be implemented in order to ensure that no soil/excavated material is transported on wheels or tracks of vehicles or plant and deposited on the public road.
- e) Proposed measures for protection of the environment, according to the relevant provisions of the Protection of Environment Operations (POEO) Act, 1997 including procedures to control environmental impacts of work e.g. sediment control, proper removal, disposal or recycling of waste materials, protection of vegetation and control/prevention of pollution i.e. water, air noise, land pollution.

A number of the above matters may require separate approval from Council, particularly those relating to works on or adjacent to Council property. These may be covered by separate conditions of consent contained in this Determination Notice. Appropriate approvals will need to be obtained prior to the approval of this plan.

The approved Site Operations Management Plan is to be implemented prior to the commencement of any works on the site, and an approved copy provided to Council for information. Ongoing compliance with the matters detailed in the SOMP shall be monitored by the appointed Principal Certifying Authority.

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

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road

- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

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

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

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

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

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

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

- 20) The pump out drainage system for the access ramp and basement car parking area shall be provided in accordance with Council's Development Engineering Standards. Engineering details and specifications shall be submitted to the Principal Certifying Authority (PCA) for approval prior to the issue of any Construction Certificate.
- 21) Engineering details and manufacturers specifications for the pumps, switching system and sump pit shall be submitted to the Principal Certifying Authority (PCA) for approval prior to issue of any Construction Certificate.
- 22) For internal driveways with a gradient exceeding 10% (1 in 10), longitudinal profiles of all vehicular driveways and ramps shall be submitted for approval by the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate. The maximum grade of the driveway/ramp shall not exceed **25%** and shall comply with AS 2890.1. The profile shall be drawn at a reduction ratio of 1 to 25 vertical and horizontal and shall be related to the datum used for the issue of the footway design levels and shall also show the road centre line levels, Council issued footway design levels and gutter levels. Council's Car Clearance Profile in Council's Development Engineering Standards, (Plan No. S 006) shall be used to design the profile.

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

- 23) The building / subdivision work in accordance with the development consent must not be commenced until:
  - a. a construction certificate for the building / subdivision 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 two days' notice to the council of the person's intention to commence the building / subdivision work.
- 24) 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.
- 25) 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.
- 26) 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.
- 27) Prior to the commencement of works, a dilapidation report shall be prepared by the developer and a copy provided to directly adjoining property owners to the north and south of the subject site. The report must clearly identify the condition of existing structures and improvements on adjoining properties prior to the commencement of works. All care shall be taken during the construction process to ensure adjoining structures and improvements are protected and should any change in condition occur from that recorded in the dilapidation report, the rectification of such shall be at full cost to the developer of the subject site.
- 28) 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.
- 29) 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.
- 30) 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.

- 31) 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.
- 32) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 33) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - a. in the case of work for which a principal certifying is required to be appointed:
    - i. the name and licence number of the principal contractor, and
    - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
  - b. in the case of work to be done by an owner-builder:
    - i. the name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- 34) 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.

- 35) Permission is granted for the demolition of dwellings and structures currently existing on the properties, subject to strict compliance with the following: -
- a) The developer is to notify adjoining residents seven 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 Bankstown City 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 Bankstown City 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.

**CONDITIONS TO BE SATISFIED DURING CONSTRUCTION**

- 36) 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.
- 37) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 38) Prior to each floor slab being poured, an identification report by a Registered Surveyor must be submitted to the principal certifying authority verifying that the finished floor level and siting to the property boundaries conforms to the approved plans.
- 39) 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.
- 40) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 41) 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.
- 42) 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.
- 43) 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.
- 44) If unexpected soil contaminants are encountered during excavation and/or construction works, all work is to cease and Council notified immediately. The contaminated land situation is to then be evaluated by a suitably qualified and

experienced environmental consultant and an appropriate response determined by the applicant which is agreed to by Council, prior to the re-commencement of works. Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the new contamination information. The applicant must also adhere to any conditions that may be imposed by the accredited site auditor, if required.

- 45) 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.
- 46) 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 the demolition and 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.
- 47) There shall be no access to the development site across, over or through the adjoining Council reserve (Alice Reserve).
- 48) For the entirety of the demolition and construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment or site fencing on any neighbouring properties. Neighbouring driveways are to be kept clear of any vehicles or construction equipment and materials.

## **CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION**

- 49) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 50) 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.
- 51) 24 off street car parking spaces are to be provided in accordance with the submitted plans. This shall comprise:

21 residential spaces

Three residential visitor spaces

Three of the above car parking spaces are 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.

- 52) 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.
- 53) Prior to the issue of any Occupation Certificate a design verification from a qualified designer shall be submitted to the Principal Certifying Authority. The design verification is a statement in which the qualified designer verifies that the development has been constructed as shown in the plans and specifications in respect of which the Construction Certificate was issued, having regard to the design quality principles set out in Schedule 1 of SEPP No. 65.
- 54) 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.
- 55) 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.
- 56) 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.
- 57) 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.
- 58) 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.

- 59) 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.

Note: The location of the "On-Site Stormwater Detention System" shall be shown on the plan of subdivision where subdivision is proposed. Where subdivision is not proposed the location of the "On-Site Stormwater Detention System" shall be included on an A4 size site plan attached to the Section 88E Instrument and registered on the title prior to the issue of the final occupation certificate.

The developer shall submit to Council evidence of the final registration of the Restriction and Positive Covenant on the title of the property.

- 60) 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.

Note: The location of the "On-Site Stormwater Detention System" shall be shown on the plan of subdivision where subdivision is proposed. Where subdivision is not proposed the location of the "On-Site Stormwater Detention System" shall be included on an A4 size site plan attached to the Section 88E Instrument and registered on the title prior to the issue of the final occupation certificate.

The developer shall submit to Council evidence of the final registration of the Restriction and Positive Covenant on the title of the property.

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