



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

13 September 2021 - 6.00pm

ORDER OF BUSINESS

ORDER OF BUSINESS

APOLOGIES AND DECLARATIONS

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

BANKSTOWN WARD

- 1 DA-1044/2020/1 - 10 Juno Parade, Bankstown**
Division 8.2 Review of Determination of Council's LPP's Refusal of DA-1044/2020 which sought approval for the demolition of existing structures and construction of a two-storey attached dual occupancy with Torrens title subdivision 3
- 2 DA-772/2020 - 32-34 Leonard Street, Bankstown**
Demolition of existing structures, construction of six storey residential flat building with 53 units and basement car parking. 21

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Canterbury Bankstown Local Planning Panel - 13 September 2021

ITEM 1	DA-1044/2020/1 - 10 Juno Parade, Bankstown
	Division 8.2 Review of Determination of Council's LPP's Refusal of DA-1044/2020 which sought approval for the demolition of existing structures and construction of a two-storey attached dual occupancy with Torrens title subdivision
FILE	DA-1044/2020/1 - Bankstown
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	19 May 2021
APPLICANT	Pinnacle Plus
OWNERS	Rabah Marabay
ESTIMATED VALUE	\$739,837.67
AUTHOR	Planning

REPORT

This matter is reported to the Canterbury Bankstown Local Planning Panel ('the Panel') in accordance with Division 8.2 Section 8.2(1)(a) of the Environmental Planning & Assessment Act, 1979 (EP&A Act 1979), permitting the applicant to review a determination of an application for development consent by a local planning panel, and Section 8.3(5) of the Act, requiring that a review of a determination made by a local planning panel be conducted by the panel.

Development Application No. DA-1044/2020 was refused by the Panel on 5 March 2021, having originally been reported to the Panel in accordance with the delegations to determine a development application of a dual occupancy with a contravention to a development standard in excess of 30%, being a variation to Bankstown Local Environmental Plan 2015 (BLEP 2015) Clause 4.4 'Floor space ratio' which constituted one of a number of non-compliances and departures from development standards and controls.

Review Application No. RE-1044/2020/1 proposes the demolition of existing structures and construction of a two-storey attached dual occupancy with Torrens title subdivision, with minor amendments made between the plans reviewed in the previous determination, though representing substantially the same development as was proposed and determined by Panel under DA-1044/2020.

Review Application No. RE-1044/2020/1 has been assessed against BLEP 2015 and Bankstown Development Control Plan 2015 (BDCP 2015) and the application fails to comply with regard to BLEP 2015 Clauses 1.2 regarding the compatibility of the proposal with the prevailing suburban character and amenity of the residential area and the provision of good urban design, 4.1A regarding the minimum lot width of a site for a dual occupancy development, 4.3 regarding wall height, 4.4 regarding the maximum permitted floor space ratio and 4.6 regarding exceptions to development standards, and BDCP 2015 Clauses 4.14 regarding private open space, 4.15 regarding solar access of the proposed dwellings, 4.17 regarding solar access of neighbouring dwellings, 4.30 regarding on-site car parking and 4.34 regarding landscaping.

The application was notified in accordance with the Canterbury Bankstown Community Participation Plan 2019 for a period of 14 days, ending on 15 June 2021. No responses were received by Council with regard to the subject proposal.

POLICY IMPACT

The application proposes a number of extensive variations to relevant instruments and policies, namely BLEP 2015 and the BDCP 2015. It is considered that support of these variations would undermine the ability of the relevant instruments and policies to appropriately guide development within the local government area in order to create suitable planning outcomes for the community. It is further considered that support of the proposed variations would have the effect of facilitating the unorderly and uneconomic development of land, listed as EP&A Act 1979 Object 1.3(c).

FINANCIAL IMPACT

There are no direct financial impacts as a result of the subject Development Application.

RECOMMENDATION

It is recommended that the Panel confirm its original decision to refuse the development application, with the reasons for refusal originally provided being modified to address the changes made to the plans following the original determination, as per the attached reasons of refusal in Attachment B

ATTACHMENTS

- A. Assessment Report
- B. Reasons for Refusal

RE-1044/2020/1 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 10 Juno Parade, Greenacre. The site is a regular shaped allotment that is zoned R2 Low Density Residential under BLEP 2015. The allotment contains an area of 512.1m² and has a width of 14.02 metres which is consistent through the length of the site.

The site currently contains a single storey dwelling house with a detached garage, vegetation located near the rear of the site as well as a street tree located on the nature reserve forward of the property boundary. The land is situated in a medium risk flooding zone (overland flow path), being located near Coxs Creek, a tributary of the Cooks River. The surrounding development predominately consists of single storey detached dwelling houses. There are very few interruptions to this streetscape other than a few two storey dwellings (one opposite the site, the other approximately 80 metres to the west of the site). The northern side of Juno Parade is part of the Strathfield Local Government Area. The site's context can be seen in the below aerial photograph.



PROPOSED DEVELOPMENT

Review Application No. RE-1044/2020/1 proposes the demolition of existing structures and construction of a two-storey attached dual occupancy with Torrens title subdivision, with minor amendments made between the plans reviewed in the previous determination, though representing substantially the same development as was proposed and determined by Panel under DA-1044/2020

DIVISION 8.2 REVIEWS

Pursuant to Section 8.2(1)(a) the application is seeking review of the decision made by the local planning panel on 5 March 2021.

Sections 8.3, 8.4 and 8.5 of the *Environmental Planning and Assessment Act 1979* read as follows;

8.3 Application for and conduct of review

- (1) ***An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.***

The applicant has requested Council to review its decision to refuse Development Application No DA-1044/2020.

- (2) ***A determination or decision cannot be reviewed under this Division—***

- (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
- (b) *after the Court has disposed of an appeal against the determination or decision.*

The review has occurred within the period prescribed by the Regs.

- (3) ***In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.***

While the applicant made amendments to the originally proposed development application, it is considered that the development remains substantially the same to that which was originally refused.

(4) *the review of a determination or decision made by a delegate of a council is to be conducted—*

- (a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
- (b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*

This application has been referred to Council's Local Planning Panel for decision as the original application was determined by the Local Planning Panel.

(5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*

Review Application No DA-1044/2020 was referred to Council's Local Planning Panel for determination. The subject review is referred back to the Panel for determination.

(6) ... (9)

Not applicable.

8.4 Outcome of review

After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.

The report prepared for the Panel's consideration recommends that the Panel confirm its original decision to refuse the application, notwithstanding proposed amendments.

8.5 Miscellaneous provisions relating to reviews

(1) *The regulations may make provision for or with respect to reviews under this Division, including—*

- (a) specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and*
- (b) setting the period within which reviews must be finalised, and*
- (c) declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.*

(2) *The functions of a consent authority in relation to a matter subject to review under this Division are the same as the functions in connection with the original application or determination.*

- (3) *If a decision to reject an application for development consent is changed on review, the application is taken to have been lodged on the date the decision is made on the review.*
- (4) *If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW planning portal.*
- (5) *Notice of a decision on a review to grant or vary development consent is to specify the date from which the consent (or the consent as varied) operates.*
- (6) *A decision after the conduct of a review is taken for all purposes to be the decision of the consent authority.*
- (7) *If on a review of a determination the consent authority grants development consent or varies the conditions of a development consent, the consent authority is entitled (with the consent of the applicant and without prejudice to costs) to have an appeal against the determination made by the applicant to the Court under this Part withdrawn at any time prior to the determination of that appeal.*

Development Application No DA-1044/2020 was refused on 5 March 2021. The report prepared for the Panel's consideration recommends that the Panel confirm its original decision to refuse the application. The report does not recommend that the determination is changed in response to this review.

In accordance with Section 8.5(2) the following assessment against S4.15 of the EP&A Act 1979 has been undertaken by Council.

STATUTORY CONSIDERATIONS

When determining this application, the relevant matters listed in Section 4.15(1) of the EP&A Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- Roads Act 1993
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 19—Bushland in Urban Areas
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Bankstown Local Environmental Plan 2015 (BLEP 2015)
- Draft Canterbury Bankstown Local Environmental Plan 2020
- Bankstown Development Control Plan 2015 (BDCP 2015)

Roads Act 1993

Section 138 of the *Roads Act 1993* requires that Transport for New South Wales (TfNSW) grant concurrence for proposed connections to a classified road. Juno Parade is listed as a State road on the 'Schedule of Classified Roads and Unclassified Regional Roads' and as such, concurrence is required for the proposed vehicle access point to replace the existing VFC.

In correspondence dated 19 July 2021, TfNSW provided concurrence subject to attached conditions of consent (Attachment G), with particular note to the requirement of vehicles entering and exiting the site in a forward direction.

ENVIRONMENTAL PLANNING INSTRUMENT [SECTION 4.15(1)(A)(I)]**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

In accordance with BASIX SEPP, a BASIX Certificate accompanied this application. The Certificate makes a number of energy/resource commitments relating to water, energy and thermal comfort. The relevant commitments indicated on the BASIX Certificate have been shown on the plans in order to satisfy objectives of the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 Clause 101 – 'Development with frontage to classified road' requires that any new development not compromise the effective and ongoing operation and function of a classified road, as well as requires the prevention of potential impact of traffic noise and vehicle emissions on such new developments. Additionally, Clause 102 – 'Impact of road noise or vibration on non-road development' requires that Council consider that residential accommodation will not be adversely impacted by noise and vibration from classified roads.

The consent authority can be satisfied through the concurrence provided by TfNSW that the proposed development type will not impact the functionality and ongoing operation of Juno Parade (Clause 101), subject to amendments being made by the applicant to ensure all vehicles (required for this development) are able to enter and exit the site in a forward direction.

The consent authority cannot be satisfied that the development will not be adversely impacted by road noise and vibrations as the application was not submitted with an acoustic report to demonstrate compliance with Clauses 102(3)(a & b).

State Environmental Planning Policy No 19—Bushland in Urban Areas

The proposal has been assessed against the relevant aims and objectives of State Environmental Planning Policy No 19—Bushland in Urban Areas (1986 EPI 14) which seeks to protect remaining native vegetation within urban areas. It is considered that the site does not contain remnant native vegetation and is consistent with the aims of the instrument.

State Environmental Planning Policy No 55—Remediation of Land

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

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

The development site has a history of residential uses and the review application seeks to retain the use of the site for residential purposes. Council records do not suggest the site has been used for any purpose that would lend to providing for contamination and a site inspection noted there to be no evidence of fill onsite or any indicators of potential contamination. It is considered the land is not contaminated.

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

The proposed development seeks approval for the removal of six (6) trees on site and one (1) tree on Council's nature reserve. Some of the trees on site are exempt in accordance with Part B11 of the BDCP 2015. Council's Tree Management Officers have reviewed the application and raised objection to the removal of one (1) of the trees at the rear, noting the following:

- **The 1x mature *Cinnamomum camphora* (camphor tree) was observed to be mature specimen presenting little structural defects, with good health evident. The proposed development would require removal of this tree as significant encroachments into the subject tree SRZ and TPZ would occur under the current design adversely impacting the subject trees root and crown vitality. This is not supported. The 1 x mature *Cinnamomum camphora* (camphor tree) is to be retained and protected.**

It is considered that the proposal fails to meet the requirements of Clauses 7 and 9 of the SEPP which require that a person must not clear vegetation in a non-rural area without consent by the council for any vegetation as declared under the relevant development control plan. The species of tree proposed to be removed is not exempt as its height exceeds 10 metres. Accordingly, the tree in question cannot be lawfully removed without the consent of Council, which recommends the retention of the tree.

Bankstown Local Environmental Plan 2015

An assessment of the review application revealed that the proposal fails to comply with five (5) provisions contained in the Bankstown Local Environmental Plan 2015 namely to Clause 1.2 Aims of Plan, Clause 4.1A Minimum lot sizes and special provisions for dual occupancies, Clause 4.3 Height of buildings, Clause 4.4 Floor space ratio, and Clause 4.6 Exceptions to development standards. Three of these provisions relate to development standards, which the consent authority is able to vary subject to BLEP 2015 Clause 4.6. These standards and the proposed variations are outlined in the table below and discussed in detail further.

Bankstown Local Environmental Plan 2015			
Clause	Requirement	Proposed	Compliance
Clause 4.1A Minimum lot sizes and special provisions for dual occupancies	500m ² area 15 metres width at the front building line	512.1m ² in area 14.02 metres in width	N
Clause 4.3 Height of buildings	9.0 metres height of building (max.)	A maximum building height and a maximum wall height of 8.13 metres	Y
	7.0 metres wall height (max.)		N
Clause 4.4 Floor space ratio	0.5:1 (max.)	0.62:1	N

4.1A – Minimum lot sizes and special provisions for dual occupancies

Clause 4.1A aims to ensure that lot sizes are sufficient to accommodate development that is consistent with the objectives and planning provisions for dual occupancies as well as to minimise any likely adverse impact of development on the amenity of the area. To do so, it establishes a minimum lot area and a minimum lot width for dual occupancy development sites. These are listed for attached dual occupancy developments within the R2 Low Density Residential zone (as proposed through this application) as a minimum lot area of 500m² and a minimum lot width at the front building line of 15.0 metres. The subject development site as previously noted satisfies the minimum lot area being 512.1m² in area but fails to comply with the minimum lot width of 15.0 metres, being 14.02 metres in width at the front building line, representing a 6.5% departure from the development standard.

The proposed departure from the standard has direct implications on the subject development and presents extended impacts on adjoining properties. As is evidenced by the number and nature of other non-compliances contained within this application the site is considered unsuitable for a dual occupancy development. The site's width prohibits the provision of adequate levels of amenity to future occupants of the site as the insufficient width of the development's footprint limits the potential for sufficient solar access to future residents as the northern elevation of the development that is best-suited for solar access is mostly utilised for car parking. Were the site to be a minimum of 15.0 metres in width at the front building line, there would be opportunities address the issue in part.

Further, the subdivision pattern of the immediate vicinity is regular, in that each allotment has a width of less than 15 metres, meaning that were this application to be approved with the requested variations it would be the only dual occupancy within the immediate vicinity unless future variations were granted to other properties on this side of Juno Parade, noting that across the roadway is Strathfield LGA where dual occupancies are prohibited within the relevant zone.

4.3 – Height of buildings

Clause 4.3 aims to ensure that the height of a development is compatible with the character, amenity and landform of the locality by limiting the maximum building height and wall height of a development. The development site is zoned R2 Low Density Residential and is limited to a maximum building height of 9.0 metres and a maximum wall height of 7.0 metres (Clause 4.3(2B)(b)). The proposed development complies with the maximum permitted building height, measuring at 8.13 metres in height above existing natural ground level. This height is also the maximum proposed wall height. A wall height of 8.13 metres is 1.13 metres in excess of the maximum permitted wall height and is a 16% departure from the standard. The extent of this departure is inconsistent within the character of the R2 Low Density Residential zone which can be understood by viewing existing development in the vicinity and through the development standards contained in BLEP 2015 and the relevant development controls as contained in BDCP 2015 in relation to wall height.

4.4 Floor space ratio

Clause 4.4 aims to establish a maximum bulk and density for a site to deliver a level of consistency in built form and the retain the low scale and density character of the local area as envisaged by the R2 Low Density residential Zone.

The subject development site is limited to a maximum permitted FSR of 0.5:1 as per the Floor Space Ratio Map of BLEP 2015. With a total site area of 512.1m², the development is restricted to a maximum GFA of 256.05m². The subject application seeks approval for a total GFA of 316.9m², representing a 24% departure from the development standard. This departure is split evenly between the two proposed dwellings, both of which provide for around 158m² of GFA. Approval of the subject application would result in the creation of two allotments with non-compliant FSRs.

The proposed variation is considered to result in a bulk and scale which not only exceeds the maximum permitted for the site but is representative of building almost one quarter larger than the permitted bulk and scale of adjoining developments in the locality. A variation to this extent will be inconsistent with the character of the R2 Low Density Residential zone as envisaged and reflected by the development standards contained in BLEP 2015 and the relevant development controls as contained in BDCP 2015. The proposed variation has direct impacts on adjoining properties by way of increased overshadowing as the building is longer than a compliant development would be.

Summary of Non-Compliances

The above departures from development standards all contribute to a proposal that is inconsistent with the expected outcome for the development site and one which would result in undue amenity impacts on the potential future occupants and the residents of adjoining properties. The development site in question is too narrow for the proposed development type, and further, the proposed development itself exceeds the site's capacity in terms of FSR as well as its wall height limitations.

On this basis, the proposal is considered inconsistent with BLEP 2015 Clause 1.2 with regard to the aims of the instrument, with particular reference to aims (d) and (i) which seek to provide development that is compatible with the character of the local area (whether existing or desired) as well as to provide for developments with good urban design in terms of site layouts and building forms.

4.6 Exceptions to development standards

The above departures to development standards are able to be considered pursuant to BLEP 2015 Clause 4.6. The applicant has submitted two Clause 4.6 variation requests for the departures from Clauses 4.1A and 4.4 requesting variations to the minimum lot width and the maximum permitted floor space ratio. Both requests however fail to address the relevant matters required to be satisfied under BLEP 2015 Clause 4.6, with particular regard to compliance with relevant controls being either unreasonable or unnecessary, as well as with regard to the presence of sufficient environmental planning grounds that would warrant the proposed variations.

The applicant has not submitted a Clause 4.6 variation request with regard to BLEP 2015 Clause 4.3 Height of buildings (wall height), and as such, the consent authority cannot consent to the variation requested.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENT [SECTION 4.15(1)(A)(II)]

Draft Canterbury Bankstown Local Environmental Plan 2020

The Draft Canterbury Bankstown Local Environmental Plan 2020 (CBLEP 2020) applies to the subject site. The Draft CBLEP 2020 has been publicly exhibited and adopted by the Canterbury Bankstown Local Planning Panel on 30 June 2020 and is now to be considered by the Department of Planning for finalisation. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft CBLEP 2020 provides for an administrative conversion of both the BLEP 2015 and CLEP 2012 into a combined document under the Standard Instrument LEP template.

With respect to the proposed development the proposal is considered to be inconsistent with a number of the standards, controls and aims of the draft instrument (being identical to the provisions contained in the current applicable local environmental plan).

DEVELOPMENT CONTROL PLAN [SECTION 4.15(1)(A)(III)]**Bankstown Development Control Plan 2015**

An assessment of the development application revealed that the proposal fails to comply with a number of the provisions contained in Part B1 of the Bankstown Development Control Plan 2015 namely Clauses 4.14 relating to private open space, 4.15 and 4.17 relating to solar access, 4.30 relating to car parking and 4.33 and 4.34 relating to tree preservation and landscaping. The proposal also fails to comply with Bankstown Development Control Plan 2015 Part B5 – Parking in relation to the objectives of Sections 1, 2 and 3 and Section 5 *Other Considerations*. The proposal also fails to comply with provisions of the Bankstown Development Engineering Standards.

The proposed development is permissible with consent but includes a number of variations that are not supported. These are addressed individually below:

Bankstown Development Control Plan 2015			
Clause	Requirement	Proposed	Compliance
Clause 4.14 Private Open Space	80m ² of area, 5 metre dimension within 300mm of NGL per dwelling	Dwelling 10: 59.1m ² Dwelling 10a: 58.1m ²	N
Clause 4.15 Access to sunlight	3 hours between 8am-4pm at mid-winter solstice	Dwelling 10: 3 hours Dwelling 10a: 2 hours	Y / N
Clause 4.17 Access to sunlight	50% of open space for 3 hours between 9am-4pm at equinox	No equinox shadow assessments have been provided	N
Clause 4.30 Building design (Car parking)	One (1) covered space and one (1) uncovered (stacked space)	One (1) covered space, no stacked space	N
Clause 4.33 Landscaping	Protect significant trees	One (1) significant tree to be removed	N
Clause 4.34 Landscaping	45% landscaped front setback with one tree	0% landscaped and no opportunity for a tree	N

4.14 - Private Open Space

The proposal fails to satisfy the requirement for private open space per the BDCP 2015, which requires a minimum 80m² of area per dwelling, with a minimum dimension of 5.0 metres throughout and which sits no higher than 300mm above existing natural ground level. As the proposal seeks use of alfresco areas elevated up to 800mm above existing NGL to form part of the private open space, the area provided fails to satisfy the requirements of BDCP 2015. The proposal provides for 59.1m² of compliant open space for Dwelling 10 and 58.1m² of compliant open space for Dwelling 10a, representing 26% and 27% departures from the minimum required area, respectively. It is considered the non-compliance is a direct result of the proposed overdevelopment of the site as the proposed structure leaves insufficient room for suitable open spaces.

4.15 - Solar Access

The proposal fails to provide sufficient solar access to Dwelling 10a (eastern unit) due to reliance on a side-elevation window that is only able to achieve a maximum of two (2) hours direct solar access at the mid-winter solstice, representing a 33% departure from the control of three (3) hours minimum.

The substandard design proposed is considered to provide for a poor development outcome as it fails to consider the surrounding properties which are yet to be redeveloped. Any future development on adjacent properties may further exacerbate the compromised solar access as shadowing of relevant windows would be unavoidable from any reasonable development.

It is considered that the solar access non-compliance is a direct result of the allotment's insufficient width, which prohibits suitable accommodation for an attached dual occupancy development on the site. The development standard of 15.0 metres in width at the front building line provides sufficient width to allow for an appropriately-sized living area to be positioned at the front of the dwellings of a standard dual occupancy development. These living areas can be of adequate size while being next to the required garages as there is sufficient frontage to accommodate for setbacks and wall thicknesses. Sites with a compliant width are able to provide a suitably-sized living area with north-facing windows for compliant solar access.

The narrowness of the subject site results in a poor planning outcome in that there is no opportunity for a front-facing living area to be provided for the dwellings, restricting their only solar access opportunities to east and west elevations. The subject application instead provides for an oversized front entry and coat storage area, which is the only area of the ground floor that will benefit from adequate solar access.

4.17 - Solar Access

The proposal was submitted with insufficient information in order to determine compliance with minimum solar access to the provided private open spaces at the March and September equinoxes.

4.30 - Car Parking

The proposal fails to provide sufficient and appropriate car parking for either dwelling. As required by TfNSW, any car parking on site is to be situated so as to allow for the driver to enter / exit in a forward direction. The setback and front manoeuvring area of the development is considered insufficient to provide for reasonable turning paths, without crossing property boundaries or impacting pedestrian safety on the footway forward of the property boundary along Juno Parade.

While the development provides for one covered car parking space per dwelling, no provision is made for a second space (as required by Part B5 of BDCP 2015) as the area reserved on plans for this stacked space both obstructs the space within the garage from forward entry/exit as well as fails to be provided with any opportunity to enter/exit in a forward direction itself.

4.33 – Trees

The proposal seeks authorisation of the removal of a number of trees on site. Some of the trees are exempt and would be supported for removal and replacement, however, one (1) of the trees at the rear of the site provides for a high retention value and is not suitable for removal. Therefore, the removal of all trees on site is not supported.

4.34 - Landscaping - Trees, Shrubs, Ground Cover, Grass Planting

The proposal seeks authorisation for an entirely paved front setback (0% landscaped), representing a 100% variation from the control requiring a suitably landscaped front setback (45% landscaped). Additionally, as the front setback is required for vehicle manoeuvring, there is no opportunity for a tree to be planted within the front setback.

Part B5 – Parking

The development fails to provide the required four (4) suitable car parking spaces to satisfy TfNSW requirements and BDCP 2015 provisions pertaining to the minimum parking required for the proposed development. The non-compliance is considered to be a direct result of the proposed variations to minimum lot width and FSR. The elimination of these two variations would result in a site that has sufficient width and setback to allow for vehicles entering and exiting the site to do so in a forward direction, as can be seen on a number of dual occupancy development sites that front classified roads throughout the local government area.

Bankstown Development Engineering Standards

The proposed development was referred to Council's Development Engineers for comment, who raised the following matters:

- No on-site detention has been provided in accordance with Clause 10.1.2 of the Bankstown Development Engineering Standards.
- The proposed stormwater pit levels and the existing ground level along the side setbacks does not allow for the minimum pipe cover along the connecting pipes per table 7.1 of Australian Standard AS2500.3

The proposed outlet/discharge pipe in Council's nature strip will not be supported as it is inconsistent with the Bankstown Development Engineering Standards.

NOTE: The above details the various non-compliances with the Bankstown Development Control Plan 2015. The non-compliances are largely caused due to the width of the allotment, being almost 1m less than the minimum required for a dual occupancy development and the proposed FSR of the development. Further, the extent of the non-compliances highlight that the proposed development is inconsistent with the prevailing and expected future character of the locality and would result in a poor amenity outcome for the adjoining residents and the future occupants of the development.

PLANNING AGREEMENTS [SECTION 4.15(1)(A)(IIIA)]

The applicant has not proposed to enter into a planning agreement.

THE REGULATIONS [SECTION 4.15(1)(A)(IV)]

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

THE LIKELY IMPACTS OF THE DEVELOPMENT [SECTION 4.15(1)(B)]

As a direct result of the number of proposed variations to the relevant development standards, development controls and engineering standards, it is considered that the proposal, if approved would result in a highly undesirable precedent and undermine a number of long held development standards that have seen thousands of dual occupancies across the city be approved to a satisfactory standard from a design, internal living amenity and locality impact perspective.

Future occupants of the site will be provided with insufficient parking and manoeuvring areas to access a busy roadway raising safety concerns, insufficient solar access and insufficient private open space which all amount to substantial impacts on the quality of the development and the quality of life afforded to future occupants.

Residents of immediately adjoining properties will be excessively shadowed by a development that is larger than would ordinarily be envisaged for the property due to the excessive GFA proposed. Additionally, water runoff is likely to be increased as a result of the overdevelopment of the site, and the insufficient areas of landscaping and tree plantings.

Impacts on the greater community and local government area as a whole would result from the perceived acceptance of overdevelopment of properties. Without sufficient environmental planning grounds to warrant the variations to Clauses 4.1A and 4.4 of the BLEP 2015, the site is considered unsuitable for the proposed development, and no GFA beyond the maximum permitted for this site is considered suitable. Overdevelopment of sites across the local government area will see further impacts from shadowing, visual bulk and scale, stormwater runoff, parking demand, community facility over-utilisation and increased pressure on public infrastructure.

SUITABILITY OF THE SITE [SECTION 4.15(1)(C)]

The site is not considered acceptable for the proposed development, with the majority of the non-compliances being a direct result of the site not being suitable to accommodate a dual occupancy development, or a development of this size.

SUBMISSIONS [SECTION 4.15(1)(D)]

In accordance with the Canterbury Bankstown Community Participation Plan 2019, the review application was neighbour-notified for a period of fourteen (14) days ending on 15 June 2021. No submissions have been received by Council with regard to this application.

THE PUBLIC INTEREST [SECTION 4.15(1)(E)]

With regard to the relevant planning considerations, it is concluded that the proposed development would contravene the public interest. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and development controls, by the consent authority, in order to ensure that any adverse impacts associated with the development are suitably addressed. Approval of this development would undermine the integrity of the controls contained in this report in addition to providing for a poor development outcome.

CONCLUSION

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

The proposed development is not considered to be satisfactory in accordance with the applicable environmental planning instruments and development controls.

It is recommended that Panel confirm its original decision to refuse the proposed development.

RECOMMENDATION

It is recommended that Panel confirm its original decision to refuse the proposed development.

REASONS FOR REFUSAL

1. The proposed development fails to comply with Clause 101(2)(b) of State Environmental Planning Policy (Infrastructure) 2007 in relation to the effect of development on a classified road. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
2. The proposed development is inconsistent with the aims of the Bankstown Local Environmental Plan 2015. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
3. The proposed development is inconsistent with the objectives of the R2 Low density residential zone of the Bankstown Local Environmental Plan 2015. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
4. The proposed development fails to comply with Clause 4.1A of the Bankstown Local Environmental Plan 2015 which relates to minimum lot sizes and special provisions for dual occupancies. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
5. The proposed development fails to comply with Clause 4.3 of the Bankstown Local Environmental Plan 2015 in relation to maximum wall height of a dual occupancy. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
6. The proposed development fails to comply with Clause 4.4 of the Bankstown Local Environmental Plan 2015 which relates to floor space ratio. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
7. The proposed development fails to comply with Clause 4.6 of the Bankstown Local Environmental Plan 2015 which related to exceptions to development standards. [Pursuant to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979*];
8. The proposed development is inconsistent with the Draft Canterbury Bankstown Local Environmental Plan. [Pursuant to *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979*];
9. The proposed development fails to comply with Clause 4.14 of the Bankstown Development Control Plan 2015 – Part B1 which relates to Private open space. [Pursuant to *Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979*];

10. The proposed development fails to comply with Clause 4.15 of the Bankstown Development Control Plan 2015 – Part B1 which relates to solar access to the dual occupancy. [Pursuant to *Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979*];
11. The proposed development fails to comply with Clause 4.33 of the Bankstown Development Control Plan 2015 – Part B1 which relates to the retainment of significant trees. [Pursuant to *Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979*];
12. The proposed development fails to comply with Clause 4.34 of the Bankstown Development Control Plan 2015 – Part B1 which relates to landscaping. [Pursuant to *Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979*];
13. The proposal fails to demonstrate compliance with Councils Development Engineering Standards [Pursuant to *Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979*];
14. The proposed development represents an unacceptable level of impact of the locality. [Pursuant to *Section 4.15(1)(b) Environmental Planning and Assessment Act, 1979*];
15. The site is considered unsuitable for the proposed development [Pursuant to *Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979*];
16. The development is not considered to be in the public interest [Pursuant to *Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979*].

-END-

Canterbury Bankstown Local Planning Panel - 13 September 2021

ITEM 2	DA-772/2020 - 32-34 Leonard Street, Bankstown
	Demolition of existing structures, construction of six storey residential flat building with 53 units and basement car parking.
FILE	DA-772/2020 – Bankstown
ZONING	R4 High Density Residential
DATE OF LODGEMENT	4 September 2020
APPLICANT	Green Square Design
OWNERS	MR Shu Yu Yun
ESTIMATED VALUE	\$15,891,405
AUTHOR	Aidan Harrington

REPORT

In accordance with the Local Planning Panels Direction made by the Minister for Planning and Public Spaces, the Canterbury-Bankstown Local Planning Panel is required to determine applications involving development in which State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development applies where the development is four or more storeys in height. The development proposed under DA-772/2020 meets this criteria and is therefore reported to the Canterbury-Bankstown Local Planning Panel for determination.

Development Application No. DA-772/2020 proposes demolition of existing structures, construction of a 6 storey residential flat building with 53 units and basement car parking.

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*, which requires, amongst other things, an assessment against the provisions contained within *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 (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, *Greater Metropolitan Regional*

Environmental Plan No 2 – Georges River Catchment, Bankstown Local Environmental Plan 2015, Draft Consolidated Canterbury Bankstown Local Environmental Plan and Bankstown Development Control Plan 2015.

The proposal is generally compliant with the relevant provisions of the above policies, except for the proposed variations to solar access for communal open space, location of private open space and location of substations.

The application was advertised for a period of twenty one (21) days on two separate occasions, initially between 30 September 2020 and 20 October 2020 and again between 4 August 2021 and 24 August 2021. No submissions have been received for the subject development application.

POLICY IMPACT

The proposed development will not have any direct policy impacts.

FINANCIAL IMPACT

The proposed development will not have any direct financial impacts.

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-772/2020 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is made up of three allotments, known as 32, 32A & 34 Leonard Street, Bankstown. The site is a regular shaped allotment that is zoned R4 High Density Residential, has a maximum permissible building height of 19m and a maximum permissible floor space ratio of 1.75:1 under the Bankstown Local Environmental Plan 2015.

The site is located on the eastern side of Leonard Street, approximately 110 metres north of the street's intersection with Macauley Avenue. The site has a gradual or steady fall from its northern boundary to its southern boundary and a gentle fall from the street to the rear of the site. The site currently contains 3 single storey dwelling houses, a number of trees and detached outbuildings.

The surrounding development consists of a variety of residential accommodation ranging from dwelling houses to residential flat buildings and is considered to be an area in transition from low density to high density. The allotments directly adjoining the site to the north (22-30 Leonard Street) have an approval for a 6 storey residential flat building, which was determined in November 2018. The sites immediately to the south, being 36 and 38 Leonard Street, are occupied by a single storey dwelling and a two storey dwelling respectively.



Figure 1: Aerial of subject site in blue. **Source:** NearMaps 2021

PROPOSED DEVELOPMENT

The development application proposes the demolition of existing structures, construction of a 6 storey residential flat building with 53 units (comprising 2 x 1 bedroom units and 51 x 2 bedroom units) and basement car parking.

The specifics of the development are as follows:

Floor	Description
Basement Level 2	36 resident car spaces, 2 motorcycle spaces, storage cages, services, cleaners WC, lifts and stairs.
Basement Level 1	14 resident car spaces, 11 visitor car spaces, 4 motorcycle spaces, storage cages, mechanical room, garbage room, hydrant pump, services, lifts and stairs.
Ground Floor	7 apartments, communal open space, temporary bin holding area and bicycle spaces.
Level 01	10 apartments
Level 02	10 apartments
Level 03	10 apartments
Level 04	8 apartments
Level 05	8 apartments

Statutory Considerations

When determining this application, the relevant matters listed in section 4.15(1) of the *Environmental Planning and Assessment Act 1979* must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- *State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)*
- *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*
- *Bankstown Local Environmental Plan 2015 (BLEP 2015)*
- *Draft Consolidated Canterbury Bankstown Local Environmental Plan*
- *Bankstown Development Control Plan 2015 (BDGP 2015)*

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*.

Environmental planning instruments [section 4.15(1)(a)(i)]**State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**

Clause 7 of *SEPP 55 – Remediation of Land* requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, the consent authority must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

A desktop study reveals that the site was subdivided in 1912, with aerial imagery from 1943 confirming that the site was being used for residential purposes. There is no history of the site being used for a purpose other than residential, or that any land use activities occurred on the site which suggests that the site may be contaminated. The applicant has submitted a Geotechnical Investigation, which contains recommendations in regards to future excavation, building foundations and contamination management. Council's Environmental Health Officer has reviewed the document submitted and is satisfied subject to the imposition of suitable conditions of consent. Accordingly, the site is suitable for the purpose of the proposed development in accordance with *SEPP 55 – Remediation of Land*.

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

In accordance with *SEPP – BASIX*, a BASIX Certificate accompanied this application. The Certificate makes a number of energy/resource commitments relating to water, energy and thermal comfort. The relevant commitments indicated on the BASIX Certificate have been shown on the plans in order to satisfy objectives of the SEPP. The BASIX Certificate requirements have been incorporated into conditions of consent.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (GMREP No.2)

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 123 of Schedule 1 of the *EP&A (Savings, Transitional and Other Provisions) Regulations 2017*. The GMREP No.2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP No.2.

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

The proposed development seeks approval for the removal of 3 trees. Council's Tree Protection Officer has reviewed the application and raised no objection to the removal of the 3 trees, subject to conditions. It is considered that the proposed development is consistent with the relevant provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65)

This policy applies to residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component. The development must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least 3 or more storeys and contain at least 4 or more dwellings. Residential apartment development does not include boarding houses or serviced apartments. The proposed development fits within the above criteria, and as such SEPP 65 applies to the development.

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing 'good design'. Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000* requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses the design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the ADG have been achieved. The design verification statement satisfactorily addressed the nine (9) design quality principles.

The development has been considered against the various provisions of the Apartment Design Guide in accordance with Clause 28(2)(c) of SEPP 65.

Part 3 – Siting of the Development			
Objective	Design Guidance	Proposal	Complies (Y/N)
<u>3B-1 Orientation - Streetscape</u> Building types and layouts respond to the streetscape and site while optimising solar access within the development	Buildings along the street frontage define the street, by facing it and incorporating direct access from the street	The residential flat building addresses Leonard Street. The building design optimises pedestrian and vehicular access from the street.	Y
<u>3B-2 Orientation – Overshadowing</u> Overshadowing of neighbouring properties is minimised during mid-winter	Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access	Sufficient solar access is achieved as required by sections 3D and 4A of the ADG with the exception of sufficient solar access being achieved to the proposed communal open space	N Refer to discussion below

	<p>Solar access to living rooms, balconies and private open spaces of neighbours should be considered</p>	<p>No. 36 Leonard Street (adjoining site to the south) While solar access to the rear windows of the dwelling house is not achieved, solar access is provided to those windows along the front elevation between 12-3 and the windows along the northern elevation between 2-3. Given this is an area in transition, it is considered that this outcome is acceptable.</p> <p>Future Development of No. 36-38 Leonard Street (adjoining sites to the south) It is considered that future development of the adjoining allotments to the south of the development will be capable of achieving compliance with the required solar access controls.</p> <p>No. 33-37 Percy Street (adjoining development to the east) The units of the adjoining development overshadowed by the proposal will still maintain 2 hours of solar access. As such, the existing solar access arrangement for 33-37 Percy Street remains compliant.</p> <p>Future Development of No. 39-41 Percy Street (adjoining sites to the south east) There will be limited overshadowing to lower</p>	Y
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		level apartments between 2pm and 3pm.	
	Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%	The 'adjoining property' to the south currently does receive the required hours of solar access	NA
	Overshadowing should be minimised to the south or downhill by increased upper level setbacks	The upper levels of the development are setback 9m from the property boundary to the south.	Y
	It is optimal to orientate buildings at 90 degrees to the boundary with neighbouring properties to minimise overshadowing and privacy impacts, particularly where minimum setbacks are used and where buildings are higher than the adjoining development	Such an orientation of the built form was adopted with this proposal.	Y
	A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings	There are no 'solar collectors' on the adjoining dwellings that are overshadowed by the development.	Y
<u>3C-1 Transitions</u> Transition between private and public domain is achieved without compromising safety and security	Terraces, balconies and courtyard apartments should have direct street entry, where appropriate	Direct access from the public domain to the ground floor apartments, which front the street, is proposed through gates to the units POS.	Y
	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings	The levels of the POS to the street are considered to allow for sufficient passive surveillance.	Y
	Upper level balconies and windows should overlook the public domain	Upper level balconies and living room windows directly overlook the public domain.	Y
	Front fences and walls along street frontages should use visually permeable materials and treatments. The height of solid fences or walls should be limited to 1m	No front fences are proposed.	NA
<u>3-D-1 Communal Open Space</u> An adequate area of communal open space is provided to enhance residential amenity and to	Design Criteria Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2	881sqm or 37% of the site area is provided as communal open space Direct solar access is not achieved to 50% of the communal open space for a min. of 2 hours between 9am and 3pm.	N Refer to discussion below

provide opportunities for landscaping	hours between 9 am and 3 pm on 21 June (mid winter)														
	Communal open space should be consolidated into a well designed, easily identified and usable area	The communal open space is provided in a consolidated, easily accessible area of the site.	Y												
	Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions	Minimum dimension of 3m for the communal open space has been achieved.	Y												
	Communal open space should be co-located with deep soil areas	Communal open space has been co-located with the deep soil zones.	Y												
	Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies	It is considered that there is equitable access to the communal open space.	Y												
<u>3E-1 Deep Soil Zones</u> Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	<u>Design Criteria</u> Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site Area</th><th>Minimum Dimensions</th><th>Deep Soil Zone</th></tr><tr><td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² – 1500m²</td><td>3m</td></tr><tr><td>Greater than 1500m²</td><td>6m</td></tr><tr><td>Greater than 1500m² with significant existing tree cover</td><td>6m</td></tr></table>	Site Area	Minimum Dimensions	Deep Soil Zone	Less than 650m ²	-	7%	650m ² – 1500m ²	3m	Greater than 1500m ²	6m	Greater than 1500m ² with significant existing tree cover	6m	443sqm or 18% of the site area is provided as deep soil. A minimum dimension of 6 metres is provided throughout the deep soil zone	Y
Site Area	Minimum Dimensions	Deep Soil Zone													
Less than 650m ²	-	7%													
650m ² – 1500m ²	3m														
Greater than 1500m ²	6m														
Greater than 1500m ² with significant existing tree cover	6m														
<u>3F-1 Building Separation</u> Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	<u>Design Criteria</u> Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building Height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr></table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Side and rear setbacks for the ground, first, second and third floors (the first 4 storeys) are equal to or exceed 6 metres while side and rear setbacks for the next 2 floors are equal to or exceed 9 metres.	Y						
Building Height	Habitable rooms and balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													

	Up to 25m (5-8 storeys)	9m	4.5m		
	Over 25m (9+ storeys)	12m	6m		
<u>3F-2 Visual Privacy</u> Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space	Communal open space, common areas and access paths should be separated from private open space and windows to apartments, particularly habitable room windows.			Suitable measures have been incorporated into the design such that at the interface of private and communal areas, adequate privacy and amenity is preserved and retained.	Y
3G-1 Building entries Building entries and pedestrian access connects to and addresses the public domain	Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge			Multiple entries are proposed off Leonard Street contributing to an activation of the street edge.	Y
	Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries			Communal entry is identifiable and is not easily confused with private entries.	Y
3G-2 Entry accessibility Access, entries and pathways are accessible and easy to identify	Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces			Lift lobby is clearly identifiable from the communal open space, as is the main entrance to the building.	Y
3H-1 Vehicle Access Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Car park access should be integrated with the building's overall facade. Design solutions may include: <ul style="list-style-type: none">the materials and colour palette to minimise visibility from the streetsecurity doors or gates at entries that minimise voids in the facadewhere doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed			Vehicular access is proposed at the lowest point of the sites frontage. Access to and egress from the basement car park will maintain sufficient sight lines for motorists. Vehicular access to the basement does not dominate the presentation of the development rather it suitably integrates with the building design.	Y

3J-1 Proximity to public transport Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	Design Criteria For development in the following locations: <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less The car parking needs for a development must be provided off street	The site is within 800m of Bankstown Train Station hence the Guide to Traffic Generating Developments can be relied on. 45.9 spaces required for 2 bed units. 1.2 spaces required for 1 bed units. 10.6 space required for visitors. Total of 58 car spaces required – 61 provided.	Y
Part 4 – Designing the building			
4A-1 Solar access	Design Criteria 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter 2. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter	Total Units = 53 70% = 37 (38 units provided with a minimum of 2 hours direct sunlight) 15% = 8 (7 units receive no direct sunlight)	Y
4A-2 Daylight access Daylight access is maximised where sunlight is limited	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms	Highlight windows and the like are only relied on as a secondary source of light and are not the primary sources of light.	Y
4B-3 Cross Ventilation The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	Design Criteria At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	62% or 33 apartments are suitably cross ventilated	Y

4C-1 Ceiling heights	Ceiling height achieves sufficient natural ventilation and daylight access	Design Criteria Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable rooms</td><td>2.4m</td></tr><tr><td>2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>Mixed use areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable rooms	2.4m	2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	Mixed use areas	3.3m for ground and first floor to promote future flexibility of use	Minimum 2.7m floor to ceiling height achieved on all levels.	Y
Minimum ceiling height																
Habitable rooms	2.7m															
Non-habitable rooms	2.4m															
2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area															
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope															
Mixed use areas	3.3m for ground and first floor to promote future flexibility of use															
4D-1 Apartment layout	The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	Design criteria Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment Type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each	Apartment Type	Minimum internal area	Studio	35m ²	1 Bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²	All apartments achieve the minimum internal areas.	Y		
Apartment Type	Minimum internal area															
Studio	35m ²															
1 Bedroom	50m ²															
2 Bedroom	70m ²															
3 Bedroom	90m ²															
4D-2 Environmental performance	Environmental performance of the apartment is maximised	Design Criteria In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	All habitable rooms are limited to a maximum depth of 8m from a window	Y												
4D-3 Apartment layout		Design Criteria Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Units 17, 27, 37, 38, 46 fails master bedroom size	N Refer to discussion below												

Apartment layouts are designed to accommodate a variety of household activities and needs	<p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments	<p>Bedrooms achieve the minimum dimensions.</p> <p>Complies with living room dimensions.</p>																
<p>4E-1 POS</p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p>	<p>Design criteria</p> <p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio Apartment</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartment</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartment</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartment</td><td>12m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p>	Dwelling type	Minimum area	Minimum depth	Studio Apartment	4m ²	-	1 bedroom apartment	8m ²	2m	2 bedroom apartment	10m ²	2m	3+ bedroom apartment	12m ²	2.4m	<p>All apartments comply with the minimum POS areas and dimensions.</p>	Y
Dwelling type	Minimum area	Minimum depth																
Studio Apartment	4m ²	-																
1 bedroom apartment	8m ²	2m																
2 bedroom apartment	10m ²	2m																
3+ bedroom apartment	12m ²	2.4m																
<p>4E-2 Location of POS</p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents</p>	<p>Primary open space and balconies should be located adjacent to the living room, dining room or kitchen to extend the living space</p> <p>Primary open space and balconies should be orientated with the longer side facing outwards or be open to the sky to optimise daylight access into adjacent rooms</p>	<p>POS is an extension of internal living areas.</p> <p>This has been achieved with this development.</p>	<p>Y</p> <p>Y</p>															
<p>4F-1 Common circulation space</p> <p>Common circulation spaces achieve good amenity and properly service</p>	<p>Design criteria</p> <p>The maximum number of apartments off a circulation core on a single level is eight</p>	<p>A maximum of 5 apartments are proposed off a single circulation core.</p>	Y															

the number of apartments													
4G-1 Storage Adequate, well designed storage is provided in each apartment	Design Criteria In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><td>Dwelling type</td><td>Storage size volume</td></tr><tr><td>Studio apartment</td><td>4m³</td></tr><tr><td>1 bedroom apartment</td><td>6m³</td></tr><tr><td>2 bedroom apartment</td><td>8m³</td></tr><tr><td>3 bedroom apartment</td><td>10m³</td></tr></table> At least 50% of the required storage is to be located within the apartment	Dwelling type	Storage size volume	Studio apartment	4m ³	1 bedroom apartment	6m ³	2 bedroom apartment	8m ³	3 bedroom apartment	10m ³	All units comply with the provision of storage, with at least 50% of the required storage area being provided within the apartments.	Y
Dwelling type	Storage size volume												
Studio apartment	4m ³												
1 bedroom apartment	6m ³												
2 bedroom apartment	8m ³												
3 bedroom apartment	10m ³												
4K-1 Apartment mix A range of apartment types and sizes is provided to cater for different household types now and into the future	A variety of apartment types for housing choice	An acceptable variety of apartment layouts and sizes are proposed	Y										
4W-1 Waste storage Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park	Provided within the basement with a holding area on the ground floor.	Y										
	Waste and recycling storage areas should be well ventilated	Area is well ventilated.	Y										
	Circulation design allows bins to be easily manoeuvred between storage and collection points	Considered acceptable by Council's waste department.	Y										
	A waste management plan should be prepared	Reviewed by Council's Waste department and considered acceptable.	Y										

Solar access to the communal open space

Design Criteria 2 of Objective 3-D-1 (Communal Open Space), requires *developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).*

The proposed communal open space would receive the following solar access between 9am and 3pm on 21 June.

Time	Percentage of Communal Open Space Receiving Solar Access
9:00am	6%
10:00am	15%
11:00am	12%
12:00pm	17%
1:00pm	23%
2:00pm	35%
3:00pm	50%

The communal open space will achieve solar access to a portion of the useable area at all times in mid winter. Part 3D of the Apartment Design Guide provides the following with regard to sites located within dense urban areas that are unable to achieve the design criteria.

Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space*

In light of the ADG recommendations referred to above, to offset the decreased solar access to the communal open space, larger balconies and increased private open spaces were provided to the majority of the apartments (to 77% of the apartments). Additionally, to supplement the communal open space in the northern setback, further open space, internal to the built form, is provided at the southern portion of ground floor plate that, whilst not receiving direct solar access, is open to the sky and provides additional external area for the occupants of the building. This results in the development having a 10% greater COS than the minimum required area under the ADG.

Further, the site is within 450m walking distance of 4 major parks (see below) that provide a variety of recreation activities (playgrounds, dog parks, sporting fields).



Figure 2: Walking distance to major parks

Master Bedroom Size

Objective 4-D-3, Design Criteria 1, requires that master bedrooms achieve a minimum area of 10m². The master bedrooms of units 17, 27, 37, 38, 46 fail to comply. Although the current design is non-compliant, a condition of consent is recommended to be imposed that requires the size of the master bedrooms of the above units be increased to 10m². The master bedrooms are capable of being enlarged without causing any non-compliances with the Apartment Design Guide.

Bankstown Local Environmental Plan 2015

This site is mapped under the Land Application Map, referenced in Clause 1.3 of the Bankstown Local Environmental Plan 2015 (BLEP 2015), and as such the BLEP 2015 applies to the development. The relevant provisions of the BLEP 2015 are addressed below.

Provision/ Standard	Requirement	Proposal	Complies
Part 1 Preliminary			
1.2 Aims of the plan	Consistency with the aims.	Consistent with the relevant aims of the BLEP 2015	Y
1.3 Land to which plan applies	Area within the Land Application Map	Site is located within the Land Application Map referred to in Clause 1.3 of the BLEP 2015.	Y

Provision/ Standard	Requirement	Proposal		Complies
Part 2 Permitted or Prohibited Development				
2.1-2.3 Zoning	The site is zoned R4 High Density Residential	The proposed development is permitted with consent		Y
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Consent is sought to demolish existing site structures.		Y
Part 4 Principal Development Standards				
4.1B Minimum lot sizes and special provisions for certain dwellings	<div>The width of the allotment (measured at the front building line) is at least 30m</div> <div>The area of the allotment is equal to or greater than 1500sqm</div>	<div>The width of the allotment is 46.9m</div> <div>The area of the allotment is 2352sqm.</div>	Y	
4.3 Height of Buildings	Maximum permissible building height is 19m	19.6m		N (refer below to comments made having regard to Clause 5.6 of BLEP 2015)
4.4 Floor Space Ratio	Maximum permissible floor space ratio is 1.75:1	<div>Ground</div> <div>Level 1</div> <div>Level 2</div> <div>Level 3</div> <div>Level 4</div> <div>Level 5</div> <div>Total</div> <div>Site</div> <div>FSR</div>	<div>577m²</div> <div>765m²</div> <div>765m²</div> <div>765m²</div> <div>617m²</div> <div>617m²</div> <div>4106m²</div> <div>2352m²</div> <div>1.745:1</div>	Y
Part 5 Miscellaneous Provisions				
5.6 Architectural Roof Features	Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.	<div>The development proposes three (3) architectural roof features that exceed the maximum building height permitted by Clause 4.3 of the BLEP 2015.</div> <div>Discussion relating to the architectural roof features, is provided below this table.</div>		Y Refer to discussion below

Provision/ Standard	Requirement	Proposal	Complies
Part 6 Local Provisions			
6.1 Acid Sulfate Soils	Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.	Class 5 Acid Sulfate soils. An acid sulfate soils management plan has been submitted and is considered acceptable.	Y
6.2 Earthworks	Before granting consent to development including earthworks, the following must be considered: (a) drainage patterns and soil stability (b) the likely future use or redevelopment of the land, (c) quality of the fill or the soil to be excavated, or both, (d) effect of development on existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	The proposed earthworks are considered acceptable and consistent with this clause having regard to the submitted Geotech report.	Y

Clause 5.6 Architectural Roof Features

The development provides breaches to the maximum permissible 19 metre building height standard in 3 areas – one of which is in the north western corner of the building while the other two are located more central to the building and relate to the two lift cores.

Clause 5.6 allows for architectural roof features to exceed the maximum permissible building height where the consent authority can be satisfied that the provisions contained within subclause 3 have been met. Clause 5.6(3) reads as follows;

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that—

(a) the architectural roof feature—

- (i) comprises a decorative element on the uppermost portion of a building, and*
- (ii) is not an advertising structure, and*
- (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*
- (iv) will cause minimal overshadowing, and*

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

The proposed architectural roof features are identified and illustrated below:

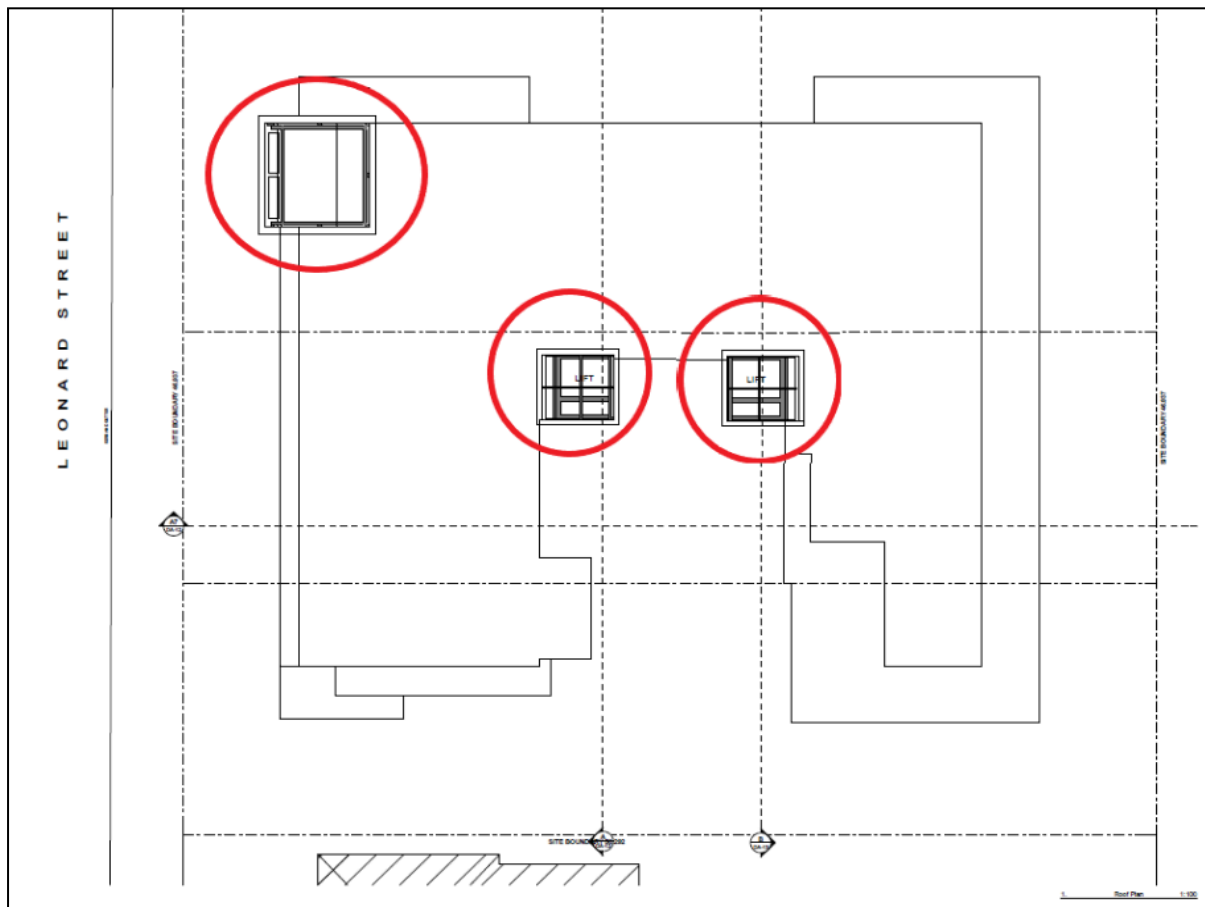


Figure 3: Roof Plan



Figure 4: Front Elevation (western elevation)

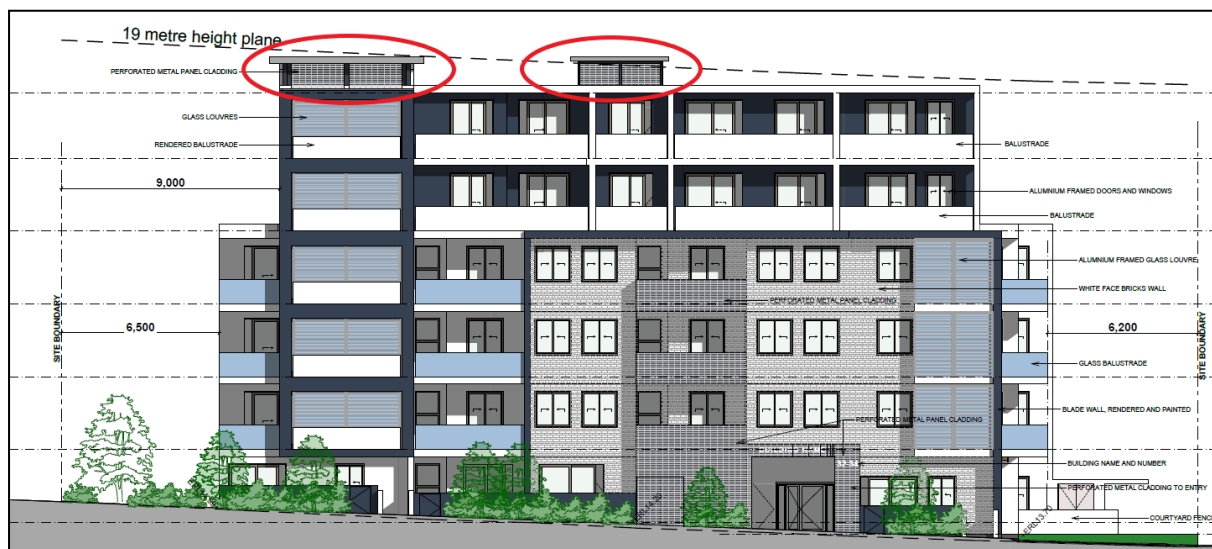


Figure 5: Side Elevation (northern elevation)



Figure 6: Rear Elevation (eastern elevation)

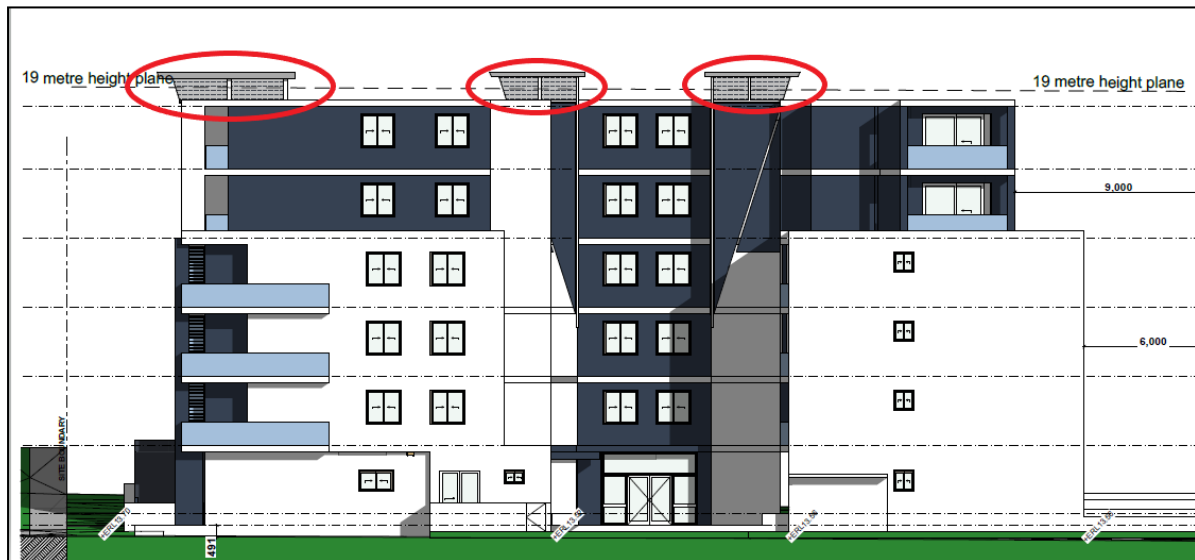


Figure 7: Side Elevation (southern elevation)

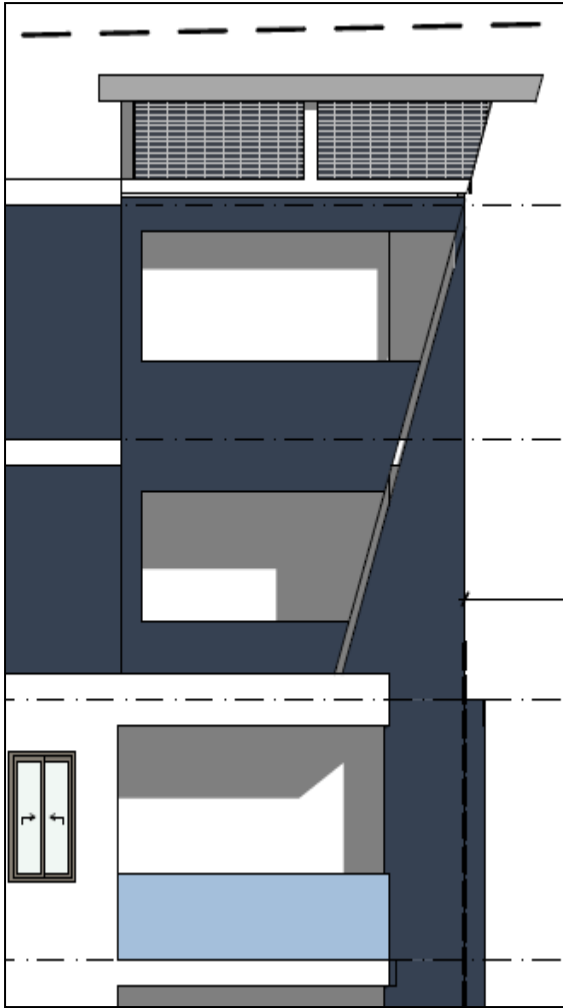


Figure 8: Roof Feature Detail (internal)

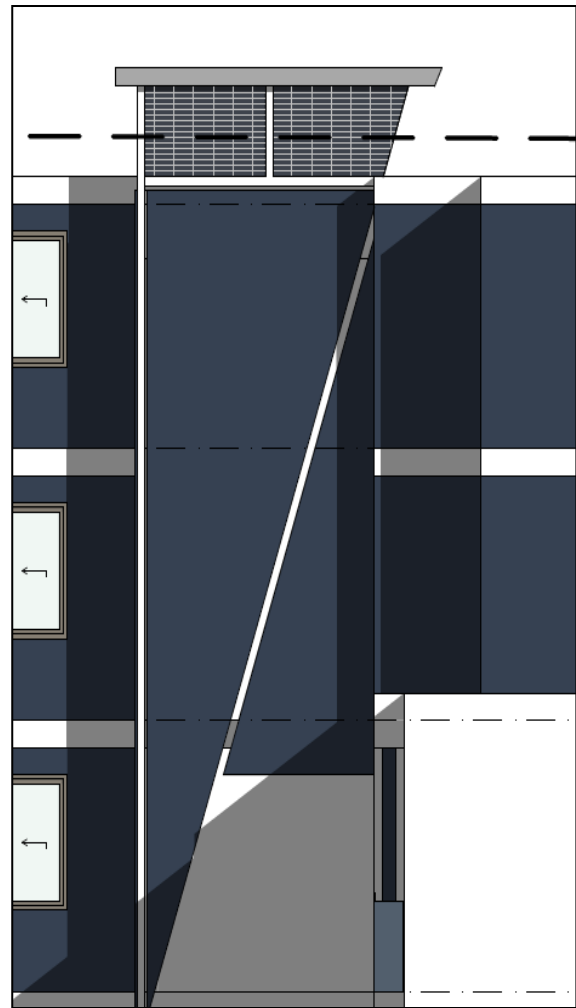


Figure 9: Roof Feature Detail (front)

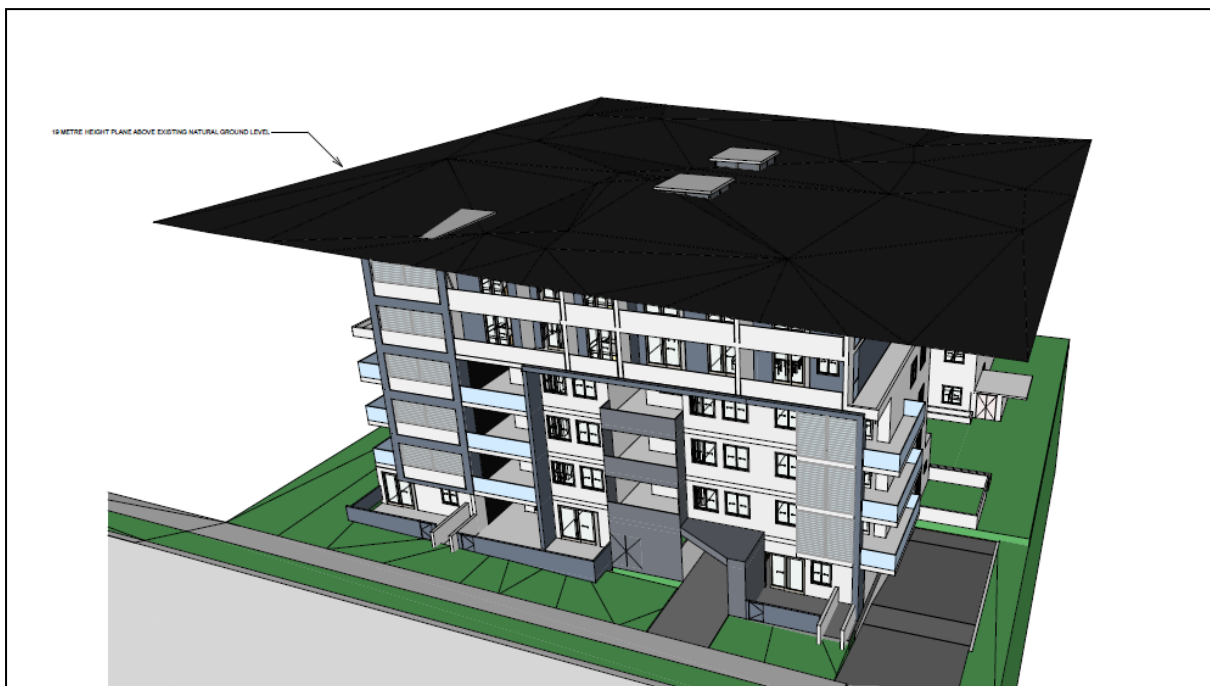


Figure 10: Maximum Height Plane

The above architectural roof features are decorative elements on the upper most portions of the building, which have been designed in a way that is integral to the buildings design. This is ensured by the location of the elements on the important portions of the building (highest points and corner element) and the use of the same perforated metal that defines the entryway to the building being replicated on the roof features.

It is not considered that the roof features are advertising structures, they do not include any floor space, nor are they reasonably capable of being modified to include floor space and they will cause only minimal overshadowing. As such, pursuant to Clause 5.6 of the BLEP 2015, it is considered that the proposed breaches to the height of building control are architectural roof features, and do not contravene Clause 4.3 of the BLEP 2015.

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

The Draft Canterbury Bankstown Local Environmental Plan (CBLEP) applies to the subject site. The Draft CBLEP has been publicly exhibited and adopted by the Canterbury Bankstown Local Planning Panel on 30 June 2020 and is now being considered by the Department of Planning Industry and Environment. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft CBLEP provides for an administrative conversion of both the BLEP 2015 and CLEP 2012 into a combined document under the Standard Instrument LEP template.

With respect to the proposed development, the proposal is considered to be consistent with the draft instrument.

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

The following table provides for an assessment of the development against the relevant provisions contained within Part B1 – Residential Development and Part B5 – Parking of the Bankstown Development Control Plan 2015 (BDCP 2015).

Standard	Requirement	Proposal	Complies
Part B1 Section 9			
9.1 Isolation	The consent authority must not grant consent to any development on land within Zone R4 High Density Residential if the proposed development will have the effect of isolating land with an area of less than 1,200m ² and a width of less than 20 metres at the front building line so as to preclude the reasonable development of that land.	The sites immediately to the north have already received development consent for a residential flat building. To the south there are two properties – 36 & 38 Leonard Street. The combined area of these sites is 1681sqm with an allotment width of 33m. Given that dwellings currently exist on these sites, it is not considered that the proposed development will result in the isolation of an adjoining site.	Y

9.2 Storey Limit	Development must comply with the storey limit that corresponds with the maximum building height shown for the site on the Height of Buildings Map as follows: 6 storeys (subject development site)	6 storeys (excluding basement)	Y
9.3 Siting of Development	The siting of residential flat buildings, serviced apartments, shop top housing and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.	The siting of the development is considered to be compatible with the existing slope and contour of the land.	Y
9.4 Fill	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the natural ground level of an adjoining property except where: (a) the residential flat building, serviced apartments or shop top housing is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the residential flat building, serviced apartments or shop top housing to a height no greater than 1 metre above the natural ground level of the allotment.	Minimal cut and fill is proposed as part of the development.	Y
9.5 Primary Setback	The minimum setback for a building wall to the primary frontage is: ... (b) 6 metres for all other allotments.	A 6m setback is proposed from the primary frontage to the building wall.	Y

6.8 Side & Rear Setbacks	For a building with 3 or more storeys, the minimum setback to the side and rear boundaries of the allotment is 4.5 metres provided the average setback is 0.6 multiplied by the wall height. (11.4m)	Setbacks prescribed by the ADG prevail from those contained within the BDCP 2015.	NA
9.10 Basement Setbacks	The minimum setback for a basement level to the side and rear boundaries of the allotment is 2 metres.	2m setback achieved throughout.	Y
9.11 Driveway Setbacks	The minimum setback for a driveway to the side and rear boundaries of the allotment is 1 metre.	2m setback provided to the sites southern boundary	Y
9.12 Private Open Space	Development must locate the private open space behind the front building line. This clause does not apply to any balconies where it is used to provide articulation to the street facade.	Ground floor units that face the street provide POS forward of the front building line.	N Refer to discussion below
9.13 Building Design	Council applies the design quality principles of State Environment Planning Policy No. 65—Design Quality of Residential Apartment Development and the Apartment Design Guide to residential flat buildings, serviced apartments and shop top housing. This includes buildings that are two storeys or less, or contain less than four dwellings.	The provisions contained within SEPP 65 and the Apartment Design Guide have been considered.	Y
9.14 Demolition	Development for the purpose of residential flat buildings, serviced apartments and shop top housing must demolish all existing dwellings (not including any heritage items) on the allotment.	All dwellings and associated ancillary structures are proposed to be demolished.	Y
9.15 Adaptable Dwellings	Residential flat buildings, serviced apartments and shop top housing with 10 or more dwellings must provide at least one adaptable dwelling plus an adaptable dwelling for every 50	9 adaptable dwellings have been provided.	Y

	<p>dwellings in accordance with AS 4299–Adaptable Housing.</p> <p>(2 required)</p>		
9.16 Roof Pitch	The maximum roof pitch for residential flat buildings, serviced apartments and shop top housing is 35 degrees.	Flat roof proposed.	Y
9.21 Plant siting	<p>The siting of a plant room, lift motor room, mechanical ventilation stack, exhaust stack, and the like must:</p> <p>(a) integrate with the architectural features of the building to which it is attached; or</p> <p>(b) be sufficiently screened when viewed from the street and neighbouring properties.</p>	Plans show compliance with the clause. Condition to ensure any additional plant is not visible.	Y
9.22 Car Parking	Development must locate the car parking spaces behind the front building line	All on-site car parking spaces are located within the basement.	Y
9.23 Substations	The location and design of substations must be shown on the plans.	The plans provide for the location and design of the substation.	Y
9.24 Substations	Substations should locate underground. Where not possible, substations are to be integrated into the building design and concealed from public view.	While the proposed substation has not been located underground, it has been located behind landscape plantings to ensure that it is not visible from the public domain.	Y
9.25 Substations	Substations must not locate forward of the front building line.	The substation is proposed forward of the front building line.	N Refer to discussion below
9.29 Landscaping	<p>Development must landscape the following areas on the allotment by way of trees and shrubs with preference given to native vegetation endemic to the City of Bankstown (refer to Appendix 4 and Appendix 5 for a list of suitable species):</p> <p>(a) a minimum 45% of the area between the building and the primary frontage; and</p>	<p>Greater than 45% of the area between the building and the primary frontage has been provided as landscaping.</p> <p>6 trees with a container size of 75L or greater have been proposed within the front setback.</p>	Y

	(b) a minimum 45% of the area between the building and the secondary frontage; and (c) plant more than one 75 litre tree between the building and the primary frontage (refer to Appendix 5 for a list of suitable trees in the City of Bankstown)		
Part B5 Car Parking			
2.1 Number of car parking spaces	R4 zone: <ul style="list-style-type: none"> • 1 space per 1 bed dwelling (2 spaces) • 1.2 spaces per 2 bed dwelling (61 spaces) • 1 Visitor space per 5 dwellings (11 spaces) Total 74 spaces required	61 spaces provided in accordance with the RMS guidelines – refer to assessment against the ADG	The provisions contained within SEPP 65 / ADG prevail

Clause 9.12 – Private Open Space

The development proposal has been designed with ground floor courtyards addressing Leonard Street to achieve solar access to these units and activate the street setback, consistent with the emerging streetscape trend within Leonard Street.

The development application is supported by updated streetscape elevations and landscape plans which show the courtyard fencing sits comfortably behind a landscape buffer, ensuring that the location of courtyards in the front setback maintains the landscape setting of the residential flat building. The location of courtyards within the front setback is consistent with a number of approved developments in the vicinity of the site, with the location of the courtyards within the front setback as proposed, maintaining consistency with the applicable objectives (a) and (b) of Section 9 of the Bankstown DCP 2015 as follows:

Objective (a) *To ensure the building form, building design and landscaping of residential flat buildings, serviced apartments and shop top housing are compatible with the suburban character of the high density residential areas.*

The proposed courtyard location provides a streetscape interface consistent with the established street character of Leonard Street as demonstrated in examples provided below.

Objective (b) *To ensure the building form and building design of residential flat buildings, serviced apartments and shop top housing provide appropriate amenity to residents in terms of access to sunlight and privacy.*

Further to the above, the materials proposed to be used in this instance are a combination of rendered walls and Colourbond slats. By using a combination of materials and colours for the courtyard fences, it ensures that the location of the private open space does not result in an imposing built form against the street. With the height of the fences being limited to 1.5m, the private open space will present less dominate than the 1.8m fence seen in example 1 below.

The proposed courtyard location improves residential amenity of the ground floor units with the orientation of these units improving solar access, noting the landscape treatment and fencing will maintain appropriate privacy to these units.

1. 1-7 Leonard Street, Bankstown



<p>2. 18-20 Leonard Street, Bankstown</p>	
<p>3. 41-43 Leonard Street, Bankstown</p>	
<p>4. 21-25 Leonard Street, Bankstown</p>	

Figure 11: Examples of POS Location



Figure 12: Streetscape

Clause 9.25 – Substation Location

Clause 9.25 of Part B1 of BDCP requires that substations be located behind the front building line. The intent of this control to avoid them detracting from the visual appearance of the overall development. Although the substation has been provided forward of the front building line, substantial landscaping has been provided in front of the substation which acts as a screen. The landscaping provided is as follows:

Name (common)	Height
Bottlebrush x 4	10m
Gymea Lilly x 2	1.5m
Lilly Pilly x 3	2m
Native Grass x 6	0.9m
False Sarsparilla x 10	0.4m

It is considered that the above plantings will provide sufficient visual screen such that the substation will not be visible from the street.

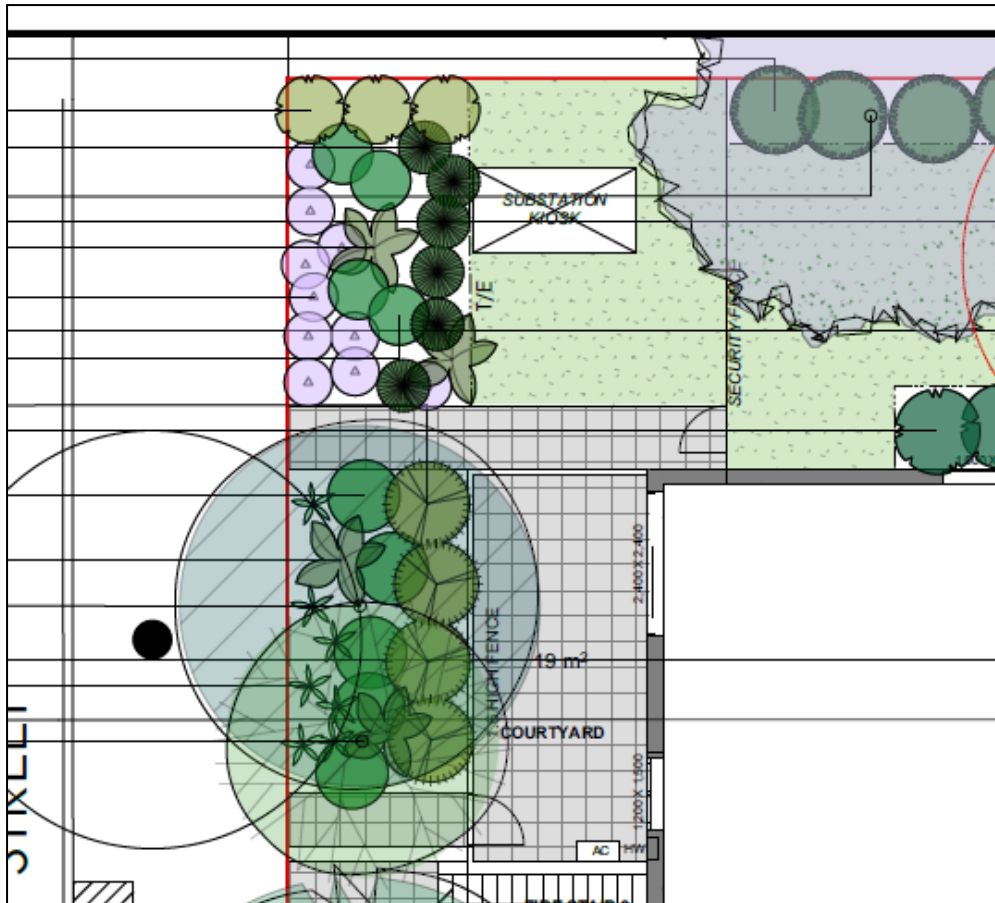


Figure 13: Landscape screen of substation

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

No planning agreements have been entered into or proposed by the applicant regarding this development application.

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

The proposed development is considered to be consistent with 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 considered to be suitable for the development as proposed.

Submissions [section 4.15(1)(d)]

The application was advertised for a period of twenty one (21) days on two separate occasions, initially between 30 September 2020 and 20 October 2020 and again between 4 August 2021 and 24 August 2021. No submissions have been received for the subject development application.

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 the Zone R4 – High Density Residential zone. The development appropriately responds to the various layers of planning legislation that applies to the site including the provisions contained within the Apartment Design Guide.

CONCLUSION

The development application has been assessed against the matters for consideration contained in Section 4.15(1) of the Environmental Planning and Assessment Act 1979, requiring, amongst other things, an assessment against the provisions contained within 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 (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, Bankstown Local Environmental Plan 2015, Draft Consolidated Canterbury Bankstown Local Environmental Plan 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 emerging and envisaged high density residential character of the surrounding locality.

RECOMMENDATION

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

CONDITIONS OF CONSENT

- 1) The building work/s must comply with the conditions of this Determination Notice. A Construction Certificate must not be issued until the plans and specifications satisfy the required technical standards and the consent conditions of this Determination Notice. In the event of an inconsistency between this Determination Notice, the approved plans and supplementary documentation, this Determination Notice shall prevail.
- 2) The building work/s must be carried out in accordance with the approved plans and supplementary documentation set out in the table below, except where amended by the conditions specified in this Determination Notice.

Plan No.	Plan Name	Date (outlined in red)	Revision	Prepared By
DA-00	Location/Site Analysis Plan	20/7/2021	E	Green Square Design
DA-01	Basement Level 2	16/08/2021	H	
DA-02	Basement Level 1			
DA-03	Ground Floor Plan	20/7/2021	E	
DA-04	Level 2 Plan			
DA-05	Level 3 Plan			
DA-06	Level 4 Plan			
DA-07	Level 5 Plan			
DA-08	Level 6 Plan			
DA-09	Roof Plan			
DA-10	Elevations			
DA-11	Elevations			
DA-12	Section A			
DA-13	Section B			
DA-17	Vehicle Ramp Details	8/3/2021	C	
DA-24	Communal Open Space Plan		A	
DA-25	Pre and Post Adaption Plan			
1 of 3	External Finishes Schedule	20/7/2021	B	
2 of 3				
3 of 3				
L/01	Proposed Landscape Plan (Ground Floor)	19/7/2021	B	Birdwood Landscape Design
L/02	Landscape Details and Schedule	19/7/2021	A	
L/03	Front Fence Elevation		-	

Prior to the issue of a Construction Certificate, the approved development documents as specified in the table above must be amended as follows:

- a) The master bedrooms of units 17, 27, 37, 38 and 46 shall be amended so as they have a minimum internal area of 10m², excluding wardrobe space, in accordance with objective 4-D-3 Design Criteria 1 of the Apartment Design Guide. The amendment shall not result in any further non-compliances with the ADG.
 - b) The Construction Certificate plans shall include the provision of gas (if gas provided to the development) and water outlets on all balconies and terraces.
 - c) The Construction Certificate plans shall ensure that the air-conditioning units and clothes drying facilities on all balconies are screened from view.
- 3) The plan of management submitted in support of this application prepared by Chapman Planning Pty Ltd dated 24 August 2020, forms part of the development consent. In the event of any inconsistency, the conditions of this consent will prevail over the plan of management. As part of the Plan of Management a maintenance plan and a landscape management plan shall be developed.
- 4) Separate approval is required for any heat shield and/or associated fire assembly structures/facilities not shown on the approved plans.
- 5) In the unforeseen event that an additional substation is required, the size and location of the substation is to be submitted for approval to Council and Ausgrid, prior to the issue of any Construction Certificate or the commencement of use, whichever is earlier. A substation has not been approved and if required details must be submitted to Council.

If required by the applicable energy supplier, the owner must dedicate to the applicable energy supplier an area of land within the site or building to enable an electricity substation to be installed.

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:

- 6) The Principal Certifier must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 7) Landscaping shall be installed in accordance with the landscape plans approved in Condition 2 of this consent.

- 8) The landscape plan must include a provision for the replacement of all existing boundary fencing where such fencing does not reach a height of 1.8 metres and/or is not of suitable quality or standard. Replacement fencing must be 1.8 metres high unless otherwise shown on the approved plans or as stipulated within this Determination Notice. The materials and colours of the fence must be selected in consultation with the adjoining property owners unless the design of the fence and the type of material is specified to allow for overland flow. Fencing forward of the building line must not be greater than 1 metre. All costs related to fencing must be borne by the person having the benefit of this Determination Notice.
- 9) Approval in accordance with Council's Tree Management Order (TMO) is granted to lop or remove only those trees identified to be lopped or removed on the approved plans. If not indicated on the approved plans, separate approval must be obtained to prune or remove trees on adjoining properties or other trees located on the site. A person(s) who contravenes or causes or permits the TMO to be breached shall be guilty of an offence and liable for prosecution.
- 10) The following tree protection measures are to be complied with to protect the small trees and shrubs located on the adjoining properties at 30 and 36 Leonard Street, Bankstown:
- No tree roots greater than 25mm in diameter are to be severed. Should tree roots greater than 25mm in diameter be located, the stormwater system is to be relocated accordingly;
 - The stormwater line and associated pits are to be located no closer than 2 metres from the property boundaries. Alternatively, the stormwater line is to be installed by careful digging using hand tools or horizontal boring and passing the pipe beneath existing tree roots.
 - No tree roots greater than 25mm in diameter are to be severed.
- 11) Tree protection measures shall comply with Australian Standard AS4970-2009 Protection of trees on development sites, together with the following conditions:
- The tree/s to be retained and protected together with their relevant Tree Protection Zone (TPZ) shall be marked on all demolition and construction drawings.
 - All contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.
 - A designated Tree Protection Zone shall be created on site by erecting a tree protection fence at 2 metres from the boundaries with 30 & 36 Leonard Street, Bankstown. The fence is to be constructed of chain wire mesh 1.80 metres high supported by steel posts. The fence is to be installed prior to demolition / construction, shall not be removed or altered, and is to remain in place for the duration of the site works;

- With the exception of the tree outside 34 Leonard Street, the council street trees are to be isolated from development impacts with tree protection fencing and/or ground protection and trunk and branch protection in accordance with AS4970-2009 and the tree protection plan.
 - The applicant will display in a prominent location on the tree protection fence a durable, weather resistant sign of a similar design, layout and type size as per Appendix C, Australian Standard AS4970-2009 Protection of trees on development sites clearly showing:
 - a. The Development Consent number;
 - b. The name and contact phone number of the consultant arborist / site manager (nominate whoever is applicable);
 - c. The purpose of the protection zone;
 - d. The penalties for disregarding the protection zone;
 - No vehicular access, excavations for construction or installation of services shall be carried out within the fenced Tree Protection Zone.
 - All utility services, pipes, stormwater lines and pits shall be located outside the fenced Tree Protection Zone.
 - Building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone.
 - Trees marked for retention must not to be damaged or used to display signage, or as fence or cable supports for any reason.
 - If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery. Tree roots greater than 25mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 5 or equivalent – before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.
- 12) A tree protection plan must be developed provided to the Principal Certifier to demonstrate how the trees within surrounding properties are to be protected.
- 13) A Soil Erosion and Sedimentation Control Plan must be prepared prior to the issue of a Construction Certificate. The plan must be prepared by a professional engineer as defined by the Building Code of Australia and approved by the Principal Certifier. The plan must state that the capacity and effectiveness of erosion and sediment control devices must always be maintained throughout the construction period.
- 14) The Council approved plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) will affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap inTM.

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

Sydney Water must issue either a Building Plan Assessment letter which states that the application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 15) All fees, levies, bonds and/or contributions as required by this Determination Notice must be paid to the relevant authority/entity.
- 16) A long service levy payment which is calculated to be 0.35% of the total cost of the building work/s must be paid to the Building and Construction Industry Long Service Payments Corporation.
- 17) Pursuant to Section 7.11 of the *Environmental Planning and Assessment Act 1979* and the Bankstown Development Contributions Plan 2019, this development will require or increase the demand on public amenities, public services and public facilities in the area.

The amount of the contribution (as at the date of this Development Notice) has been assessed as **\$687,862.00**. The amount payable is based on the following components:

Bankstown Contribution Element 2019	Amount
Roads and Active Transport	\$82,967.00
Community Facilities	\$51,250.00
Open Space and Recreation	\$432,677.00
Public Domain Facilities	\$114,827.00
Plan Administration	\$6,141.00

Note: The contributions payable will be adjusted, at the time of payment, to reflect Consumer Price Index increases which have occurred since the "Consent to operate from date" on the front page of this Determination Notice.

The contribution must be paid to Council in accordance with the requirements of the Development Contributions Plan prior to the issue of the Construction Certificate.

- 18) 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 heavy duty VFC at the property boundary.
 - b) Drainage connection to Council's system into existing street stormwater pit across the road on the western boundary via a concrete 375mm Ø stormwater pipe and new street stormwater pit at the front of the site in accordance with Council's Standard S-101
 - c) Concrete footway paving along the site's entire frontage.
 - d) Concrete kerb and gutter along the site's entire frontage.
 - e) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
 - f) Repair of any damage to the public road including the footway occurring during development works.

- g) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.
- h) Replacement of the street trees approved for removal, with the species and location of the replacements to be determined in consultation with Council's Tree Management Team.

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 (21) days prior to the information being required and must be approved prior to the issue of the Construction Certificate.

- 19) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on relevant Construction Certificate plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 20) The layout of the approved car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, and parking bay dimensions) should be in accordance with the AS 2890 parking series.

Furthermore, 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 Certifier 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 parking series. 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.

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

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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, and
- m) Demolition is proposed.

The person having benefit of this Determination Notice shall construct all works approved within the public road and footway under the supervision and to the satisfaction of Council and shall arrange for necessary inspections by Council whilst the work is in progress.

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

- 22) 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 professional engineer as defined by the Building Code of Australia. Plans and details prepared and signed by the professional engineer as defined by the Building Code of Australia are to be submitted to the Principal Certifier 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.

- 23) 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 job No. 2020555, issue 1 dated 8/8/2020 prepared by MBC ENGINEERING PTY. LTD. 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.

The plans shall be amended so as no downpipes are affixed externally to the building. All downpipes must be integrated into the buildings design.

- 24) The proposed stormwater system location must have a minimum 2m set-back from the property boundaries.
- 25) The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) shall be in accordance with the Australian Standard AS 2890 parking series.
- 26) 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 Certifier for approval prior to the issue of a construction certificate.
- 27) The pump out drainage system for the driveway/access ramp and car parking area/open space area shall be provided in accordance with Council's Bankstown Development Engineering Standards. The Engineer must design the Pump out drainage system to be in accordance with the Australian Standards AS 3500. Engineering details and manufacturers specifications for the pumps, switching system and sump pit shall be submitted to the Principal Certifier for approval prior to issue of any Construction Certificate. The Engineer must certify that the Hydraulic design complies with the above relevant standards.
- 28) Engineering details and manufacturers specifications for the pumps, switching system and sump pit shall be submitted to the Principal Certifier for approval prior to issue of any Construction Certificate. The Engineer must certify that the Hydraulic design complies with the above relevant standards.
- 29) The development must be carried out in accordance with the commitments shown on the submitted BASIX Certificate. The BASIX commitments must 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.

The location of the air-conditioning and hot water units and associated infrastructure must be located to ensure that they are not visible from the street, and that they do not result in a non-compliance with the relevant built form controls and private open space controls contained within the Apartment Design Guide. Confirmation from a suitably qualified architect that the BASIX commitments do not compromise the design guidance as contained within the Apartment Design Guide must be provided prior to the issuing of a Construction Certificate.

- 30) No permanent or temporary anchors are to be installed on adjoining properties without the approval of the adjoining land owners.
- 31) If any neighbouring properties or roadway are to be utilised for support, the legal rights of any adjoining properties must be respected including for temporary supports. In this regard the written permission of the affected property owner must be obtained and a copy of the owner's consent for temporary rock anchors or other material in adjacent lands must be lodged to Canterbury Bankstown Council prior to the issue of a Construction Certificate.

Temporary rock anchors are rock anchors that will be de-stressed and removed during construction. All other rock anchors are permanent rock anchors for the purposes of this Consent.

Council will not permit permanent rock anchors in adjacent private lands unless they are specifically permitted in a Development Consent.

Where temporary anchors are proposed to be used, an Application must be made to Canterbury Bankstown Council for approval under Section 138 of the Roads Act 1993, via a Road Works Permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified Structural Engineer, with supporting details addressing the following issues:

- a) Demonstrate that any structures within the road reserve are of adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve.
 - b) All existing services must be shown on a plan and included on cross sectional details where appropriate.
 - c) Demonstrate how the temporary anchors will be removed and replaced by full support from structures within the subject site by completion of the works.
 - d) The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.
- 32) The basement of the development is located adjacent to a Council Public Road Reserve. Separate approval and Work Permit is to be obtained from Council for any temporary or permanent anchoring works under Council's Public Road.

- 33) 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). The plan is required to be submitted six months prior to the commencement of works on the site, for both demolition and construction phases of the development / project. This Plan must address the measures that will be implemented for pedestrian safety and traffic management as specified below.

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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 construction 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 TfNSW 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.

- 34) 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.

- 35) The sum of the impervious areas associated with the car parking area, driveway(s) and pedestrian paths must not exceed 55% of the area between the dwelling(s) and the primary frontage.

- 36) A vacant land charge form is to accompany any Construction Certificate (CC) application for the removal of all domestic garbage and recycling bins.
<https://www.cbccity.nsw.gov.au/council/forms/waste-recycling>
- 37) A design certificate and detailed plans are to accompany any Construction Certificate (CC) application which demonstrate that the communal bin storage room (basement 1) has been designed to be constructed in accordance with the Waste Management Guide for New Developments and including the following requirements:
- (a) Floors must be constructed of concrete at least 75mm thick and graded and drained to a Sydney Water approved drainage fitting;
 - (b) The floors must be finished so that is non-slip and has a smooth and even surface;
 - (c) The room is to be integrated within the building, a minimum 2.1m unobstructed room height is required in accordance with the Building Code of Australia;
 - (d) The walls must be constructed of solid impervious material;
 - (e) The ceilings must be finished with a smooth faced non-absorbent material capable of being cleaned;
 - (f) Walls, ceiling and floors must be finished in a light colour;
 - (g) Is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock;
 - (h) A self-closing door openable from within the room;
 - (i) Must be constructed to prevent the entry of birds and vermin;
 - (j) Be provided with adequate light and ventilation. Light source must be through controlled light switches located both outside and inside the room;
 - (k) Any doorways must be 2m wide and open outwards;
 - (l) Be of sufficient size to accommodate all bins with additional room for manoeuvring (minimum aisle space of 1.5m and 15cm between bins);
 - (m) Designed to fit 7 x 1,100L recycling bins;
 - (n) Designed to fit 6 x 1,100L garbage bins; and
 - (o) Designed to fit 5 x 240L garden organic bins.
- 38) A design certificate and detailed plans are to accompany any Construction Certificate (CC) application which demonstrate that the temporary bin holding area (ground floor) has been designed to be constructed in accordance with the Waste Management Guide for New Developments and including the following requirements:
- (a) Floors must be constructed of concrete at least 75mm thick and graded and drained to a Sydney Water approved drainage fitting;
 - (b) The floors must be finished so that is non-slip and has a smooth and even surface;
 - (c) The room is to be integrated within the building, a minimum 2.1m unobstructed room height is required in accordance with the Building Code of Australia;
 - (d) The walls must be constructed of solid impervious material;
 - (e) The ceilings must be finished with a smooth faced non-absorbent material capable of being cleaned;

- (f) Walls, ceiling and floors must be finished in a light colour;
 - (g) Is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock;
 - (h) A self-closing door openable from within the room;
 - (i) Must be constructed to prevent the entry of birds and vermin;
 - (j) Be provided with adequate light and ventilation. Light source must be through controlled light switches located both outside and inside the room;
 - (k) Any doorways must be 2m wide and open outwards;
 - (l) All pathways to be used from communal bin storage room (basement 1) to the temporary bin holding area must be a minimum 2m wide, this includes the service lift doors;
 - (m) Be of sufficient size to accommodate all bins with additional room for manoeuvring (minimum aisle space of 1.5m and 15cm between bins);
 - (n) Designed to fit 7 x 1,100L recycling bins; and
 - (o) Designed to fit 6 x 1,100L garbage bins.
- 39) A design certificate and detailed plans are to accompany any CC application which demonstrate that the bin carting route from the temporary bin storage area (ground floor) to nominated collection point has been designed to be constructed in accordance with the following requirements:
- (a) Direct and less than 10 metres;
 - (b) Minimum 2m wide hard surface;
 - (c) Non-slip, free from obstacles and steps;
 - (d) Not within a driveway or carpark;
 - (e) A maximum grade of 1:30 (3%); and
 - (f) Layback installed at the nominated collection point.
- 40) A design certificate and detailed plans are to accompany any Construction Certificate (CC) application which demonstrate that the bulky waste storage room (ground floor) has been designed to be constructed in accordance with the Waste Management Guide for New Developments and including the following requirements:
- (a) Floors must be constructed of concrete at least 75mm thick and graded and drained to a Sydney Water approved drainage fitting;
 - (b) The floors must be finished so that is non-slip and has a smooth and even surface.
 - (c) The walls must be constructed of solid impervious material;
 - (d) The room is to be integrated within the building, a minimum 2.1m unobstructed room height is required in accordance with the Building Code of Australia;
 - (e) The ceilings must be finished with a smooth faced non-absorbent material capable of being cleaned;
 - (f) Walls, ceiling and floors must be finished in a light colour;
 - (g) Is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock;
 - (h) A self-closing door openable from within the room;
 - (i) Must be constructed to prevent the entry of birds and vermin;

- (j) Be provided with adequate light and ventilation. Light source must be through controlled light switches located both outside and inside the room;
 - (k) Any doorways must be 2m wide and open outwards;; and
 - (l) Designed to a minimum size of 8m².
- 41) The construction certificate plans shall include the provision of a CCTV security camera system throughout the development. The construction certificate plans shall ensure that cameras are located in areas of the development such as building entrances, basement, letter boxes, lobby's etc.
- 42) No additional building services, infrastructure or the like shall be placed on the roof of the development, or shall be visible from the public domain. All services shall be located within the basement, other than the substation and hydrant booster, which must be located as noted on the approved plans. If the service provisions on the approved plans are found to be insufficient for the development, a modification application shall be lodged.
- 43) Prior to the issue of a construction certificate, a lighting plan shall be prepared and submitted to the principal certifier. All building entrances, communal open spaces, basement storage, common circulation areas and galleries shall be well lit.
- 44) The approved galleries shall remain open for the lifetime of the development, with no further enclosure by screen, wall, window or the like permitted. Construction certificate plans shall confirm that the galleries remain open as approved.
- 45) Individual air-conditioning units located on unit balconies shall be integrated into the building design and shall not be visible from the public domain.
- 46) Eighteen (18) bicycle spaces that comply with AS 2890.3:2015 shall be clearly shown on the plan. The spaces shall be protected from vehicle encroachment and such measures shall also be shown on the construction certificate plans.
- 47) Sight distance triangles for pedestrian safety must be provided within the site boundary as shown on Figure 3.3 from AS2890.1:2004. No fencing adjoining the driveway along the southern boundary higher than 1m is permitted. The Construction Certificate plans must demonstrate compliance with the above.
- 48) A Construction Certificate shall not be issued until design verification from a qualified designer has been received. The design verification is a statement in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development of which Development Consent was granted, having regard to the design quality principles set out in Schedule 1 of SEPP No. 65.
- 49) All substation, hydrants, boosters and other services must be contained within cabinets in the built form. Separate approval is required for any services outside of the built form and not authorised through this Development Consent.

- 50) Prior to the issue of a construction certificate, confirmation must be received from Ausgrid, confirming that no additional heat shields/blast walls are required for the onsite substation. If any additional structures are required or the approved design is not considered satisfactory, a modification application shall be lodged for consideration.
- 51) Underground services shall use common trenches outside Tree Protection Zones. If services need to be run within a Tree Protection Zone then all utility pipes and similar are to be installed using appropriate directional boring techniques. No tree roots are to be severed or damaged during this work.
- 52) The deep soil areas located in the front setback along Leonard Street and within the site must be retained as deep soil and landscaping for the lifetime of the development. No encroachments for services or any structure is permitted within these areas.
- 53) Access to all communal and public areas of the development, including communal open spaces, are to be designed and constructed in accordance with the requirements of *Disability (Access to Premises — Buildings) Standards 2010*.
- 54) Storage areas within all units must be provided in accordance with the Apartment Design Guidance (ADG) Criteria outlined in 4G-1. The plans must demonstrate prior to the issuing of a Construction Certificate that 50% of the required storage is provided within each unit, exclusive of any kitchen, bathroom and bedroom storage. The storage must be contained within the unit and not result in any failures of any other controls within the ADG as a result of its location. The plans should also identify the storage within the basement areas, demonstrating capacity for the remaining storage not within the units as required by the ADG 4G-2.
- 55) The plans must demonstrate that the proposal meets the requirement that Universal Design Principles are utilised in 20% of the apartments within the development. All Construction Certificate documentation must demonstrate compliance with this requirement.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 56) A Construction Certificate is required for the erection of a building in accordance with this Determination Notice.

This Determination Notice does not authorise building work until a Principal Certifier has been appointed as the Principal Certifier for the work by (or with the approval of) the person having the benefit of this Determination Notice.

The following requirements apply before the commencement of building work in accordance with this Determination Notice:

- a) the Principal Certifier has, no later than 2 days before the building work commences, notified the Consent Authority and the Council (if the council is not the Consent Authority) of his or her appointment as the Principal Certifier,
 - b) the Principal Certifier has, no later than 2 days before the building work commences, notified the person having the benefit of this Determination Notice of any inspections that are required to be carried out in respect of the building work,
 - c) the person carrying out the building work has notified the Principal Certifier that the person will carry out the building work as an owner-builder, if that is the case,
 - d) the person having the benefit of this Determination Notice, if not carrying out the 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 involve, and
 - ii. notified the Principal Certifier of the appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any inspections that are required to be carried out in respect of the building work,
 - e) the person having the benefit of this Determination Notice has given at least a 2-day notice to the Council, and the Principal Certifier if not the Council, of the person's intention to commence the erection of the building.
- 57) Prior to the issue of a Construction Certificate, a dilapidation survey must be undertaken by a professional engineer as defined by the Building Code of Australia for the adjoining properties at Nos. 30 & 36 Leonard Street and Nos. 27, 33, 39 & 41 Percy Street and is to detail the physical condition of all structures (including driveways, retaining walls, and other outdoor structures such as carports, pergolas, awnings, etc), both internally and externally, including such elements as walls, ceilings, roofs, structural members and other similar elements. The dilapidation survey must consider structural as well as hydrological and geotechnical factors likely to arise from the development. It must be submitted to the Principal Certifier and all costs associated with preparing the survey must be borne by the person having the benefit of this Determination Notice. This survey must be provided in hard copy to the relevant adjoining property owners prior to the issue of a Construction Certificate.
- 58) 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 that Act and that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

- 59) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifier 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 Certifier 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 carried out 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 carrying out the residential building work are changed while the work is in progress, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- 60) Existing trees within the vicinity of the development site or paths of travel of construction vehicles accessing the development site that are to be retained must be protected with temporary fencing. This must be of a type that prevents injury to tree roots, placed 2 metres away from the trunk base of the existing tree to prevent damage during construction and retained in accordance with Council's Tree Management Order (TMO). There must not be any stockpiling of materials within the 2-metre fenced zone whilst the construction of the building work/s is being undertaken and must always be maintained throughout the construction period.
- 61) Erosion and sediment control measures must be installed in accordance with the plans accompanying the Construction Certificate. The capacity and effectiveness of the erosion and sediment control devices must always be adequately maintained throughout the construction period.
- 62) Council's warning sign for Soil and Water Management must be displayed throughout the construction period at the most prominent point of the site, visible to both the street and site.
- 63) Prior to the commencement of work, the person having the benefit of this Determination Notice must provide a temporary on-site toilet if access to existing toilets on site is not adequate/available. Temporary on-site toilet facilities must be installed and be adequately maintained throughout the construction period.

64) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early 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 can be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Section 73 Compliance Certificates or telephone 13 20 92.

65) A fence must be erected around the area of the development site, except where an existing 1.8 metres high boundary fence is in good condition and can secure the area. Any new fencing must be temporary and at least 1.8 metres high. All fencing must be maintained throughout the construction period 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 work proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of building work/s.

66) A sign must be erected in a prominent position at the development site and must clearly show the following information:

- a) the name, address and telephone numbers (both during and outside of normal working hours) of the Principal Certifier for the work,
- b) the name of the licenced builder / owner-builder and a telephone number on which that person may be contacted outside working hours, and
- c) that unauthorised entry to the development site is prohibited.

Any such sign must be maintained while the building work is being carried out and must be removed when the building work has been completed.

67) Prior to demolition, the entire site (includes any structures) is to be assessed for hazardous materials, especially asbestos. A Hazardous Materials (HAZMAT) Report is to be prepared by a Type "A" inspection body accredited by NATA. All recommendations contained within this report are to be implemented and a clearance certificate issued by an appropriately qualified Occupational Hygienist is to be submitted to Council prior to the issue of a Construction Certificate.

68) The demolition of all structures on the property must be undertaken in accordance with all the following:

- a) Written notice must be issued to adjoining residents a minimum of seven (7) days prior to the commencement of demolition advising of the commencement date,
- b) Written notice must be issued to Council for inspection a minimum of (7) days prior to the commencement of demolition. Written notice must include the date when demolition work will commence and details of the name, address, contact telephone number and licence number of the demolition contractor,

- c) Inspections being undertaken by Council including:
 - i. A pre-commencement demolition inspection when all site works required as part of this Determination Notice are installed on the site and prior to demolition work commencing, and
 - ii. A final demolition inspection when the demolition work has been completed to ensure that the site is left in a satisfactory manner, in accordance with the conditions of this Determination Notice,
- d) Payment of an inspection fee at Council's current rate must be paid prior to inspection. Council requires 48 hours' notice to carry out an inspection,
- e) A sign must be erected at the front of the property showing the name of the licenced demolition contractor, the licence number and a telephone number on which that person can be contact outside of working hours,
- f) All demolition work must be carried out in accordance with Australian Standard 2601-2001 – The Demolition of Structures,
- g) Where asbestos containing materials are to be removed, demolition must be carried out by contractors who have a current SafeWork NSW licence in asbestos removal,
- h) An asbestos clearance certificate issued under the *Work Health and Safety Act 2011* must be submitted to Council after the completion of demolition work,
- i) Hazardous and intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority,
- j) Demolition procedures must maximise the reuse and recycling of demolished materials to reduce the environmental impacts of waste disposal,
- k) Adhere to the requirements stipulated in the approved Waste Management Plan, and
- l) Demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no building work/s is to be carried out at any time on a Sunday or a public holiday.

A copy of the final demolition inspection report must be submitted to the Principal Certifier prior to the commencement of any building work.

- 69) Any fill imported onto the site must be virgin excavated natural material or excavated natural material, classified as such in accordance the 'Waste Classification Guidelines' (NSW EPA, 2014) or excavated natural material meeting the requirements of the Excavated Natural Material Exemption (NSW EPA, 2014).

Certificates verifying that imported fill is virgin excavated natural material or excavated natural material must be provided to Council prior to the issue of an Occupation Certificate.

70) Approval is granted for the removal of the following trees:

- Any tree/s where the base of the trunk of the tree is located within 3 metres of the external wall of an approved dwelling;
- Any declared noxious plant. The applicant, builder and all contractors are to ensure that all noxious plants are properly identified, controlled and/or removed on this site without injury or death of any protected plants;
- Any tree species listed under clause 2.4 of Bankstown Development Control Plan 2015 Part B11 – Tree Management Order;
- The street tree adjoining the bin cart route;
- Any of the following tree/s:

Tree Species	Location
1 x Pinus sp.	Adjacent to 32 (Northern side)
1 x Brush Box	Adjacent to 32 (Northern side)
1 x China Doll	Between 32 & 32a
1 x Camphor Laurel	Between 32 & 32a
1 x Camphor Laurel	Rear Yard of 32

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

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

- 71) The remaining council street trees are to be retained and protected throughout the development in accordance with condition 11 of this consent.
- 72) In order to facilitate construction works, a Works Zone is to be installed across the site frontage in Leonard Street, subject to the approval of the Traffic Committee. The applicant shall apply for the Works Zone in accordance with Council's requirements, at least three months prior to the commencement of the works on the site.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 73) Any new information revealed during building work/s that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier. Works are to cease until the new information is evaluated by an appropriately qualified and experienced environmental consultant and an appropriate response determined by the applicant and/or owner which is agreed to by Council. Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the new contamination information.
- 74) Any excavation works carried out on site should be closely monitored to ensure no signs of potential acid sulfate soil or actual acid sulfate soil are observed. Indicators may include grey to greenish blue clays, unusual gold-yellow mottling or 'rotten egg' odours. If any of these indicators are observed, excavation of the site must be stopped, and Council is to be notified immediately. A suitably qualified environmental consultant must be contracted to further assess the site.
- 75) In the instance works cause the generation of odours or uncovering of unexpected contaminants works are to immediately cease, Council is to be notified and a suitably qualified environmental consultant appointed to further assess the site. The exposed material/excavation is to be evaluated by the supervising environmental consultant and an appropriate response determined in consultation with the applicant, which is agreed to by Council.

Council may also request that an NSW EPA Accredited Site Auditor is involved to assist with the assessment of any unexpected finds, review any contamination information and prepare a Site Audit Report and Site Audit Statement. The applicant must adhere to any additional conditions which may be imposed by the NSW EPA Accredited Site Auditor.

- 76) Any soils to be excavated and disposed of from the site must be analysed and classified by a suitably qualified environmental consultant, in accordance with relevant NSW EPA guidelines including the 'Waste Classification Guidelines' (NSW EPA, 2014) prior to off-site disposal.

Any soils to be excavated and reused onsite or offsite must be analysed and classified by a suitably qualified environmental consultant, in accordance with relevant NSW EPA guidelines including the 'Waste Classification Guidelines' (NSW EPA, 2014) prior to reuse.

Any waste material for disposal to be transported to an appropriately licensed waste facility by an EPA licensed waste contractor in accordance with relevant NSW EPA guidelines.

- 77) If the Duty to Report contamination to the NSW EPA under Section 60 of the Contaminated Land Management Act 1997 is triggered, Council must be notified within seven (7) days of the notification to the NSW EPA.
- 78) All excavations must be kept free from the accumulation of water.

- 79) Building work, subdivision work or demolition work may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.
- 80) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 81) Erosion and sediment control measures must be installed in accordance with the plans accompanying the Construction Certificate and the capacity and effectiveness of the erosion and sediment control devices must always be adequately maintained throughout the construction period.
- 82) There must not be any stockpiling of building spoil, materials, or storage of equipment on the public road during the construction period. The footway and the road reserve must always be maintained in a safe condition. No work can be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.
- 83) A report as prepared by a registered surveyor must be submitted to the Principal Certifier prior to the construction of any floor level of the development verifying that the proposed finished floor level and the wall setbacks to the property boundary conform to the approved plans.
- 84) 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.
- 85) All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Where damage occurs to an adjoining property, all necessary repairs or suitable agreement for such repairs must be undertaken by the person having the benefit of this Determination Notice in consultation with, and with the approval of, the affected property owner as soon as practical. All costs associated in achieving compliance with this condition must be borne by the person having the benefit of this Determination Notice.
- 86) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of this Determination Notice must, at his/her own expense:

- a) Protect and support the building, structure or work from possible damage from the excavation, and

- b) Where necessary, underpin the building, structure or work to prevent any such damage.

This consent condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

The owner of any affected buildings is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on an adjoining allotment of land.

- 87) 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.
- 88) Replacement boundary fencing must be 1.8 metres high unless otherwise shown on the approved plans or as stipulated within this Determination Notice. The materials and colours of the fence must be selected in consultation with the adjoining property owners unless the design of the fence and the type of material is specified to allow for overland flow. Fencing forward of the building line must not be greater than 1 metre. All costs related to fencing must be borne by the person having the benefit of this Determination Notice.
- 89) The stormwater drainage system shall be constructed in accordance with Council's Bankstown Development Engineering Standards and the engineering plans and details approved by the Principal Certifier. Should the person having benefit of this Determination Notice encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, then he / she must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at his / her own expense.
- 90) 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.
- 91) Requirements of the approved WMP shall be complied with during all site preparation works, demolition (if proposed) and throughout all construction works. When implementing the WMP the developer is to ensure:

- (a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the Protection of Environment Operations Act 1997;
- (b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the Protection of Environment Operations Act 1997;
- (c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW;
- (d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it;
- (e) Records are required regarding the details and location of the disposal of all demolition and construction waste (including excavated material), description of waste and are to be kept on site as evidences of lawful disposal. Records are to include receipts and weighbridge dockets which verify material types and volumes, time and date of disposal, waste vehicle rego, and confirmation of the waste disposal facility. Records/ details are also to be kept of person removing the waste;
- (f) All materials and resources that are to be stored on site during construction works are contained on the site;
- (g) The provisions of the Protection of Environment Operations Act 1997 must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses; and
- (h) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 92) The occupation or use of the building must not commence unless an Occupation Certificate has been issued.
- 93) An Occupation Certificate for the completed development must not be issued until all conditions relating to demolition, building and subdivision works have been satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).
- 94) The approved galleries must remain open for the lifetime of the development, with no further enclosure by screen, wall, louvres, Perspex, window or the like permitted. Compliance with this condition must be verified prior to the issue of any occupation certificate. This condition must be complied with for the life for the development, unless altered by Council under a separate consent.

- 95) 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 Bankstown Development Engineering Standards and in accordance with the appropriate provisions of the Conveyancing Act.

Where subdivision is not proposed, the surveyor shall show the location of the "On-Site Stormwater Detention System" on an A4 size site plan attached to the Section 88E Instrument to be registered, on the title of the subject property, prior to the issue of the Final Occupation Certificate. Alternatively, where subdivision is proposed, 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 Bankstown Development Engineering Standards and in accordance with the appropriate provisions of the Conveyancing Act. The surveyor shall show the location of the "On-Site Stormwater Detention System" on the plan of subdivision. The developer shall submit evidence of the final registration of the Restriction and Positive Covenant on the title of the property, to Council.

- 96) 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.

- 97) Sixty-one (61) off street car spaces being provided in accordance with the submitted plans. This shall comprise:

Fifty (50) residential spaces;

Eleven (11) residential visitor spaces;

Two (2) 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.

- 98) Landscaping is to be installed in accordance with the approved landscape plan(s). All works and methods nominated and materials specified on the approved landscape plan(s) are to be completed prior to the issue of an Occupation Certificate.

- 99) 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. All lighting must be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.

- 100) The buildings / dwellings must be readily identified from the street with the allocated house numbers. An official "house numbering" letter is issued to the person having benefit of this Determination Notice indicating the proposed numbering of the new development. House numbering without Council's written approval is not permitted.

- 101) The Section 73 compliance certificate under the *Sydney Water Act 1994* must be submitted to the Principal Certifier.
- 102) 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.
- 103) A registered surveyor shall prepare a Work As Executed Plan and certification of the constructed stormwater management system shall be prepared by a professional engineer as defined by the Building Code of Australia and shall be submitted to Council.

The information on the Work As Executed Plan shall be shown in red on a copy of the approved stormwater plan and shall include all information specified in Council's Bankstown Development Engineering Standards. The stormwater management system shown on the Work As Executed Plan must be certified by a professional engineer as defined by the Building Code of Australia.

A copy of the Work As Executed Plan and Certification prepared by a professional engineer as defined by the Building Code of Australia shall be submitted to Council for information prior to issue of the final occupation certificate.

- 104) The principal certifier is not to issue an occupation certificate until written confirmation has been received from Canterbury Bankstown Council's Waste Services team confirming that all waste management facilities have been constructed in accordance with the approved plans and Waste Management Plan. Specifically, the path of travel for all waste, from unit to point of waste collection, waste storage room sizing, access to water and sewer connections, finished materials, access and door way dimensions, and that all waste facilities are fit for purpose.

An inspection is required to be undertaken by Council's waste management representative prior to the issue of the written confirmation from the council to the principal certifier.

- 105) Prior to the issue of any OC, the developer is to enter into a formal agreement with Council for the utilisation of Council's Domestic Waste Collection Service. This is to include the applicant completing the 'Agreement for On-Site Waste Collection' prior to the issue of an Occupation Certificate.

This is to allow access to and from the waste management facilities for collection staff to enter and exit for the purpose of waste and recycling collection and to indemnify council and its contractors against claims for loss or damage or wear and tear of access roads or to other parts of the building

Note: By entering into an agreement with Council for waste collection, the development will be required to operate in full compliance with Council's Waste Management collection requirements.

- 106) Waste will be collected from the kerbside. A 'No Stopping Waste Vehicles Excepted' signage is to be installed, subject to obtaining approval from the Traffic Committee, three months prior to the occupation of the site. All costs associated with the installation of the stems and signs are to be borne by the Applicant.
- 107) Eighteen (18) bicycle spaces that comply with AS 2890.3:2015 shall be provided. The spaces shall be protected from vehicle encroachment and such measures shall also be shown on the construction certificate plans.

ONGOING CONDITIONS OF USE

- 108) CCTV footage shall be stored for a minimum of 31 days and be made available to police upon request.
- 109) The approved landscaping and external work must be maintained post occupation and must not be altered or changed without Council approval or unless the altered work is carried out in accordance with the relevant provisions of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- 110) The approved WMP is to be implemented throughout the ongoing use of the development.
- 111) The development must operate in full compliance with Council's Waste Management collection requirements.
- 112) The nominated kerbside collection point is to be utilised to facilitate the collection of garden organic bins for the development. All mobile garbage bins that are left kerbside for collection must be taken back within the property boundary on the same day of service.
- 113) The nominated collect and return collection point are to be utilised to facilitate the collection of waste and recycling bins for the development.
- 114) The temporary bin holding area will be required to be of sufficient size to allow the temporary storage of all allocated waste and recycling bins for the development. Developments proposing a temporary holding area will require a caretaker to transfer all allocated bins from the bin storage area to the temporary holding area the day before the designated collection day and return them once emptied.
- 115) Contracts (or agreements) with cleaners, building managers and tenants must clearly outline the waste management and collection system and must clearly identify everyone's role and responsibility. This is to include:

- (a) Maintaining and cleaning the communal bin storage and temporary holding areas and bulky waste storage room;
- (b) Cleaning and washing all bins regularly;
- (c) Managing all bin transfers and rotations;
- (d) Managing bulky waste and arrange appropriate collections;
- (e) Arranging the prompt removal of dumped rubbish;
- (f) Ensuring the recycling bins are free of contamination (which includes but not limited to garbage, plastic bags, clothing, polystyrene, etc);
- (g) Ensuring there is suitable signage for each bin hopper and recycling cupboard on each floor and bin storage room. Council can assist with education signage;
- (h) Ensuring all residents are informed and kept up to date in the use of the waste management system; and
- (i) Checking the number of bins and reporting any damages to Council.

Where the development incorporates strata title subdivision, the by-laws are to clearly set out the management responsibilities for the developments waste and recycling system.

- 116) No waste storage containers are to be located or placed outside the approved waste storage area at any time except for collection purposes.
- 117) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin.
- 118) Should a noise issue (relating to the development) not previously identified arise (through complaint or otherwise), the owner/ occupier must, upon request by Council, employ the services of a qualified acoustic consultant who has not previously been involved with the development to undertake a post-occupation assessment of the development and complete an acoustic report with recommendations to rectify the noise issue. A copy of this acoustic assessment report must be submitted to Council for approval and from there noise attenuation works must be implemented. Submission of the acoustic report must be within 30 days from the date requested by Council.
- 119) The applicant must ensure that all activities within the premises comply with the relevant sections of the Protection of the Environment Operations Act 1997 and Regulations
- 120) The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage to other premises as defined in the 'Assessing Vibration: A Technical Guideline' (NSW Department of Environment and Conservation, 2006).

- 121) Any activity carried out in accordance with this approval must not give rise to offensive odour, offensive noise or pollution of air, land or water as defined in the Protection of the Environment Operations Act 1997 and Regulations
- 122) The operation of the development must not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.
- 123) Any area that is within any of the required sight distance triangles for the ingress and egress to the site must be kept clear of any and all obstruction at all times.
- 124) All storage areas are to be clearly identifiable and secured. Any storage areas in alcoves need to be well lit and mirrors to be erected to assist with unclear sightlines.
- 125) Access control for the basement must include the provision of a roller door installed with swipe card and intercom access.
- 126) Access into the residential lobby shall be via key/swipe card and/or intercom for visitors.
- 127) CCTV is to be installed to the basement levels and to the entries in proximity to the letter boxes for the development.
- 128) All letter boxes are to have non-master key locks, to prevent mail theft and fraud.

-END-

Canterbury Bankstown Local Planning Panel - 13 September 2021

ITEM 3	DA-90/2021 - 492 Henry Lawson Drive, East Hills
	Alterations to lift well, and internal alterations
FILE	DA-90/2021 – Revesby
ZONING	W1 Natural Waterways, R2 Low Density Residential, SP2 Infrastructure Facility
DATE OF LODGEMENT	16 February 2021
APPLICANT	Corona Projects Pty Ltd
OWNERS	Janette Margaret Little
ESTIMATED VALUE	\$250,000.00
AUTHOR	Planning

REPORT

This matter is reported to Council's Local Planning Panel as the applicant seeks a variation to Clause 4.3(2B)(b) of the Bankstown Local Environmental Plan 2015 in relation to the permissible wall height. The variation proposed to the development standard is in excess of the Council officers' delegations.

Development Application No. DA-90/2021 proposes internal and external alterations and additions to the existing dwelling. Specifically works comprise minor internal alterations to the first floor and minor external alterations and additions to the existing lift shaft to accommodate the installation of a passenger lift. The purpose of this passenger lift is to provide the occupant, who suffers a disability and is wheelchair bound, access to both the ground and first floors of the dwelling. Currently, access between the ground floor and the first floor is confined to being via a flight of stairs.

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 which requires, amongst other things, an assessment against the provisions contained within Bankstown Local Environmental Plan 2015 (BLEP 2015) and Bankstown Development Control Plan 2015 (BDCP 2015).

Council's assessment of the application identified departures to Clause 4.3(2) and Clause 4.3(2B)(b) of the BLEP 2015 relating to building height and wall height respectively. The application was also found to have failed to comply with Clause 2.3 of Part B1 of BDCP 2015 in relation to 'storey limit' and Clause 2.9 of the of Part B1 of BDCP 2015 in relation to the side setback controls.

For reasons as outlined in the report, the non-compliances to the wall and building height standards within BLEP 2015 and the departures to the storey limit and side setback controls in Part B1 of BDCP 2015 are worthy of support.

The application was notified for a period of fourteen (14) days between 2 March 2021 and 15 March 2021. No submissions were received during this period.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-90/2021 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as No 492 Henry Lawson Drive, East Hills. The site is a regular rectangular shaped allotment that is part zoned W1 Natural Waterways, part zoned R2 Low Density Residential and part zoned SP2 Infrastructure Facility. Refer to below for an extract of the zoning map.

The site contains an existing two (2) / three (3) storey dwelling that fronts Henry Lawson Drive (to the east). The site is bordered by the Georges River to the west with dwelling houses adjoining to the immediate north and south. The site has a 12.9 metre frontage and an overall site area of 786m². The site slopes significantly from the east to the west (front to the rear) by approximately 8.6 metres, towards the Georges River.

The site is affected by low, medium and high-risk flooding from the Georges River and affected by medium and high-risk flooding caused by stormwater from the Kelso Swamp catchment.



Figure 1 - Map of site identifying the zoning – Source: NSW ePlanning Spatial View



Figure 2 - Aerial photo of subject site – Source: NearMaps 2021

PROPOSED DEVELOPMENT

The development application proposes minor internal alterations to the first floor and minor external alterations and additions to the existing lift shaft to accommodate the installation of a passenger lift. A small awning is proposed on the first floor, immediately adjacent the lift.

Statutory Considerations

When determining this application, the relevant matters listed in Section 4.15(1) of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River (GMREP No. 2)
- State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- State Environmental Planning Policy (Coastal Management) 2018
- Bankstown Local Environmental Plan 2015 (BLEP2015)
- Draft Consolidated Canterbury Bankstown Local Environmental Plan 2020
- Bankstown Development Control Plan 2015 (BDCP 2015)

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)]***Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment***

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

State Environmental Planning Policy 55 – Remediation of Land

The provisions of Clause 7 of State Environmental Planning Policy 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.*

There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the development and therefore satisfies the provisions of SEPP 55.

State Environmental Planning Policy (Coast Management) 2018

The subject development site is mapped under the Coastal Management SEPP as the following: Coastal Environmental Area and Coastal Use Area.

The proposed works are located approximately halfway up the site in an area which has been previously modified for the construction of a dwelling house. Due to this area being modified for residential use, it is considered that the proposed works will not adversely impact the integrity and resilience of the biophysical, hydrological or ecological environment of the site. Additionally, it is considered that the proposed works will not impact any marine vegetation or the surrounding environment.

Bankstown Local Environmental Plan 2015

An assessment of the development application has revealed that the proposal fails to comply with the provisions contained within the *Bankstown Local Environmental Plan 2015* relating to the maximum permitted building height (Clause 4.3(2)) and the maximum permissible wall height (Clause 4.3(2B)(b)).

The breach to both the permitted building height and the permitted wall height occurs as a result of the extension provided to the existing lift shaft.

Clause 4.3 Height of buildings

Clause 4.3(2) provides as follows:

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

The 'Height of Buildings Map' identifies the site as having a maximum permissible building height of 9 metres.

Maximum permissible building height	Maximum proposed building height	Extent of the variation
9 metres	9.47 metres	5.2%

Clause 4.3(2B)(b) provides as follows:

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

(a) ...

(b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,

Maximum permissible wall height	Maximum proposed wall height	Extent of the variation
7 metres	9.27 metres	32.4%

Clause 4.6 Exceptions to development standards

Clause 4.6 of BLEP 2015 includes provisions that allow for exceptions to development standards in certain circumstances. Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

Clause 4.6(2) provides as follows:

- (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.*

As indicated above, the development contravenes the development standards contained within both Clause 4.3(2) and 4.3(2B)(b) of the Bankstown Local Environmental Plan 2015.

The applicant has lodged two Clause 4.6 requests; one justifying a variation to Clause 4.3(2) while the other justifying a variation to Clause 4.3(2B)(b).

Building Height

Clause 4.6(3) provides as follows:

- (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.*

Extracts from the applicant's Clause 4.6 submission are provided below (with respect to their response to the provisions contained within Clause 4.6(3)(a) and (b));

- The building alterations comprising of the lift overrun with a variation of 470mm (from the northern elevation) to the height of the building may be approved without being inconsistent with the zone objectives.*
- As the height of the lift overrun is less than the height of the existing dwelling, the resulting development will be visually compatible with the existing dwelling and therefore the character of the area. The quantum of change overall is considered to be minor and the additional height will be visually subservient to the higher roofline behind.*
- The proposed works do not interfere with local amenity in terms of shadow impact, privacy or overlooking or unreasonable bulk and scale. The general bulk and scale of the building is already established – only a small component of the dwelling will be changed. The existing dwelling is two storeys and has a partial third storey at the rear. The dwelling forms a part of the existing local character. The proposal does not change the general built form of the dwelling.*

- *A compliant proposal would unreasonably prevent the installation of the upgraded lift which is required for enhanced accessibility and mobility reasons for the disabled owner.*
- *To ameliorate the visual impact of the height increase, the selected external finish above the roof gutter line will be cladding in slate grey to blend with the roof behind.*
- *The site is subject to slope. Combined with the prior excavation of the site, there is inevitable difficulty in strict compliance with the building height standard which must be taken into account when considering the nature of the proposed departure.*
- *The lift shaft and overrun occupy 1.25% of the floor plate of the dwelling and is a small component of the overall building. (Floor plate approx. 257m²; Lift shaft approx. 3.2m². The increased bulk and scale caused by the lift overrun does not unreasonably impact upon the character or amenity or landform of the area.*
- *The height of the lift overrun is lower than the height of the existing approved dwelling and the existing roof will form a backdrop to the overrun when viewed from the river.*

Clause 4.6(4) provides as follows:

(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

On the basis of the applicant's submission, it is considered that compliance with the standard is both unreasonable and unnecessary in this instance and that there are sufficient environmental planning grounds to support a variation.

(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

The objectives of Clause 4.3 provide 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,*

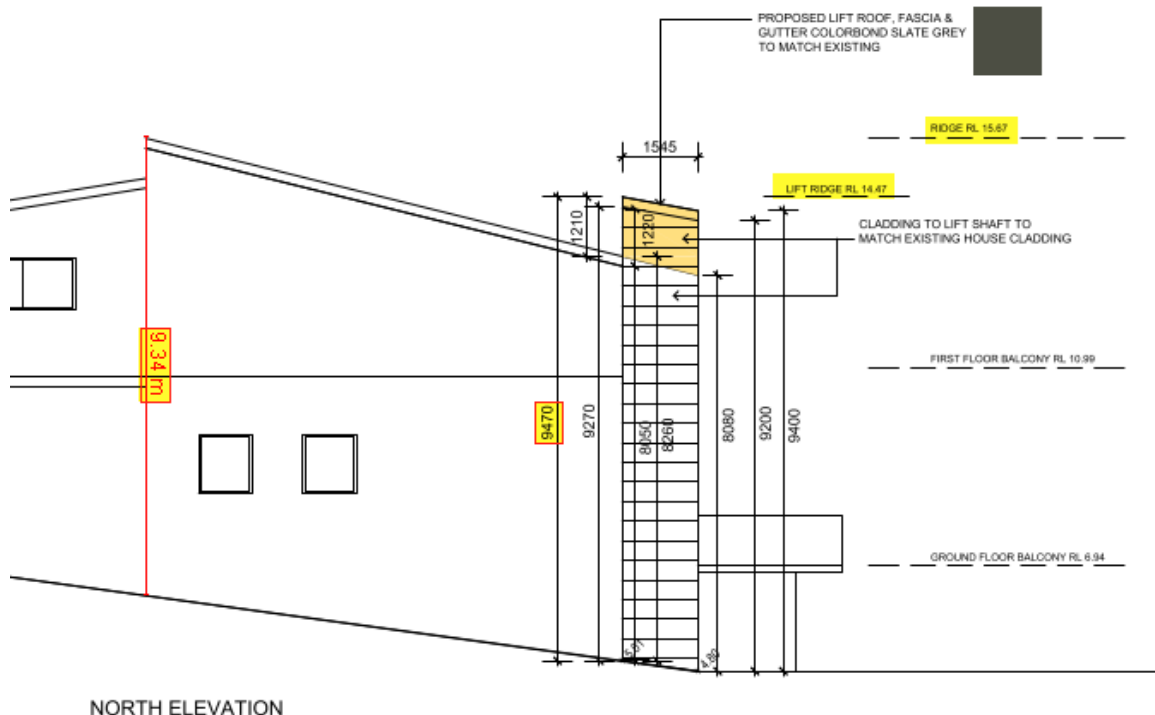
- (d) *to define focal points by way of nominating greater building heights in certain locations.*

The objectives Zone R2 Low Density Residential provide as follows:

1 *Objectives of zone*

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *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.*
- *To allow for the development of low density housing that has regard to local amenity.*
- *To require landscape as a key characteristic in the low density residential environment.*

In addressing the proposed variation to the building height control, consideration must be given primarily to whether the built form is consistent with objective (a) and (b) of the development standard. The existing structure currently contains a non-compliant building height, with the building height being measured at 9.34 metres at its highest point, with the roof ridge set at RL15.67 (see below). The proposed works to the existing lift shaft will result in a further building height non-compliance, with the RL of the lift shaft being proposed at 14.47. The building height at this location will be 9.47 metres, which represents a 5.2% departure from the development standard.



The extent of the departure the applicant is seeking through this proposal is not unlike that which currently exists. That is, a 34cm departure currently exists to the main roof ridge while a 47cm departure is proposed for the lift shaft. The materials and treatment proposed for the lift shaft are consistent with that already provided to the house (the fascia and gutter to be colourbond slate grey to match the existing house). By providing cladding to the lift shaft again to match the existing dwelling and proposing the pitch of the roof to the lift shaft to match that of the dwelling ensures that the works are compatible with the existing built form. Despite the minor non-compliance, the proposed works are considered to be compatible with the character, amenity and landform of the area in which the site is located.

The relevant objectives of the R2 Low Density Residential zone are to “provide for the housing needs of the community within a low density residential environment”, “To allow for the development of low density housing that has regard to local amenity” and to ensuring “landscape as a key characteristic in the low density residential environment”. It is considered that the proposal is consistent with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with those structures in the immediate vicinity. It is worth noting that the proposed RL of the top of the lift shaft is in fact lower than the existing RL of the main roof ridge to the dwelling. The exceedance in building height is a result of site-specific constraints including the slope of the land and the specifications required to accommodate a passenger lift. To insist on strict compliance with the BLEP 2015, in regard to building height, would unnecessarily hinder the existing dwelling being modified to meet the needs of the current occupant.

As such, it is considered that proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 of the BLEP 2015 and the objectives for Zone R2 Low Density Residential.

Wall height

Clause 4.6(3) provides as follows:

- (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.*

Extracts from the applicant's Clause 4.6 submission are provided below (with respect to their response to the provisions contained in Clause 4.6(3)(a) and (b));

- *The increase in the height of the lift shaft wall is a relatively small component of the whole dwelling's built form. The increased bulk and scale caused by the increased wall height does not unreasonably impact upon the character or amenity or landform of the area.*
- *The increased wall height of the lift overrun represents a rise of 1.22m above the height of the existing wall. While the existing and proposed heights are non-compliant, the increase upon the existing is considered to be modest at 15%. As such, the change to the overall bulk and scale of the building is considered modest. To assist in ameliorating the impact of the increased wall height, the overrun extension will be in recessive colours above the gutter line.*
- *The first objective is concerned with compatibility with the character, amenity and landform of the area. In this regard, it is noted that the existing approved wall height exceeds 7m by 1.05m. The dwelling is of a relatively large bulk and scale and forms part of the existing local character. The extent of the increase in the height of the wall forming the lift shaft is considered to be relatively insignificant compared to the existing dwelling.*
- *The dwelling will retain its compatible contextual relationship with the site and neighbouring dwellings.*
- *A compliant proposal would unreasonably prevent the installation of the upgraded lift which is required for enhanced accessibility and mobility reasons for the disabled owner.*
- *The quantum of change overall is considered to be minor and the additional wall height will be visually subservient to the higher roofline behind.*
- *Due to the relatively limited nature of the wall height increase compared to the height of the existing wall and the extent of the building affected, it is considered that there is no unreasonable impact on the prevailing suburban character.*
- *By contrast, a compliant proposal would not allow the upgrade of the lift in the manner intended.*

Clause 4.6(4) provides as follows:

(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

On the basis of the applicant's submission, it is considered that compliance with the standard is both unreasonable and unnecessary in this instance and that there are sufficient environmental planning grounds to support a variation in accordance with the above criteria.

(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

The objectives of Clause 4.3 provide as follows:

4.3 Height of buildings

(2) The objectives of this clause are as follows—

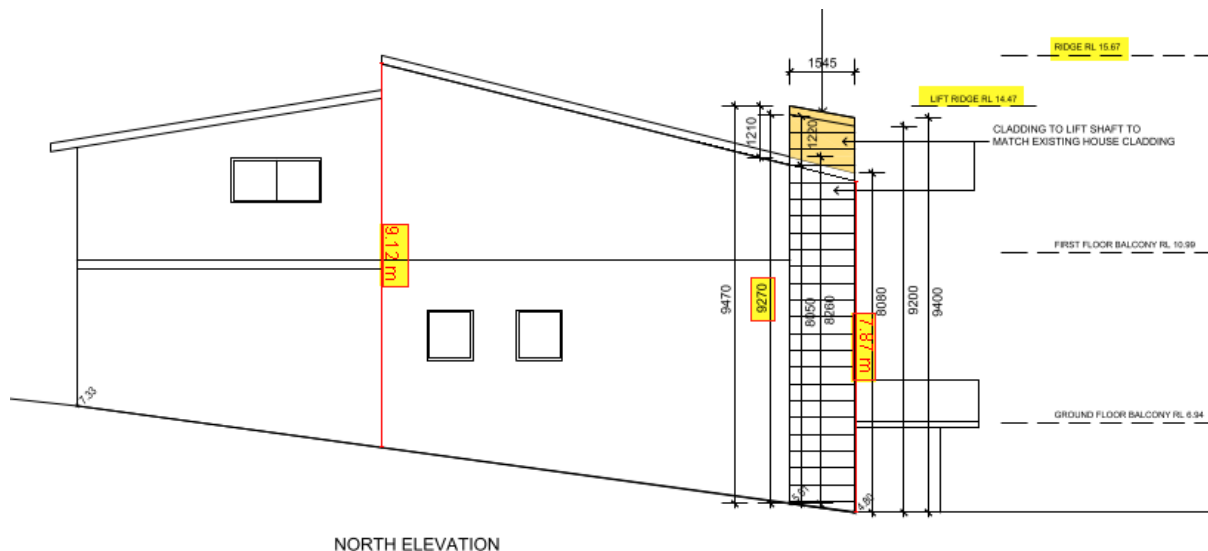
- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low 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.*

The objectives Zone R2 Low Density Residential provide as follows:

2 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- 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.*
- To allow for the development of low density housing that has regard to local amenity.*
- To require landscape as a key characteristic in the low density residential environment.*

In addressing the proposed variation to the wall height standard, consideration must be given primarily to whether the built form is consistent with objective (a) and (b) of the development standard. A wall height greater than 7 metres currently occurs along the majority of the northern elevation of the existing dwelling. At its highest point the wall height is 9.12 metres (as measured to the eave beneath the main roof ridge). The proposal seeks to provide for a maximum wall of height of 9.27 metres so as to accommodate works associated with providing a passenger lift to the dwelling. This represents a 32.4% departure from the development standard.



For reasons similar to those provided in justifying the departure to the building height standard, the wall heights proposed in order to accommodate the installation of a passenger lift are compatible with the wall heights of the existing dwelling. The proposed wall heights are in keeping with the existing built form of the dwelling particularly as viewed along the dwelling's northern elevation. Because the ridge of the main roof sits higher than the ridge provided to the lift shaft, when the dwelling is viewed from the west (Georges River) the proposed increase in wall height will be effectively imperceptible. Despite the non-compliance, the proposed works are considered to be compatible with the character, amenity and landform of the area.

The relevant objectives of the R2 Low Density Residential zone are to *"provide for the housing needs of the community within a low density residential environment"*, *"To allow for the development of low density housing that has regard to local amenity"* and ensuring *"landscape as a key characteristic in the low density residential environment"*. It is considered that the proposal is consistent with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with those structures in the immediate vicinity. To insist on strict compliance with BLEP 2015, it would result in a passenger lift not being able to be installed at the site.

As such, it is considered that proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 of the BLEP 2015 and the objectives of R2 Low Density Residential zone.

Accordingly, the proposed variations to 'Building Height' under Clause 4.3(2) and 'Wall Height' under Clause 4.3(2B)(b) have been satisfactorily addressed through the Clause 4.6 requests.

Clause 5.21 Flood Planning

The proposed works are located within an area that have several flood affectations. The works proposed are located within the existing building footprint and are to be used in conjunction with the existing dwelling. There is no additional floor area proposed. As such, the proposed works will not impact or change the flooding behaviour of the land nor increase the risk to the surrounding area in the times of floods. It is evident that there is easy access to Henry Lawson Drive in the case of a flooding event. It has been considered that the proposed development will have minimal impact on the flooding behaviour that may result due to climate change and the design and scale of the building has been deemed to be appropriate.

Clause 6.1 Acid sulfate soil

The site is affected by Class 1 and Class 5 acid sulfate soils. The majority of the site is affected by Class 5 soils, while there is a small portion, located towards the Georges River, that is affected by Class 1. The proposed works are located exclusively in the existing building's footprint. There is no excavation proposed, so any acid sulfates within the area will not be disturbed.

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

The Draft Canterbury Bankstown Local Environmental Plan 2020 (CBLEP 2020) applies to the subject site. The Draft CBLEP 2020 has been publicly exhibited and adopted by the Canterbury Bankstown Local Planning Panel on 30 June 2020 and is now being considered by the Department of Planning for finalisation. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft CBLEP 2020 provides for an administrative conversion of both the BLEP 2015 and CLEP 2012 into a combined document under the Standard Instrument LEP template.

With respect to the proposed development the proposal remains consistent with the aims of the draft instrument (being identical to the provisions contained in the current applicable local environmental plan) except for the proposed variations to the building and wall height controls.

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

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

CONTROL	REQUIRED	BDCP 2015 PART B1	
		PROPOSED	COMPLIANCE
Clause 2.3 Storey limit	<p>The storey limit for dwelling houses is 2 storeys.</p> <p>In addition, dwelling houses in the foreshore protection area (refer to map in Appendix 1) must ensure the wall height does not exceed 7 metres and the building height does not exceed 9 metres.</p>	<p>The existing dwelling is part 2 storey part 3 storey.</p> <p>The dwelling has a maximum building height of 9.47 metres and a maximum wall height of 9.27 metres</p>	<p>No</p> <p>The report argues that there is merit in supporting the proposed building and wall heights. These controls are identical to those contained in the BLEP 2015.</p> <p>The applicant is not seeking to increase the number of storeys – it remains a part 2 part 3 storey dwelling</p>
Clause 2.9 Setbacks to the side boundary	<p>For the portion of the building wall that has a wall height greater than 7 metres, the minimum setback to the side boundary of the allotment is 1.5 metres.</p> <p>Council may vary this requirement where a second storey addition to an existing dwelling house demonstrates it must use the ground floor walls for structural support.</p>	<p>The existing dwelling is setback 925mm from its northern boundary</p>	<p>No</p> <p>The existing dwelling observes a minimum 925mm setback to the sites northern boundary. Works proposed through this application do not seek to encroach within this existing setback.</p>

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 provisions of the Environmental Planning and Assessment Regulation, 2000.

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

The development will have no additional impact on the natural and built environments with no foreseeable social or economic impacts on the locality.

There currently exists a first floor balcony providing views over and towards the Georges River. While the development allows for people to access this balcony when egressing the passenger lift, this will not increase the likely incidence of overlooking that's currently available for the residents of the dwelling. As such no additional privacy impacts will arise from this development for the adjoining residents.

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

The site is suitable for the development.

Submissions [section 4.15(1)(d)]

The application was notified for a period of 14 days between 2 March 2021 and 15 March 2021. No submissions were received during this period.

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

Approval of the development would remain in the wider 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 which required, amongst other things, an assessment against the provisions contained within *Bankstown Local Environmental Plan 2015* (BLEP 2015) and *Bankstown Development Control Plan 2015* (BDCP 2015).

The proposed development results in an appropriate built form for the site while allowing a development which is compatible with the prevailing character and amenity of the area. At the completion of the works, the development will enhance the quality of life, the social wellbeing and amenity for the occupants of the dwelling.

RECOMMENDATION

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

CONDITIONS OF CONSENT

APPROVED DEVELOPMENT

- 1) The building work/s must comply with the conditions of this Determination Notice. A Construction Certificate must not be issued until the plans and specifications satisfy the required technical standards and the consent conditions of this Determination Notice. In the event of an inconsistency between this Determination Notice, the approved plans and supplementary documentation, this Determination Notice shall prevail.
- 2) The building work/s must be carried out in accordance with the approved plans and supplementary documentation set out in the table below, except where amended by the conditions specified in this Determination Notice.

Plan No.	Plan Name	Date	Revision	Prepared By
01	Site Plan	Oct. 2020	-	Corona Projects
03	Proposed First Floor Plan	05.03.21	A	
04	West Elevation			
05	North Elevation			
06	South Elevation			

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

- 3) The Principal Certifier must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 4) Approval in accordance with Council's Tree Management Order (TMO) is granted to lop or remove only those trees identified to be lopped or removed on the approved plans. If not indicated on the approved plans, separate approval must be obtained to prune or remove trees on adjoining properties or other trees located on the site. A person(s) who contravenes or causes or permits the TMO to be breached shall be guilty of an offence and liable for prosecution.
- 5) A Soil Erosion and Sedimentation Control Plan must be prepared prior to the issue of a Construction Certificate. The plan must be prepared by a professional engineer as defined by the Building Code of Australia and approved by the Principal Certifier. The plan must state that the capacity and effectiveness of erosion and sediment control devices must always be maintained throughout the construction period.
- 6) The Council approved plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) will affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap inTM.

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

Sydney Water must issue either a Building Plan Assessment letter which states that the application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 7) All fees, levies, bonds and/or contributions as required by this Determination Notice must be paid to the relevant authority/entity.
- 8) A long service levy payment which is calculated to be 0.35% of the total cost of the building work/s must be paid to the Building and Construction Industry Long Service Payments Corporation.
- 9) Pursuant to Part 7 of the Environmental Planning and Assessment Act 1979, and the Bankstown Development Contributions Plan 2019, a contribution of \$2,500.00 must be paid to Council. The amount must be adjusted at the time of actual payment, in accordance with the provisions of the Bankstown Development Contributions Plan 2019. The contribution must be paid before the issue of the Construction Certificate. Payment will only be accepted in the form of cash, bank cheque or EFTPOS. Personal cheque and credit card payments will not be accepted.

Note: The Bankstown Development Contributions Plan 2019 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.

- 10) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on relevant Construction Certificate plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 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 the person having benefit of this Determination Notice to obtain a Works Permit and or a Roadway / Footpath Building Occupation Permit prior to issue of any construction certificate for this development being issued where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a. Dig up, disturb, or clear the surface of a public footway or public road,
- b. Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,

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

The person having benefit of this Determination Notice shall construct all works approved within the public road and footway under the supervision and to the satisfaction of Council and shall arrange for necessary inspections by Council whilst the work is in progress.

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

- 12) A certificate from a practising and suitably qualified structural engineer certifying that the existing structure is capable of supporting the new superimposed loads from the proposed development shall be submitted prior to the issue of a Construction Certificate.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 13) A Construction Certificate is required for the erection of a building in accordance with this Determination Notice.

This Determination Notice does not authorise building work until a Principal Certifier has been appointed as the Principal Certifier for the work by (or with the approval of) the person having the benefit of this Determination Notice.

The following requirements apply before the commencement of building work in accordance with this Determination Notice:

- a) the Principal Certifier has, no later than 2 days before the building work commences, notified the Consent Authority and the Council (if the council is not the Consent Authority) of his or her appointment as the Principal Certifier,

- b) the Principal Certifier has, no later than 2 days before the building work commences, notified the person having the benefit of this Determination Notice of any inspections that are required to be carried out in respect of the building work,
 - c) the person carrying out the building work has notified the Principal Certifier that the person will carry out the building work as an owner-builder, if that is the case,
 - d) the person having the benefit of this Determination Notice, if not carrying out the 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 involve, and
 - ii. notified the Principal Certifier of the appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any inspections that are required to be carried out in respect of the building work,
 - e) the person having the benefit of this Determination Notice has given at least a 2-day notice to the Council, and the Principal Certifier if not the Council, of the person's intention to commence the erection of the building.
- 14) Existing trees within the vicinity of the development site or paths of travel of construction vehicles accessing the development site that are to be retained must be protected with temporary fencing. This must be of a type that prevents injury to tree roots, placed 2 metres away from the trunk base of the existing tree to prevent damage during construction and retained in accordance with Council's Tree Management Order (TMO). There must not be any stockpiling of materials within the 2-metre fenced zone whilst the construction of the building work/s is being undertaken and must always be maintained throughout the construction period.
- 15) Council's warning sign for Soil and Water Management must be displayed throughout the construction period at the most prominent point of the site, visible to both the street and site.
- 16) Prior to the commencement of work, the person having the benefit of this Determination Notice must provide a temporary on-site toilet if access to existing toilets on site is not adequate/available. Temporary on-site toilet facilities must be installed and be adequately maintained throughout the construction period.
- 17) A fence must be erected around the area of the development site, except where an existing 1.8 metres high boundary fence is in good condition and can secure the area. Any new fencing must be temporary and at least 1.8 metres high. All fencing must be maintained throughout the construction period 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 work proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of building work/s.

- 18) 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.
- 19) 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 that Act and that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 20) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifier 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 Certifier 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 carried out 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 carrying out the residential building work are changed while the work is in progress, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- 21) A sign must be erected in a prominent position at the development site and must clearly show the following information:
 - a) the name, address and telephone numbers (both during and outside of normal working hours) of the Principal Certifier for the work,
 - b) the name of the licenced builder / owner-builder and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the development site is prohibited.

Any such sign must be maintained while the building work is being carried out and must be removed when the building work has been completed.

- 22) Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site).

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 23) Building work or demolition work may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.
- 24) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 25) A report as prepared by a registered surveyor must be submitted to the Principal Certifier prior to the construction of any floor level of the development verifying that the proposed finished floor level and the wall setbacks to the property boundary conform to the approved plans.
- 26) All civil and hydraulic engineering works on site must be carried out in accordance with Council's Bankstown 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 Bankstown Development Engineering Standards and the engineering plans and details approved by the Principal Certifier. Should the person having benefit of this Determination Notice encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, then he / she must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at his / her own expense.
- 28) While building work is being carried out and where no noise and vibration management plan is approved under this consent, the person having the benefit of this Determination Notice is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.
- 29) Where necessary, the stormwater drainage system shall be constructed in accordance with Council's Bankstown Development Engineering Standards and the engineering plans and details approved by the Principal Certifier. Should the person having benefit of this Determination Notice encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, then he / she must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at his / her own expense.

- 30) There must not be any stockpiling of building spoil, materials, or storage of equipment on the public road during the construction period. The footway and the road reserve must always be maintained in a safe condition. No work can be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 31) The occupation or use of the building must not commence unless an Occupation Certificate has been issued.
- 32) An Occupation Certificate for the completed development must not be issued until all conditions relating to demolition, building and subdivision works have been satisfied and Council has issued a Work Permit Compliance Certificate (where applicable).
- 33) A report as prepared by a registered surveyor must be submitted to the Principal Certifier verifying that the reduced level (RL) of the finished floor level at each level, the height of external walls, the maximum reduced level (RL) of roof structures / roof eaves overhangs and the external wall setbacks to the property boundaries all conform with the approved plans.
- 34) Before the issue of an occupation certificate, the person having the benefit of this Determination Notice must ensure any public infrastructure damaged as a result of the carrying out of building works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council.

Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work.

-END-