



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

**9 October 2023 - 6.00 PM**

**Location: Council Chambers  
Cnr Chapel Road and The Mall  
Bankstown**

# Welcome to the City of Canterbury Bankstown

We're committed to creating a liveable and loveable City for all our residents. Here's how we're doing it:



## Great Cities

We believe in creating vibrant, dynamic, and diverse communities that offer opportunities for people to connect, pursue their passions, and contribute to the world around them.



## Naturally Green

We protect and prioritise nature in and around our city to enhance environmental sustainability and improve the quality of life for our residents.



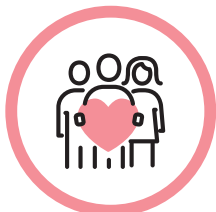
## Design Excellence

We encourage buildings, spaces, and objects that are both beautiful and practical, enhancing the beauty, accessibility, and safety of our built environment.



## People First

We prioritise the needs, preferences, and aspirations of our community in all aspects of urban planning and design, creating supportive and enriching places people love.



## Community

We engage with our community to ensure their needs and aspirations are reflected in the outcome, creating sustainable, resilient, vibrant, diverse, and inclusive places.



## Sustainability

We seek designs that reduce negative impacts on the environment while also promoting social and economic well-being.



## Net-Zero

We encourage our community to design buildings and places that produce as much renewable energy as they consume, reducing greenhouse gas emissions, lowering energy bills, and increasing resilience to environmental shocks and stresses.

**Join us in creating a City that's liveable, loveable, and sustainable for all!**

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## ORDER OF BUSINESS

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### **APOLOGIES AND DECLARATIONS**

### **CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

### **DISCLOSURE OF INTEREST RETURNS 2022/2023**

### **DARANI / BANKSTOWN WARD**

#### **1        31/177 Banksia Road, Greenacre**

Demolition of existing buildings on Strata Lot 31 in SP 88998 and construction of a residential flat building development comprising 71 apartments (55 x 2-bed units and 16 x 3-bed units) ranging in height from 3-6 storeys with basement car parking, and with strata subdivision.

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### **BURA / BASS HILL WARD**

#### **2        25-27 Waldron Road, Sefton**

Demolition of existing structures and construction of a 4 storey Residential Flat Building containing 32 apartments (of which 16 apartments are affordable housing under SEPP (Housing) 2021) with single level basement car parking and landscaping.

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## Canterbury Bankstown Local Planning Panel - 09 October 2023

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<b>ITEM 1</b>	<b>31/177 Banksia Road, Greenacre</b>
	<b>Demolition of existing buildings on Strata Lot 31 in SP 88998 and construction of a residential flat building development comprising 71 apartments (55 x 2-bed units and 16 x 3-bed units) ranging in height from 3-6 storeys with basement car parking, and with strata subdivision.</b>
<b>FILE</b>	<b>DA-1028/2020 – Darani / Bankstown</b>
<b>ZONING</b>	<b>B6 Enterprise Corridor</b>
<b>DATE OF LODGEMENT</b>	<b>11 November 2020</b>
<b>APPLICANT</b>	<b>Chahine Group Pty Ltd</b>
<b>OWNERS</b>	<b>Grandview Estate 2020 Pty Ltd</b>
<b>ESTIMATED VALUE</b>	<b>\$19,156,110</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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This matter is reported to the Canterbury-Bankstown Local Planning Panel as both “Contentious” and “Sensitive” development in accordance with schedule 2 of the Local Planning Panels Direction dated 30 June 2020. The proposal is contentious development due to 10 or more unique submissions being received by way of objection (14 unique submissions objecting to the development have been received). The proposal is sensitive development as it is development to which State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development applies and is 4 or more storeys in height.

Development Application No. DA-1028/2020 proposes the demolition of existing buildings on Strata Lot 31 in SP 88998 and construction of a residential flat building development comprising 71 apartments (55 x 2-bed units and 16 x 3-bed units) ranging in height from 3-6 storeys with basement car parking, and with strata subdivision.

DA-1028/2020 has been assessed against Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015 Part A2 - Corridors, and the application fails to comply in regards to building height, residential setbacks, and

landscaping. The Application and has also been assessed against State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development and its accompanying Apartment Design Guide, and fails to comply in relation to the provision of communal open space, solar access, visual privacy, habitable room depth and minimum room sizes. The non-compliances described here are not considered worthy of support.

The application was advertised and notified for two separate periods of twenty one (21) days, the first from 9 December 2020 until 20 January 2021 (noting that the Christmas/New Year period of 20 December – 10 January is excluded from the calculation of a public notification period, in accordance with the current Clause 16 of Schedule 1 of the *Environmental Planning and Assessment Act, 1979*) and the second from 13 July 2022 to 3 August 2022, following the submission of amended plans.

Fourteen (14) unique submissions were received during these advertising and notification periods, raising concerns relating to: character; parking; vehicular access; height controls; lack of public transport; impact of construction; traffic implications; number of units/overdevelopment; fencing; privacy impacts; overshadowing impacts; need for a neighbourhood liaison committee; and poor urban design. A number of these matters raised in objection have not been satisfactorily addressed.

## **POLICY IMPACT**

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Refusal of the application will ensure the proposed non-compliant development will have no policy implications.

## **FINANCIAL IMPACT**

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The applicant may choose to exercise their appeal rights. Otherwise, the matter being reported has no direct financial implications to Council.

## **RECOMMENDATION**

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It is recommended that the application be refused, for the reasons stated in Attachment B.

## **ATTACHMENTS**

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- A. Assessment Report
- B. Reasons for Refusal



## **DA-1028/2020 – SECTION 4.15 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is known as 31 / 177 Banksia Road, Greenacre. The site is a strata lot, forming part of an existing development previously approved by Council at 177 Banksia Rd for 30 residential apartments across three buildings two-storeys in height with rooms incorporated into the attic of each building. The sites were consolidated to preserve access to the provisions in Part A3 of the BDCP 2015, which required the sites to be consolidated to allow development above 2 storeys.



**Figure 1: Aerial of subject site in blue. Source: NearMap 2023**

The overall site is an irregular allotment that is currently zoned B6 Enterprise Corridor under the Bankstown Local Environmental Plan 2015 (BLEP 2015), noting that the Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023) was gazetted on 23 June 2023, however contained a savings provision at Clause 1.8A requiring applications lodged before that date to continue to be assessed under the

BLEP 2015. It is noted that the zoning of the site under the CBLEP 2023 is also B6 Enterprise Corridor.

The overall site of 177 Banksia Rd contains two older fibro dwellings fronting Banksia Rd to the west, and the north-western part of the site is vacant. This makes up the strata lot numbered 31. The 2-storey-plus-attic development of 30 residential apartments across 3 buildings is located at the eastern end of the site. These are Lots 1-30 in Strata Plan 88998.

The site has a frontage of 69.44m to Hume Hwy, a frontage of 39.12m to Stacey St, a frontage of 101.42m to Banksia Rd and a splay corner frontage of 10.375m to the Stacey St/Banksia Rd 'intersection'. The northern boundary measures 71.825m and the eastern boundary measures 100.56m. The site has a total area of 1.01 hectares (10,144sq m). The site falls from north to south, with a plateau in the north-west corner at an RL of 66.6m AHD, that falls to RL61.0 at the Banksia Rd frontage on the undeveloped portion of the site (i.e. Strata Lot 31, as described above). Vegetation on the site is minimal and scattered, with the vegetation near the northern boundary on the aerial photo image above located on the adjoining site to the north.

The surrounding development consists of a service station immediately to the north, and residential development to the east and opposite the site to the south in Banksia Rd characterised by single dwelling development varying between single- and two-storeys in height. To the west, the site fronts Stacey Street, and on the opposite corner of the Stacey St-Hume Hwy intersection is the heritage listed Bankstown Water tower.

## **PROPOSED DEVELOPMENT**

The Development Application proposes the demolition of existing buildings on Strata Lot 31 in SP 88998 and construction of a residential flat building development comprising 71 apartments (55 x 2-bed units and 16 x 3-bed units) ranging in height from 3-6 storeys with basement car parking, and with strata subdivision.

The proposed development seeks approval for a new part-three/part-four storey building fronting Banksia Rd containing 13 units, and a five-storey building in the north-western corner of the site, fronting the Hume Hwy containing 26 units, and a six-storey building in the south-western corner of the site fronting Stacey St and containing 32 units. A communal open space area is provided in the middle of the site, centrally located between all buildings, and significant landscaping is proposed between the building fronting the Hume Hwy and the site frontage to the Hume Hwy. These buildings sit above a basement containing 124 car parking spaces, 110 for residential and 14 for visitors, of which 2 spaces are for disabled persons.





**Figure 2: Perspective view from Hume Hwy**



**Figure 3: Perspective view from Stacey St/Hume Hwy intersection**



**Figure 4: Perspective view from Banksia Rd**



**BACKGROUND**

A number of development applications have been lodged on the subject site. The following background is provided:

DA-1814/2001 was lodged on 18 December 2001 seeking approval for the “Construction of a Multi-Storey Residential Development Comprising of 112 Units in 2 to 9 Storey Buildings Including a Gymnasium, Tennis Court and Basement Carparking” at 177-183 Banksia Rd and 315 Hume Hwy. The DA was refused at a meeting of Council on 2 October 2003

Council adopted the Bankstown Development Control Plan 2005 in March 2005, which included Part A2 – Corridors, which focused on years of strategic planning along the Hume Highway corridor. The site-specific planning controls currently applying to the development site were adopted as part of this DCP.

DA-1042/2005 was lodged on 27 September 2005 seeking approval for the demolition of existing structures and construction of a new mixed residential and childcare development comprising of eighty-five (85) residential units up to six (6) storeys high with two (2) adaptable units, including a fifty (50) place child care centre with associated basement car parking and landscaping at 177-183 Banksia Rd and 315 Hume Hwy. The DA sought to enable the site-specific planning controls. The DA was refused at a meeting of Council on 14 March 2007. The DA was appealed to the Land and Environmental Court (LEC) on 24 September 2007 and the appeal was dismissed by the LEC on 24 December 2007.

DA-243/2008 was lodged on 31 March 2008 seeking approval for the demolition of existing structures and construction of a residential flat building development comprising of thirty (30) units across three separate buildings 2 storeys in height (incorporating attics), including associated car parking and landscaping with strata subdivision, at 177 Banksia Rd only. The DA was approved on 14 December 2008 under delegated authority. This DA did not seek to enable the site-specific provisions of Part A2 of the BDCP 2005, as the site did not include the consolidation of 181-183 Banksia Rd and 315 Hume Highway.

DA-768/2013 was lodged on 17 September 2013, seeking approval for the consolidation of 177 Banksia Rd with 315 Hume Hwy and 181-183 Banksia Rd and creating a 31-lot strata subdivision. This was done to preserve the development provision specifically applicable to the subject sites only where they form one consolidated lot. The DA was approved on 18 November 2013 under delegated authority.

The subject application, DA-1028/2020 was lodged on 11 November 2020, seeking approval for the demolition of existing buildings on Strata Lot 31 in SP 88998 and construction of a residential flat building development comprising 71 apartments (55 x 2-bed units and 16 x 3-bed units) ranging in height from 3-6 storeys with basement car parking, and with strata subdivision.

The application was advertised and notified, and referred to internal and external stakeholders. Following an assessment of the plans and details submitted, and

collation of the response from internal and external stakeholders, a letter was sent to the applicant on 15 October 2021, advising of numerous outstanding issues that would need to be rectified.

Amended plans were submitted by the applicant on 1 June 2022 and 1 July 2022. These amended plans were advertised and notified, and re-referred to the same internal and external stakeholders.

The assessment of the amended plans uncovered a number of outstanding issues, and further issues were raised in response to the amended plans from internal and external stakeholders. Of significance, TfNSW advised Council on 25 July 2022 of their decision to not provide concurrence due to their need to acquire the site for Stacey St/Hume Hwy intersection upgrade works.

The Applicant was advised of the position of TfNSW on 6 September 2022. The applicant requested that Council put its assessment of the application on hold due to discussions between TfNSW and the applicant being undertaken regarding possible acquisition and compensation.

Following a lengthy period, in August 2023 the Applicant requested Council to determine the application as discussions with TfNSW have not progressed. The application has been on hold since the TfNSW advice came through and was presented to the Applicant on 6 September 2022. As such, there are numerous matters that remain outstanding, and have not been raised with the applicant since the last set of amended plans were lodged in mid-2022. Refusal of the application is the only option, and the applicant is aware of this.

### **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 (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy 65 – Design Quality for Residential Apartment Development (and the Apartment Design Guide)
- Bankstown Local Environmental Plan 2015 (BLEP 2015)
- Bankstown Development Control Plan 2015 (BDGP 2015)
- Bankstown Section 94A Development Contributions Plan

### **SECTION 4.15 ASSESSMENT**

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

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

## **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

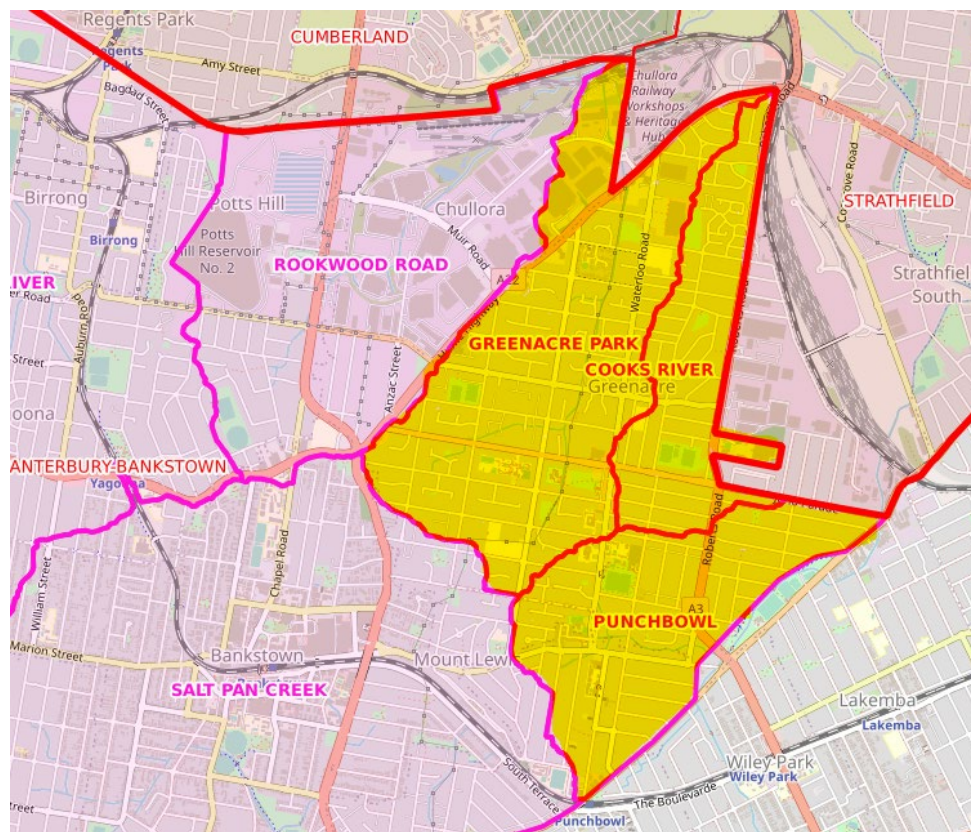
### ***Chapter 2 Vegetation in non-rural areas***

The aims of chapter 2 are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. More specifically, a person must not clear native vegetation in a non-rural area of the State that exceeds the biodiversity offsets scheme threshold without the authority conferred by an approval granted by the Native Vegetation Panel.

In this instance, the removal of trees on site is considered incidental, and does not fall foul of the aim or specific requirements of Chapter 2 of the Biodiversity and Conservation SEPP. It is considered that the development is consistent with the relevant provisions of Chapter 2 of the SEPP.

### ***Chapter 6 Water catchments***

Chapter 6 of the SEPP applies to specific water catchments, including Sydney Harbour and George's River catchments. The subject site is located within the Cooks River catchment, to which Chapter 6 does not apply. As such, Chapter 6 is not relevant to the proposed development.



**Figure 5: Greenacre Park, Cooks River and Punchbowl do not flow into a specified catchment and are not applicable under Chapter 6**

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

In accordance with the BASIX SEPP, a BASIX Certificate accompanies 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 (Transport and Infrastructure) 2021****Division 17 Subdivision 2 - Development in or adjacent to road corridors and road reservations****Transport for New South Wales (TfNSW)****Vehicle access**

As the site has a frontage to a classified road the SEPP is relevant and requires Council to be satisfied that vehicular access to the land is provided by a road other than the classified road where practical. However, Council's DCP requires access from the Hume Hwy and not Banksia Rd. The plans submitted with the original DA showed vehicle access to and from Banksia Rd, and vehicle access to the slip road portion of Stacey St (a classified road).

**Noise and vibration**

Both Hume Hwy and Stacey St are identified as roads with an annual average daily traffic volume of more than 40,000 vehicles, meaning the SEPP is relevant and requires Council to consider whether the development is likely to be adversely affected by road noise/vibration and also requires Council be satisfied that appropriate measures will be taken to ensure that certain noise criteria in decibels, is not exceeded.

An acoustic report prepared by Wilkinson Murray, accompanied the application. The report includes recommendations to achieve the acoustic levels outlined in the SEPP.

The report relies on the following elements to achieve acceptable acoustic privacy, including:

- Upgraded glazing to all windows and doors to habitable and sleeping spaces in residential apartments on noise exposed facades, and
- Alternative means of ventilation to those habitable and sleeping spaces of residential apartment where windows and doors need to be fully closed during noisy periods.



### Traffic generation

In accordance with Schedule 3 in the Infrastructure SEPP/Transport and Infrastructure SEPP, the proposal qualifies as a 'traffic generating development', representing the addition of 71 dwellings to the existing 30 dwellings already on site. As such, the development on the site would total 101 dwellings (approved and proposed) which would exceed the minimum of 75 dwellings and is thus traffic generating development, and was referred to TfNSW for review.

### Overall

The application was initially referred to TfNSW (then Roads and Maritime Services – RMS) on 15 February 2021 under Clauses 101 and 104 of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). A response was received on 31 March 2021 requiring the following:

- *The proposed vehicular access on the eastern side of Stacey Street would not be supported for the ingress and/or egress of vehicles;*
- *Any vehicular access to the development site off Hume Highway would not be supported (southern side, approaching Stacey St intersection); and*
- *Vehicular access (separately to or in addition to the above) would not be permitted from Hume Highway to any commercial component of the development fronting the Hume Highway.*

*Upon receipt of amended plans that reflect the abovementioned requirements, TfNSW will review and provide a response accordingly.*

Following the submission of amended plans in 2022, the application was referred back to TfNSW on 1 July 2022, as required above and under Clauses 2.119 and 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

A response was received on 25 July 2022 advising that the development of plans for the widening of Stacey St, including the significant upgrade of the Hume Hwy/Stacey St intersection, on the south-eastern corner of which the subject site is located. TfNSW advised that the proposed road widening and upgrade works would require acquisition of the subject site and, as such, concurrence could not be provided.

The applicant was advised of this position on 6 September 2022, and meetings were held between Council, TfNSW and the applicant to discuss the way forward. The applicant requested that Council defer determining the matter until discussions had been held between TfNSW and the applicant over the land valuation. Council indicated that this would be possible but could not extend indefinitely. As of the date of writing this report, it is Council's understanding that the valuation process remains ongoing, but has not progressed for some time. Both the applicant and Council are of the view that the matter needs to be determined at this time.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

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

The site has a history of uses that are not residential, and adjoins a service station. A Detailed Site Investigation (DSI) report was submitted by the applicant, which recommends the preparation of Remedial Action Plan to resolve contamination issues identified in the DSI. These items were identified by Council at the same time as the response from TfNSW was provided. These items were not raised with the applicant, due to the application heading towards withdrawal following any negotiation with TfNSW with regard to site acquisition.

As the matter is now reported to the CBLPP for determination, it must be noted that the proposed development fails to satisfactorily address clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.

## **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.

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 through assessment of the specific design criteria and, where relevant, design guidance for each objective. These principles are discussed as follows:

### Principle 1: Context and Neighbourhood Character

The development is not consistent with Council's height controls and therefore cannot be considered to align with the desired future character of the locality. The

design does not ensure that the proposed development is appropriate in terms of scale and bulk.

#### Principle 2: Built Form and Scale

Further to Principle 1, the development is not consistent with Council's specific height controls for this particular site, and therefore cannot be considered to align with the desired future character of the locality. The design does not ensure that the proposed development is appropriate in terms of scale and bulk.

The range of materials significantly contributes to the articulation of the building but does not sufficiently reduce the overall bulk and mass of the building.

#### Principle 3: Density

The density of the proposed development is not satisfactory, as the development fails to comply with both the storey limits in the Development Control Plan and the height limits in the Local Environmental Plan. A development that achieves compliance with the height limits would likely be considered appropriate in terms of density.

#### Principle 4: Sustainability

A BASIX Certificate has been submitted to Council with this development application, which details the resource, energy and water efficiency measures that will be incorporated into this proposal.

#### Principle 5: Landscape

The proposed development fails to provide sufficient landscaping, which is not consistent with the requirements of the Development Control Plan and the site-specific requirements for development of this nature on the site.

#### Principle 6: Amenity

The proposed development has not been designed to maximise solar access. The development fails to achieve the specific setback requirements for residential apartments from classified roads. Balconies sit within the setbacks to both Hume Hwy and Stacey St, and will have minimal amenity due to road noise and air pollution and, whilst generally in excess of the minimum areas required under the Apartment Design Guide, their location is unlikely to meet the recreational needs of future occupants. The size and room dimensions of the units (where such detail is provided) exceed the minimum standards within the Apartment Design Guide.

Lift access has been provided from the basement throughout the building, thereby providing full accessibility for all residents and visitors. However, overall amenity is considered to be compromised, based on the density of the proposed development, due to the failures in meeting height limits and residential setbacks.

#### Principle 7: Safety

The applicant has considered Crime Prevention through Environmental Design (CPTED) principles as outlined in BDCP 2015 in the design of the project. The proposal provides increased activation and passive surveillance of the surrounding

streets and private open space areas on the site. Residential entry and lobby areas are capable of being secured and well lit.

#### Principle 8: Housing Diversity and Social Interaction

The proposed design incorporates various dwelling sizes and includes adaptable units promoting diversity, affordability and access to housing choice.

#### Principle 9: Aesthetics

The proposed use of pattern, texture, form and colour seeks to produce a design aesthetic that reflects the quality of residential accommodation provided. While aspects of the design are considered appropriate, the overall outcome is not cohesive, and fails to speak to the heritage item on the opposite side of the intersection (Water Tower). An opportunity to reflect the form of the heritage building has been missed, especially at the corner where the proposed development would have the greatest street presence. Overall, the aesthetics of the design are not considered worthy of support.

#### Apartment Design Guide

Further to the design quality principles discussed above, the proposal has been considered against the various provisions of the Apartment Design Guide (ADG) in accordance with Clause 28 (2)(c) of SEPP 65.

The initial plans submitted demonstrated a number of non-compliances with key objectives in the ADG. A Request for Information letter was sent to the applicant on 15 October 2021 raising these items as needing further consideration. The amended plans submitted in June-July 2022 fail to provide sufficient detail of all apartments to allow a detailed assessment to be completed. The assessment below generally reflects the assessment completed of the original set of plans submitted, unless it is possible to determine from the amended set whether compliance has been achieved.

APARTMENT DESIGN GUIDE			
Section	Design Criteria	Proposed	Complies
<b>Part 3 - Siting the Development</b>			
<b>3C</b> Public Domain Interface	<ul style="list-style-type: none"> <li>- Avoid long, high blank walls and fences</li> <li>- Direct access from the street to ground floor apartments and windows overlooking the street improve safety and social interaction;</li> <li>- Key components to consider include entries, private terraces or balconies, fence and walls, changes in level, services location and planting.</li> <li>- Safety considerations (real or perceived) and consideration of social interaction opportunities when viewed from the public domain.</li> <li>- Terraces, balconies and</li> </ul>	Overall the public domain interface aspects of the development are considered appropriate. The site fronts two classified roads, meaning direct access to ground floor units from the street should not be encouraged, and has been avoided.	Yes



APARTMENT DESIGN GUIDE					
Section	Design Criteria		Proposed	Complies	
	<p>courtyard apartments to have direct street level entry where possible;</p> <ul style="list-style-type: none"><li>- Changes in levels between ground floor and terraces to balance surveillance and privacy;</li><li>- Provide seating at building entries, letter boxes and private courtyards adjacent the street.</li><li>- Multiple building entrances to be clearly defined through architectural detailing, changes in materials, plant species &amp; colour;</li><li>- Concealment opportunities minimised.</li></ul>				
3D Communal and Public Open Space	Communal open space has a minimum area equal to 25% of the site. Total site area is 10,100m <sup>2</sup> , requiring a minimum 2525m <sup>2</sup> )		The plans fail to demonstrate that 25% of the site has been provided as Communal Open Space within a minimum 6m dimension	No	
	Min 6m dimension.  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).		Solar access to the communal open space is compromised by the height of buildings to the north and west, and compliance has not been demonstrated	Unclear, unlikely	
3E Deep Soil Zones	Deep soil zones are to meet the following minimum dimensions:		1750sq m of DSZs are provided, generally within a minimum dimension of 6m.  This represents 17% of the site.	Yes	
	Site Area	Minimum Dimensions			Deep Soil Zone (% of site area)
	Less than 650m <sup>2</sup>	-			7%
	650m <sup>2</sup> - 1,500m <sup>2</sup>	3m			
	Greater than 1,500m <sup>2</sup>	6m			
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m				

APARTMENT DESIGN GUIDE				
Section	Design Criteria		Proposed	Complies
3F Visual Privacy	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:		Internal visual privacy issues exist. ADG requires 12m internal separation. 9.73m between Block D and E with windows (bed and living Block E, bed only Block D).	No – see below
	Building Height	Habitable Rooms & Balconies	Non-habitable Rooms	
	Up to 12m (4 storeys)	6m	3m	
	Up to 25m (5-8 storeys)	9m	4.5m	
			Courtyards of most Block E units in the “internal bend” will be within 12m for levels 1-4. The setback should increase to 18m for level 5, but does not. The ADG states that “Gallery access circulation should be treated as habitable space when measuring privacy separation distances”, which further exacerbates the level of non-compliance displayed.	
3J Bicycle and Car Parking	For development within 800 metres of a railway station the minimum car parking requirement for residents and visitors is the lesser of that set out within the Guide to Traffic Generating Developments or Council requirements as set out in the table below. Otherwise, the BDCP 2015 controls apply.		Parking complies with the DCP – minimum of 71 spaces required, 110 provided, with 14 visitor spaces, of which 2 spaces are for use by disabled persons, however space dimensions have not been provided	Yes, likely (see below)
	The car parking needs for a development must be provided off street.		Basement	Yes
Part 4 Designing the Building				
4A Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.		Worst case – 39 of 71 units definitely achieve 2 hours solar access between 9am-3pm on 21 June. Question is raised over a further 16 units achieving solar access due to balcony overhang or overshadowing from other proposed buildings on site	No – see below
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter			

APARTMENT DESIGN GUIDE														
Section	Design Criteria		Proposed	Complies										
			None of the 71 units receive no direct sunlight on 21 June	Yes										
4B Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartment at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.		Worst case, 53 of 71 units are naturally cross ventilated, or 75%	Yes										
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		N/A	N/A										
4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:		Ceiling heights of 2.8m are proposed, with floor to floor heights of 3.0m	Yes										
	<table><tr><th colspan="2">Minimum Ceiling Height for Apartment and Mixed Use Buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m main living area floor 2.4 for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>		Minimum Ceiling Height for Apartment and Mixed Use Buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m main living area floor 2.4 for second floor, where its area does not exceed 50% of the apartment area	In recent times, concern has been raised that floor to floor heights of 3.15m are required to comply with current NCC/BCA requirements. Should this be the case, height of building issues would be exacerbated.			
	Minimum Ceiling Height for Apartment and Mixed Use Buildings													
	Habitable rooms	2.7m												
	Non-habitable	2.4m												
For 2 storey apartments	2.7m main living area floor 2.4 for second floor, where its area does not exceed 50% of the apartment area													
These minimums do not preclude higher ceilings if desired.														
4D Apartment Size and Layout	Apartment are required to have the following minimum internal areas:		All units meet the minimum size, where it can be determined how many bedrooms and bathrooms have been provided	No – all cannot be confirmed										
	<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>				Apartment Type	Minimum Internal Area	Studio	35m²	1 bedroom	50m²	2 bedroom	70m²	3 bedroom	90m²
	Apartment Type	Minimum Internal Area												
	Studio	35m²												
	1 bedroom	50m²												
	2 bedroom	70m²												
	3 bedroom	90m²												
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.														
Every habitable room must have a window in an external wall with a														
		Where it can be determined which rooms	No – all cannot be confirmed											

APARTMENT DESIGN GUIDE																			
Section	Design Criteria		Proposed	Complies															
	total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		are habitable, those rooms have a window in an external wall																
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		Where it can be determined the use of rooms in unit layouts, it appears likely that open plan living arrangements will not exceed a depth of 8m	No – all cannot be confirmed															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).		Unclear whether compliance has been achieved, based on the details in the plans The use of rooms are only labelled in some units, but not all, making it difficult to determine which rooms are bedrooms, which are living rooms, and no dimensions have been provided	No – all cannot be confirmed															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).																		
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>																		
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.		N/A	N/A															
4E Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m.		Dwelling type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	Majority of balconies achieve the minimum size and dimension  Unclear whether all balconies achieve compliance, based on the details in the plans	No – see below
	Dwelling type	Minimum Area	Minimum Depth																
	Studio apartments	4m <sup>2</sup>	-																
1 bedroom apartments	8m <sup>2</sup>	2m																	
2 bedroom apartments	10m <sup>2</sup>	2m																	
3+ bedroom apartments	12m <sup>2</sup>	2.4m																	
	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 15m <sup>2</sup> and a minimum depth of 3m.		Ground floor apartments are all provided with in excess of the minimum area and dimensions	Yes															
4F Common Circulation	The maximum number of apartments off a circulation core on a single level is eight.		Maximum of 6 units	Yes															



APARTMENT DESIGN GUIDE													
Section	Design Criteria	Proposed	Complies										
and Spaces													
4G Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Unclear whether compliant storage has been provided, based on the details in the plans	No – cannot be confirmed										
	<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table>			Dwelling type	Storage size volume	Studio apartments	4m³	1 bedroom apartments	6m³	2 bedroom apartments	8m³	3+ bedroom apartments	10m³
	Dwelling type			Storage size volume									
	Studio apartments			4m³									
	1 bedroom apartments			6m³									
	2 bedroom apartments			8m³									
	3+ bedroom apartments			10m³									
At least 50% of the required storage is to be located within the apartment.													

As identified in the above table, the proposed development seeks to depart from the following ADG design criteria:

### 3D – Communal Open Space

The plans fail to clearly demonstrate that Communal Open Space has been provided that is the equivalent of 25% of the site area, across the whole development. This has not been demonstrated at this time.

### 3F - Visual Privacy

Internal visual privacy issues exist. The ADG requires 12m of internal separation. Only 9.73m is provided between Block D and E with windows (bed and living Block E, bed only Block D).

Courtyards of most Block E units in the “internal bend” will be within 12m for levels 1-4. The setback should increase to 18m for level 5, but does not. The ADG states that “Gallery access circulation should be treated as habitable space when measuring privacy separation distances”, which further exacerbates the level of non-compliance displayed.

### 4A - Solar Access

Solar access diagrams provided do not clearly demonstrate how solar access is achieved to proposed dwelling units, nor is the impact of the proposal on the already constructed part of the development demonstrated. Solar access must comply across the whole development.

For the proposed works, it appears that a worst-case scenario will deliver 39 of 71 units (55%) that can definitely achieve the minimum 2 hours solar access required between 9am-3pm on 21 June.

Question marks over solar access surround the following units D32, D33, E44, E48, D36, D37, E50, E54, D40, D41, E56, E60, D43, E62, E66, and E72. Some units on

the corner of Block E are subject to extensive overhang of balconies, which is likely to result in solar access failing around the middle of the day, given their orientation (ie Units E48, E54, E60, E66 and E72), or the potential for overshadowing from Block E and F and/or the existing portion of the development (i.e. the remaining 11 units listed above). No sun angle or sun-eye elevation diagrams have been provided to show whether windows will receive solar access for sufficient time. The solar diagrams submitted are not definitive.

#### **4D-2 – Habitable Room Depth**

The plans fail to clarify whether all units have a maximum depth of 8m from a window opening where open plan living, dining and kitchens are proposed.

#### **4D-3 – Apartment Layouts**

Minimum room dimensions cannot be confirmed, due to the lack of information provided, especially with regards to bedrooms.

#### **4E – Private Open Space**

Question is raised over the corner apartment with a predominately south facing orientation on every level in Block E, which appears to have less than the required 2m min. dimension and 10sq m. On the ground floor, some units may not be provided with the required 15sq m min within a 3m min dimension.

#### **4G – Storage**

Plans fail to demonstrate how the minimum volume of storage has been provided to each unit, including the provision of at least half that volume within the unit.

Based on the above assessment, it is considered that the proposed development fails to give adequate regard to both the design quality principles contained within SEPP 65 and the objectives specified in the ADG for the relevant design criteria

### **Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023)**

The Canterbury-Bankstown Local Environmental Plan 2023 was gazetted on 23 June 2023. Clause 1.8A **“Savings provision relating to development applications”** of the CBLEP 2023 states *“If a development application has been made before the commencement of this plan in relation to land to which this plan applies and the application has not been finally determined before that commencement, the application must be determined as if this plan had not commenced.”*

This particular development application was formally made on 11 November 2020, which predates the commencement of CBLEP 2023. Therefore, it must be evaluated based on the provisions outlined in the Bankstown Local Environmental Plan 2015.

### **Bankstown Local Environmental Plan 2015 (BLEP 2015)**

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

Clause 1.2 – Aims of the Plan  
 Clause 2.1 – Land use zone  
 Clause 2.3 – Zone objectives and Land Use Table  
 Clause 2.7 – Demolition requires development consent  
 Clause 4.3 – Height of buildings  
 Clause 4.4 – Floor space ratio  
 Clause 4.5 – Calculation of floor space ratio and site area  
 Clause 4.6 – Exceptions to development standards  
 Clause 5.10 – Heritage conservation  
 Clause 6.2 – Earthworks

An assessment of the Development Application revealed that the proposal fails to comply with the provisions of Bankstown Local Environmental Plan 2015 relating to the following:

Clause 1.2 – Aims of the Plan

The proposed development is not considered to remain consistent with the Aims of the Plan, specifically as follows:

- (d) to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (i) to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*

As demonstrated in this report, the proposed development fails to comply with the relevant development standards and controls pertaining specifically to this site and the type of development proposed. As such, the development is not considered to be compatible with the prevailing suburban character and amenity of the residential areas of Bankstown, given the extent to which it fails to meet the relevant standards and controls. Furthermore, the failure to comply with the specific requirements of the development standards and controls means that the development cannot be considered to achieve good urban design, especially with regard to site layouts, building form and streetscape.

Clause 2.3 – Zone objectives and Land Use Table

The objectives of the B6 Enterprise Corridor zone are reproduced as follows:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*
- *To provide for residential uses, but only as part of a mixed use development.*

The proposed development fails to address the objectives of the zone, most specifically the fourth objective, which permits residential development only as part of a mixed use development. No commercial use is proposed, meaning the development cannot be considered as a mixed use development, and therefore

cannot address the first and second objectives. By default, the third objective has been met.

#### Clause 4.3 – Height of buildings



Figure 6: Excerpt from Height of Buildings Map in BLEP 2015

The site has various different maximum building heights mapped under Clause 4.3 of the BLEP 2015, reflecting the various heights prescribed in Clause 6.13 of Part A2 of the BDCP 2015 (see excerpt of height of buildings map, Figure 6 above, and further discussion against BDCP 2015, below).

The proposed development fails to comply with the maximum building heights in multiple locations. The elevations show lift overruns that greatly exceed the maximum height of buildings prescribed in the height of buildings maps under Clause 4.3 of the BLEP 2015, as shown below:





**Figure 7: Excerpt from Proposed Elevations showing height breach above maximum building height, represented by the dotted red line.**

The image above shows the top of the lift shaft in Building E, being the tallest building on the site. The maximum height above natural ground level permitted under Clause 4.3 of the BLEP 2015 is 17m (as shown as 'P' in the excerpt from the height of buildings map, Figure 6, previous page).

The image shows the top of the lift overrun at RL83.245. At the location of the lift shaft to building E, natural ground level is approximately RL 65.0, meaning the height of the lift shaft would measure 18.245m, some 1.245m in excess of the maximum. The roof of the building would be 17m above natural ground level, which complies, but demonstrates there is no 'wiggle room', and the lift overrun causes the height breach. As shown in the image above, this part of the Building is six storeys high, which exceeds the maximum height of 5 storeys permitted in the BDCP 2015, and clearly demonstrates that the 5 storey limit in the DCP is consistent with the 17m height limit in the LEP.

The design of the buildings also result in part of Building E encroaching into the area of the site restricted to a 14m height limit, despite being 6 storeys high. The 11m height limit fronting Hume Hwy extends to the 20m setback line. The development fails to achieve the 20m setback to the Hume Hwy, meaning the front elevation of the buildings fronting the Hume Hwy all fail to comply with the 11m height limit.

The applicant has submitted a Clause 4.6 submission attempting to justify the non-compliance with the height of buildings limit. Council is not satisfied that the Clause 4.6 submission satisfactorily addresses the requirements of Clause 4.6 of the BLEP

2015, failing to satisfactorily demonstrate that compliance with the height of building standard is unreasonable or unnecessary in this case, or that there are sufficient environmental planning grounds to justify the contravening the height of buildings standard.

*(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 of the height of buildings standard are reproduced above, and seek to provide appropriate height transitions between development particularly at zone boundaries. The height of buildings map is purposefully specific with regard to the maximum height of building on the site, given it is surrounded by R2 low density residential zones, despite being zoned B6 Enterprise Corridor. The failure to comply with the heights of buildings specified in the standard is considered to directly contravene objective (c).

As such, Council is of the view that the Panel, as the consent authority, could not be satisfied that proposed development would be in the public interest, as the proposed development is not consistent with the objectives of the height of buildings standard, or with the objectives for development within the B6 Enterprise Corridor zone.

It is relevant to note that the breach to the permissible height limit is effectively greater if the applicant was requested to amend the floor to floor heights throughout the development to a height of 3.15m (i.e. to an accepted industry standard).

#### 4.4 Floor Space Ratio

The plans submitted do not scale, making gross floor area (GFA) and floor space ratio (FSR) calculations difficult. Relying on the areas provided on the plans for each unit, the total GFA of the proposed development is calculated at 7097sq m. The site area of Lot 31 in Strata Plan 88988 totals 6001sq m, meaning the FSR would breach.

The approved development at the eastern end of 177 Banksia accommodated 3978sq m on a site area of 4143sq m. This represents an FSR of 0.96:1. Across the total site area of 10,144sq m, the development has a GFA of 11075sq m, representing an FSR calculation of 1.1:1. The maximum permissible FSR on the subject site is 1:1. As such, the FSR fails to comply with Clause 4.3 of the BLEP 2015. No Clause 4.6 submission has been provided attempting to justify the breach.

#### 5.10 Heritage Conservation

Clause 5.10(5) of the BLEP 2015 permits that the consent authority may require a heritage management document to be prepared that assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item. In this instance, such a report was not requested, with direction given that the architectural expression of the new building should take inspiration from the heritage item in the vicinity.

An opportunity exists to express the form of the water tower in the proposed building being constructed on the diagonally opposite corner of a major intersection in the local government area, and an attempt has been made to express a curved feature at the corner. However, the attempt is poor and is not considered to sufficiently address the opportunity that is presented. Whilst the development does not fail to satisfy Clause 5.10 of the BLEP 2015, the architectural and urban design opportunity has been missed.

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

As noted above, the Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023) was gazetted on 23 June 2023, however contained a savings provision at Clause 1.8A requiring applications lodged before that date to continue to be assessed under the BLEP 2015. As such, the CBLEP 2023 has the status of a draft EPI for the purposes of the assessment under Section 4.15 of the Act. The CBLEP 2023 essentially forms an administrative update of both the Bankstown Local Environmental Plan 2015 and the Canterbury Local Environmental Plan 2012, and the assessment against the BLEP 2015 essentially covers the same issues as would any assessment against the CBLEP 2023. As such, it is considered that the assessment of the proposed development against the BLEP 2015 is consistent with the Draft CBLEP 2023 as it stood immediately prior to gazettal on 23 June 2023.

**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 A2 - Corridors of Bankstown Development Control Plan 2015.

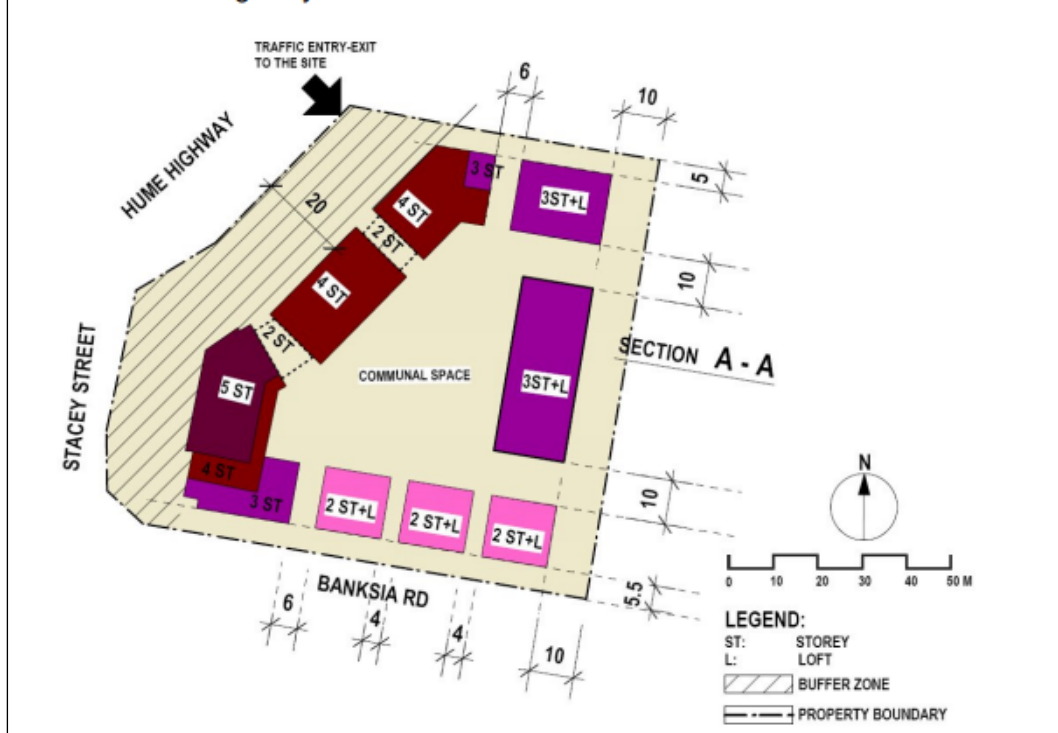
STANDARD	PROPOSED	BDCP 2015 PART A2		LEP 2015 COMPLIANCE
		REQUIRED	COMPLIANCE	
CI 6.13 Storey Limit	Single consolidated lot Vehicle access from Banksia Rd 3-4 storeys to Banksia Rd 5 storeys to Hume Hwy 6 storeys to Stacey St	(a) Single consolidated lot (b) Vehicle access form Hume Hwy (c) 2 storey to Banksia Rd boundary (d) 4 storey to Hume Hwy boundary (e) 5 storeys to Stacey St boundary (f) All remaining limited to 3 storeys, no attics 4+ storeys Otherwise, 2 storey limit	- Yes - No, see below - No - No - No - No	N/A

STANDARD	PROPOSED	BDCP 2015 PART A2		LEP 2015 COMPLIANCE
		REQUIRED	COMPLIANCE	
CI 6.14 Commercial Height	N/A	2 storeys	N/A	N/A
CI 6.15 Landscape width	Min 5m landscape to Hume Hwy Less than 5m to Stacey St	5m wide landscape to Hume Hwy and Stacey St	- Yes - No	N/A
CI 6.16 Commercial Setback	N/A	5m from Hume Hwy/Stacey St	N/A	N/A
CI 6.17 Residential setbacks	17-19.8m Setback to Hume Hwy 5.224m to Stacey St	20m from Hume Hwy and Stacey St	- No - No	N/A
CI 6.18 Residential buffer	20m setback to Hume Hwy is landscaped 20m setback to Stacey St not achieved	20m setback to residential should be commercial or landscape	- No - No	N/A
CI 6.19 Vehicle access	Vehicle access from Banksia Rd	Vehicular access from Hume Hwy not Banksia Rd	No, see below	N/A

Clauses 6.13 – 6.19 apply specifically to the subject site, forming site specific controls that must be met in order for development of the size and scale anticipated to be approved.

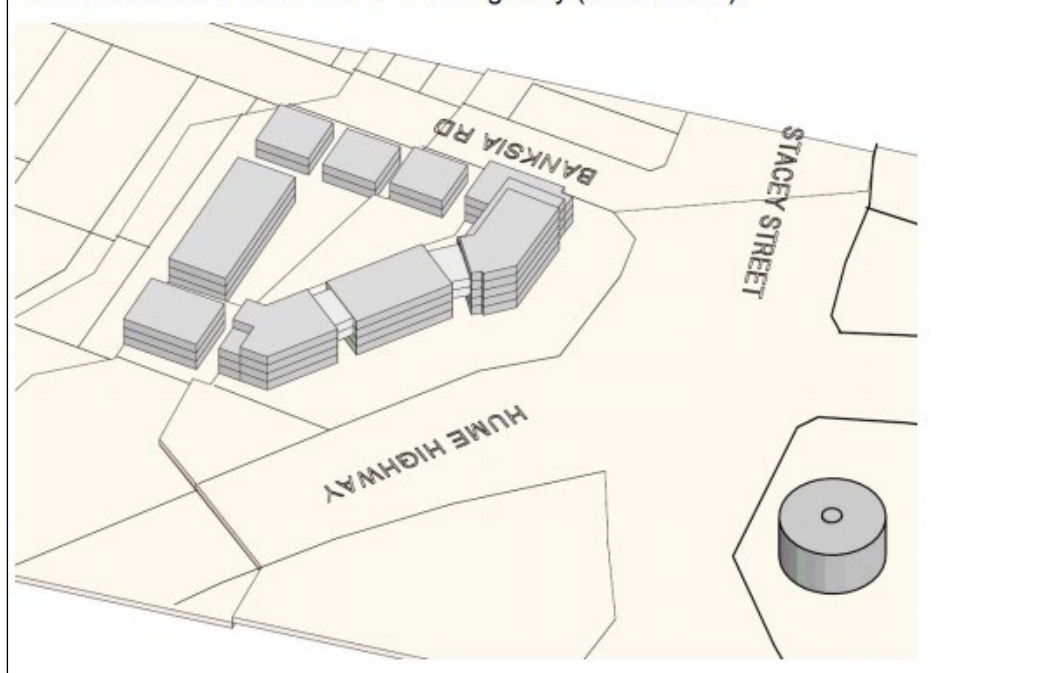
The following figures provide indicative layout and block perspective of the development envisaged under Clause 6.13 – 6.19 of Part A2 – Corridors of the BDCP 2015:

**Figure 43:** Proposed storey limit and setback controls for residential development that consolidates the allotments at Nos. 315 Hume Highway and 177–183 Banksia Road in Bankstown into a single allotment and achieves satisfactory vehicle access from the Hume Highway.



**Figure 8 – Reproduction of ‘Figure 43’ from Part A2 of the BDCP 2015**

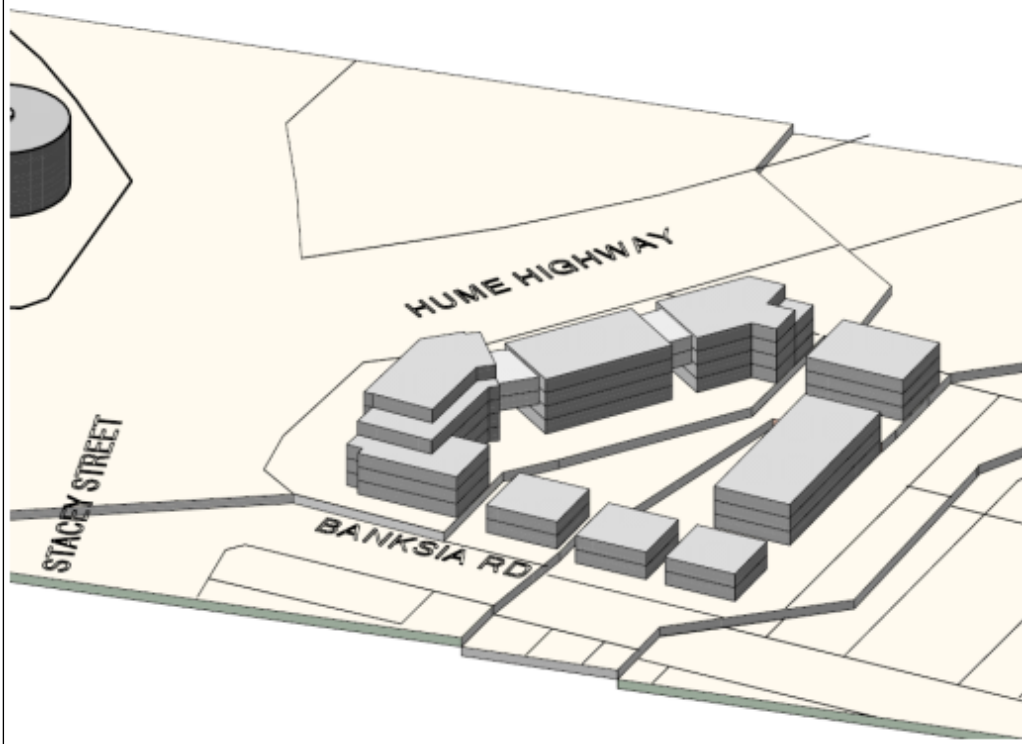
**Figure 45:** Proposed building envelope for development on the consolidated allotment as viewed from the Hume Highway (not to scale).



**Figure 9 – Reproduction of ‘Figure 45’ from Part A2 of the BDCP 2015**



**Figure 46:** Proposed building envelope for development on the consolidated allotment as viewed from Banksia Road at the rear (not to scale).



**Figure 10 – Reproduction of ‘Figure 46’ from Part A2 of the BDCP 2015**

The BDCP 2015 controls envisage vehicular access from the Hume Hwy, to minimise the impact of vehicular movements onto a site zoned B6 – Enterprise Corridor, especially from Banksia Rd which is zoned R2 – Low density residential like the remaining sites with access to Banksia Rd. As detailed above, when referred to TfNSW, it was reiterated that the Transport and Infrastructure SEPP envisages minimal vehicle access to and from classified roads. In this instance, the SEPP overrides the DCP control. Given this, Clause 6.13(b) and 6.19 do not apply to the proposed development, as the SEPP takes precedence.

The required 20m setback to residential from Hume Hwy and Stacey St has not been achieved. This setback is required to achieve an appropriate buffer between the classified roads (Stacey St and Hume Hwy) and the residential parts of the development. The setback from the building wall to Hume Hwy varies from 17m-19.807m, and reduces to considerably less when the development ‘turns the corner’ into Stacey St, reducing to 5.224m at the point of worst case.

Despite Acoustic and Air Quality reports being submitted with the development application purporting to demonstrate that residential amenity can still be achieved despite the reduced setbacks, the variation is not considered to be worthy of support. The setback is not only required as a buffer, but to allow an appropriate streetscape interaction, whereby landscaping is envisaged as a prominent feature and this has not been achieved. The failure to comply with the setback requirement to residential from classified roads results in a development that sites an inappropriate amount of

building mass within the required landscape/setback corridor, and cannot be supported.

The storey limits prescribed by Clause 6.13 of Part A2 of the BDCP 2015 are not complied with. The building presents 6 storeys to Stacey St (5 storeys permitted), 5 storeys to Hume Hwy (4 storeys permitted) and a portion of the development proposes four storeys to Banksia Rd (as per the indicative diagrams above, a combination of 2-4 storeys is permitted to different parts of the Banksia Rd frontage). In some instances, these elements comply with the maximum height limits prescribed by Clause 4.3 of the BLEP 2015 and could be considered acceptable despite not complying with the storey limits in the BDCP 2015. However, in multiple instances the maximum height limits in Clause 4.3 of the BLEP 2015 are breached, indicating that the consistent failure to comply with the storey height limits in the DCP is a function of the overall height breaches in the BLEP 2015. Were the storey limits in the BDCP 2015 to be followed, it is likely that overall height breaches to the BLEP 2015 would be removed.

*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 consistent with the provisions of the Environmental Planning and Assessment Regulation, 2021.

The proposed development fails to provide satisfactorily plans with sufficient detail to complete a full and proper assessment of the proposal, as required under the Environmental Planning and Assessment Regulation, 2021

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

If the proposed development were to be approved, the resultant development would not be consistent with the desired future character of the surround area, given the additional height, which would in turn result in additional solar access and privacy impacts onto nearby properties, beyond those considered acceptable when the site specific controls were developed for the site. The resultant impact on the amenity of existing residents and the future residents of the development would be unacceptable, and these likely impacts should result in the development being refused.

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

On the basis of the assessment made of the proposed development and detailed in this report, it is considered that the site is not suitable for the proposed development.

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

The application was advertised and notified for two separate periods of twenty one (21) days, the first from 9 December 2020 until 20 January 2021 (noting that the

Christmas/New Year period of 20 December – 10 January is excluded from the calculation of a public notification period, in accordance with the current Clause 16 of Schedule 1 of the *Environmental Planning and Assessment Act, 1979*) and the second from 13 July 2022 to 3 August 2022, following the submission of amended plans.

Fourteen (14) unique submissions were received during these advertising and notification periods, raising concerns relating to: character; parking; vehicular access; height controls; lack of public transport; impact of construction; traffic implications; number of units/overdevelopment; fencing; privacy impacts; overshadowing impacts; need for a neighbourhood liaison committee; and poor urban design. A number of these matters raised in objection have not been satisfactorily addressed, as detailed below:

**1. Character**

**Submission:** *Character – the proposal is out of character with the surrounding area* (this has been raised on multiple occasions in submissions).

**Response:** The failure to comply with the prescribed height limits on the site in both the BLEP 2015 and BDCP 2015 would result in a development that is out of character with the surrounding area

**2. Parking**

**Submission:** *Parking – in the street is difficult currently and will only be exacerbated by the development* (this has been raised on multiple occasions in submissions)

**Response:** The proposed development appears to comply with the minimum requirements in relation to car parking provision

**3. Vehicular Access**

**Submission:** *The DCP requires no access from Banksia Rd. Vehicle access is supposed to be limited to the Hume Hwy and not from Banksia Rd* (this has been raised on multiple occasions in submissions)

**Response:** Council's DCP requires no vehicular access from Banksia Rd and only vehicular access from Hume Hwy. The Transport and Infrastructure SEPP applies, as the site has a frontage to a classified road and requires Council to be satisfied that vehicular access to the land is provided by a road other than the classified road, where practical. The matter was referred to TfNSW who indicated that no vehicular access off Hume Hwy would be supported. Despite the intent of the DCP, the SEPP takes legal precedence and the access from Banksia Rd is the only vehicular access possible.

**4. Height controls**

**Submission:** *The development exceeds the height controls stipulated in both the Council's LEP and DCP* (this has been raised on multiple occasions in submissions). *There will be impacts as a result on the existing properties to the south in Stacey St and Banksia Rd*

**Response:** The development exceeds the height limits stipulated in both Councils LEP and DCP. It is recommended that the development application be refused on these grounds.

**5. Lack of public transport**

**Submission:** *The development claims the site is serviced by good public transport. This is not correct.*

**Response:** The site is located in close proximity to bus stops.

**6. Impact of construction**

**Submission:** *Impact of construction – dust, fumes etc, on the health of existing residents.*

**Response:** Were the development to be approved, conditions would be imposed on any development consent requiring appropriate ameliorative measures to be undertaken to mitigate the impacts of construction on surrounding properties.

**7. Traffic implications;**

**Submission:** *Traffic implications – has a traffic study been provided. The street experiences high volumes of traffic at peak times, and the development will significantly exacerbate this*

**Response:** Traffic Reports have been submitted with the application and these have been referred to TfNSW and Council's Traffic Section. Council's Traffic Section has provided conditions to be imposed on any determination notice, should development consent be granted. TfNSW have not provided concurrence for the development.

**8. Number of units/overdevelopment**

**Submission:** *Number of Units – the number of units is an overdevelopment and the mix of units does not conform to the types of families needing dwellings in this area.*

**Response:** The number of units in this particular development are considered to represent an overdevelopment, as the number of units proposed is a direct result of the height breaches proposed and the breach sought to the maximum permitted FSR. The mix of units is limited in its scope, being either 2 or 3 bedroom units only.

**9. Fencing**

**Submission:** *Proposed fence is not in keeping with the existing fences in the locality, is a target for graffiti and does not provide sufficient security to neighbouring properties.*

**Response:** Proposed fencing is considered to comply with the relevant requirements of fencing.

**10. Privacy impacts**

**Submission:** *Privacy Impacts resulting from high-rise development in close proximity to two-storey (or lower) development*

**Response:** The height of the development at the Stacey St/Banksia Rd corner does not match the suggested storey limits in the BDCP 2015. Those

units that sit above the storey limits prescribed in the DCP are likely to have impacts on the privacy afforded to nearby properties, beyond that envisaged as acceptable by Council when the DCP controls were being formulated.

**11. Overshadowing impacts**

**Submission:** *Overshadowing impacts onto adjoining and nearby properties.*

**Response:** The height of the development at the Stacey St/Banksia Rd corner does not match the suggested storey limits in the BDCP 2015. Those units that sit above the storey limits prescribed in the DCP are likely to have impacts on the solar access afforded to nearby properties, beyond that envisaged as acceptable by Council when the DCP controls were being formulated.

**12. Need for a neighbourhood liaison committee**

**Submission:** *If approved, a neighbourhood liaison committee should be formed by the developer to keep residents informed and ensure work is only undertaken in accordance with the approved hours, to minimise impacts for residents.*

**Response:** Were the application to be approved, the imposition of a condition requiring a neighbourhood liaison committee to be formed by the developer would be supported.

**13. Poor urban design**

**Submission:** *Does not achieve good urban design in terms of building form, bulk, architectural treatment and visual amenity.*

**Response:** Council's assessment of the development application agrees that the proposed development does not achieve good urban design.

As detailed above, the proposed development fails to satisfactorily address all of the issues raised in submission.

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

Approval of the proposed development is not considered to be in the wider public interest.

**CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, with consideration given to relevant environmental planning instruments including State Environmental Planning Policies relating to Resilience and Hazards 2021, Transport and Infrastructure 2021, and Design Quality of Residential Apartment Development, in addition to the Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

The proposed development fails to comply with the requirements of the Resilience and Hazards SEPP in relation to contamination and remediation, the relevant



authority (Transport for NSW) has not provided concurrence for the proposed development under the Transport and Infrastructure SEPP, and the development fails to have satisfactory regard to the design quality principles contained in the SEPP 65 - Design Quality of Residential Apartment Development, and fails multiple objectives of the Apartment Design Guide, relating to room size and dimensions, solar access and communal open space. The proposed development also fails to comply with the prescribed height of buildings limit and the maximum floor space ratio in the BLEP 2015, and fails to comply with the multiple site-specific development controls contained in the BDCP 2015, relating to storey limits, residential setbacks and landscaping.

### **RECOMMENDATION**

It is considered that the proposed development should be refused, for the reasons set out in Attachment B.

## **REASONS FOR REFUSAL**

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

1. The proposed development fails to satisfactorily address the requirements of Clause 4.6(1) of State Environmental Planning Policy (Resilience and Hazards) 2021, in relation to contamination and remediation of land [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
2. Transport for New South Wales has not provided concurrence for traffic-generating development, as required under Clause 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 [pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
3. The proposed development fails to satisfactorily address the requirements of Clauses 28(2) and 30(2) of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, in relation to Communal Open Space under Objective 3D of the Apartment Design Guide and Design Quality Principle 8: Housing diversity and social interaction [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
4. The proposed development fails to satisfactorily address the requirements of Clauses 28(2) and 30(2) of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, in relation to Visual Privacy under Objective 3F of the Apartment Design Guide and Design Quality Principle 2: Built Form and Scale and Design Quality Principle 6: Amenity [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
5. The proposed development fails to satisfactorily address the requirements of Clauses 28(2) and 30(2) of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, in relation to Solar Access under Objective 4A-1 of the Apartment Design Guide and Design Quality Principle 4: Sustainability and Design Quality Principle 6: Amenity in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
6. The proposed development fails to satisfactorily address the requirements of Clauses 28(2) and 30(2) of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, in relation to Habitable Room Depth under Objective 4D-2 of the Apartment Design Guide and Design Quality Principle 6: Amenity in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
7. The proposed development fails to satisfactorily address the requirements of Clauses 28(2) and 30(2) of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, in relation to Minimum

Room Sizes and Dimensions under Objective 4D-3 of the Apartment Design Guide and Design Quality Principle 6: Amenity in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].

8. The proposed development fails to satisfactorily address the requirements of Clause 1.2 of the Bankstown Local Environmental Plan 2015, in relation to the Aims of the Policy [pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
9. The proposed development fails to satisfactorily address the requirements of Clause 2.6 of the Bankstown Local Environmental Plan 2015, in relation to the objectives of the B6 zone [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
10. The proposed development fails to satisfactorily address the requirements of Clause 4.3 of the Bankstown Local Environmental Plan 2015, in relation to the Height of Buildings [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
11. The proposed development fails to satisfactorily address the requirements of Clause 4.4 of the Bankstown Local Environmental Plan 2015, in relation to Floor Space Ratio [pursuant to Section 4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act, 1979*].
12. The proposed development fails to satisfactorily address the requirements of Clause 6.15 of the Bankstown Development Control Plan 2015 in relation to landscaping [pursuant to Section 4.15(1)(a)(iii) and (b) of the *Environmental Planning and Assessment Act, 1979*].
13. The proposed development fails to satisfactorily address the requirements of Clause 6.17 of the Bankstown Development Control Plan 2015 in relation to residential setbacks [pursuant to Section 4.15(1)(a)(iii) and (b) of the *Environmental Planning and Assessment Act, 1979*].
14. The proposed development fails to satisfactorily address the requirements of Clause 6.18 of the Bankstown Development Control Plan 2015 in relation to residential buffer zones [pursuant to Section 4.15(1)(a)(iii) and (b) of the *Environmental Planning and Assessment Act, 1979*].
15. The proposed development fails to provide satisfactory plans with sufficient detail to complete a full and proper assessment of the proposal, as required under Clause 24 of the Environmental Planning and Assessment Regulation, 2021 [pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*].
16. The proposed development fails to satisfactorily address matters raised in submission by way of objection [pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act, 1979*].

17. Approval of the proposed development is not considered to be in the public interest [pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act, 1979*].

-END-





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## Canterbury Bankstown Local Planning Panel - 09 October 2023

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<b>ITEM 2</b>	<b>25-27 Waldron Road, Sefton</b>  <b>Demolition of existing structures and construction of a 4 storey Residential Flat Building containing 32 apartments (of which 16 apartments are affordable housing under SEPP (Housing) 2021) with single level basement car parking and landscaping</b>
<b>FILE</b>	<b>DA-95/2022 – Bura / Bass Hill</b>
<b>ZONING</b>	<b>R4 High Density Residential under BLEP 2015.</b>
<b>DATE OF LODGEMENT</b>	<b>15 March 2022</b>
<b>APPLICANT</b>	<b>The Trustee for Obaid Investments Trust</b>
<b>OWNERS</b>	<b>George Lapardin</b>  <b>Anna Lapardin</b>
<b>ESTIMATED VALUE</b>	<b>\$10,092,090.00</b>
<b>AUTHOR</b>	<b>Planning</b>

### REPORT

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This application is referred to Council's Local Planning Panel in accordance with Item 4, Schedule 2 of the *Local Planning Panels Direction – Development Applications*, issued by the Minister for Planning under section 9.1 of the EP&A Act 1979 on 23 February 2018, as the application seeks consent for a development for which State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development applies and for which the development is four (4) or more storeys in height.

The application, DA-95/2022, proposes the demolition of existing structures and construction of a four (4) storey Residential Flat Building (RFB) containing 32 apartments, of which 16 apartments are affordable housing under Chapter 2 of SEPP (Housing) 2021, with single level basement car parking and landscaping. This application does not include the strata subdivision of the development.

The development application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979* requiring, amongst other things, assessment against State Environmental Planning

Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, Bankstown Local Environmental Plan 2015, Canterbury Bankstown Local Environmental Plan 2023 and Bankstown Development Control Plan 2015.

On 23 June 2023 the consolidated Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023) came into force after being publicly exhibited and adopted by Council as the Draft Canterbury Bankstown Local Environmental Plan 2020. The CBLEP 2023 includes clause 1.8A a savings provision which requires that *if a development application has been made before the commencement of the plan in relation to land to which this plan applies and the application has not been finally determined before that commencement, the application must be determined as if this plan had not commenced*. Accordingly, the determination of this application is to be made subject to the provisions of the former Bankstown Local Environmental Plan 2015 which applied to the subject site at the time of lodgement (13 February 2022) as well as the Bankstown Development Control Plan 2015.

The application was advertised and notified for a period of 21 days ending on 20 April 2022 and after receiving amended plans on 22 May 2023 was re-notified for a period of 14 days ending on 6 June 2023. During these notification periods Council received two (2) submissions raising concerns with overshadowing and the proposals potential impact on existing trees. These issues are addressed below in this report.

## **POLICY IMPACT**

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This matter has no direct policy implications.

## **FINANCIAL IMPACT**

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The matter being reported has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that the application be refused, for the reasons stated in Attachment B

## **ATTACHMENTS**

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- A. Assessment Report
- B. Reasons for Refusal

## **DA-95/2022 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site comprises two (2) properties known as 25 and 27 Waldron Road, Sefton. The combined site is a rectangular allotment that is zoned R4 High Density Residential under BLEP 2015. The site has a frontage to Waldron Road of 29.26m with a uniform width through the allotment, measuring 62.23 metres in depth for a total site area of 1,821.80m<sup>2</sup>.

The site contains two (2) dwelling houses with associated outbuildings, one (1) tree located on the nature strip on Waldron Road and ten (10) trees on site. The site has two (2) existing vehicle footpath crossings (VFCs) to Waldron Road. There is one electricity pole located within the nature strip as well as a concrete traffic calming device within the parking lane of Waldron Road in front of 25 Waldron Road (pictured below):



**Figure 1: Street Frontage of 25 Waldron Road (site on the right)**



An aerial of the site is shown below, highlighted in red:



**Figure 2: Site in Red (Source: NearMaps 2022)**

Surrounding properties are a mixture of dwelling houses, villa developments and residential flat buildings, being indicative of the area's redevelopment from low density to high density in character. The surrounding properties are typified by:

To the north: Older and newer-style dwelling houses. The site at 18-22 Waldon Road enjoys consent (DA-172/2017, as modified) for nine multi-unit dwelling as well as a complying development certificate (CD-313/2021) for a new dwelling house.

To the south: A Transport for NSW railway corridor utilised by the T3 Bankstown Line of the Sydney Trains Network.

To the east: Older-style multi-unit housing development.

To the west: Older-style dwelling houses. An application (DA-822/2022) for a 35 dwelling Residential Flat Building at 29-31 Waldron Rd which was refused by the Local Planning Panel at its meeting on 1 May 2023 and is now before the Land and Environment Court.

The site surrounds are shown below, with the site highlighted in red:



Figure 3: Site Surrounds (Source: NearMap 2022)

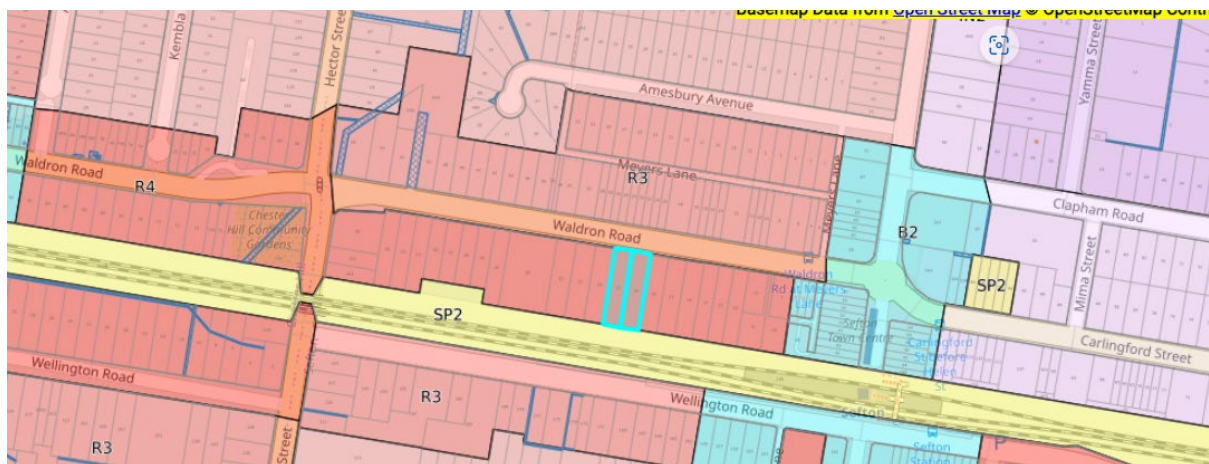


Figure 4: Land Zoning Map under BLP 2015 (Source: Weave)

## **PROPOSED DEVELOPMENT**

The development application proposes the demolition of two (2) existing single storey dwellings and construction of a four (4) storey residential flat building containing 32 apartments utilising Chapter 2 of State Environmental Planning Policy (Housing) 2021 for the provision of 16 affordable housing units, a single level of basement car parking and ground floor landscaping. The building envelope is comprised of the following elements:

Level	Components
Basement	<ul style="list-style-type: none"> <li>• 33 car parking spaces including two (2) accessible spaces</li> <li>• 12 bicycle parking spaces</li> <li>• Two (2) motorcycle / motorbike parking spaces</li> </ul>



Level	Components
	<ul style="list-style-type: none"> <li>• 32 residential storage cages</li> <li>• Two (2) lift cores</li> <li>• Two (2) fire egress stairs</li> <li>• One (1) two-way vehicle entrance / exit ramp to the ground level</li> <li>• One (1) plant room</li> <li>• One (1) fire pump room and</li> <li>• One (1) communications room</li> <li>• One (1) main switchboard (MSB) room</li> </ul>
Ground	<ul style="list-style-type: none"> <li>• Eight (8) residential units, all with ground floor patio areas, consisting of the following: <ul style="list-style-type: none"> <li>○ One (1) x studio apartment,</li> <li>○ Three (3) x one-bedroom apartments,</li> <li>○ Two (2) x two-bedroom apartments</li> <li>○ Two (2) x three-bedroom apartments</li> </ul> </li> <li>• Entry portico for pedestrian entrance from the street</li> <li>• Hydrant booster</li> <li>• Communal open space along the eastern and southern setbacks</li> <li>• Two (2) lift cores</li> <li>• Two (2) fire egress stairs</li> <li>• One (1) two-way vehicle entrance / exit ramp to the basement level</li> </ul>
First	<ul style="list-style-type: none"> <li>• Eight (8) residential units, all with balconies, consisting of the following: <ul style="list-style-type: none"> <li>○ One (1) x one-bedroom apartment,</li> <li>○ Five (5) x two-bedroom apartments,</li> <li>○ Two (2) x three-bedroom apartments</li> </ul> </li> <li>• Two (2) lift cores</li> <li>• Two (2) fire egress stairs</li> </ul>
Second	<ul style="list-style-type: none"> <li>• Eight (8) residential units, all with balconies, consisting of the following: <ul style="list-style-type: none"> <li>○ One (1) x one-bedroom apartment,</li> <li>○ Five (5) x two-bedroom apartments,</li> <li>○ Two (2) x three-bedroom apartments</li> </ul> </li> <li>• Two (2) lift cores</li> <li>• Two (2) fire egress stairs</li> </ul>
Third	<ul style="list-style-type: none"> <li>• Eight (8) residential units, all with balconies, consisting of the following: <ul style="list-style-type: none"> <li>○ One (1) x one-bedroom apartment,</li> <li>○ Five (5) x two-bedroom apartments,</li> <li>○ Two (2) x three-bedroom apartments</li> </ul> </li> <li>• Two (2) lift cores</li> <li>• Two (2) fire egress stairs</li> </ul>
Roof	<ul style="list-style-type: none"> <li>• Eight (8) clearstory windows</li> <li>• Two (2) lift overruns</li> </ul>

## **BACKGROUND**

DA-95/2022 was lodged with Council on 15 March 2022 and was accompanied by Revision A plans dated 10 December 2021. A Request for Information (RFI) was sent to the applicant on 10 May 2022 requesting 54 revisions / changes / items of additional information. Revision B plans dated 6 July 2022 were received and assessed by Council in response to this RFI. A further RFI was issued to the applicant on 16 September 2022. This RFI noted that 35 of the requested changes were completely satisfied through the amended plans, 3 items were partially satisfied

and 16 items were not satisfied or worsened by the changes. Revision D plans dated 5 May 2023 were lodged with Council in response to the second RFI.

A third RFI was issued to the applicant on 16 June 2023 which raised 13 items to be addressed. Revision E plans dated 12 July 2023 were lodged with Council by the applicant to address the items within the latest RFI. These plans are the subject of this report. An assessment of these plans revealed a number of continuing deficiencies with the application, many of which have been present since Revision A.

### **STATUTORY CONSIDERATIONS**

When determining this application, the relevant matters listed in Section 4.15C 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 (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing) 2021,
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Bankstown Local Environmental Plan 2015
- Canterbury Bankstown Local Environmental Plan 2023
- Bankstown Development Control Plan 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)]**

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the removal of vegetation in non-rural areas of Canterbury Bankstown Council and aims to protect the biodiversity values of trees and other vegetation and to preserve the amenity of these areas through the preservation of trees and other vegetation.

The application is accompanied by an arborist report which notes the following vegetation:

- Nature Strip: 1 bottlebrush street tree capable of being retained and protected through the duration of works and the lifetime of the development.
- Adjoining Site (23 Waldron): a number of trees are located on the shared boundary which had been lopped sometime between 17 October 2021 and 9 November 2021. These trees were previously significant and warranted

protection under BDCP 2015 due to their height, however the damage done from the unauthorised lopping / pruning has rendered these trees as having negligible value. Since the lopping works, some regrowth has occurred, however it is still considered that these trees do not require special consideration for protection during works. The proposed building setback along the subject site's eastern boundary (minimum 2 metres within the basement level and 6 metres at upper levels) is considered suitable for the ongoing protection and retention of the trees.

- Adjoining Site (29 Waldron): One tree on this site has been identified as a tree to be protected, being a camphor laurel located in the rear yard of this adjoining property which enjoys a 4 metre setback from the development proposed on 25-27 Waldron Road. The construction of a new boundary wall would protrude within the Tree Protection Zone (TPZ) by 0.61% which is considered suitable subject to conditions to protect this tree during works if the application was to be supported.
- Development Site:
  - Six (6) trees are listed as exempt under BDCP 2015 as they do not reach a height of 5 metres and are therefore not required to be considered before removal.
  - Four (4) trees are existing within the proposed building envelope and are required to be removed to facilitate the development. Two (2) of these trees are of low value while two (2) are of medium value. It is considered that subject to replacement planting conditions, that removal of these trees is suitable if the application was to be supported.
  - Five (5) trees would be provided with Tree Management Zone (TMZ) encroachments of at least 10%, being considered major encroachments and are proposed to be removed. All trees are of low to medium retention value, with removal and replacement being considered suitable if the application was to be supported.

In total, fifteen (15) trees are proposed to be removed, with two (2) trees proposed to be retained and protected (one on the nature strip and one on the adjoining site at no. 29 Waldron Road). None of the trees proposed to be removed are of a protected species and it is considered that subject to replacement plantings, removal of the trees is consistent with the relevant provisions of Chapter 2 of the SEPP.

Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to developments requiring consent which are situated in a regulated catchment (Georges River and Sydney Harbour catchments being applicable to Canterbury Bankstown Council).

The subject site sits within the Sydney Harbour Catchment, being on land draining to the Duck River which is a tributary of the Parramatta River and thus of Sydney Harbour.

The development will have a neutral impact on the quality of the water entering the waterway, with no adverse runoff anticipated from a residential land use and will not

have an adverse impact on the water flow of the Duck River. The development is proposed to incorporate an on-site stormwater detention system to mitigate additional runoff impacts which result from increasing the site cover of the development site. The development will not provide for adverse impacts on aquatic ecology or public access to waterways in the area. Accordingly, it is considered that the development is consistent with the relevant provisions of Chapter 6 of the SEPP.

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

*State Environmental Planning Policy – Building Sustainability Index BASIX– 2004* ('BASIX SEPP') applies to the development. The objectives of this Policy are to ensure the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate for multi-dwelling housing, being Certificate No. 1264004M dated 17 December 2021. The Certificate commits to environmentally sustainable measures. The Certificate demonstrates the proposed development, were it to be supported, would satisfy the relevant water, thermal and energy commitments as required by the BASIX SEPP.

### **State Environmental Planning Policy (Housing) 2021**

Division 1 of State Environmental Planning Policy (Housing) 2021 applies to in-fill affordable housing developments, with the subject application being proposed for the purpose of both affordable and market rate housing. The relevant controls contained within SEPP (Housing) 2021 are as follows:

<b>Section</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Compliance</b>
16 Development to which Division applies	This division applies where the development is permitted under another EPI, where at least 20% of the GFA is for affordable housing and where the development is within an accessible area (800m walking distance to a public entrance to a railway station)	The development is for a residential flat building which is a permitted land use under BLEP 2015 for the subject site.  44% of the development's total GFA is used for the purpose of affordable housing.  The subject site is located a 317 metre walk to Sydney Train's Sefton Railway Station.	Y
17 Floor space ratio	The bonus FSR for a development to which this division applies, on a site with a maximum FSR of 2.5:1 or less and where less than 50% of the GFA will be for the purpose of affordable housing is:	The subject site has a maximum FSR of 1:1 under BLEP 2015. With 44% of the development's GFA allocated for affordable housing purposes, the affordable housing bonus is 0.44:1.  A maximum FSR (with bonus)	N

Section	Requirement	Proposed	Compliance
	Existing FSR + (% affordable / 100)	<p>of 1.44:1 applies to the site.</p> <p>The development application proposes 1.48:1, which is more than the maximum permitted.</p> <p>No clause 4.6 variation request accompanies the subject application about the maximum permitted FSR under BLEP 2015.</p>	
18 Non-discretionary development standards	<p>A minimum site area of 450m<sup>2</sup></p> <p>30% of the site area is for landscaping</p> <p>15% of the site area is for deep soil</p> <p>70% of living rooms and private open spaces receive at least 3 hours solar access from 9am – 3pm at the Mid-Winter Solstice (MWS)</p> <p>Parking in accordance with the following rate:</p> <ul style="list-style-type: none"> <li>• 0.5 space per 1-bedroom</li> <li>• 1 space per 2-bedroom</li> <li>• 1.5 space for 3-bedroom</li> </ul> <p>NSW ADG applies for an RFB</p>	<p>The subject site has an area of 1,821.8m<sup>2</sup>, which is more than the minimum required.</p> <p>34% of the site is provided for landscaping.</p> <p>17% of the site is provided for deep soil areas.</p> <p>81% compliance is achieved with regard to 3-hours solar access at the MWS.</p> <p>The proposal complies with the parking requirement, providing 33 car parking spaces (4 parking spaces for 1-bedroom units, 17 parking spaces for 2-bedroom units and 12 parking spaces for 3-bedroom units).</p> <p>An assessment of the provisions of the NSW ADG is contained within this assessment report.</p>	Y
19 Design requirements	Consent must not be granted unless the consent authority has considered whether the design of the development is compatible with the desirable elements of the character of the local area and future character of the precinct if the area is undergoing transition.	The immediate vicinity has historically been composed of low-density residential development in the form of dwellings, dual occupancies, and villa developments. Since the commencement of the previous LEP in 2015 the subject development site and adjoining properties to the east and west have been zoned R4 High Density Residential while across Waldron Road has been zoned R3 Medium Density Residential. Despite these zonings, no high-density development had occurred	Y

Section	Requirement	Proposed	Compliance
		<p>within the vicinity until 2018 with the completion of another residential flat building at 35-37 Waldron Road.</p> <p>The area is now undergoing an intensification of land use, with new, high density residential developments either under construction or having been approved by Council.</p> <p>It is considered that the subject development application, proposing a high-density residential development to replace the existing low-density character of the site is in keeping with the expected future character of the area, as the locality will continue to establish itself as a high and medium density neighbourhood.</p>	
21 Must be used for affordable housing for at least 15 years	The development must be used for the purpose of affordable housing for a period of at least 15 years from the date of occupation.	A letter from a registered affordable housing provider accompanies this development application.	Y

The proposed development complies with the applicable provisions of Division 1 of SEPP (Housing) 2021 except for the maximum permitted FSR for in-fill affordable housing developments. The proposal seeks authorisation for an exceedance of the maximum permitted FSR (inclusive of bonus), though the applicant asserts that they comply with the FSR. To demonstrate compliance, the applicant provides the following explanatory note:

*Note: To establish the affordable housing component of the gross floor area, the total built-up area of the entire development is taken as 2691.55m<sup>2</sup>, as per the information provided on the cover page. From this, the sum of the total net areas of all 32 units (2441.37m<sup>2</sup>) is taken away leaving 250.18m<sup>2</sup>. This is then divided amongst the 32 units to work out the common area allocation per unit which is 7.82m<sup>2</sup>. The net floor area of the 16 units nominated as affordable is 1180.5m<sup>2</sup> plus the common area allocation (16 x 7.82m<sup>2</sup>) is 125.12m<sup>2</sup>. The sum of these two figures is therefore 1305.62m<sup>2</sup>, & this total represents the gross floor area of the proposed development allocated to affordable housing.*

*The gross floor area needed to take advantage of the affordable housing FSR bonus of 0.4774:1 is 1284.95m<sup>2</sup>. Therefore, the proposed development provides greater than 47.74% of the floor area for affordable housing (48.51 % provided) & is eligible for the FSR bonus of 0.4774:1. In accordance with Clause 17(1)(a)(ii) of SEPP (Housing) 2021, the maximum FSR of the development is 1.4774:1. The development proposes an FSR of 1.4774: 1 & complies with this clause.*

Figure 5: Explanatory Note Provided by Applicant RE: Bonus FSR



The application proposes that portions of communal areas such as corridors and the bin storage room should be allocated for the purpose of the bonus FSR, based on the ratio of the development which is for the purpose of affordable housing. These communal areas do not satisfy the requirement that the areas used for determining the FSR bonus are only areas used for the purpose of affordable housing (lobbies, corridors, bin storage areas and other communal facilities cannot constitute part of a dwelling, which would be necessary for use as housing). Communal areas of the development are excluded from the calculation to determine which percentage of the development is used for affordable housing and accordingly may not be used to increase the affordable housing bonus.

Bankstown LEP 2015 provides for a maximum permitted 1:1 FSR on the site. In addition to the LEP maximum FSR SEPP (Housing) 2021 provides bonus 0.44:1 (based on the Council's assessment as well as the applicant's assertion above  $1,180.5 / 2,691.55 = 0.44$ ) which equates to a maximum permitted FSR of 1.44:1. The application proposes an FSR of 1.48:1. Were the affordable element to be removed from this application, the resultant FSR would be proposed at 1.04:1 representing a 4% departure from the development standard. No written clause 4.6 variation request accompanies this application to demonstrate that compliance from the standard is either unreasonable or unnecessary or that there are sufficient environmental planning grounds to warrant a contravention of the standard.

The application must be refused as it proposes to breach a development standard without sufficient supporting documentation as well as the proposed breach not within the public interest, representing an overdevelopment of the site which contributes to a number of other non-compliances which have been raised within this report.

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

This policy applies to certain 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. This application satisfies the relevant criteria to be assessed against this EPI.

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. A design verification statement from a registered architect (Registration Number: 8842) accompanies this application. These principles are discussed as follows based on Council's assessment of the architect's submission:

#### Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is considered to be the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposed development seeks consent for a front setback which is predominantly hardstand, being impacted by the driveway, pedestrian entrance, services and a private open space patio. This streetscape presentation is inconsistent with the expected character of the area noting the development controls of the Canterbury Bankstown Development Control Plan 2023 require an extensively landscaped front setback. Further, the excess height and FSR also suggest that the development is inconsistent with the expected future character of the locality.

#### Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The proposal seeks to vary the minimum allotment width contained within BLEP 2015 which applies to residential flat buildings. As is discussed further within this report, BLEP 2015 clause 4.1B requires a 30 metre allotment width for RFBs within the R4 High Density Residential zone. The subject site contains a width of 29.26 metres or a 2.5% departure from the standard. In addition to the lot width non-compliance, the application also proposes departures from the maximum permitted FSR and maximum permitted height of building. Combined, these non-compliances demonstrate that the application results in an overdevelopment of the site, failing to achieve a quality built form outcome through bulk and scale, articulation and presentation to the public domain.

#### Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal seeks to vary the maximum permitted FSR and height of building for the development site, resulting in an overdevelopment of the site. The density proposed is out of character with the site and its context.

#### Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Comment: The development incorporates measures to enhance sustainability such as sun shading, landscaping and complies with the minimum provisions for natural light and ventilation required by the ADG.

#### Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.

Comment: The application is accompanied by a landscape plan which demonstrates a suitable landscaping outcome for some of the site, but is deficient with regard to the front setback which is predominantly hardstand, in contrast with the expected character of the area which seeks to establish well-landscaped setbacks between the street and the built form.

#### Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Comment: The application demonstrates that while in total the dwellings proposed achieve compliant levels of solar access and natural ventilation and comply with minimum areas and dimensions, the communal open space area is insufficient both with regard to minimum areas and solar access and are wholly located within side and rear setbacks resulting in the COS being shadowed by the development itself for the majority of the day at the mid-winter solstice (MWS).

Further, insufficient information accompanies the application to demonstrate that either this development or developments on adjoining properties will be able to retain suitable levels of amenity should these developments articulate, creating additional shadowing impacts primarily to the east and west.

#### Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose

Comment: The development provides for passive surveillance of the street as well as over communal areas and provides direct and legible paths throughout the site to maximise safety.

#### Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Comment: The development provides for a mix of dwelling sizes and configurations and proposes affordable units to enhance the social mix.

#### Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The proposed external treatment of the development is dominated by rendered walls which are both high maintenance and of low design merit. The outcome of this development would be a building requiring regular cleaning and repainting maintenance, or one where the development detracts from the expected quality of the streetscape.

A summary table of ADG design criteria follows:

Section	Requirement	Proposed	Compliance
3D Communal and Public Open Space (1)	Communal open space (COS) has a minimum area equal to 25% of the site area.	Insufficient COS is provided. The application proposes the eastern building setback to be utilised as communal open space, however it is not	<b>N</b>

Section	Requirement				Proposed	Compliance						
					<p>considered that this results in a suitable outcome as this space is designed to be the accessway to the lift cores, and not for the enjoyment of residents through either passive or active recreation due to the conflicting nature of the uses.</p> <p>Excluding the impacted portion of the eastern side setback, the application proposes <math>293.9 / 1821 = 16\%</math> of the site area to be used for COS which is less than the 25% required.</p>							
3D Communal and Public Open Space (2)	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 9am and 3pm on 21 June (mid-winter).				Solar access outcome to the open space is poor due to the shadowing caused by the development itself and potential future shadowing of a development to the west.	N						
3E Deep Soil Zones	<table><tr><td>Site Area</td><td>Min. Dim.</td><td>Deep Soil Area</td></tr><tr><td>Greater than 1,500m<sup>2</sup> with existing tree cover</td><td>6m</td><td>7%</td></tr></table>		Site Area	Min. Dim.	Deep Soil Area	Greater than 1,500m <sup>2</sup> with existing tree cover	6m	7%			$131.5 / 1821 = 7.2\%$  Deep soil area complies	Y
Site Area	Min. Dim.	Deep Soil Area										
Greater than 1,500m <sup>2</sup> with existing tree cover	6m	7%										
3F Visual Privacy	<table><tr><td>Building Height</td><td>Habitable Rooms / Balconies</td><td>Non-Habitable Rooms</td></tr><tr><td>12m (4 storeys)</td><td>6m</td><td>3m</td></tr></table>		Building Height	Habitable Rooms / Balconies	Non-Habitable Rooms	12m (4 storeys)	6m	3m			Setbacks proposed are considered suitable, with 6 metres to a property boundary for all levels (except the basement).	Y
Building Height	Habitable Rooms / Balconies	Non-Habitable Rooms										
12m (4 storeys)	6m	3m										
3J Bicycle and Car Parking	The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments (GtTGD), or the car parking requirement prescribed by the relevant council, whichever is less				<p>The GtTGD requires the provision of 32 (26 residential and 6 visitor spaces) car parking spaces. BDCP 2015 requires the provision of 37 car parking spaces (31 resident and 6 visitor).</p> <p>The GtTGD prevails as this is the lesser of the two numbers.</p> <p>The development proposes 33 car parking spaces which is one (1) in excess of the minimum required.</p>	Y						
4A Solar and Daylight Access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area.				<p>81% of apartments achieve a minimum 2 hours solar access at mid-winter.</p> <p>Insufficient information has been provided to demonstrate that compliance is able to be retained should adjoining properties seek to develop in a similar manner. The ADG</p>	N						

Section	Requirement		Proposed	Compliance
			notes that where undue solar impacts on adjoining properties can be avoided, setbacks should be increased.	
4A Solar and Daylight Access	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter		13% of apartments achieve no direct solar access at the mid-winter.	Y
4B Natural Ventilation	60% of apartments are provided with natural cross-ventilation.		72% of apartments are provided with natural cross-ventilation.	Y
4B Natural Ventilation	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line		Cross-through apartment depths are limited to 14.3 metres.	Y
4C Ceiling Heights	Minimum 2.7 metre ceiling height for habitable rooms and 2.4 for non-habitable rooms.		2.8 metre ceiling height proposed with a slab thickness of 300mm to allow for services.	Y
4D Apartment Size and Layout (1)	Apartment Type	Minimum Internal Area	All apartments demonstrate compliance with their respective minimum sizes.	Y
	Studio	35m <sup>2</sup>		
	1 bedroom	50m <sup>2</sup>		
	2 bedroom	70m <sup>2</sup>		
	3 bedroom	90m <sup>2</sup>		
	The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.			
4D Apartment Size and Layout (2)	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		All habitable rooms are provided with sufficiently sized windows which face an external wall of the development. No light wells are proposed.	Y
4D Apartment Size and Layout (1)	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		6.75 metre room depth achieved, except where part of open plan living areas.	Y
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window		All units comply with a maximum 8 metre open plan living area depth from window.	
4D Apartment Size and Layout (1)	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space)		All primary and other bedrooms comply with minimum areas and dimensions.	Y
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)			
4D Apartment Size and Layout (3)	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1-</li></ul>		All living areas achieve minimum dimensions.	Y



Section	Requirement	Proposed	Compliance																		
	bedroom apartments <ul style="list-style-type: none"><li>4m for 2- and 3-bedroom apartments</li></ul>																				
4D Apartment Size and Layout (4)	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	All cross-through apartments are wider than 4.0 metres.	Y																		
4E Private open space and balconies	<table><tr><th>Type</th><th>Min. Area</th><th>Min. Depth.</th></tr><tr><td>Studio</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1-bed</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2-bed</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3-bed</td><td>12m<sup>2</sup></td><td>2.4m</td></tr><tr><td colspan="3">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 15m<sup>2</sup> and a minimum depth of 3m</td></tr></table>	Type	Min. Area	Min. Depth.	Studio	4m <sup>2</sup>	-	1-bed	8m <sup>2</sup>	2m	2-bed	10m <sup>2</sup>	2m	3-bed	12m <sup>2</sup>	2.4m	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 15m <sup>2</sup> and a minimum depth of 3m			Units 004 (ground floor), 105, 205 and 305 fail to provide sufficient private open space with regard to either area or minimum depth in accordance with this requirement.	N
Type	Min. Area	Min. Depth.																			
Studio	4m <sup>2</sup>	-																			
1-bed	8m <sup>2</sup>	2m																			
2-bed	10m <sup>2</sup>	2m																			
3-bed	12m <sup>2</sup>	2.4m																			
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 15m <sup>2</sup> and a minimum depth of 3m																					
4F Common circulation spaces	The maximum number of apartments off a circulation core on a single level is eight	The maximum number of apartments off a single lift core is four (4).	Y																		
4G Storage	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m<sup>3</sup></td></tr><tr><td>1 bedroom</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom</td><td>10m<sup>3</sup></td></tr></table>	Dwelling Type	Storage size volume	Studio	4m <sup>3</sup>	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	All apartments are provided with at least 50% of their storage volume requirements within the units themselves, while basement storage cages satisfy a minimum volume which corresponds to the noted requirements.	Y								
Dwelling Type	Storage size volume																				
Studio	4m <sup>3</sup>																				
1 bedroom	6m <sup>3</sup>																				
2 bedroom	8m <sup>3</sup>																				
3+ bedroom	10m <sup>3</sup>																				
4J Noise and pollution	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layouts of buildings	Referral made to TfNSW for Sydney Trains corridor at rear of site.  Front of site faces Waldron Road, which is not a classified roadway  Acoustic treatment of windows along rear elevation (which have been minimised) is considered a suitable outcome, being consistent with other approvals within the locality.	Y																		

## State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4, Section 4.6 requires a consent authority 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, the

consent authority must be satisfied that the land will be remediated before the land is used for that purpose.

The subject site and locality have historically been used solely for residential land purposes with no history of potential sources of contamination as is detailed within the Geotechnical Report accompanying this application. The report, authored by Ground Technologies concludes that the site presents low risk of contamination and that the site is suitable for residential development. As such, it is considered unlikely that the land is contaminated and that the land is suitable for the proposed continued residential land use subject to conditions of consent in the event the application were to be supported and therefore that the development application satisfies the provisions of Chapter 4, Section 4.6

## **State Environmental Planning Policy (Transport and Infrastructure) 2021**

### Chapter 2, Division 15 – Railways

#### *Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors—notification and other requirements*

##### 2.97 Development adjacent to rail corridors

*Before determining a development application on land adjacent to a rail corridor, Council must have provided notice to TfNSW within 7 days of lodgement and must take into consideration any response from TfNSW received within 21 days of notice.*

This application is identified in SEPP (T&I) 2021 as requiring referral to TfNSW (Sydney Trains) for concurrence before the consent authority may approve the development. The application was referred to Sydney Trains who supported the application in their General Terms of Agreement dated 6 May 2022.

##### 2.98 Excavation in, above, below or adjacent to rail corridors

*Before determining a development application which proposes the penetration of ground to a depth of at least 2 metres on land within 25 metres of a rail corridor, Council must have provided notice to TfNSW within 7 days of lodgement and must take into consideration any response from TfNSW received within 21 days of notice. Concurrence from TfNSW is required before approval of such a development application.*

A response in the general terms of agreement has been provided by TfNSW with regard to the subject proposal's excavation works which includes conditions of consent pertaining to the proposed works and their potential to impact the railway corridor adjoining the development site.

##### 2.99 Impact of rail noise or vibration on non-rail development

*Before determining a development application for the purpose of residential accommodation, a place of public worship, a hospital or an educational*

*establishment or childcare facility, Council must consider the likely to be adversely affected by rail noise or vibration.*

*In particular, for residential accommodation, Council must be satisfied that the appropriate measures are proposed to ensure compliance with the requirements of 2.99(3) with regard to noise levels.*

The application is accompanied by an acoustic report which has been reviewed by Council's Environmental Health Officer as being suitable with regard to the requirements of this section of SEPP (Transport and Infrastructure) 2021.

### Bankstown Local Environmental Plan 2015

Clause	Requirement	Proposed	Compliance
Cl. 1.2 Aims of Plan	<p>to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,</p> <p>to provide a range of housing opportunities to cater for changing demographics and population needs,</p> <p>to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,</p> <p>to concentrate intensive trip-generating activities in locations most accessible to rail transport to reduce car dependence and to limit the potential for additional traffic on the road network,</p> <p>to enhance the quality of life and the social well-being and amenity of the community.</p>	<p>The proposed development is compatible with the prevailing residential character of the area and provides a range of housing opportunities for the population needs.</p> <p>The development is located within an accessible area, concentrating trips around Sefton Railway Station along the T3 Bankstown Line of the Sydney Trains Network.</p> <p>The overdevelopment of the site as demonstrated by the number of variations proposed is indicative of a poor urban design outcome. The location and lack amenity of the communal open space is a result of a poor site layout.</p>	<b>N</b>
Cl. 2.2 Zoning of land to which Plan applies	For the purposes of this Plan, land is within the zones shown on the Land Zoning Map.	<p>The development site is zoned R4 High Density Residential under BLEP 2015.</p> <p>Residential flat buildings are a permitted form of the development within this zone, subject to consent.</p>	<b>Y</b>
Cl. 2.3 Zone objectives and Land Use Table	<p>To provide for the housing needs of the community within a high density residential environment.</p> <p>To provide a variety of housing types within a high density</p>	The development proposes to add high density residential accommodation to the site, providing a variety of housing types through studio, 1, 2 and 3 bedroom apartments.	<b>Y</b>

Clause	Requirement	Proposed	Compliance								
	residential environment.										
Cl. 2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Demolition of two existing dwellings and associated outbuildings is sought through this application.	<b>Y</b>								
Cl. 4.1B Minimum lot sizes and special provisions for certain dwellings	<table border="1"> <tr> <td>Type</td><td>Zone</td><td>Lot Size</td><td>Lot Width</td></tr> <tr> <td>RFB</td><td>R4</td><td>1,500m<sup>2</sup></td><td>30 metres</td></tr> </table>	Type	Zone	Lot Size	Lot Width	RFB	R4	1,500m <sup>2</sup>	30 metres	<p>The site area is 1821.8m<sup>2</sup> which is more than the minimum of 1,500m<sup>2</sup>.</p> <p>The lot width is 29.26 metres which is a 2.5% variation from the development standard. A clause 4.6 variation request accompanies this application which seeks to establish the suitability of this non-compliance in accordance with BLEP 2015 cl. 4.6.</p>	<b>N</b>
Type	Zone	Lot Size	Lot Width								
RFB	R4	1,500m <sup>2</sup>	30 metres								
Cl. 4.3 Height of buildings - Height of Buildings Map	<p>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,</p> <p>The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p>	<p>A 13 metre maximum height of building applies to the site.</p> <p>The proposal seeks consent for a maximum height of 13.35 metres, or a 2.7% departure from the development standard.</p> <p>A clause 4.6 variation request accompanies this application which seeks to establish the suitability of this non-compliance in accordance with BLEP 2015 cl. 4.6.</p>	<b>N</b>								
Cl. 4.4 Floor space ratio	<p>to establish the bulk and maximum density of development consistent with the capacity and character of the locality of a development site,</p> <p>The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</p>	<p>A 1:1 maximum FSR applies to the site. The development is also subject to an FSR bonus through SEPP (Housing) 2021 which permits an addition 0.44:1 FSR. In total, the development benefits from a maximum FSR of 1.44:1.</p> <p>An FSR of 1.48:1 is proposed, representing a 2.8% departure from the standard.</p> <p>No clause 4.6 variation request accompanies this application with regard to this non-compliance.</p>	<b>N</b>								
Cl. 4.6 Exceptions to development standards	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 application is accompanied by two (2) cl. 4.6 variation requests which pertain to BLEP 2015 clauses 4.1B and 4.3 with regard to the minimum site width and the height of building respectively. An address of these requests	<b>N</b>								

Clause	Requirement	Proposed	Compliance
	<p>the contravention of the development standard by demonstrating—</p> <p>a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>4) Development consent must not be granted for development that contravenes a development standard unless—</p> <p>a) the consent authority is satisfied that—</p> <p>i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>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</p> <p>b) the concurrence of the Planning Secretary has been obtained.</p>	follows within this report.	
Cl. 6.2 Earthworks	The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	A single basement level is proposed, which is considered suitable subject to conditions of consent imposed by TfNSW with regard to the adjoining railway corridor.	Y

## Clause 4.6

### Request to vary BLEP 2015 Clause 4.1B Minimum lot sizes and special provisions for certain dwellings

As addressed above, the subject site does not achieve the minimum 30 metre lot width required by clause 4.1B. The site is 29.62 metres in width which is a 2.5% in departure from the standard.

The request to vary the minimum lot width for the development typology proposed within the R4 High Density Residential zone does not satisfy the necessary requirements to permit the consent authority to contravene the subject development standard. In particular the written request to depart from the LEP notes that the development has been designed to minimise shadowing on adjoining properties however no shadow study has been provided as part of this application to detail what the shadowing impacts would be on the property to the west (29-31 Waldron Road). Council was, at the time of lodgement of this application, assessing a proposal for a residential flat building at 29-31 Waldron Road. That application was refused by Council and is now subject to an appeal within the NSW Land & Environment Court. This appeal includes a contention that the development fails to provide compliant solar access to the development. Noting that both the subject site and the site to the west have a streetscape to the north, the developments rely primarily on east and west elevations to achieve solar access compliance. Shadowing impacts from the subject application would further restrict solar access to the east elevation of the development on the adjoining property should that appeal be upheld. Additionally, this application is not accompanied by a solar study to demonstrate that solar access to this development can be retained in the long term, subject to the redevelopment to the west. It is considered that any redevelopment to the west would significantly impact or totally eliminate solar access to Units 002, 003, 005, 007 and 008, which would render the development non-compliant with regard to Section 4A of the ADG (Solar and daylight access).

Insufficient information has been provided to adequately assess whether the proposed setbacks to the west are suitable for the locality. Objective 3B-2 of the NSW ADG requires that overshadowing of adjoining properties be minimised, specifically noting that better retention of solar access may require setbacks in excess of those required in 3F Visual Privacy. The supplied clause 4.6 variation request does not address how increased setbacks to the west would be achievable noting that the site already fails to satisfy the expected minimum width for the development typology. Further, the request notes that the development permits the site to benefit from the full potential of the zoning but it is argued within this report that the development far exceeds the potential of the zoning, noting the breaches to height and FSR in addition to the insufficient allotment width.

Each of the environmental planning grounds proposed to strengthen the variation request would be demonstrated through a compliant development which would be achieved with amalgamation of an adjoining site. The provision of housing within the locality is the expected outcome for this site, and nothing pertaining to the proposed



variation results in a better provision of housing than a compliant development would allow.

Lastly, the request notes that there is 'no public benefit' in maintaining the development control in question. In fact, contravention of this control would result in a number of other sites within the immediate area requesting similar departures from the standard when redeveloping as the subdivision pattern of the area is relatively consistent both on Waldron Road as well as Wellington Road which lies to the south of the adjoining railway corridor. Variations to the lot width result in an undesirable outcome with regard to solar access, as addressed above but also with regard to streetscape presentation as each site is required to have a large VFC as well as essential services which account for a substantial portion of the streetscape. Reductions below 30 metres in width of site dimensions result in an intensification of the impact of these services on the streetscape which restricts the ability of the developments to provide adequate presentation to the street through ground floor, street facing apartments and suitable building entrances. It is noted that the subject development proposes two (2) building entrances on the east elevation as the streetscape is not able to accommodate direct access from the footpath due to the VFC, bin room and other services.

#### Request to vary BLEP 2015 Clause 4.3 *Height of buildings*

As discussed above, the application proposes a 13.35 metre building height, or a 2.7% departure from the 13 metre development standard.

While the site does slope from north to south (street to rear) and the development proposes to incorporate a split-level construction approach, no justification for the contravention of the standard has been put forward. It is noted within the request that strict compliance cannot be reached, however no address of alternate methods has been put forward. For example, could compliance be achieved through the use of two-floor apartments (e.g. maisonette style dwellings) on level 2, which would allow for a reduction in internal ceiling heights from 2.7 to 2.4 metres? This modification would bring the overall height of the building down to 13.05 metres, while a further 500mm reduction in the ground floor RL could then achieve compliance.

The report notes that the roof form is an integral part of the design of the development 'as compared to a simple flat roof form' and adds interest and serves as a design feature of the development, while simultaneously noting that the lift overruns are not visible from the street and that the parapet feature with the greatest height breach is present at the rear of the site, again, not being visible from the streetscape.

Further, The NSW LEC appeal on the adjoining site to the west includes a contention for the proposed height of building breach. The proposed breach in this matter is 300mm or 2.3% of the development standard. This demonstrates that the standard has not been abandoned by Council and that compliance is expected to be achieved even on a site with nearly identical landform characteristics.

Lastly, the report asserts that the height breach is suitable as the development demonstrates through compliant FSR that the proposal is of an appropriate scale. As

is discussed within this report, the FSR proposed is in excess of the permitted maximum through BLEP 2015 and SEPP (Housing) 2021.

#### Request to vary BLEP 2015 Clause 4.4 Floor space ratio

No request to vary BLEP 2015 Clause 4.4 has been provided and as such, no departure from the development standard can be consented to by the consent authority.

### **Canterbury Bankstown Local Environmental Plan 2023**

On 23 June 2023 the consolidated Canterbury Bankstown Local Environmental Plan 2023 came into force after being publicly exhibited and adopted by Council as the Draft Canterbury Bankstown Local Environmental Plan 2020. The Canterbury Bankstown Local Environmental Plan 2023 includes through clause 1.8A a savings provision which requires that *if a development application has been made before the commencement of the plan in relation to land to which this plan applies and the application has not been finally determined before that commencement, the application must be determined as if this plan had not commenced*. Accordingly, this determination is to be made subject to the provisions of the former Bankstown Local Environmental Plan 2015 which applied to the subject site at the time of lodgement (13 February 2022) and the Bankstown Development Control Plan 2015.

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

At the time of lodgement the Draft Canterbury Bankstown Local Environmental Plan 2020 applied to the subject site. Since lodgement this Plan has come into force.

No further draft environmental planning instruments are applicable to the subject site or development typology.

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

### **Bankstown Development Control Plan 2015.**

Clause	Requirement		Proposed	Compliance				
SECTION 9 – RESIDENTIAL FLAT BUILDINGS								
9.1 Isolation of allotments	Must not result in residual allotments having less than 1,200m <sup>2</sup> in area and 20 metres in allotment width.		The development would not isolate adjoining properties which are all able to be consolidated to achieve specified minimums.	Y				
9.2 Storey limit	<table><tr><td>BLEP Height</td><td>Storey Limit</td></tr><tr><td>13</td><td>4</td></tr></table>	BLEP Height	Storey Limit	13	4		The proposal is for a four (4) storey RFB.	Y
BLEP Height	Storey Limit							
13	4							
9.3 Storey limit	The siting of residential flat buildings and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property.		The siting of the development is considered to be in keeping with the contours of the land. A stepped slab proposal responds to the natural fall of the land.	Y				
9.5 Primary and secondary setback	6 metres for all other allotments.		6 metres is proposed to front property boundary.	Y				

Clause	Requirement	Proposed	Compliance
restrictions			
9.8 Setbacks to side and rear boundaries	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.	7.8 metre side setbacks required where 6 metres are proposed however, the ADG building separation prevails and 6 metres would be considered acceptable where no adverse impacts are proposed.  In this instance, a greater than 6 metre setback may be required to the west to retain solar access for the adjoining site.	<b>N</b>
9.10 Setbacks to side and rear boundaries	The minimum setback for a basement level to the side and rear boundaries of the allotment is 2 metres.	A minimum 2.1 metre side / rear setback is proposed for the basement level.	<b>Y</b>
9.11 Setbacks to side and rear boundaries	The minimum setback for a driveway to the side and rear boundaries of the allotment is 1 metre.	A 1.8 metre setback between the driveway and side boundary is proposed.	<b>Y</b>
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.	The street facing units are provided with private open spaces within the front setback, however this is considered an acceptable outcome resulting in a positive interaction between the street and the development despite the technical non-compliance with the control.	<b>N</b>
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.	An assessment of the development against the relevant provisions of the NSW ADG is provided within this report.	<b>Y</b>
9.14 Building design	Development for the purpose of residential flat buildings, serviced apartments and shop top housing must demolish all existing dwellings.	The proposal seeks to demolish all structures off the site.	<b>Y</b>
9.15 Building design	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 dwellings in accordance with AS 4299–Adaptable Housing.	Insufficient information has been provided to note which apartments are proposed to be adaptable and by what standards this would be measured.	<b>N</b>
9.21 Building Design	The siting of a plant room, lift motor room, mechanical ventilation stack, exhaust stack, and the like must: a. integrate with the	The siting of essential services is contained within the built form of the development (fencing), but dominates the streetscape and provides little visual relief of the hardstand.	<b>N</b>

Clause	Requirement	Proposed	Compliance
	<p>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>	Insufficient information with regard to the potential need for a substation has been provided. A potential substation location would further impact the landscaping of the front setback.	
9.22 Building design (car parking)	Development must locate the car parking spaces behind the front building line.	All car parking spaces are located within the basement level, and none are located within the front setback.	Y
9.23 Building design (substations)	The location and design of substations must be shown on the plans.	Evidence has been provided to confirm that no substation is required.	N/A
9.27 Building design (utilities and building services)	Utilities and building services are to be integrated into the building design and concealed from public view.	The siting of essential services is contained within the built form of the development, screened from the public realm of integrated into the design of the proposal.	Y
9.28 Landscaping	Development must retain and protect any significant trees on the allotment and adjoining allotments. To achieve this clause, the development may require a design alteration or a reduction in the size of the residential flat building, serviced apartments and shop top housing.	An arborist report accompanies the application which has been considered acceptable with regard to removal of vegetation on site.	Y
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>b. (b) a minimum 45% of the area between the building and the secondary frontage; and</p> <p>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);</p>	A landscape plan accompanies the application which complies with the relevant requirements and is considered suitable for the locality.	Y
9.30 Security	Where the allotment shares a boundary with a railway corridor or an open stormwater drain, any building, solid fence or car park on the allotment should, wherever practical, be setback a minimum	TfNSW (Sydney Trains) has provided concurrence for the development, specifically with regard to the interface between the development site and the rail corridor.	Y

Clause	Requirement	Proposed	Compliance
	<p>1.5 metres from that boundary. The setback distance must be:</p> <ol style="list-style-type: none"> <li>treated with hedging or climbing vines to screen the building, solid fence, or car park when viewed from the railway corridor or open stormwater drain; and</li> <li>the hedging or climbing vines must be planted prior to the completion of the development using a minimum 300mm pot size; and</li> <li>the planter bed area must incorporate a commercial grade, sub-surface, automatic, self-timed irrigation system; and</li> <li>the allotment must be fenced along the boundary using a minimum 2 metre high chain-wire fence; and</li> <li>the fence provides an appropriate access point to maintain the landscaping within the setback area; and</li> <li>where a car park adjoins the boundary, hedging or climbing vines must also be planted along the sides of any building or solid fence on the allotment that face the railway corridor or open stormwater drain.</li> </ol> <p>If a setback for landscaping under this clause is not practical, other means to avoid graffiti must be employed that satisfies Council's graffiti minimisation strategy.</p>	The application proposes a compliant landscaped setback to the rail corridor incorporating hedging and other landscaping elements to sufficiently screen the corridor from the development.	
<b>SECTION 14 – ANCILLARY DEVELOPMENT</b>			
14.1 & 14.2 Fence Height	<ul style="list-style-type: none"> <li>1.8 metres maximum height</li> <li>Solid construction not above 1 metre</li> </ul>	A maximum fence height of 1.0 metres is proposed.	<b>Y</b>
<b>PARTS A1, A2, A3 and B2 - COMMERCIAL</b>			
The subject site is subject to Section 4 being within the Sefton Small Village Centre			
3.3 Lot widths	The minimum primary frontage for residential flat buildings with 3 or more storeys is 30 metres	As addressed within this report, the development site fails to provide sufficient width for the proposed development.	<b>N</b>
3.5 Storey limit (not including basements)	The minimum floor to ceiling height for a living area is 2.7 metres.	2.7 metre floor to ceiling heights achieved.	<b>Y</b>
3.14 Building design	The location and design of substations must be shown on the	No substation is required.	<b>N/A</b>



Clause	Requirement	Proposed	Compliance
(substations)	plans.		

An assessment of the Development Application revealed that the proposal fails to comply with a number of the provisions of the Bankstown Development Control Plan 2015 some of which are considered acceptable, but others of which demonstrate an overdevelopment of the site and a poor outcome for future occupants. In particular, the development does not comply with the minimum side setbacks which has not been demonstrated this will not result in adverse impacts on the adjoining development site to the west. Additionally, insufficient information has been provided to demonstrate that the required number of units are to be accessible for persons with mobility impairments.

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

There are no planning agreements applicable to the proposed development.

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

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2021.

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

The key potential impacts of the development have been discussed throughout this report. Based on the above findings, it is considered that the proposed development will result in an undesirable impact.

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

The application has been assessed under Section 4.15 of the Act, and as demonstrated throughout the body of this report, the application is poorly resolved in significant areas of concern. It is acknowledged that there has been some attempt by the Applicant to address some concerns raised by Council, However, those efforts have resulted in additional non-compliances that have not been considered and the amended design still results in three (3) development standard variations as well as several non-compliances with development controls. Accordingly, it is considered that the site is not suitable for the development.

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

The application was advertised and notified for a period of 21 days ending on 20 April 2022 and amended plans were re-notified for a period of 14 days ending on 6 June 2023. During these notification periods Council received two (2) submissions with regard to this application. These submissions raised the following concerns:

##### ***Submission: Request to view a shadow diagram***

**Response:** The application is accompanied by shadowing plans which were included within the notification bundle in accordance with the Canterbury Bankstown Community Participation Plan 2020. The

shadow cast by the proposed development would impact the property to the west between the hours of 8am and 10:30am and the property to the east between the hours of 12pm to 4pm at the mid-winter solstice. Insufficient information regarding the potential of this shadowing to impact upon redevelopment of surrounding properties contributes to a reason to not support this proposal.

**Submission:** *Impact of the development on trees on adjoining properties*

**Response:** An arboricultural report accompanies this application which has been assessed as suitable with regard to the removal of vegetation on site and retention of vegetation on adjoining sites. Council is recommending refusal of this application based on other grounds.

**Submission:** *Need to split the building form into two (2) to reduce impacts.*

**Response:** This suggestion was provided to the applicant but was not implemented on amended plans. As a result of the proposed single building envelope, shadowing impacts from the development on the development site and adjoining properties is considered excessive and contributes a reason to not support the proposal.

**Submission:** *Request to view a landscape plan.*

**Response:** A landscape plan accompanies this development application and was included within the bundle of documents available for public viewing in accordance with the Canterbury Bankstown Community Participation Plan 2020. Council has reviewed the plan and found it to be acceptable.

**Submission:** *Minimum frontage not achieved.*

**Response:** This constitutes a reason for refusal of the subject application.

**Submission:** *Requirement for use as affordable housing.*

**Response:** Council imposes conditions of consent on affordable housing developments to ensure they are used for affordable purposes for the required timeframe. As this application is recommended for refusal, no such condition is required.

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

The proposed development, in its current form, is considered to contravene the public interest. The proposed departures from the key planning controls will result in a design that is not in keeping with the current and future desired character of similar development within the locality.

### **CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*. As outlined within this report the proposed development fails to comply with a number of standards and controls, in particular the minimum lot width for the proposed development typology, the maximum permitted height of building and maximum

permitted floor space ratio as well as controls from the ADG relating to communal open space private open spaces. As is demonstrated by the number and nature of the non-compliances proposed, the number of revisions received by Council and the interconnected nature of the development standards which are proposed to be breached it is evident that the proposal is not suitable for the site, does not represent a good planning outcome and is not within the public interest and therefore should be refused.

### **RECOMMENDATION**

It is recommended that the application be refused, for the reasons set out in Attachment B.



## **REASONS FOR REFUSAL**

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

1. The proposal fails to comply with the maximum permitted floor space ratio permissible for the property in accordance with the additional floor space ratio bonus provision of SEPP (Housing) 2021 [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
2. The proposal was not accompanied by sufficient information to demonstrate the minimum solar access requirements of SEPP (Housing) 2021 with regard to impacts from developments on adjoining properties in the near and long term [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
3. The proposal fails to comply with Bankstown Local Environmental Plan 2015 Clause 4.1B(1)(a) with regard to ensuring adequate sizing for residential lots [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
4. The proposal fails to comply with Canterbury Bankstown Local Environmental Plan 2023 Clause 4.1B(1)(a) with regard to ensuring adequate sizing for residential lots [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
5. The proposal fails to comply with Bankstown Local Environmental Plan 2015 Clause 4.1B(2)(b) with regard to the minimum required lot width for the proposed development typology [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
6. The proposal fails to comply with Canterbury Bankstown Local Environmental Plan 2023 Clause 4.1B(2)(b) with regard to the minimum required lot width for the proposed development typology [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
7. The proposal fails to comply with Bankstown Local Environmental Plan 2015 Clause 4.3(2) with regard to the maximum permitted height of building applicable to the land [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
8. The proposal fails to comply with Canterbury Bankstown Local Environmental Plan 2023 Clause 4.3(2) with regard to the maximum permitted height of building applicable to the land [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],
9. The proposal fails to comply with Bankstown Local Environmental Plan 2015 Clause 4.4(2) with regard to the maximum permitted floor space ratio to the land [Pursuant to S4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*],



10. The proposal fails to comply with Canterbury Bankstown Local Environmental Plan 2023 Clause 4.4(2) with regard to the maximum permitted floor space ratio to the land [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
11. The proposal fails to comply with Bankstown Local Environmental Plan 2015 Clause 4.6(3) with regard to accompanying of a written request to vary a development standard with this application [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
12. The proposal fails to comply with Canterbury Bankstown Local Environmental Plan 2023 Clause 4.6(3) with regard to accompanying of a written request to vary a development standard with this application [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
13. The proposal fails to comply with Bankstown Local Environmental Plan 2015 Clause 4.6(4) with regard to the satisfaction of the matters contained within BLEP 2015 Clause 4.6(4)(a & b) [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
14. The proposal fails to comply with Canterbury Bankstown Local Environmental Plan 2023 Clause 4.6(4) with regard to the satisfaction of the matters contained within BLEP 2015 Clause 4.6(4)(a & b) [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
15. The proposal fails to comply with the minimum required area of communal open space in accordance with the NSW Apartment Design Guide [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
16. The proposal fails to comply with the minimum required solar access to the principal communal open space in accordance with the NSW Apartment Design Guide [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
17. The proposal fails to provide a cohesive and well-designed communal open space in accordance with the NSW Apartment Design Guide [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
18. The proposal fails to provide a communal open space which is responsive to the microclimate and site conditions of the development with regard to the shadowing impacts from the development itself, in accordance with the NSW Apartment Design Guide [Pursuant to S4.15(1)(a)(i) of *the Environmental Planning and Assessment Act*, 1979],
19. The proposal fails to provide for complaint side setbacks in accordance with BDCP 2015 Part B1 Section 9 Clause 9.8 [Pursuant to S4.15(1)(a)(iii) of *the Environmental Planning and Assessment Act*, 1979],
20. The proposal fails to provide sufficient information to demonstrate compliance with BDCP 2015 Part B1 Section 9 Clause 9.15 with regard to adaptable

dwellings [Pursuant to S4.15(1)(a)(iii) of *the Environmental Planning and Assessment Act*, 1979],

21. The proposal fails to provide a sufficient bin storage area in accordance with BDCP 2015 Part B13 [Pursuant to S4.15(1)(a)(iii) of *the Environmental Planning and Assessment Act*, 1979],
22. Due to the above reasons, Council cannot accurately assess the proposed development with respect to the environmental, social, and economic impacts on the locality [Pursuant to Section 4.15(1)(a)(b) of the *Environmental Planning and Assessment Act* 1979];
23. The site is considered unsuitable for the proposed development [Pursuant to S4.15(1)(c) of *the Environmental Planning and Assessment Act* 1979]; and
24. For the reasons stated above, it is considered that the development is not in the public interest [Pursuant to S4.15(1)(e) of *the Environmental Planning and Assessment Act* 1979].

-END-