



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

3 April 2019 - 6.00pm

Location:

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

ORDER OF BUSINESS

APOLOGIES AND DECLARATIONS

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

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- 1 **33 Ian Crescent, Chester Hill**
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- 2 **49 McCrossin Avenue, Birrong**
Demolition of existing garage, construction of a detached secondary dwelling
and a detached triple car garage with associated concrete driveway 27

CANTERBURY WARD

- 3 **67-69 Balmoral Avenue, Croydon Park**
Demolition of existing structures and construction of an affordable housing
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subdivision and associated works pursuant to State Environmental Planning
Policy (Affordable Rental Housing) 2009 52
- 4 **92 & 92A Bayview Ave, Earlwood**
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- 5 **599-603 Canterbury Road, Belmore**
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basement parking. 107

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- 6 **67 Burbank Avenue, Picnic Point**
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- 7 **Application to amend Bankstown Local Environmental Plan 2015: 1–17**
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Canterbury Bankstown Local Planning Panel - 3 April 2019

| | |
|--------------------------|--|
| ITEM 1 | 33 Ian Crescent, Chester Hill |
| | Use of the existing outbuilding as a secondary dwelling and associated fitout |
| FILE | DA-856/2018 – Bass Hill |
| ZONING | R2 Low Density Residential |
| DATE OF LODGEMENT | 13 November 2018 |
| APPLICANT | Boris Grgurevic & Associates |
| OWNERS | Kanchan Dagaonkar |
| ESTIMATED VALUE | \$50,000 |
| AUTHOR | Development Services |

REPORT

This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 10%. The development standard the applicant seeks to vary relates to the maximum permissible wall height as contained in Clause 4.3(2B)(a) of the Bankstown Local Environmental Plan 2015. The applicant proposes a maximum wall height of 4.19 metres, resulting in a 39% variation to the development standard.

Development Application No. DA-856/2018 proposes to convert the existing outbuilding to a secondary dwelling and the associated fit out of the structure.

Council's Local Planning Panel considered the application at their meeting on 4 February 2019. The minutes of that meeting are provided below:

"

- 1. The Panel considered that the amenity of the proposed and existing dwellings could be significantly improved with some re-design.*
- 2. The Panel considered that a better outcome would be achieved by making the following design amendments:*
 - (a) Re-arranging the internal layout of the proposed dwelling.*

- (b) *Connecting the existing grassed private open space area in the north western corner with the living area of the proposed dwelling (with such living area being relocated).*
 - (c) *Locating the living area so that it achieves the required solar access requirement specified by clause 3.13. of the Bankstown DCP 2015.*
 - (d) *Addressing the privacy between the existing dwelling and the proposed dwelling through suitable screens or other privacy measures including additional landscaping.*
 - (e) *Locating the pool pump so that it is further away from the proposed dwelling and suitably enclosed to minimise acoustic impacts.*
 - (f) *Re-locating (or undergrounding) the proposed rain water tank.*
 - (g) *Improving the pedestrian access arrangements to the proposed dwelling.*
3. *The Panel was of the view that the proposed contravention of the development standard (being 1.9m above the 3m wall height maximum) was acceptable in principle; the written request was adequate; and compliance would be unreasonable in light of it being an existing wall and having no additional impacts on adjoining land.*

CBLPP Determination

*That Development Application DA-856/2018 Re: Use of the existing building as a secondary dwelling and associated fitout be **DEFERRED** for the Applicant to submit amended plans."*

SUPPLEMENTARY INFORMATION

The applicant submitted amended plans in response to the Panels resolution. These plans were notified to the adjoining properties for a period of seven days between 20 February 2019 and 26 February 2019. No submissions were received during this period.

The applicant has addressed the Panel's recommendations as follows:

Re-arranging the internal layout of the proposed dwelling.

The applicant has re-arranged the internal layout of the proposed secondary dwelling. The bathroom is situated towards the centre of the dwelling and the meals room has been relocated to be along the western side of the dwelling.

Connecting the existing grassed private open space area in the north western corner with the living area of the proposed dwelling (with such living area being relocated).

The applicant has relocated the living area to the western side of the dwelling. In doing this, connection to the existing grassed private open space in the north western corner of the site is achieved by way of a glass sliding door. This creates a more functional and accessible area of private open space for the occupants of the secondary dwelling and increases the amenity of the dwelling for the future levels.

Locating the living area so that it achieves the required solar access requirement specified by clause 3.13. of the Bankstown DCP 2015.

The applicant has re-arranged the internal layout of the dwelling to ensure that three hours of direct solar access is achieved to the meals room. This demonstrates compliance with Clause 3.13 of the Bankstown Development Control Plan 2015 – Part B1.

Addressing the privacy between the existing dwelling and the proposed dwelling through suitable screens or other privacy measures including additional landscaping.

The applicant has amended the site plan to include the provision of privacy screening by way of landscaping between the two dwellings. The applicant has also provided 1.8m high privacy screening on the existing timber deck to increase the privacy between the two dwellings.

Locating the pool pump so that it is further away from the proposed dwelling and suitably enclosed to minimise acoustic impacts.

The applicant has relocated the pool pump under the pool deck to minimise the acoustic impact. Further to this, an additional condition has been included in the recommended conditions of consent which provides as follows:

The proposed use of the pool filter equipment must not give rise to offensive noise as defined in the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2000. All noise emitting equipment must be housed in an insulated enclosure and appropriately positioned so as to cause no nuisance to neighbours, principal dwelling and secondary dwelling.

Re-locating (or undergrounding) the proposed rain water tank

The applicant has relocated the proposed rainwater tank to be in the rear setback of the secondary dwelling. This provides a more functional area of private open space for the dwellings.

Improving the pedestrian access arrangements to the proposed dwelling

The applicant has included on the site plan the provision of two proposed pedestrian paths. One being next to the existing car space and another leading from the existing concrete area to the secondary dwelling, providing direct pedestrian access to both the secondary dwelling and the private open space in a formalised manner.

CONCLUSION

The application before the Panel remains compliant with the relevant legislation and has addressed the concerns relating to the amenity of the future occupants of the secondary dwelling. The applicant has provided amendments addressing each of the matters raised by the Panel. It is recommended the application be approved, subject to conditions included at Attachment 'B'.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the conditions included at Attachment 'B'.

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

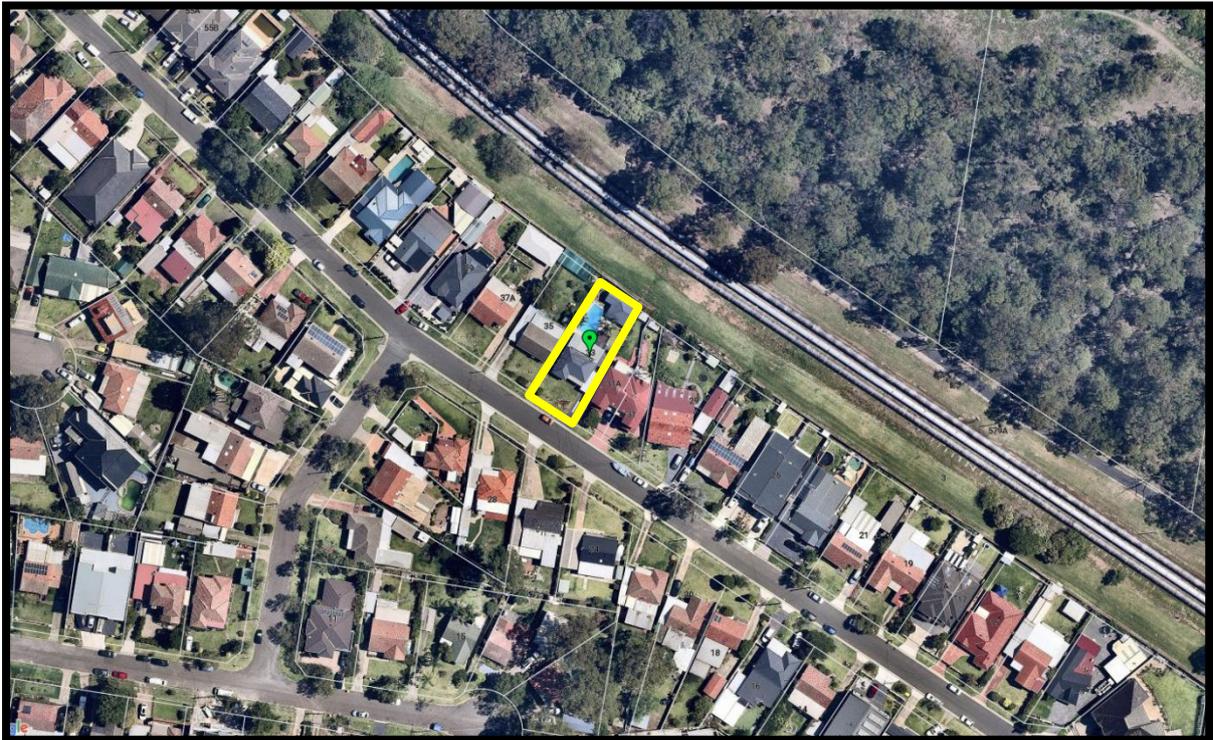
DA-856/2018 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is rectangular in shape with a frontage of 15.24m to Ian Crescent and has a total site area of 558m². The land gently falls to the rear with the low point at the sites' north western corner. Currently occupying the site is a single storey dwelling with a hipped tile roof, an inground swimming pool and a detached outbuilding.

The surrounding developments include a variety of single and two storey residences. Adjoining the site to the east is a two storey attached dual occupancy development while to the west is a single storey dwelling with tile roof. Immediately to the rear is a Sydney Water drainage pipeline.

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



PROPOSED DEVELOPMENT

DA-856/2018 proposes the use of the existing outbuilding as a secondary dwelling and associated fit out.

The proposal will reflect the same building footprint with works being confined to the fit out of the structure for habitable purposes. The proposal includes two bedrooms, a kitchen, meals room, living room, bathroom and laundry room, all separate to the principal dwelling.

The external appearance and built form remain largely the same. Minor external changes to the building are proposed which include the addition of new windows and doors and the removal of existing windows and doors.

SECTION 4.15 ASSESSMENT

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

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

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

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications.

An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan as well as the planning principles as set out in Clause 8 of the GMREP.

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

The subject site has long been used for residential purposes and no excavation is proposed as part of this development application with all proposed work limited to the internal of the existing outbuilding. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination.

The subject site is considered suitable for the development and therefore satisfies the provisions of SEPP No. 55.

State Environmental Planning Policy (Affordable Rental Housing) 2009

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

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

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

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

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

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

| STANDARD | PERMITTED | PROPOSED | COMPLIANCE |
|----------------------------------|-----------------------------------|---|------------|
| Number of dwellings | Two | Two | Yes |
| Total Floor Area | Max. 279m ² (558/2) | 161.297m ² (104.147m ² + 57.15m ²) | Yes |
| Floor Area of Secondary Dwelling | Max. 60m ² | 57.15m ² | Yes |

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

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

Bankstown Local Environmental Plan 2015

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

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 4.1B – Minimum Lot Sizes and Special Provisions for Certain Dwelling
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio

Clause 4.5 – Calculation of floor space ratio and site area
 Clause 4.6 – Exceptions to development standards
 Clause 5.4 – Controls relating to miscellaneous permissible uses

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

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

| STANDARD | PERMITTED | PROPOSED | COMPLIANCE |
|---|-------------------|--|------------------------------|
| Height of Buildings for Secondary Dwellings | Max 3m – wall | Max. 4.19m (wall height) | No – see justification below |
| | Max 6m - building | Max. 4.36m (building height) | Yes |
| Floor space ratio (specific site) | Max. 0.50:1 | A GFA of 161.297m ² is proposed resulting in a FSR of 0.28:1. | Yes |

Clause 4.3 – Height of Buildings

Clause 4.3(2B)(a) – Height of buildings of BLEP 2015 refers to the maximum permitted height of buildings for secondary dwelling developments in the R2 Low Density Residential Zone as having a maximum building height of 6m and a maximum wall height of 3m. It reads as follows:

4.3 Height of buildings

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

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) to define focal points by way of nominating greater building heights in certain locations.*

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

(2A) ...

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

- a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,*
- b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,*

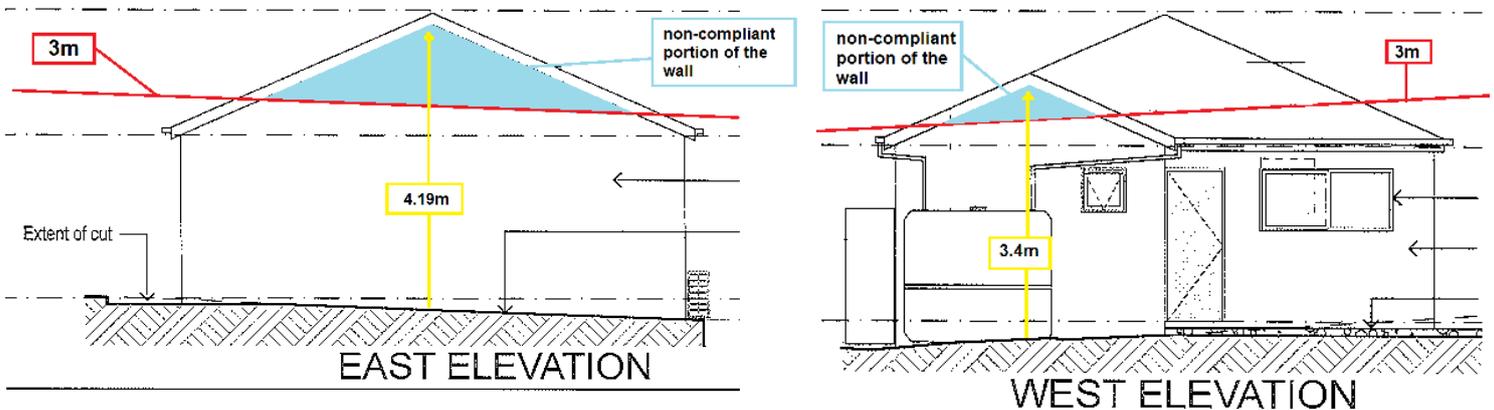
c) *for multi dwelling housing and boarding houses:*

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

...

The proposal seeks to vary Clause 4.3(2B)(a) of Bankstown Local Environmental Plan 2015. The non-compliant portion of the dwelling wall is measured at 4.19m at the highest point on the eastern elevation, which represents a variation of 1.19m or 39%. The other breach occurs on the western elevation where the non-compliant portion of the wall measures 3.4 metres at the highest point, which represents a variation of 400mm or 13%.

It is relevant to note that the non-compliant wall height of 4.19m on the eastern elevation and 3.4m on the western elevation is confined to the peak of the existing gable end wall and gable roof. See elevations below:



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

Clause 4.6 – Exceptions to development standards

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

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

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

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

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

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

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

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

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

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

...

The aim of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. The applicant's Clause 4.6 submission is attached to this report at '*Attachment D*'.

It is considered that enforcing compliance with Clause 4.3(2B)(a) of the Bankstown Local Environmental Plan 2015 which relates to maximum wall height of secondary dwellings would be unreasonable for the following reasons:

- No openings are provided along the non-compliant eastern elevation which would contribute to a loss of privacy.
- Openings along the non-compliant western elevation are confined to a bathroom window resulting in no loss of amenity for the adjoining residents to the west.
- Solar access is maintained to the rear yards of No. 35 Ian Crescent and the rear yard of dual occupancy development to the east for considerable periods of the day.
- There is no change proposed to the predominate built form that currently exists.
- The change of use does not introduce or contribute to any additional amenity impact, specifically with respect to the wall height breach.

It is recommended that the applicant's request to vary the development standard be supported. In this regard, compliance with the standard is considered to be unnecessary in

this instance and there is sufficient environmental planning grounds to support the proposed variation to the maximum wall height development standard. The assessment of the proposed development and the applicant's Clause 4.6 submission provided adequate basis for the approval of the application which is also considered to be in the public interest because it is consistent with the objectives of the standard being varied and the objectives of the R2 residential Zone.

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

There are no applicable draft environmental planning instruments.

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

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

| STANDARD | BDCP 2015 PART B1 | |
|--------------------|---|---|
| | REQUIRED | COMPLIANCE |
| Clause 3.1 | The subdivision of secondary dwellings is prohibited. | Complies, no subdivision proposed. |
| Clause 3.2 | Council must not consent to development for the purpose of secondary dwellings unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning instrument; and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under an environmental planning instrument, that greater floor area. | The total floor area of the principal dwelling and secondary dwelling complies with the provisions of this clause. The following calculations are provided: Total Floor Area = 279m ² (558m ² /2m ²) Gross Floor Area = 161.297m ² (104.147m ² + 41.28m ²) The total floor area of the secondary dwelling is 57.15m ² . |
| Clause 3.4 | The storey limit for detached secondary dwellings is single storey and the maximum wall height is 3 metres. | The secondary dwelling is single storey. As mentioned previously, the wall height exceeds the maximum height of 3m. See Justification below. |
| Clause 3.10 | For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metre. | The existing garage has a minimum setback to the eastern side boundary of 0.33m and 0.26m to the rear boundary. See Justification below. |
| Clause 3.12 | Secondary dwellings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space. | A dwelling house is to provide a minimum 80m ² of POS behind the front building line and with a minimum width of 5 metres throughout. |

| STANDARD | BDCP 2015 PART B1 | |
|--------------------|--|--|
| | REQUIRED | COMPLIANCE |
| | | The proposal maintains compliance with this clause with 95m ² of POS provided. |
| Clause 3.13 | At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas. | The proposal depicts a north facing living area (kitchen) which will receive greater than 3 hours of direct sunlight. |
| Clause 3.16 | Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: <ul style="list-style-type: none"> (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council. | It is considered that compliance is demonstrated with this Clause as no windows have been proposed along the eastern elevation and the windows facing south face inward to the site, the west facing windows overlook the properties private open space and the north facing windows overlook the Sydney Water drainage reserve. |
| Clause 3.17 | Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: <ul style="list-style-type: none"> (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling. | No windows overlook the private open space of an existing adjoining dwelling. |
| Clause 3.23 | The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling. | The roof pitch is 24 degrees. No attics or basements have been proposed. |

| STANDARD | BDCP 2015 PART B1 | |
|--------------------|--|--|
| | REQUIRED | COMPLIANCE |
| Clause 3.26 | Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces. | The site contains a carport which does not result in any non-compliance with car parking requirements. |

As demonstrated in the table above, an assessment of the development application has revealed that the proposal fails to comply with Clause 3.4 and 3.10 of Part B1 of BDCP 2015. Below are reasons as to why the proposed wall height and proposed setback to the side and rear boundary should be supported.

Wall Height

Clause 3.4 of Part B1 of the BDCP 2015 requires the secondary dwelling to have a maximum wall height of 3m. The wall height of the proposed secondary dwelling measures at 4.19m, causing a non-compliance of 1.19m above the maximum allowable wall height. The non-compliance arises due to the nature of the roof form / gable end wall found on the east elevation. As indicated earlier in the report, a departure also occurs along the dwelling's western elevation. Again, the departure is as a result of the existing gable roof form.

The justification to support the variation of Clause 3.4 of Part B1 of the Bankstown Development Control Plan 2015 is consistent with the justification above for Clause 4.3 of the Bankstown Local Environmental Plan. It is considered that there are sufficient environmental planning grounds to support the proposed variation to the wall height of the outbuilding and that the proposed variation would not contravene objectives of the R2 residential zone.

Side and rear setbacks

Clause 3.10 of Part B1 of BDCP 2015 requires the secondary dwelling provide a minimum side and rear boundary setback of 0.9 metres for the portion of the building with a wall height less than or equal to 7 metres. Clause 3.10 provides as follows;

3.10 *For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metre.*

The existing outbuilding that is to be converted into a secondary dwelling has an existing eastern boundary (side) setback which ranges from 0.33m to 0.43m and an existing northern boundary (rear) setback which ranges from 0.26m to 1.33m. No further encroachment toward the boundary is proposed.

No loss of amenity will occur by way of retaining these setbacks given that there are no openings proposed along the eastern elevation and the northern elevation is adjoined by the Sydney Water Pipeline.

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

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

There are no planning agreements that apply to this application.

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

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

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

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

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

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

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

No submissions were received for or against the development.

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

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

CONCLUSION

The development application has been assessed in accordance with the matters for consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

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

RECOMMENDATION

It is recommended that:

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

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No.DA-856/2018, submitted by Boris Grgurevic, accompanied by Sheet No. 1, 2 and 3, all issue 3, prepared by Boris Grgurevic & Associates P/L, dated 20-2-19 and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

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

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 3) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 4) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.
- 5) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 6) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

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

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 7) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 8) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 9) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 10) The development is to be carried out in accordance with the commitments shown on the BASIX Certificate. The BASIX commitments approved with this Development Application are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 11) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, evidence of lodgement of an application for a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

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

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

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

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

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

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

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

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

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

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

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

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

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

- 13) The existing building must be brought into conformity with Performance Requirements P2.2.2, P2.2.3 and P2.3.1 of the Building Code of Australia (BCA), to protect persons using the building, and to restrict the spread of fire from the building to other buildings nearby. Details indicating compliance with the Performance Requirements of the BCA must be provided to the certifying authority prior to the issue of a construction certificate.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 14) The building work in accordance with the development consent must not be commenced until:
- a. a construction certificate for the building work has been issued by the council or an accredited certifier, and
 - b. the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building / subdivision work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c. the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d. the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 15) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained

in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.

- 16) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 17) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 18) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 19) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 20) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 21) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 22) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - a. in the case of work for which a principal certifying is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
 - b. in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- 23) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 24) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 25) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 26) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 27) The swimming pool is to be enclosed by a child resistant barrier comprising fences and gates designed, constructed, installed and maintained in accordance with Australian Standard 1926-2012 - Swimming Pool Safety Part 1: Safety barriers for swimming pools.

A notice containing the words "Young Children Should be Supervised When Using this Swimming Pool" and "Pool Gates Must Be Kept Closed At All Times" and "Keep Articles, Objects and Structures At Least 900 Millimetres Clear Of The Pool Fence At All Times" together with a simple flow sequence containing details of resuscitation techniques must be displayed in a prominent position in the immediate vicinity of the pool.

Overflow and discharge pipes from the pool and filtration unit must be connected to the sewer.

- 28) The proposed use of the pool filter equipment must not give rise to offensive noise as defined in the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2000. All noise emitting equipment must be housed in an insulated enclosure and appropriately positioned so as to cause no nuisance to neighbours, principal dwelling and secondary dwelling.
- 29) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 30) The existing internal stormwater drainage system, and the stormwater drainage system draining the site shall be cleaned out, tested for leaks and repaired as necessary. A licensed plumber is to certify that the work has been carried out.
- 31) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 32) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 33) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 34) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 35) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted. An official "house numbering" letter will be sent to the applicant indicating the proposed house numbers of the new development. Note: The house numbers of the development are subject to change depending of the type on subdivision that may occur at a later stage.
- 36) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.

SCHEDULE A: ADVICE TO APPLICANTS

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

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

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

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2019

| | |
|--------------------------|--|
| ITEM 2 | 49 McCrossin Avenue, Birrong |
| | Demolition of existing garage, construction of a detached secondary dwelling and a detached triple car garage with associated concrete driveway |
| FILE | DA-920/2018 – Bass Hill |
| ZONING | R2 Low Density Residential |
| DATE OF LODGEMENT | 11 December 2019 |
| APPLICANT | Mr Charbel Hanna |
| OWNERS | Boulas Taouk |
| ESTIMATED VALUE | \$118,000 |
| AUTHOR | Aidan Harrington |

REPORT

This matter is reported to Council's Local Planning Panel as the application received 23 unique submissions by way of objection during the two notification periods. The number of objections results in the development being classed as 'contentious development' under the direction of the Planning Minister and as such the matter is required to be reported to the Local Planning panel for determination.

Development Application No. DA-920/2018 proposes demolition of an existing garage, construction of a secondary dwelling and a detached triple car garage with associated concrete driveway

DA-920/2018 has been assessed against *State Environmental Planning Policy No. 55 (Remediation of Land)*, *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015* and achieves full compliance with all the relevant provisions.

The application was notified for a period of 14 days on two occasions, the first being from 11 December 2018 to 15 January 2019 and then again with amended plans from 25 January 2019

to 7 February 2019. The initial notification period resulted in eight submissions while the second notification period resulted in a further 15 submissions being received, resulting in 23 submissions in total. Consideration of the submissions is contained within this report.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the conditions included at Attachment 'B'.

ATTACHMENTS

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

DA-920/2018 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site legally known as Lot 70 DP 26982 or more commonly referred to as 49 McCrossin Avenue, Birrong has a primary road frontage to McCrossin Avenue of 15.24 metres. The site has an overall area of 695 square metres and is zoned R2 Low Density Residential under the Bankstown Local Environmental Plan 2015. The site has a medium risk flood affectation as a result of the stormwater canal that directly adjoins the property to the east (rear). The existing surrounding character of the site is made up of a variety of forms of residential accommodation which range in both age and condition.

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



PROPOSED DEVELOPMENT

The original development application proposed the demolition of the existing garage, construction of a detached secondary dwelling and a detached gym/hobby room. The development application was amended by the applicant to propose the following works:

- Demolition of existing garage;
- Construction of a detached secondary dwelling
- Construction of a detached triple car garage and associated driveway.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

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

State Environmental Planning Policy (Affordable Rental Housing) 2009

The provisions of Clause 22(3) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* specifies that a consent authority must not consent to the carrying out of development for the purposes of a secondary dwelling unless:

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

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

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

The table below is provided to demonstrate the assessment undertaken in regard to the numerical controls as set out in Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

| STANDARD | PERMITTED | PROPOSED | COMPLIANCE |
|----------------------------------|---|--|-------------------|
| Number of dwellings | Two | Two | Yes |
| Total Floor Area | 347.8m ² (695.6m ² /2) | Principal dwelling: 93m ² Secondary Dwelling: 60m ² Additional garage space: 24m ² Total area: 177m ² | Yes |
| Floor Area of Secondary Dwelling | Max. 60m ² | 60m ² | Yes |

| | | | |
|-------------|--------------------------------|-------------------------------------|-----|
| Site Area | Min. 450m ² | 695.6m ² | Yes |
| Car Parking | No additional parking required | Triple car garage to be constructed | Yes |

State Environmental Planning Policy No. 55 – Remediation of Land

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

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

The subject site has long been used for residential purposes and this will not change as part of the development application. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the proposed development and therefore the development application satisfies the provisions of SEPP No. 55 – Remediation of Land.

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

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

Bankstown Local Environmental Plan 2015

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

- Clause 1.2 – Aims of Plan
- Clause 1.3 – Land to which Plan applies
- Clause 1.4 – Definitions
- Clause 1.7 – Maps
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition requires development consent
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio

Clause 4.5 – Calculation of floor space ratio and site area
 Clause 5.4 – Controls relating to miscellaneous permissible uses
 Clause 6.2 – Earthworks
 Clause 6.3 – Flood Planning

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015. The table below is provided to demonstrate the proposals compliance with the relevant numerical controls as set out by the BLEP 2015.

| STANDARD | PERMITTED | PROPOSED | COMPLIANCE |
|---|--|----------------------------|------------|
| Clause 4.3(2B)(a) – Height of Buildings for Secondary Dwellings | Max 3m – wall height | 2.8 metre wall height | Yes |
| | Max 6m - building height | 4.55 metre building height | Yes |
| Clause 4.4 – Floor space ratio | Max. 0.50:1 | 0.254:1 | Yes |
| Clause 5.4(9) – Total floor area of secondary dwellings | 60 square metres or 10% of the total floor area of the principal dwelling (whichever is greater) | 60 square metres | Yes |

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

There are no applicable draft environmental planning instruments.

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

Bankstown Development Control Plan 2015 – Part B1 Residential Development

Section 3 the BDCP 2015 – Part B1 relates to Secondary Dwellings and contains the following objectives:

- (a) To ensure secondary dwellings are established in conjunction with the principal dwelling on the same allotment.*
- (b) To ensure the building form and building design of secondary dwellings are compatible with the prevailing suburban character of the residential areas.*
- (c) To ensure the building form and building design of secondary dwellings provide appropriate amenity to residents in terms of private open space, access to sunlight and privacy.*
- (d) To ensure the building form and building design of secondary dwellings do not adversely impact on the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.*
- (e) To ensure the building form of secondary dwellings in the foreshore protection area preserves the existing topography, land and rock formations, and the unique ecology of natural bushland and mangrove areas.*

Section 13 of the BDCP 2015 – Part B1 relates to Ancillary Development (Outbuildings) and contains the following objectives:

- (a) To ensure outbuildings are established in conjunction with the principal dwelling on the same allotment.
- (b) To ensure the building form and building design of outbuildings are compatible with the prevailing suburban character of the residential areas.
- (c) To ensure the building form and building design of outbuildings do not adversely impact on the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.
- (d) To ensure the building form of outbuildings in the foreshore protection area preserves the existing topography, land and rock

The following table provides a summary of the assessment of the development application against the primary development controls contained within the BDCP 2015 – Part B1 Section 3 and Section 13.

| STANDARD | BDCP 2015 PART B1 | |
|-------------------------------|---|---|
| | REQUIRED | COMPLIANCE |
| Secondary Dwelling | | |
| Clause 3.1 Subdivision | The subdivision of secondary dwellings is prohibited. | No subdivision is proposed as part of this Development Application. Complies |
| Clause 3.2 Floor Area | Council must not consent to development for the purpose of secondary dwellings unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning instrument; and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under an environmental planning instrument, that greater floor area. | The total floor area of the principal dwelling and secondary dwelling is considered to comply with this provision of this clause. The following calculations are provided: Maximum allowable Floor Area = 347.8m ² (695.6/2) Total Floor Area (proposed) 177.m2 (93m ² + 60m ² + 24m ²) The total floor area of the secondary dwelling is measured at 60m ² , deemed compliant with this clause. Complies |
| Clause 3.4 Height | The storey limit for detached secondary dwellings is single storey and the maximum wall height is 3 metres. | The proposed secondary dwelling is single storey and proposes a maximum wall height of 2.8 metres Complies |

| STANDARD | BDCP 2015 PART B1 | |
|---|--|--|
| | REQUIRED | COMPLIANCE |
| Clause 3.5 Siting of structure | The siting of secondary dwellings and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation. | The proposal is considered to demonstrate compliance with this clause as it compatible with the existing slope, with minimal fill presented as well as no elevated platforms or excessive excavation. Complies |
| Clause 3.6 Fill | Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the secondary dwelling is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the secondary dwelling to a height no greater than 1 metre above the ground level (existing) of the allotment. | The proposal demonstrates compliance with this clause with 300mm of fill above the NGL. Complies |
| Clause 3.8 Setbacks | The minimum setback for a building wall to the primary road frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey. | 34m N/A Complies |
| Clause 3.10 Setbacks | For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metre. | The minimum side and rear setbacks proposed are 0.9 metres. Complies |
| Clause 3.12 Private Open Space | Secondary dwellings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space. | The total private open space for the site is measured at 108m ² which therefore complies with Clause 2.12, Part B1 of the BDCP 2015 in accordance with the minimum requirements for private open space for the principal dwelling. Complies |

| STANDARD | BDCP 2015 PART B1 | |
|---|---|---|
| | REQUIRED | COMPLIANCE |
| Clause 3.13 Solar Access | At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas. | The proposed secondary dwelling will receive in excess of 3 hours of direct solar access to the kitchen and living areas through the eastern and western facing windows. Complies |
| Clause 3.14 Solar Access | At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling. | The proposed secondary dwelling will not reduce the amount of solar access received by the existing adjoining dwellings. Complies |
| Clause 3.15 Solar Access | A minimum 50% of the private open space required for the principal dwelling on the allotment and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space. | Both the private open space for the principal dwelling and the adjoining property will continue to receive in excess of 3 hours of solar access to 50% of the private open space at the equinox. Complies |
| Clause 3.16 Visual Privacy | Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council. | Compliance with this clause is achieved as there are no dwellings within the vicinity for overlooking to occur. Complies |

| STANDARD | BDCP 2015 PART B1 | |
|---|---|--|
| | REQUIRED | COMPLIANCE |
| Clause 3.17 Visual Privacy | Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling. | It is considered that compliance is demonstrated with this clause as the window to the southern elevation is a bedroom and the window to the north has a separation of 5.8 metres to the property boundary. Complies |
| Clause 3.23 Roof Pitch | The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling. | The roof pitch of the proposal measures at 20 degrees, demonstrating compliance with this clause. Complies |
| Clause 3.26 Car Parking | Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces. | The development provides a triple car garage. Complies |
| Outbuilding | | |
| Clause 13.1 Site Cover | The sum of the gross floor area of all the outbuildings on the allotment must not exceed 60m ² . | The detached garage is proposed to be 53m ² . Complies |
| Clause 13.2 Site Cover | Outbuildings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space. | The detached garage allows for 108m ² of private open space to be retained demonstrating compliance. Complies |
| Clause 13.3 Height | The storey limit for outbuildings is single storey. An attic or basement is not permitted in outbuildings. | The proposed detached garage is single storey. Complies |
| Clause 13.4 Height | The maximum building height for outbuildings is 4.8 metres and the maximum wall height for outbuildings is 3 metres. | The maximum wall height is 2.8 metres and the maximum building height is 4.3 metres. Complies |

| STANDARD | BDCP 2015 PART B1 | |
|-------------------------------------|--|--|
| | REQUIRED | COMPLIANCE |
| Clause 13.6 Height | <p>Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where:</p> <p>(a) the outbuilding is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or</p> <p>(b) the fill is contained within the ground floor perimeter of the outbuilding to a height no greater than 1 metre above the ground level (existing) of the allotment.</p> | <p>The detached garage proposes to have 300mm of fill.</p> <p>Complies</p> |
| Clause 18.8 Setbacks | <p>The minimum setback to the side and rear boundaries of the allotment is:</p> <p>(a) zero setback for carports or masonry walls that do not contain windows, eaves and gutters provided the structures comply with the Building Code of Australia; or</p> <p>(b) 0.45 metre for non-masonry walls that do not contain a windows, eaves and gutters; or</p> <p>(c) 0.9 metre for walls with windows, or outbuildings that are or are intended to be used for recreation purposes.</p> | <p>The minimum setback proposed for the detached garage is 0.9 metres.</p> <p>Complies</p> |
| Clause 13.9 Building Design | <p>Outbuildings must not function as self-contained dwellings, and must not function or be adapted to function for industrial purposes.</p> | <p>The detached outbuilding does not contain the required fixtures to be considered capable of functioning as a dwelling. Conditions relating to the use of the detached garage have been included in the recommended conditions of consent.</p> |
| Clause 13.10 Building Design | <p>The design of outbuildings is limited to the following facilities:</p> <p>(a) a half bowl sink; and</p> <p>(b) a maximum cupboard length of 1.8 metres; and</p> <p>(c) a toilet and shower with external access only; and</p> <p>(d) no cooking facilities or excessive number of large windows</p> | <p>No fixtures or windows have been proposed for the detached garage.</p> <p>Complies</p> |

| STANDARD | BDCP 2015 PART B1 | |
|-------------------------------------|--|--|
| | REQUIRED | COMPLIANCE |
| Clause 13.11 Building Design | The maximum roof pitch for outbuildings is 25 degrees. | The detached garage is proposed with a 20 degree roof pitch demonstrating compliance. Complies |

As demonstrated in the above table, compliance is achieved with all of the relevant and applicable provisions of the Bankstown Development Control Plan 2015. The objectives of both sections 3 and 13 of the BDCP 2015 have been met with the proposed development and would result in a built form compatible with the existing prevailing character of the surrounding locality and the future character envisioned by the BDCP 2015.

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

There are no planning agreements that apply to this application.

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

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

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

The likely impacts of the proposal have been managed through the design of the development which is compliant with Council's planning controls and are consistent with the impacts of similar types of development in the surrounding locality. It is concluded that there would be no significant adverse impacts on the immediate or surrounding locality as a result of this development.

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

The proposal is a permissible form of development on the subject site and represents a built form that is compatible with the existing and desired future character of the locality. Accordingly, the site is considered to be suitable for the proposed development.

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

The application was notified to the adjoining properties for two periods of fourteen days. The first period between 11 December 2018 to 15 January 2019 received a total of eight submissions (note that notification period is extended over the Christmas period in accordance with EP&A Act 1979 Schedule 1 Division 3(16)). The second period of notification (after amended plans were received) attracted an additional 15 submissions between 25 January 2019 and 7 February 2019, resulting in a total of 23 submissions received relating to the development application.

The following concerns were raised which are addressed below:

Objection: *As the proposed design had been amended from that which was originally lodged and notified a subsequent period of notification was required in accordance with the Bankstown DCP 2015, Introduction, Section 3 – Public Notification.*

Comment: The application was notified for an additional period of fourteen days with the amended design as required by the Bankstown Development Control Plan 2015.

Objection: *Outbuilding Design – the design of the outbuilding includes a door to an internal toilet and shower room that is setback 900mm from the southern site boundary. The location of the door way will adversely impact on the amenity of the adjoining site by way of visual and acoustic privacy.*

Comment: The proposed development has been amended to now include a triple car garage which has no access along the southern site boundary and no internal toilet and shower access. The design changes have minimised the impact on visual and acoustic privacy and will not result in an unreasonable loss of amenity.

Objection: *The design of the outbuilding will be used as another secondary dwelling. The building has been designed with an internal toilet and shower facilities, a sink and bench and has numerous large windows on the northern eastern and western elevations. If the outbuilding were to be converted to a secondary dwelling it would not meet the objectives of the R2 zone.*

Comment: The design which was originally proposed has been amended to reduce the likelihood of an unauthorised conversion as there are now no windows or amenities in the structure. Further to this, specific conditions will be included in any consent stating that the structure is not to be used as, or converted to, a self-contained dwelling as per the definition of dwelling in the Bankstown Local Environmental Plan 2015.

Objection: *Concern is raised over stormwater drainage associated with the proposed structures onsite and their potential to impact adjoining property owners to the south and north by way of excessive runoff.*

Comment: The proposed development includes a stormwater management plan which has been reviewed by Council's drainage engineers. The design has achieved compliance with the Bankstown Development Engineering Standards. The plan is referenced in the conditions of consent and is required to be constructed by the developer.

Objection: *Concern is raised over increased traffic impact on the locality as a result of the proposal. McCrossin Avenue has a small carriage width and as such cannot*

accommodate multiple uses on individual lots. No additional parking has been proposed on site.

Comment: The proposed development was amended to provide a triple car garage on site which reduces the impact on McCrossin Avenue. McCrossin Avenue and the surrounding street network is deemed to have sufficient capacity to support the proposed development and the increased traffic which may result from it.

Objection: *Concern is raised over the demolition of the existing garage at the rear of the site as typically, buildings of this nature and age contain asbestos.*

Comment: Conditions would be placed on any consent requiring that demolition is carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001. Further to this the following specific conditions would be placed on the consent:

- *Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.*
- *Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.*

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

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

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 and the relevant specific environmental planning instruments, including State Environmental Planning Policy No 55— Remediation of Land, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

The proposed development results in an appropriate built form for the site which is consistent with the longer term future desired future character illustrated in Council's Development Control Plan and Local Environmental Plan.

RECOMMENDATION

It is recommended that DA-920/2018 be approved subject to the attached conditions.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No.DA-920/2018, submitted by Charbel Hanna, accompanied by Drawing No. 01, 02, 03, 04 & 05, revision B, prepared by Inkon Plans, dated 14/12/2018 and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.
- 3) The detached garage must not be used as or adapted to a dwelling as defined by the Bankstown Local Environmental Plan 2015 for the lifetime of the development.
- 4) The detached garage must not be used as a commercial premises as defined by the Bankstown Local Environmental Plan 2015 without separate approval for the lifetime of the development.
- 5) The detached garage must not facilitate the undertaking of an industrial activity as defined by the Bankstown Local Environmental Plan 2015 without separate approval for the lifetime of the development.

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

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 6) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 7) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.
- 8) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 9) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would

affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

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

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 10) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 11) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 12) Pursuant to section 4.17 of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$590 shall be paid to Council.

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

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

- 13) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 14) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. SW01, revision B, dated 12/02/2019, prepared by AE Consulting Engineers. The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.

- 15) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

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

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

- 16) The development is to be carried out in accordance with the commitments shown on the BASIX Certificate. The BASIX commitments approved with this Development Application are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 17) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, evidence of lodgement of an application for a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

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

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

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

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

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

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

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

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

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

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit. All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

- 18) Documentary evidence of Sydney Water's approval of the proposed connection to its drainage system is required to be submitted to the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate. All conditions imposed by Sydney Water shall be strictly complied with and incorporated into the approved drainage plan.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 19) The building work in accordance with the development consent must not be commenced until:
- a. a construction certificate for the building work has been issued by the council or an accredited certifier, and
 - b. the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c. the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d. the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building work.
- 20) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 21) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 22) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 23) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.

- 24) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 25) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 26) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 27) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- a. in the case of work for which a principal certifying is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
 - b. in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and
 - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- 28) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

- c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

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

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

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

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 30) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.

- 31) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 32) Prior to the ground floor slab being poured, an identification report by a Registered Surveyor must be submitted to the principal certifying authority verifying that the proposed buildings finished ground floor level and siting to the property boundaries conforms to the approved plans.
- 33) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 34) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 35) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.
- 36) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - a. protect and support the adjoining premises from possible damage from the excavation, and
 - b. where necessary, underpin the adjoining premises to prevent any such damage.
- 37) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 38) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.
- 39) A suitably qualified Professional Civil or Structural Engineer shall be engaged by the developer to carry out inspections relating to construction of internal driveways and parking areas. The work shall be carried out in accordance with the approved plans and

specifications and certification from the Civil or Structural Engineer is to be provided upon completion.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 40) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 41) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 42) A suitably qualified Professional Civil Engineer shall certify that the driveways, parking bays, and service areas have been constructed in accordance with the approved plans and specifications. Such Certification shall be submitted prior to the issue of the Occupation Certificate or occupation of the site.
- 43) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 44) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted. An official "house numbering" letter will be sent to the applicant indicating the proposed house numbers of the new development. Note: The house numbers of the development are subject to change depending of the type on subdivision that may occur at a later stage.
- 45) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.

SCHEDULE A: ADVICE TO APPLICANTS

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

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

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

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2019

| | |
|--------------------------|---|
| ITEM 3 | 67-69 Balmoral Avenue, Croydon Park |
| | Demolition of existing structures and construction of an affordable housing development for a multi dwelling development comprising nine dwellings with basement car parking, strata subdivision and associated works pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 |
| FILE | DA-231/2018 - Canterbury |
| ZONING | R3 Medium Density Residential |
| DATE OF LODGEMENT | 1 June 2018 |
| APPLICANT | Danney Bob Faker |
| OWNERS | Danney Bob Faker, DBF Group Pty Ltd |
| ESTIMATED VALUE | \$3,034,876.00 |
| AUTHOR | Planning |

REPORT

This matter is reported to the Local Planning Panel as the number of submissions exceeds ten, being 40 submissions (including one petition).

Development Application No. 231/2018 seeks approval for the demolition of existing structures and construction of an affordable housing development for a multi dwelling development comprising nine dwellings with basement car parking, strata subdivision and associated works pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009.

The application has been assessed against the relevant policies, in particular State Environmental Planning Policy (Affordable Rental Housing) 2009, Canterbury Local Environmental Plan 2012 and Canterbury Development Control Plan 2012.

The proposed development does not satisfactorily achieve key criteria set by the above policies. Key issues raised in the main assessment report include the application not demonstrating that the site is within an accessible area, not providing over 20% affordable housing to trigger the FSR bonus, breaching the maximum FSR allowable under the CLEP 2012, site isolation of 65 Balmoral Avenue, inadequate solar access, inadequate internal amenity and inconsistency with the character of the streetscape and surrounding locality.

The documentation submitted with the original application and amended plans is inadequate; with documents not containing adequate details, plans labelled incorrectly, colours and finishes omitted, solar access diagrams inaccurate, landscaping plans inadequately detailed, critical documents not provided including a geotechnical report and acid sulfate soils report and BASIX details not shown on the plans.

The application was advertised/notified for a period of 21 days. Forty (40) objections including a petition with 77 signatures were received during this period, which raised concerns relating to:

- Overdevelopment / density
- Compatibility
- Accessibility
- Reasons for rejection not addressed
- BASIX, solar diagrams and other information incorrect
- Private open space
- Traffic
- Overshadowing
- Internal and external amenity
- Inappropriate location of affordable housing
- Trees / landscaping
- Privacy
- Property values

Based on the inadequacy of the development in terms of both the proposed built form and documentation submitted, the application is recommended for refusal.

POLICY IMPACT

There are no policy impacts.

FINANCIAL IMPACT

There are no financial implications.

RECOMMENDATION

It is recommended that the application be refused for the reasons detailed in attachment B:

ATTACHMENTS

- A. Assessment Report
- B. Reasons for Refusal

DA-231/2018 ASSESSMENT REPORT

BACKGROUND

A previous development application, DA-213/2015, was received on 19 May 2015 and refused on 29 August 2017. Of the sixteen reasons for refusal, key issues included site isolation, solar access, character of the area, design, stormwater management and inadequate detail provided in the submitted application.

The applicant was provided with five opportunities to amend the previous application, including several meetings, before the application was refused.

On 29 October 2017 a pre-DA was held with the applicant, architect and planner. The key issues discussed at the meeting related to the streetscape / character and site isolation.

The subject application was lodged on 4 June 2018.

On 19 October 2018, a request for amended plans and information was issued to the applicant. It was advised that only one chance would be provided given the history of the previous development application. Council's letter raised issues including insufficient dedication of affordable housing to trigger bonus provisions of the SEPP ARH, insufficient detail about the sites location in an accessible area as defined under the SEPP ARH, inadequate and conflicting information, character, solar access, site isolation, landscaping, setbacks, building entry, earthworks, acid sulfate soils, tree protection and stormwater issues.

On 9 November 2018 a meeting was held with the applicant and architect. The same issues regarding character, the front façade and site isolation were discussed.

Amended plans were received on 17 December 2018 and these form the basis of this report.

SITE DETAILS

The subject site, 67-69 Balmoral Avenue Croydon Park, is legally known as Lots 4, 6 and 8, Section J in DP 876. The site is located on the western side of Balmoral Avenue. Current structures on the site include detached dwellings, outbuildings and a swimming pool.

Located 450m south of Georges River Road and 200m from the Cooks River, Balmoral Avenue is zoned R3 Medium Density Residential with a maximum FSR of 0.5:1 and height of 8.5m.

The area is predominantly single detached dwellings with a consistent bungalow housing street setting. The existing streetscape predominantly comprises single detached dwellings with landscaped front and rear setbacks, rear outbuildings / swimming pools and side setbacks between approximately 0.9-1.2m. Parking is primarily accommodated in garages, with some dwellings featuring driveways along the side setback.

On the corner of Lyminge Road and Balmoral Avenue, two developments are located on the boundary, reflective of their previous use as shops. There are several heritage items in the

locality. The development at 63 Balmoral Avenue, Croydon Park is a listed heritage item as a 'Victorian shop and dwelling above'.

PROPOSED DEVELOPMENT

The subject proposal seeks approval for the demolition of existing structures, construction of multi dwelling development comprising nine dwellings with basement car parking and strata subdivision under State Environmental Planning Policy (Affordable Rental Housing) 2009.

The development comprises:

- Demolition of existing structures;
- Construction of a multi-dwelling development with nine dwellings (5x2 bedroom + study, 2x3 bedroom and 2 x 2 bedroom);
- Dedication of 16% of the development for affordable housing (as per page 4 of the Statement of Environmental Effects);
- Basement car parking (18 car spaces in a tandem arrangement);
- Landscaping and drainage works.

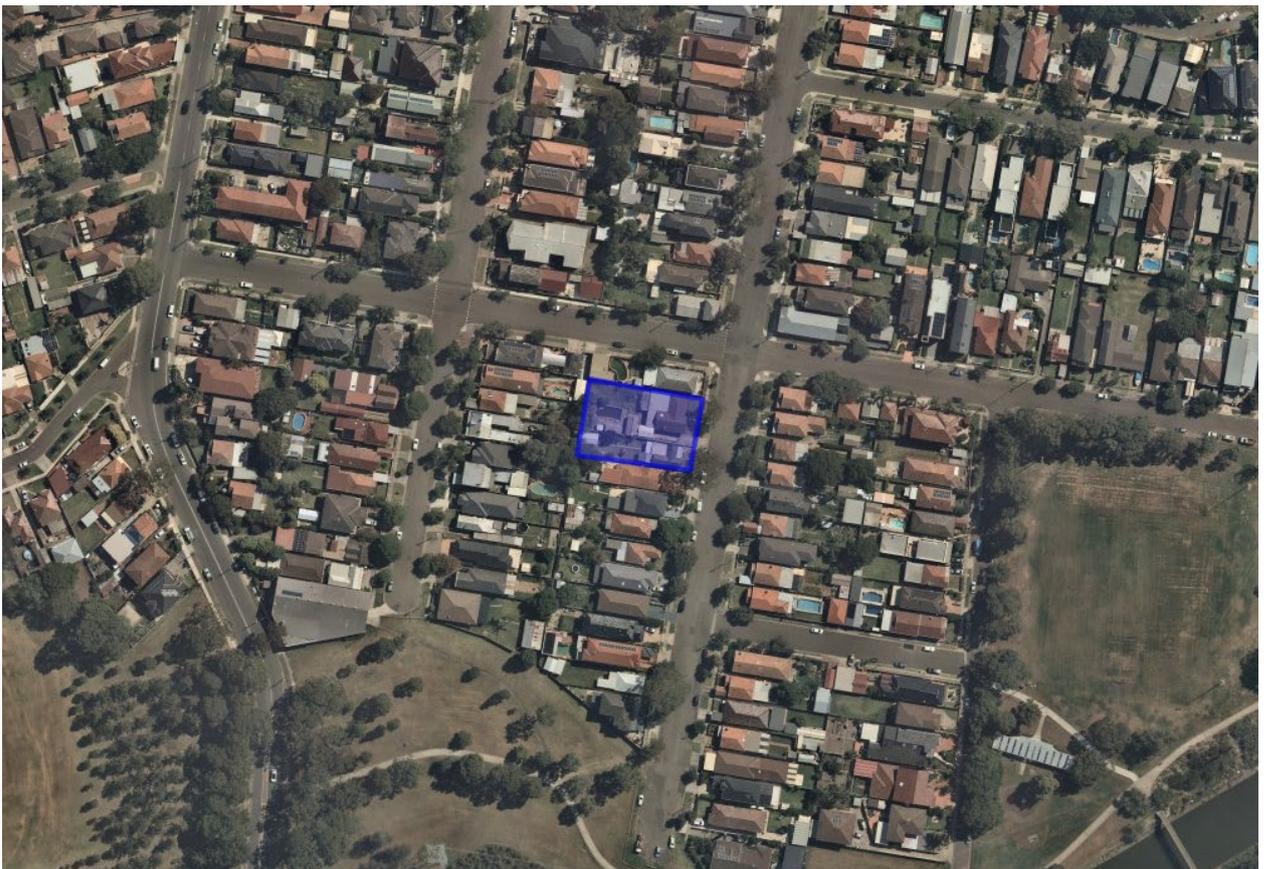


Figure 1: Aerial view, site highlighted in blue. Source: NearMap accessed 12 March 2019

STATUTORY CONSIDERATIONS

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

- (a) State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)
- (b) State Environmental Planning Policy (Affordable Rental Housing) 2009.
- (c) State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX)
- (d) Canterbury Local Environmental Plan 2012
- (e) Canterbury Development Control Plan 2012.
- (f) Canterbury Development Contributions Plan 2013

SECTION 4.15 ASSESSMENT

The development application has been assessed under the aims and objectives and Section 4.15 of the Environmental Planning and Assessment Act, 1979 and the following key issues emerged:

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

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

A review of the history of the site shows that the subject sites have generally only been used for residential purposes. Given that the site has been used for only residential purposes, the site is considered to be consistent with State Environmental Planning Policy 55-Remediation of Land.
- **State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX)**
SEPP 2004: BASIX requirements came into force for all residential accommodation where development applications were lodged on or after 1 July 2004. A BASIX assessment is a mandatory component of the development approval process under the Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. An amended BASIX Certificate was provided, however the DA related commitments have not been adequately indicated on the architectural plans.
- **State Environmental Planning Policy (Affordable Rental Housing) 2009**
The application has been assessed against the provisions within Division 1 In-Fill Affordable Housing of the ARH SEPP. The proposed development is assessed having regard to the standards as set out in the table below:

| Standard | Requirement | Proposal | Complies |
|---|--|--|---------------------------|
| Clause 10 – Development to which Division applies | This Division applies to development for the purposes of multi dwelling housing. Division 1 does not apply to development on land in the Sydney Region unless all or part of the development is within an accessible area. | The applicant was requested to demonstrate that the development is located within an accessible area in accordance with the definition. Whilst it is likely that the subject site is located within 400m of a compliant bus service, the applicant has not provided any evidence of which bus stop and service it relies upon to gain access to SEPP ARH. | Insufficient information. |
| Clause 11 and 12 | Repealed | - | - |
| Clause 13 – Floor Space Ratios | <p>This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.</p> <p>The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</p> <p>(a) if the existing maximum floor space ratio is 2.5:1 or less:</p> <p>...</p> <p>(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,</p> <p>where:</p> <p>AH is the percentage of the gross floor area of the development that is used for affordable housing.</p> <p>Y = AH ÷ 100</p> | <p>Site area = 1,380sqm*</p> <p>As stated on page 4 of the Statement of Environmental Effects, only 16% of the development is proposed as affordable housing. It is unclear from the provided plans and documentation how this has been calculated.</p> <p>Accordingly, as 20% affordable housing has not been provided, the proposal is not eligible for any additional FSR above the LEP provisions.</p> <p>*An inadequate survey plan accompanied the application with a number of disclaimers that no investigation has been undertaken on the site.</p> | No. |
| Clause 14(1)(b) | Minimum 450m ² . | 1,380sqm. | Yes. |

| | | | |
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| Site Area | | | |
| Clause 14(1)(c) Landscaped Area | Min 30% of the site area (414m ²). | Unclear, as inadequate dimensions are indicated on the submitted plans. | Insufficient information provided. |
| Clause 14(1)(d) Deep Soil Zone | 15% of the site area (207m ²). 3m min. dimension. Min two-thirds (10% of site area, 138m ²) is located at the rear of the site, when practical. | Unclear, as inadequate dimensions are indicated on the submitted plans. | Insufficient information provided. |
| Clause 14(1)(e) Solar Access | Living rooms and private open space areas for a minimum of 70% of the dwellings are to receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter. | The original solar access diagrams were provided from 8am-4pm for 10 dwellings (instead of 9 proposed). The amended solar diagrams do not demonstrate three hours and fail to show one of the shadows at 12pm. | No. |
| Clause 14(2)(a) Car Parking | 0.5 spaces per 1 bedroom unit. 1 space per 2 bedroom unit. 1.5 spaces per 3 bedroom unit. 7 x 2 bed = 7 spaces. 2 x 3 bed = 3 spaces. Total required = 10 spaces. | 18 spaces (tandem). | Yes. |
| Clause 14(2)(b) Minimum Dwelling Size | Min unit sizes: Bedsit/studio - 35m ² 1 bed – 50m ² 2 bed – 70m ² 3 bed – 95m ² | Some dimensions on the plans are not to scale. However it would appear that the proposed dwellings comply. | Likely yes. |
| Clause 15 – Design Requirements | (1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the <i>Seniors Living Policy: Urban Design Guidelines for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are | The applicant has not indicated that they have had any consideration of the Seniors Living Policy as required by the ARH SEPP. | No, refer to comment [1] |

| | | | |
|--|---|---|---------------------------|
| | consistent with this Policy. (2) This clause does not apply to development to which clause 4 of <u>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</u> applies. | | |
| Clause 16A – Character of Local Area | A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. | The proposed development is considered to be incompatible with the character of the local area. | No, refer to comment [2]. |
| Clause 17 – Must be used for affordable housing for 10 years | A consent authority must be satisfied that the dwellings proposed will be used for the purpose of affordable housing and managed by a registered housing provider for 10 years from the date of the occupation certificate. A restriction must be registered before the date of the occupation certificate in accordance with section 88E of the <i>Conveyancing Act 1919</i> . | Were consent recommended, a condition would have been imposed to ensure compliance with these provisions. | Yes, via condition. |
| Clause 18 – Subdivision | Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority. | Strata subdivision is sought, however plans have not been lodged for strata subdivision. | No. |

[1] Clause 15 – Seniors Living Policy

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004, apply to the extent that those provisions are consistent with the SEPP. They must be considered for consent to be granted.

The *Seniors Living Policy: Urban Design Guidelines for Infill Development* sets out five sections, each corresponding to a key issue when designing infill development. Sections of the guidelines addressing these issues are:

1. Responding to (neighbourhood) context
2. Site Planning and Design
3. Impacts on streetscape

4. Impacts on neighbours
5. Internal site amenity

The proposed development is assessed having regard to relevant provisions of the guidelines.

1. Responding to (neighbourhood) context

The Seniors Living Policy stipulates that *'new developments that increase residential densities need not be out of character with their surroundings'*. In this respect, new development seeking an increased development yield must respond to the existing and desired future character of their local area. A detailed analysis of the character of the area is found below under 'Clause 16A – Character of Local Area'. However in short, the development does not establish an appropriate relationship with existing development and the desired future character as shaped by the CLEP 2012 and CDCP 2012 planning controls.

2. Site Planning and Design

Key objectives according to the guidelines are listed and responded to below:

- *Minimising impact on neighbourhood character*
- *Providing high amenity for new dwellings*
- *Maximising deep soil areas*
- *Minimising visual dominance of parking and vehicle manoeuvring*
- *Providing a range of dwelling sizes to promote housing choice*

The existing character of the area comprises single detached dwellings. The proposed development originally incorporated terrace style housing rows spanning across the front and rear of the subject site:

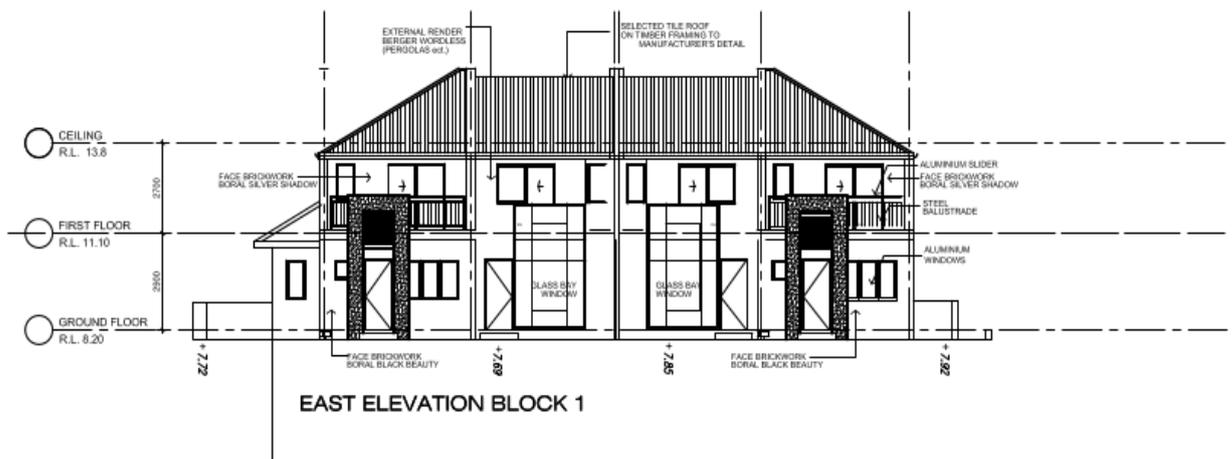


Figure 1: Original East Elevation (front) from Drawing No. DA11A

The amended design has attempted to break the built form as shown below:

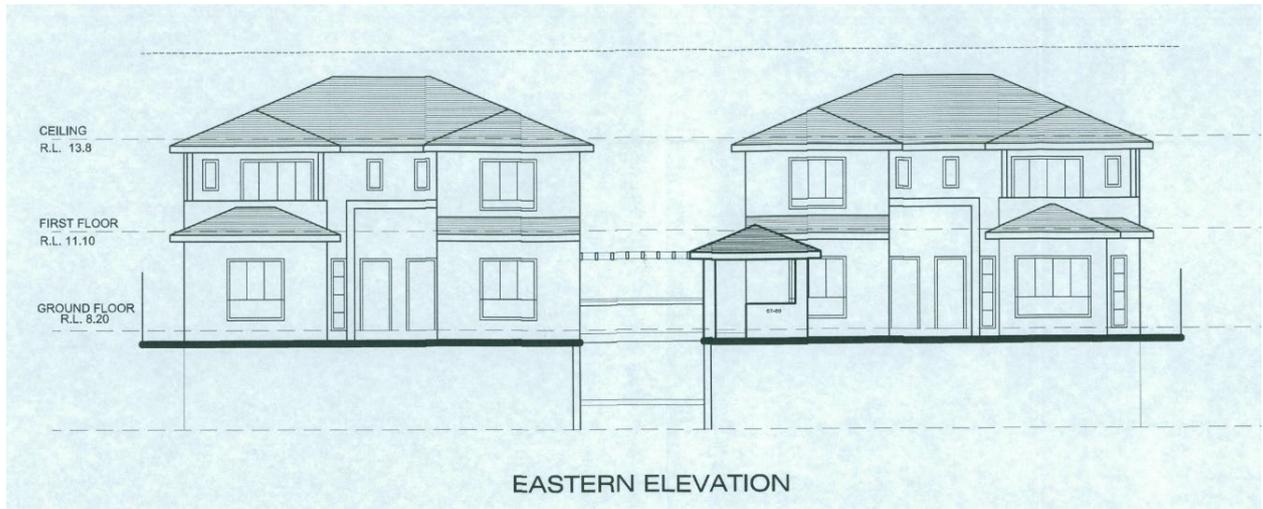


Figure 2: East Elevation (front) as amended from Drawing No. DA06D

The new proposed design is an improvement over the original and given the prevailing low density streetscape with associated built form to pattern, the amended scheme provides a break in the built form is more appropriate than the previous terrace style proposal.

However, whilst multi dwelling developments are permissible in the zoning subject to consent, any proposed scheme is required to balance the built form characteristics of a new development type (multi dwellings) against the prevailing character of the existing streetscape. This is particularly important for a development seeking additional density above that ordinarily permitted and for developments which are introducing new elements into an existing streetscape.

However, the applicant has not assisted in this analysis and has not submitted the supporting information requested by Council; in particular a streetscape analysis, colours and materials/finishes schedule, landscaping plan, and adequately detailed elevations.

Notwithstanding the above, the proposed design of the street facing dwellings is convoluted, with inadequate detailing of the main entryways. The proposed development has inconsistent roof pitches and, therefore, an ungainly design appearance.

In addition, due to the detailing of the design, the buildings appear unbalanced as individual buildings and as whole development resulting an uncomfortable visual aesthetic.

The design, whilst an improvement from the original, does not adequately delineate each dwelling along the streetscape. The appearance of the rear dwellings has also been omitted, which needs to be considered in the presentation of the development towards the street.

The proposal has not adequately integrated characteristics of the streetscape into the design of the development including design elements of bungalows that feature prominently in the streetscape. The proposal has not adequately considered existing architectural features and lines/levels from surrounding dwellings, defined front courtyards to align with front setbacks existing within the streetscape and a minimised basement entry.

Instead, the focal point of the development has become the basement entrance, which has neither been minimised nor integrated into the built form. As one of the first basements in the street, it is key that the proposal integrates the design into the built form where possible. Apart from built form techniques to minimise views of the basement (including cantilevered elements, basement materials and gates), landscaping would also aid in obscuring the basement. Insufficient landscaping details were provided, including a landscaping strip along the basement driveway as required by the CDCP 2012.

Internally within the site, the proposed development has not incorporated a high level of amenity. A balance between passive surveillance and privacy between dwellings has not been demonstrated, with the entries of the rear dwellings having direct views into the private open space of the front row of dwellings. Solar access has also not been clearly shown on the solar access diagrams. Fencing details have not been adequately provided for these areas, with design inconsistencies throughout the plans. The floor plans are inadequately detailed, with doors and windows shown as walls.

For these reasons, the proposed development has not been designed in response to the context of the subject site.

3. Impacts on streetscape

The impact of the proposal on the local streetscape would be inconsistent with the existing character as discussed below under 'Clause 16A Character of a Local Area'. Point 2 directly above also details the proposal's impact on the streetscape with respect to elements of the proposed built form being incompatible with development in the street and inadequately detailed. These impacts generally revolve around the inability to balance a new form of development into the streetscape with existing positive elements of the street. Critically, the location of the basement driveway through the middle of site detracts from the streetscape, as the design does not minimise its presentation when viewed from the street.

4. Impacts on neighbours

With respect to visual privacy, the first floor areas are populated with bedrooms and bathrooms. Notwithstanding, visual privacy within the development is unsatisfactory due to direct viewing into the front row's private open space areas by the rear row.

Insufficient information has been provided regarding solar access to the southern building, including retention of adequate sunlight to the living areas.

5. *Internal site amenity*

As discussed above, the key issues regarding insufficient internal amenity include inadequate direct sunlight to the internal living spaces and private courtyards of the dwellings as well as an unknown level of privacy afforded to the private open space areas of the front row of dwellings. The 'studies' proposed in the rear row of dwellings lend themselves to conversion as undersized bedrooms whilst other bedrooms in the development are also undersized. The proposed compromises on internal amenity are unjustified.

[2] 16A - Character of Local Area

For consent to be granted, the consent authority must be satisfied that the design of the proposal is compatible with the character of the local area. An analysis of the existing local area and potential future character is detailed below.

South of Georges River Road, Balmoral Avenue is zoned R3 Medium Density Residential with a maximum FSR of 0.5:1 and height of 8.5m. There are several heritage items in the locality. The existing streetscape predominantly comprises single detached dwellings with landscaped front and rear setbacks, rear outbuildings / swimming pools and side setbacks between 0.9-1.2m. Parking is primarily accommodated in garages, with some dwellings featuring driveways along the side setback. On the corner of Lyminge Road and Balmoral Avenue, two developments are located on the boundary, reflective of their previous use as shops. The development at 63 Balmoral Avenue, Croydon Park is a listed heritage item as a 'Victorian shop and dwelling above'.

Due to the increased density permitted under the ARH SEPP (had the proposal met the requirements), the proposed built form requires careful consideration of both the existing and future character of the local area. Of significance to the subject application, the proposal includes four dwellings fronting Balmoral Avenue, redesigned from a terrace housing configuration to a dual occupancy / large dwelling presentation across two built forms. The rear dwellings retain a row. Whilst attached dwellings are a permissible use in the zoning, it is noted that the existing subdivision pattern and minimum lot size of 460sqm would discourage this type of built form in the area.

Given the applicable height and relatively low applicable FSR of 0.5:1, likely residential development in the area would primarily result in redevelopment of existing dwellings, new dual occupancy / semi-detached dwellings, multi dwelling housing and other similarly lower density residential development.

The front row of dwellings have been amended to appear as two large dwellings / dual occupancies and provides a break in the middle of the site. The rear row of dwellings spans 25.15m. Given the dominant detached dwelling built form of the area, the rear building width is unlike anything in the local area and will be discernable from the street.

Whilst a break in the front built form is a positive change to better achieve consistency with existing development, the elevations do not demonstrate any architectural cues,

elements or materials found in the streetscape. The relocation of the basement driveway through the middle of the site features prominently in the design, despite being one of the first basements introduced into the street. Given the existing streetscape, the basement egress needs to be minimised as far as possible. As a detailed colours and finishes schedule has not been provided, it is difficult to ascertain how far removed the proposed development is from the positive streetscape elements in the street.

Notwithstanding, as described further above, the proposed design has not harmonised any of the proposed design elements with a convoluted front façade, inconsistent roof pitches, unbalanced detailing of the buildings and inadequate landscaping.

In view of the above, the proposed development has not responded to both the existing and desired future character of the local area. Consideration of these elements of the proposal demonstrates that the scheme is incompatible with the existing and intended character of the local area and does not achieve Clause 16A of the ARH SEPP.

- **Canterbury Local Environmental Plan 2012**

This site is zoned R3 Medium Density Residential under CLEP 2012. The development does not satisfy the objectives of the zone as the proposal is inconsistent with the medium density environment as sought by the suite of applicable planning controls. As a result of the proposed departures to the CLEP 2012 and CDCP 2012, the proposal does not meet the objective:

*'...To provide a variety of housing types **within** a medium density environment.'*

| Clause | Standard | Proposal | Complies |
|--------|---|---|---------------------------|
| 2.6 | Subdivision—consent requirements Land to which this Plan applies may be subdivided, but only with development consent. | The proposal seeks strata subdivision, however strata plans have not been provided. | No. |
| 4.3 | Height of buildings 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 – 8.5 metres . | The true height of the development cannot be determined as a sufficiently detailed survey, including levels and site dimensions, has not been provided. | Insufficient information. |
| 4.4 | Floor space ratio 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. Max. FSR – 0.5:1 | Unclear as the plans do not adequately scale. However, as the proposal seeks an FSR of 0.68:1 (according to the SEE) but the SEPP ARH requirements have not | No. |

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| | | <p>been triggered to receive an additional FSR allowance, the proposal does not comply with the maximum FSR development standard.</p> <p>A clause 4.6 written request has not been provided.</p> | |
| 6.1 | <p>Acid sulfate soils (ASS) Consent is required on Class 5 land for:- Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</p> | <p>The site is affected by Class 4 Acid Sulfate Soils. An Acid sulfate soils plan has not been provided.</p> | No. |
| 6.2 Earthworks | <p>Before granting consent to development including earthworks, the following must be considered:</p> <ul style="list-style-type: none"> (a) drainage patterns and soil stability (b) the likely future use or redevelopment of the land, (c) quality of the fill or the soil to be excavated, or both, (d) effect of development on existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. | <p>A geotechnical engineer's report was not submitted with the application.</p> | No. |
| 6.4 | <p>Stormwater management</p> <p>A consent authority must be satisfied that the development:</p> <ul style="list-style-type: none"> (a) is designed to maximise the use of water permeable surfaces on the | <p>Council's engineer has raised issue with the disposal of stormwater from the site. This is discussed further within</p> | No. |

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| | <p>land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and</p> <p>(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.</p> | the CDCP 2012 section of this report. | |
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Section 4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

A draft boarding house amendment to the Canterbury Local Environmental Plan 2012 has been exhibited, however is not relevant to the subject application.

Section 4.15(1)(a)(iii) Any development control plan

- **Canterbury Development Control Plan 2012**

The proposed development does not meet with the controls and objectives of Part B General and Part C Multi Dwelling Housing and Attached Dwellings section of Canterbury DCP 2012. The following key controls are provided below:

| Standard | Requirements | Proposal | Complies |
|---|--|--------------------------|----------|
| Part B – General Controls | | | |
| B 1.3 Parking Provision Rates | C1 Multi dwelling housing: Studio/1b = 1space (0) 2 bedroom = 1.2spaces (7 x 1.2 = 8.4) 3+bedrooms = 2 spaces (2 x 2 = 4) Visitors: 1/5 dwellings (1.8) TOTAL: 14.2 spaces | SEPP ARH prevails. | N/A |
| | Bicycle Spaces – 1 space/5 dwellings + 1/10 dwellings (visitor). (2) | 0 provided. | No. |
| B1.3.2 Accessible Parking Rates | C1 Provide 1 (one) accessible parking space per required adaptable dwelling designed and constructed in accordance with AS 2890.1. | 1 provided. | Yes. |
| B 1.4 Design of Parking Facilities | C1 All parking, and associated infrastructure is to comply with Australian Standard 2890 | Compliant as reviewed by | Yes. |

| | Parking Facilities series | Council's development engineer. | |
|---|--|--|------|
| B1.4.6 Basement Parking Requirements | C2- Provide ventilation to basement parking. Location and details of mechanical ventilation design must be outlined in applications to Council. | An appropriate condition of consent could have been included to ensure basement ventilation. | Yes. |
| | C3 Design and integrate basement parking so as not to accentuate the scale or bulk of a building or detract from the streetscape or front setback character. | Not integrated appropriately. | No. |
| | C4 Basement podiums shall protrude a maximum of 1m above existing ground level, except where it forms a barrier to 1:100 year flood events | <1m protrusion | Yes. |
| | C5 N/A | 5.1m | Yes. |
| | C6 Maximum 6m width for access driveways. | No alternate street | Yes. |
| | C7 Vehicular access should be via secondary streets, rear lanes or internal driveways where possible. | Unclear from the plans. | No. |
| | C8 Locate the entrance to basement parking below a terrace or balcony. Alternatively, setback the entrance at least 1m from the building line. | | No. |
| | C9 Recess car park entries from the main building façade alignment. | Not adequately recessed | No. |
| | C10 Integrate car parking, vehicle ramps, driveways and entries, ventilation grills and screens into the overall facade and landscape design. | Not integrated adequately | No. |
| | C11 Avoid black holes in the façade by providing security doors or decorative grills to car park entry. | Black hole not avoided. | No. |
| | C12 Return façade material into the car park entry recess for the extent visible from the street. | Unclear what façade materials used | Yes. |
| | C13 Use materials similar to the façade on any interior of the car park that is visible from the street. | Materials not acceptable. | Yes. |
| | C14 Provide directions to areas of car parking that are not readily visible from the street. Provide signposting in accordance with AS 2890.1. | Not necessary – entry highly visible from street | Yes. |
| | C15 Maintain pedestrian safety by minimising the potential for vehicular and pedestrian conflict, and in particular limit the number of | Vehicle access point limited to 1. Clear sightlines and direct | |

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| | vehicular access points: Provide clear sight lines at pedestrian and vehicular crossings, Separate and clearly distinguishing between pedestrian and vehicular entries, Use traffic calming devices where appropriate. | from garage to units. | |
| B2 Landscaping and B3 Tree Preservation | Council's landscape architect has reviewed the application against the controls in B2 and B3. A landscape plan has not been provided in accordance with Part B2 and the trees have not been accurately depicted on the architectural drawings. | | No. |
| B4 Accessible and Adaptable Design | No access report provided. | | No – insufficient information |
| B7 Crime Prevention and Safety | C1 Avoid blind corners in pathways, stairwells, hallways and car parks. | Generally no blind corners | Yes. |
| | C2 Provide natural surveillance for communal and public areas. | Fencing details not provided | No. |
| | C3 Provide clearly visible entries. | Clearly visible entries. | Yes. |
| | C4 Design the fence to maximize natural surveillance from the street to the building, and from the building to the street, and minimize opportunities for intruders to hide. | Fencing details not provided | No. |
| | C5 Avoid landscaping that obstructs natural surveillance. | General lack of landscaping detail. | Insufficient information. |
| | C6 Ensure lighting does not produce glare or dark shadows. | A condition of consent could have been imposed to this effect. | Yes. |
| | C7 Entrances, exits, service areas, pathways, car parks are to be well lit after dark when they are likely to be used. | A condition of consent could have been imposed to this effect. | Yes. |
| | C8 Where permitted, provide appropriate mixed uses within buildings to increase opportunities for natural surveillance. | N/A | N/A |
| B7.3 Additional Provisions for Residential Development | C1 Allow natural observation from the street to the dwelling, from the dwelling to the street, and between dwellings C1 Provide an appropriate level of security for individual dwellings and communal areas. C1 Design dwellings and communal areas to provide a sense of ownership | Inadequate details of privacy between dwellings has been shown on the plans. | Insufficient information. |
| B9 Waste | C1 Facilities for the handling, storage, collection and disposal of waste are to form | A bin storage area within 15m from the | Yes. |

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| | <p>an integral part of the design process for every development. A waste bin storage area is to be provided for each dwelling. The waste bin storage area is to be of adequate size to accommodate all allocated bins.</p> <p>C4 An on-site bin presentation area is to be provided (excluding dwelling houses, dual occupancy and semi-detached dwellings). The bin presentation area must be located within 15m of the street kerb. If the bin storage area is within 15m of the street kerb, it can be considered to be the presentation area and a separate presentation area is not required. Refer to section B9.6 for detailed design for the waste bin storage area and bin presentation areas.</p> <p>C5 All waste bin storage areas and bin presentation areas are to be designed in accordance to the following bin service allocations:</p> <p>(b) Multi Dwelling Housing, Seniors Housing and Attached Dwellings: i. Waste allocation is one x 140 litre bin per dwelling; ii. Recycling allocation is one 240 litre bin per dwelling; and iii. Garden vegetation allocation is one 240 litre bin per dwelling.</p> | kerb to service the number of bins required. | |
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| Standard | Requirements | Proposal | Complies |
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| Part C– Multi Dwelling Housing and Attached Dwellings | | | |
| C3.2.1 Minimum Lot Size and Frontage | C1 Must have street frontage C2 Minimum 27m frontage on major road Minimum 20m on local road | Approximately 30m, noting that an adequate survey has not been provided. | Yes. |
| C3.2.2 Isolated Site | C1 No isolation of neighbouring. | The subject site isolates the adjoining corner site at 65 Balmoral. | No, refer to comment [3] below. |
| C3.2.3 Private Open Space | C1 Attached Dwellings and Multi Dwelling Housing must provide 40m ² of private open space per dwelling. C2 Private open space must include an area 2.5m by 2.5m suitable for outdoor dining facilities. | Generally yes, though some dwellings contain 30sqm with 12sqm indicated in the front entryway. >2.5 x 2.5 area provided/dwelling Adjacent to main living room | Yes. Yes. Yes. |

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| | <p>C3 Private open space must be located adjacent to the main living areas, such as a living room, dining room or kitchen.</p> <p>C4 The principal area of open space for each dwelling may comprise a combination of privacy-screens, sun-shading devices and landscaped areas.</p> <p>C5 Be designed to prevent direct overlooking from a public space, communal place or from neighbouring buildings.</p> <p>C6 Be designed to accommodate both recreation and service activities.</p> <p>C7 Include a suitably screened area for clothes drying facilities.</p> <p>C8 Be oriented to provide maximum exposure to midwinter daylight whilst optimising privacy.</p> <p>C9 Private open space at ground level must be a minimum of 4m in any direction for attached dwellings and multi dwelling housing.</p> <p>C10 Private open space at ground level shall have a maximum gradient of 1:50.</p> <p>C11 Ensure that balconies, verandas or pergolas do not encroach upon any required deep soil area.</p> | <p>No details provided.</p> <p>Insufficient details provided.</p> <p>Sufficiently sized to accommodate both.</p> <p>Provided.</p> <p>Minimal solar access to POS.</p> <p>Complies.</p> <p>Unable to determine.</p> <p>Unclear</p> | <p>No.</p> <p>No.</p> <p>Yes.</p> <p>Yes.</p> <p>No.</p> <p>Yes.</p> <p>Insufficient information.</p> <p>Insufficient information.</p> |
| C3.2.4 Layout and Orientation | <p>C1 Orientate development to maximise solar access and natural lighting, without unduly increasing the building's heat load.</p> <p>C2 Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.</p> <p>C3 Coordinate design for natural ventilation with passive solar design techniques.</p> <p>C4 Site new development and private open space to avoid existing shadows cast from nearby buildings.</p> <p>C5 Site a building to take maximum benefit from cross-breezes and prevailing winds.</p> <p>C6 Do not compromise the creation of casual surveillance of the street, communal space and parking areas, through the required orientation.</p> | <p>Inadequate solar access information received.</p> <p>Natural ventilation achieved.</p> <p>Inadequate solar access information received.</p> <p>Adequate cross ventilation and casual surveillance of both streets achieved through the design.</p> | <p>No.</p> <p>Yes.</p> <p>Insufficient information.</p> <p>Yes.</p> |

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| C3.3 Building Envelope | <p><u>Height</u></p> <p>C1 Multi dwelling housing must not exceed the following numerical requirements:</p> <p>(a) Maximum height of one storey where the building is located more than 20m (in addition to the required front setback) (26m) or a distance of 65% of the total length of the allotment (29.72m), as measured from the front boundary (whichever is the greater).</p> <p>(b) Maximum height of two storeys except in locations stated in (a) above.</p> <p>(c) Two storey dwellings may be permitted at the rear of an allotment in R3 zones only where that part of the site faces an industrial development, a road, a railway line or an area of open space.</p> <p>(d) Maximum external wall height of 3.8m where the one storey restriction applies.</p> <p>(e) Maximum external wall height of 7m where two storeys are permitted and the height of buildings under the LEP is 8.5m.</p> <p>Basement and Sub-floor Projection</p> <p>C3 Any part of a basement or sub-floor area that projects greater than 1m above ground level comprises a storey.</p> | <p>Single storey with attic beyond 29m</p> <p>Two storey + attic</p> <p>N/A</p> <p>Inadequate information provided.</p> <p>Inadequate information provided.</p> <p><1m</p> | <p>Yes.</p> <p>Yes.</p> <p>N/A</p> <p>Insufficient information.</p> <p>Insufficient information.</p> <p>Yes.</p> |
| | <p><u>Attics and Roof Terraces</u></p> <p>C4 Attics and mezzanine floors do not comprise a storey.</p> <p>C5 Roof top terraces are not acceptable on any building or outbuilding in any residential zone.</p> | <p>Attics do not comprise a storey</p> <p>Not proposed.</p> | <p>Yes.</p> <p>N/A</p> |
| | <p><u>Basement and Sub-floor</u></p> <p>C6 Attached dwelling development must not include basement or subfloor parking.</p> <p>C7 Basement and sub-floor parking is suitable in the R4 High Density Residential Zone under the LEP for multi dwelling housing.</p> <p>C8 The provision of basement parking for multi dwelling housing in the R3 Medium Residential Zone of the LEP may be considered where site constraints warrant and it can be demonstrated that there will be no adverse impacts on amenity, streetscape or public domain.</p> | <p>N/A</p> <p>N/A</p> <p>The proposed basement has not been designed to integrate into the development through cantilvered elements, landscaping and materials and finishes.</p> | <p>N/A</p> <p>N/A</p> <p>No.</p> |

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| | <p>C9 Basement and sub-floor parking is only suitable where compliance with Chapter B1 Transport and Parking of this DCP can be demonstrated.</p> <p>C10 Any part of a basement or sub-floor area that projects greater than 1m above ground level comprises a storey.</p> | <p>The proposal would therefore detract from the streetscape through a jarring, large basement entry.</p> <p>Yes</p> <p><1m</p> | <p>Yes.</p> <p>Yes.</p> |
| | <p><u>Retaining Walls – Development Without Basement Parking</u></p> <p>C11 Walls that would enclose a sub-floor area: (a) Maximum 2m for steeply sloping land; and (b) Maximum 1m for all other land.</p> <p>C12 Retaining walls that would be located along, or immediately adjacent to, any boundary: (a) Maximum 3m for steeply sloping land, but only to accommodate a garage that would be located at street level; and (b) Maximum 1m for all other land.</p> | N/A | N/A |
| | <p><u>Cut and fill – Development Without Basement Parking</u></p> <p>C13 Maximum 1m cut below ground level where it will extend beyond an exterior wall of the building.</p> <p>C14 No limit to cut below ground level where it will be contained entirely within the exterior walls of a building, however, excavated area is not to accommodate any habitable room that would be located substantially below ground level.</p> <p>C15 Maximum 600mm fill above ground level where it would extend beyond an exterior wall of a building.</p> <p>C16 If proposed cut and fill, or a retaining wall, would be deeper or higher than 1m, structural viability must be confirmed by suitably qualified engineers' reports.</p> | N/A | N/A |
| C3.3.3 Setbacks | <p>C1 Development, including basement and sub-floor areas, fronting a major road must have a minimum front setback of 9m.</p> | N/A | N/A |

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| | <p><u>Setbacks in R3 zone</u></p> <p>C2 Front and rear setbacks</p> <p>(a) A minimum setback of 6m from the front boundary.</p> <p>(b) A minimum setback of 3m from the rear boundary where the building the subject of the setback, is single storey.</p> <p>(c) Minimum 3m or 5m width of deep soil along the front and rear boundaries based on setback requirements.</p> <p>(d) On corner lots a minimum of 5.5m from the longer street frontage</p> <p>Multi dwelling housing development must comply with the following side setbacks:</p> <p><u>C3 – Side setbacks</u></p> <p>(a) A minimum of setback of 1.5m from the side boundaries for dwellings that would be fronting the street or front setback.</p> <p>(b) A minimum setback of 2.5m from the side boundaries for building that does not front the street or front setback.</p> <p>(c) A minimum of 1m width of deep soil along side boundaries.</p> | <p>6m</p> <p>5m</p> <p>Unclear, though likely complies.</p> <p>N/A, the site does not meet the criteria of a corner site as defined in the Glossary section of the CDCP 2012.</p> <p>1.2m</p> <p>2.5m-2.95m</p> <p>1m</p> | <p>Yes.</p> <p>Yes.</p> <p>Insufficient information.</p> <p>N/A</p> <p>No.</p> <p>Yes.</p> <p>Yes.</p> |
| C3.3.4 Building Depth | C1 Building depth must not exceed a maximum of 25m. | 12.8m | Yes. |
| C3.3.5 Building Separation | <p>C1 Multi dwelling housing must provide a minimum 5m separation between buildings that are on one site (measured from the outer faces of the exterior wall of each building).</p> <p>C2 In the separation area:</p> <p>(a) Deep soil or private open spaces are permitted as well as communal open space.</p> <p>(b) Driveways, walkways and building lobbies are permitted (driveways should have planted verges at least 1m wide comprising canopy trees, along both sides).</p> <p>(c) Garages, carports or outdoor parking are not permitted.</p> | <p>4.83m</p> <p>No details have been provided.</p> <p>N/A</p> | <p>No.</p> <p>No.</p> <p>N/A</p> |
| C3.4.1 Building Design | C1 Contemporary architectural design acceptable where heritage listing does not | The proposal is inconsistent with this | No. |

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| | <p>apply to site or neighbours, not visually prominent from street, facades are in accordance with this DCP.</p> <p>C2 New building forms do not mimic traditional features.</p> <p>C3 Access to upper storeys must not be via external stairs.</p> <p>C4 All dwellings must contain one kitchen and laundry facility.</p> | <p>control as set out previously.</p> <p>Complies.</p> <p>Complies.</p> <p>Complies.</p> | |
| | <p><u>Building Entries</u></p> <p>C7 Clearly identifiable entries.</p> <p>C8 At least one habitable room window to street and communal areas.</p> <p>C9 Sight lines to the street from habitable rooms or entrances must not be obscured by ancillary structures.</p> <p>C10 In multiple unit development, face at least one habitable room or private open space area towards a communal space, internal driveway or pedestrian way.</p> <p>C11 Ground level private terraces located within the front setback must be setback at least 1m from the street boundary to accommodate a landscape strip which should remain in communal ownership.</p> <p>C12 Landscaping of street setbacks should not include continuous visually-solid hedges that would block sight lines from dwellings or conceal intruders.</p> <p>C13 Screen walls around private open spaces shall not be taller than 1.2m, although screens with 50% transparency may be up to 1.8m in height.</p> <p>C14 The combined width of front fencing is not to occupy more than 50% of the frontage of the site.</p> <p>C15 Dwellings that face the street must have private entrances direct from the street footpath</p> | <p>The elevations do not adequately satisfy these controls. Clear identification of front doors for individual dwellings has not been achieved.</p> <p>Habitable rooms face towards communal areas, though surveillance of the middle walkway is negligible.</p> <p>The ground floor terraces are inadequately detailed and 1m setback not provided.</p> <p>Unclear what landscaping is proposed.</p> <p>Unclear what the fencing proposed is.</p> <p>Unclear what the fencing proposed is.</p> <p>Direct access provided.</p> | <p>No.</p> <p>Yes.</p> <p>No.</p> <p>Insufficient information.</p> <p>Insufficient information.</p> <p>Insufficient information.</p> <p>Yes.</p> |

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| | <p><u>Façade Treatment</u></p> <p>C17 Use non-reflective materials</p> <p>C18 Facade design should reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows.</p> <p>C19 Facades visible from the street designed as a series of articulating panels or elements</p> <p>C20 The width of articulating panels should be consistent with the scale and rhythm characteristic of bungalows.</p> <p>C21 Width of articulating panels 4m to 6m front elevation and 10m-15m side elevation.</p> <p>C22 Avoid long flat walls along street frontages - stagger the wall alignment with a step (not a fin wall or other protruding feature) of at least 0.5m for residential buildings.</p> <p>C23 Incorporate contrasting elements in the facade - use a harmonious range of high quality materials, finishes and detailing.</p> <p>C24 Screen prominent corners with awnings, balconies, terraces or verandas that project at least 1 m from the general wall alignment.</p> | <p>The controls within this section have not been achieved by the proposal. For the reasons detailed in the character section of this report, the appearance of the front façade detracts from the streetscape and lacks sufficient detail. Elements described in these controls and present in the streetscape have not been incorporated into the design. The proposal is inconsistent with the suites of these controls and inadequately detailed.</p> | No. |
| | <p><u>Ventilation</u></p> <p>C37 Incorporate features to facilitate natural ventilation and convective currents - such as opening windows, high vents and grills, high level ventilation (ridge and roof vents) in conjunction with low-level air intake (windows or vents).</p> | <p>All dwellings achieve ventilation.</p> | Yes. |
| <p>C3.4.2 Roof Design and Features</p> | <p>C1 Use simple pitched roofs that accentuates the shape of external walls</p> <p>C2 Avoid complex roof forms with multiple gables</p> <p>C3 Roof pitches are to be compatible and symmetrical to nearby buildings</p> <p>C4 Parapet roofs that increase height of exterior walls to be minimised.</p> <p>C5 Use minor gables</p> <p>C6 Mansard roofs (or similar) not permitted</p> <p>C7 Maximum roof pitch 30degrees. Greater</p> | <p>Series of connected hip and valley roofs, whilst the rear is a gable roof.</p> <p>Proposed rooves do not exceed 30 degrees.</p> | Yes. |

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| | <p>pitch considered on merit.</p> <p>C8 Relate roof pitch to desired built form and context.</p> <p>C9 Roofs with greater pitches will be considered on merit taking into account matters such as streetscape, heritage value and design integrity.</p> <p>C10 Relate roof design to the desired built form and context.</p> | | |
| C3.4.3 Dwelling Layout & Mix | <p>C1 Design interiors to be capable of accommodating the range of furniture that is typical for the purpose of each room.</p> <p>C2 The primary living area and principal bedroom must have a minimum width of 3.5m.</p> <p>C3 Secondary bedrooms must have a minimum width of 3m.</p> <p>C4 Provide general storage in addition to bedroom wardrobes and kitchen cupboards.</p> <p>C5 The minimum amount of storage required is 6m³ for one bedroom dwellings 8m³ for two bedroom dwellings, or 10m³ for dwellings with three or more bedrooms.</p> <p>C6 Stairwells should be designed to receive natural daylight and ventilation.</p> <p>C7 10% of dwellings in any new multiple dwelling development must be accessible or adaptable to suit current or future residents with special needs.</p> | <p>Some bedrooms are undersized as per the below control.</p> <p>Living rooms >3.5m and main bedrooms <3.5m</p> <p>Some bedrooms do not meet the minimum 3m width.</p> <p>Not indicated.</p> <p>Not indicated.</p> <p>Achieved.</p> <p>Adaptable dwelling provided.</p> | <p>No.</p> <p>No.</p> <p>No.</p> <p>No.</p> <p>No.</p> <p>Yes.</p> <p>Yes.</p> |
| C3.5.1 Solar Access and Overshadowing | <p>C1 Where site orientation permits at least primary living areas of dwellings must receive a minimum of 2 hours of sunlight between 9.00am and 3.00pm on 21 June.</p> <p>C2 Principle areas of private open space must receive a minimum of 2 hours of sunlight between 9.00am and 3.00pm on 21 June to at least 50% of the open space surface area.</p> <p>C4 Proposed development must retain a minimum of 2hrs of sunlight between 9.00am and 3.00pm on June 21 for existing primary living areas and 50% of the POS of neighbouring dwellings</p> | <p>Addressed in relation to SEPP ARH.</p> <p>The shadow diagrams provided are insufficiently detailed, though the adjoining POS will likely receive</p> | <p>No.</p> <p>Insufficient information.</p> |

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| | C7 Clothes drying areas on neighbouring properties must receive 2hrs of sunlight on June 21. | 50% solar access. Unclear from the information provided. | Insufficient information. |
| C3.5.2 Visual Privacy | C1 Locate and orientate new development to maximize visual privacy between buildings on and adjoining to the site. | Visual privacy between sites is achieved. | Yes. |
| | C2 Minimise direct overlooking of rooms and private open space through use of building separation, setbacks and orientation of living room windows and private open space towards the street | The visual privacy conditions within the development have not been demonstrated through inadequate details on the plans. | Insufficient information. |
| | C3 If living room windows or private open spaces would directly overlook a neighbouring dwelling: (a) Provide effective screening with louvres, shutters, blinds or pergolas; and/or (b) Use windows that are less than 600mm wide or have a minimum sill height of at least 1.5m above the associated floor level. (c) Screening of bedroom windows is optional and dimensions are not restricted. | Overlooking to adjoining neighbours (not within the development) would only be from bedrooms or studies, which is acceptable. | Yes. |
| C3.5.3 Acoustic Privacy | C1 Protect sensitive rooms such as bedrooms, from likely sources of noise such as major roads and neighbouring living areas. C2 Bedroom windows in new dwellings that would be located at or close to ground level are be raised above, or screened from, any shared pedestrian pathway. C3 Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp. | Rooms have been co-located and result in acceptable acoustic amenity. Bedrooms have generally been located on upper levels, with the ground floor dwellings not locating bedrooms next to the basement driveway. | Yes. |
| C3.6.1 Fences | C1 Provide Boundary definition by construction of an open fence or low hedge to front street boundary. C2 Front fence within front boundary setback no higher than 1.2m. C3 Side fences can be 1.8m high to predominant building line. | No details provided. | No. |

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| | <p>C4 On corner sites where the façade of a building presents to two street frontages, fences are to be no higher than 1.2m.</p> <p>C5 Screen walls around private open spaces shall not be taller than 1.2m, although screens with 50% transparency may be up to 1.8m in height.</p> | | |
| C3.6.2 Building Services | <p>C1 All letterboxes to meet Australia Post standards.</p> <p>C2 Discretely located mailboxes at front of property.</p> <p>C3 Integrate systems, services and utility areas with the design of the whole</p> <p>C4 Facilities should not be visually obtrusive.</p> <p>C5 Appliances fitted to the exterior of a building and enclosures for service meters do not detract from the desired architectural quality of the building and streetscape.</p> <p>C6 Unscreened appliances and meters not to be attached to any façade visible from the street.</p> <p>C7 Screen or treat air conditioning units, TV antennae, satellite dishes, ventilation ducts and other like structures so they are not visible on the street elevation.</p> <p>C8 Coordinate and integrate building services, such as drainage pipes, with overall façade and balcony design.</p> <p>C9 Location and design of service areas should include:</p> <p>(a) Screening of clothes drying areas from public and semi-public places; and</p> <p>(b) Space for storage that is screened or integrated with the building design.</p> <p>C10 Minimise visual impact of solar hot water systems</p> | <p>Fire hydrants and the like have not been demonstrated on the plans.</p> | <p>No.</p> |

[3] Part 3.2.2 – Avoid isolating undeveloped sites

The CDCP 2012 requires that sites not be left sterilised or isolated as a result of redevelopment. The subject development is considered to isolate 65 Balmoral Avenue, with a site area of 459.9sqm and frontage of 9.65m. The proposal fails to perform against the following CDCP 2012 controls:

- Reasonable offers have not been made to adjoining the isolated site;

- The proposal results in a development at 65 Balmoral Avenue that would be smaller or narrower than required and thereby incapable of accommodating a development envisaged by the zoning and suite of applicable planning controls;
- The schematic submitted does not demonstrate a building envelope that generally meets the desired building envelope controls within the CDCP 2012 and CLEP 2012.

Further details are provided below to demonstrate how the development does not facilitate a suitable schematic as per the applicable planning controls for the R3 zone in response to the Planning Principle established in *Karavellas v Sutherland Shire Council [2004]* (*Karavellas*).

Part 1: Consolidation of sites and reasonable valuations

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

With respect to Part 1 of the Planning Principle established in *Karavellas v Sutherland Shire Council [2004]* (*Karavellas*), the Applicant has provided the following evidence that offers have been made to the isolated site based on independent valuations. The valuations were undertaken MG BB Pty Ltd 7 May 2015.

However, the letters provided with the amended plans package indicate –

- A letter was posted by the applicant with an offer (with receipt of registered post) on 26 November 2018.
- A response letter of rejection was dated before the offer, dated 16 November 2018.

On this basis, the evidence provided to Council does not correlate. Further, the letter of offer did not include any details of the proposed monetary offer based on the valuations and instead stated ‘...and how much you would to sell it for’.

Whilst there is a document from Clique Consulting outlining previous offers made and addressing the requirements of the planning principle, the information outlined has not been provided to Council as requested.

The first principle of *Karavellas* has therefore not been achieved.

Part 2: Where consolidation cannot occur, can the isolated site be suitably redeveloped?

Critical to this application is the second part of *Karavellas*:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

The Applicant has not provided a response to site isolation, however have provided an indicative concept design for 65 Balmoral Avenue as a multi dwelling proposal. The scheme proposes the following key variations (amongst others):

- Minimum frontage;
- Side /secondary longer setback;
- Building height in rear setback;
- Bedroom and living room dimensions.

The indicative scheme also includes a break through basement for future use by 65 Balmoral Avenue, however has not provided any information relating to proposed right of ways/ easements and the like that would be required to enforce the offer.

In this respect, the proposal has not adequately demonstrated that the isolated site can be redeveloped to fulfil the objectives of the R3 Medium Density zoning and suite of planning controls. It is also noted that the indicative built form does not relate to the built form of the proposed development. The proposal has also failed to consider modifying its own development to ensure that the redevelopment potential for both sites can be reasonably enabled.

Accordingly, the development fails to satisfy the principles of *Karavellas* and Part 3.2.2 of the CDCP 2012.

Part B Landscaping and Tree Management

The amended plans were not referred back to Council's landscape architect as the amended landscape plan only contains information regarding calculations. The following issues were raised as part of the first set of plans:

- The submitted landscape plan does not provide a satisfactory quality landscape proposal for this development. This includes no garden bed edging, planters located to remove access to the rear units and limited landscaping in the above podium areas. A high quality landscape proposal was required which takes into account the opportunities for landscaping and the benefits that landscaping can provide to this development. The Landscape Plan was requested to be prepared in accordance with Canterbury Development Control Plan 2012, by a qualified landscape architect or a qualified landscape consultant with experience designing for multi dwelling developments.
- The bin stand was requested to be moved back along the footpath to be behind the front building setback, replace the current location with garden bed.
- The existing street trees 2 x Eucalyptus sp, one located in front of 69 Balmoral Ave and one located in front of 67A Balmoral Ave were required to be retained and protected. The submitted plans were not accurate and show a street tree that has been removed in front of 67 Balmoral Ave. and propose the removal of the tree in front of 69 Balmoral Ave. This tree is a mature tree of significant size, a vigorous specimen in good health. It currently provides good visual amenity from both the street and the surrounding area and provides an opportunity for habitat links for fauna of the area. As such, this significant tree should be retained and protected with appropriate TPZ and SRZ.

Part B Development Engineering, Flood and Stormwater

As noted, the application has not satisfied the CDCP 2012 or CLEP 2012's requirements with respect to stormwater management. Council's development engineer raised the following issues regarding the amended plans:

- Based on the proposed pit surface/invert levels and pipe diameter located in the rear yards of Units 5 – 9 and along both side setbacks of the development, the minimum stormwater pipe cover of 300mm in accordance with AS3500.3 has not been achieved.
- Based on the proposed pit surface/invert levels and connecting pipe diameter within the proposed rear yards of Units 1 – 4, as well as the projected invert levels at the floor waste (Ø 150 SUMP) proposed within the common yards/areas of the development, insufficient information regarding the minimum pipe cover could not be ascertained.
- All of the stormwater inlet components (pits and sumps) and the connecting pipe network are located above the basement (limited soil thickness) and not within the deep soil area, therefore; it is unclear whether the proposed design is plausible

when considering the minimum stormwater pipe cover and gradient, slab thickness design and finally, what/how the subsoil drainage is managed.

The proposed method of stormwater management therefore does not satisfy Part B of the CDCP 2012.

- **Canterbury Development Contributions Plan 2013**

The Canterbury Development Contributions Plan 2013 would require payment of a contribution, if the application had been recommended for approval.

Section 4.15(1)(a)(iiia) Planning agreements

There are no planning agreements applicable to this development application.

Section 4.15(1)(a)(iv) The regulations [section 79C(1)(a)(iv)]

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

The documentation submitted does not meet the requirements of Schedule 1 of the Regulation, being inconsistent, inadequate quality and deficient in the areas highlighted throughout this report.

Section 4.15 (1) (b) – The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality

Section 4.15(1)(b) requires Council to consider the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Apart from those matters already addressed, there are no other likely environmental impacts to arise from the proposed development. In summary, the key impacts include:

- A development that does not satisfactorily respond to the character of the surrounding locality and therefore the built form envisaged in the R3 Medium Density Zone, by the Canterbury Local Environmental Plan 2012 and relevant provisions of the Canterbury Development Control Plan 2012.
- Detrimental impact to the streetscape through a development that is out of character with the existing streetscape and inconsistent with the envisaged future character of the area.
- Unsatisfactory overshadowing of land immediately south of the site.
- Poor amenity provided to the proposed dwellings, in terms of solar access and room sizes.
- Inadequate stormwater drainage.
- Site isolation.

Section 4.15 (1) (c) The suitability of the site

In view of the non-compliances with the provisions of the applicable environmental planning instruments and the environmental impacts summarised above, the site is unsuitable for the development for which consent is sought.

Section 4.15 (1) (d) – Any submissions made in accordance with this Act or the Regulations

In accordance with Part A3 of the Canterbury Development Control Plan 2012 the proposed development was notified to adjoining and nearby properties and was placed on public exhibition for a period of 21 days from 25 June 2018 – 9 July 2018. 40 submissions were received, including a petition with 77 signatures and letter from a Local Member. The following issues were raised:

- *Overdevelopment of the site / density too great*
The application relies on the increased density incentives provided under the State Environmental Planning Policy (Affordable Rental Housing) 2009, however does not qualify for additional FSR.

It is agreed that the proposal has not been able to accommodate the proposed density in a manner that does not compromise the existing and future streetscape of the area and is therefore unacceptable in its current form.
- *Compatibility with local character*
It is agreed that the proposal has failed to consider and relate to the character of the area as it currently exists and the future area as shaped by the planning controls in the medium density zoning. A full assessment can be found further above in the report.
- *Accessible area*
It is unclear from the application which bus stop the proposal relies on. It is agreed that the application therefore has not demonstrated it meets the accessible area requirements of SEPP ARH.
- *Inability of application to address reasons for rejection*
It is agreed that the subject application contains many of the deficiencies of the previous development application.
- *BASIX incorrect and includes neighbouring dwelling*
An amended BASIX Certificate was provided and removes the unrelated property from the certificate.
- *Lack of parking and accessible parking*
The car parking rates under the Canterbury Development Control Plan 2012 do not apply as the State Environmental Planning Policy (Affordable Rental Housing) 2009 prevails. No visitor parking is provided, which is consistent with SEPP ARH.

- *Private Open Space*
The proposal generally complies with the overall private open space required for each dwelling (40sqm), with some variations sought to a few of the dwellings to split the private open space at the front of those dwellings.
- *Traffic*
The proposal is not considered to result in any adverse traffic impacts that were not envisaged by the medium density zoning of the area.
- *Overshadowing*
The proposal has not demonstrated adequate solar access within the development and to the southern neighbour.
- *Mechanical Parking Devices, noise from basement/traffic and driveways*
There are no mechanical parking devices proposed in the subject application. A single driveway entry is proposed for the development. It is not anticipated that the noise from vehicles parking in the basement would be unreasonably detrimental to the amenity of adjoining neighbours.
- *Height of buildings*
Whilst concern is raised in the report that the exact height of the development cannot be determined based on the insufficient survey received, it is noted that the development likely complies with the height limit. Notwithstanding, the impact of the height on the adjoining dwelling regarding solar access cannot be determined, which forms part of the reasons for refusal.
- *Amenity*
The proposal in its current form is unacceptable with a view of internal amenity, impacts on adjoining neighbours and streetscape impacts. It is agreed that overshadowing to the adjoining site has not been addressed in the documentation submitted.
- *Inappropriate location of affordable housing / new bus stop*
It is unclear if the subject site is located within an accessible area as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009 and serviced by a compliant bus route within 400m of the site.

The concerns raised about the addition of a new bus stop in the locality by NSW Transport, thereby resulting in the subject site potentially meeting the accessibility requirements of the State Policy and further request for Council to lobby for the removal of the bus stop cannot be remedied through the development application process.
- *Trees and landscaping*
It is agreed that the location of trees and details of any removal or retention has not been adequately addressed. Landscaping of the site has also not been adequately addressed by the application.

- *Privacy*
Appropriate privacy has not been achieved throughout the development. It is noted that the first floor areas of each dwelling are occupied by bedrooms and bathrooms. Appropriate screening could have been conditioned for these low use rooms where required.
- *Townhouses are incompatible with the area*
The zoning applicable to the site under the Canterbury Local Environmental Plan 2012, being R3 Medium Density Residential, permits 'multi-dwelling housing', otherwise known as townhouses.
- *Asbestos and Dilapidation Report*
Had approval been recommended, standard conditions of consent would have been included to ensure any demolition works and removal of asbestos is completed in accordance with the relevant Australian Standards and by a licensed asbestos remover. The developer or demolition contractor would be required to notify adjoining neighbours of when the commencement of asbestos removal works will begin and relevant details of the work being completed.

Had approval been recommended, a dilapidation report would have been required through the conditions of consent.
- *Fencing*
It is agreed that insufficient details regarding fencing have been provided as part of the application.
- *Property value decrease due to affordable housing and increased crime from affordable housing*
There is no evidence to support that affordable housing will have an impact on houses prices and crime.
- *Concern that the property will not be used for affordable housing*
Conditions of consent requiring the nominated dwellings to be registered on the title of the development as affordable housing and managed by an affordable housing provider are included as standard conditions of consent for a development of this type.
- *Precedent for other developers to build similar inappropriate development in the area*
It is agreed to an extent that the proposed design is inappropriate for the site and approval as one of the first multi-dwellings would set an undesirable precedent. However, multi-dwelling housing is a permissible land use in the R3 zone and is anticipated in the zoning, though not to the proposed scale.
- *Accessible housing*
One dwelling is provided as an adaptable dwelling.

Section 4.15(1)(e) - The public interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and environment are avoided. The proposal does not meet key provisions within the suite of planning controls applicable to it. In view of the amenity impacts created by the proposed built form for both future and current residents, as well as number of submissions received, the proposed development is not in the public interest.

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, all relevant environmental planning instruments, and the Canterbury Development Control Plan 2012.

The proposal in its current form is unsatisfactory, failing to satisfy the requirements of the Canterbury LEP 2012 and the SEPP (Affordable Rental Housing) 2009, which must be satisfied to enable consent to be granted.

Refusal of the development application is accordingly recommended.

DA-231/2018 - REASONS FOR REFUSAL

1. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development. The proposal has not provided an adequately detailed survey plan with site dimensions and existing levels across the site by a registered surveyor, inconsistent landscaping, stormwater and architectural plans, incorrectly labelled plans, inadequately detailed floor plans and elevations, inaccurate and inadequately detailed solar access plans, inaccurate elevations showing natural ground level, omission of a strata plan and insufficient reports including geotechnical report and acid sulfate soils report.
2. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, has not demonstrated it meets the State Environmental Planning Policy 2004 – (Building Sustainability Index: BASIX) 2009 on the architectural plans.
3. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, has not demonstrated it meets the accessible area precondition of Division 1, 10 (2) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
4. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, does not meet the minimum solar access requirements of clause 14 (1) (e) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application did not address, and the proposed design fails to satisfy the design requirements of Clause 15 of State Environmental Planning Policy (Affordable Rental Housing) 2009.
6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is incompatible with the desired character of the locality, having considered the requirements of clause 16A of State Environmental Planning Policy (Affordable Rental Housing) 2009.
7. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development fails to meet the R3 Medium Density Residential zone objectives in that the proposed density is uncharacteristic of the anticipated medium density environment as per Clause 2.3 (2) of the Canterbury Local Environmental Plan 2012.

8. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.3 Building Height of the Canterbury Local Environmental Plan 2012 in that insufficient details have been provided to determine the building height.
9. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.4 Floor space ratio of the Canterbury Local Environmental Plan 2012 in that the proposal does not satisfy the requirements to qualify for State Environmental Planning Policy (Affordable Rental Housing) 2009 and therefore breaches the maximum permitted FSR under Clause 4.4 of the Canterbury Local Environmental Plan 2012.
10. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, a Clause 4.6 written request has not been provided to breach Clause 4.4 Floor space ratio of the Canterbury Local Environmental Plan 2012.
11. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of Clause 6.1 – Acid Sulfate Soils of the Canterbury Local Environmental Plan 2012.
12. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of Clause 6.2 – Earthworks of the Canterbury Local Environmental Plan 2012.
13. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the requirements of Clause 6.4 – Stormwater Management of the Canterbury Local Environmental Plan 2012.
14. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following provisions of the Canterbury Development Control Plan 2012:
 - a. Part 3.2.2 Avoid Isolating Sites, in that the proposal isolates the adjoining site at 65 Balmoral Avenue and fails to satisfy the objectives of the Part and the site isolation planning principles established by the Land and Environment Court.
 - b. Part 3.2.3 Private Open Space, in that privacy and fencing details have not been addressed.
 - c. Part C3.2.4 Layout and Orientation, in that solar access has not been demonstrated.
 - d. Part C3.3 Building Envelope, in that insufficient details have been provided to determine the proposed wall height.

- e. Part 3.3.3 Setbacks as the proposal does not comply with the minimum side setbacks and deep soil requirements.
 - f. Part 3.3.5 Building Separation, in that the development does not provide adequate separation between the front dwellings and does not provide adequate landscaping in these areas.
 - g. Part 3.4.1 Building Design, in that the proposed façade is poorly designed, clear entry ways are not provided and fencing details have not been provided.
 - h. Part C3.4.3 Dwelling layout and mix, in that the bedrooms are inadequately dimensioned.
 - i. Part 3.5.1 Solar access and overshadowing, in that inadequate solar access information was provided.
 - j. Part C3.5.2 Visual privacy, in that inadequate details have been provided regarding the proposed privacy conditions.
 - k. Part C3.6.1 Fences, in that no details have been provided.
 - l. Part C3.6.2 Building Services, in that inadequate details of fire hydrant and hoses are detailed on the plans.
 - m. Part B Stormwater, in that the minimum pit surface/invert levels have not been achieved and the proposed design is unlikely to be achievable.
 - n. Part B Landscaping and Trees as insufficient and inaccurate information has been provided.
15. Having regard to the above non-compliances with the Canterbury Development Control Plan 2012 and pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory and represents an overdevelopment of the subject site.
16. The proposed development is unsatisfactory, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
17. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk and scale and would adversely impact upon the amenity of the locality.
18. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject site.
19. Having regard to the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

WE ALSO ADVISE

1. Our decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
2. If you are not satisfied with this determination, you may:
 - 2.1. Apply for a review of a determination under Section 8.2 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination; or
 - 2.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 8.7 of the Environmental Planning and Assessment Act 1979.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2019

| | |
|--------------------------|--|
| ITEM 4 | 92 & 92A Bayview Ave, Earlwood |
| | Boundary adjustment between 92 & 92A Bayview Ave, Earlwood. |
| FILE | DA-388-2018 - Canterbury |
| ZONING | R2 - Low Density Residential |
| DATE OF LODGEMENT | 31 August 2018, further information received on 12th December 2018 |
| APPLICANT | Mr A B Barber |
| OWNERS | Mr Arthur Brian Barber |
| ESTIMATED VALUE | NIL |
| AUTHOR | Planning |

REPORT

This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 10%.

Development Application No. DA-388/2018 proposes to undertake a boundary adjustment between 92A Bayview Avenue (Lot A) and 92 Bayview Avenue (Lot B) by adjusting the common boundary between the two lots.

DA-388/2018 has been assessed against *Canterbury Local Environmental Plan 2012* and *Canterbury Development Control Plan 2012* and generally complies, with the exception of a proposed lot below the minimum subdivision lot size of 460m².

The application was not required to be notified as it was deemed to not have additional impacts on any adjoining or nearby properties; therefore notification to adjoining and surrounding properties was not undertaken.

As detailed in this report, the non-compliance with the required minimum lot size is justified and is considered worthy of support.

POLICY IMPACT

This matter has no direct policy impacts.

FINANCIAL IMPACT

The matter has no direct financial implication.

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Recommendations

DA-388/2018 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 92 & 92A Bayview Ave, Earlwood. The site is a regular allotment that is zoned R2 - Low Density Residential. It is a corner lot located adjacent to the intersection of Bayview Avenue and Highcliff Lane, Earlwood. The related lots are formally known as Lot A of DP184594 and Lot B of DP184594. Lot A has a street frontage of 15.24m to Highcliff Lane and a total site area of 232m². Lot B has a street frontage of 15.27m to Bayview Avenue and a total site area of 650.6m².

Existing on site at Lot A is a two storey industrial building, which was previously approved by Council for the storage of transformers and office purposes and later approved for the storage of refrigerator units. The existing use rights attributed to Lot A have since ceased.

Existing on Lot B is a single storey masonry dwelling with a tiled roof that is accessed via Bayview Avenue.

The surrounding development consists of predominantly single and two storey dwelling houses.



Figure 1: Street view of the subject site from Bayview Avenue.



Figure 2: Street view of the subject site from Highcliff Lane.



Figure 3: Aerial View of the subject site,

PROPOSED DEVELOPMENT

The subject application seeks Council's consent for a boundary adjustment between 92A Bayview Avenue (Lot A) and 92 Bayview Avenue (Lot B) by undertaking a boundary adjustment of the common boundary between the two lots. The existing site area and frontage of Lot A and Lot B, and the proposed resulting site area and frontage are set out in the table below:

| | <i>Existing Site Area</i> | <i>Existing Street Frontage</i> | <i>Proposed Site Area</i> | <i>Proposed Street Frontage</i> |
|--------------|---------------------------|---------------------------------|---------------------------|---------------------------------|
| Lot A | 232m ² | 15.24m | 282m ² | 19.16m |
| Lot B | 650.6m ² | 15.27m | 600.6 m ² | 15.27m |

STATUTORY CONSIDERATIONS

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

- (a) Canterbury Local Environmental Plan 2012 (CLEP 2012).
- (b) Canterbury Development Control Plan 2012 (CDCP 2012).
- (c) Canterbury Development Contributions Plan 2013.

SECTION 4.15 ASSESSMENT

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

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

The following clauses of the *Canterbury Local Environmental Plan 2012* were taken into consideration:

- **Canterbury Local Environmental Plan 2012**

This site is zoned R2 Low Density Residential under Canterbury LEP 2012. The controls applicable to this application are:

Permissibility

The site is zoned R2 - Low Density Residential under Canterbury LEP 2012. The proposed boundary adjustment (subdivision) of the lot is permitted under the zone with consent (as identified within Part 2, Clause 2.6 of CLEP 2012).

| Standard | Requirement | Proposal | Complies |
|-----------------|-----------------------------|-----------------|-------------------------------|
| Zoning | R2- Low Density Residential | Subdivision | Yes, permissible with consent |

| | | | |
|--------------------------|-------------------|--|--|
| Minimum Lot size | 460m ² | Lot A = 600.6m ² Lot B = 282m ² | No , a Clause 4.6 submitted to vary the standard. See [1] below for more details. |
| Building height | 8.5m | No building is proposed | N/A |
| Floor Space Ratio | 0.5:1 maximum | No new building is proposed. | N/A |

The proposal does not comply with the following controls of CLEP 2012:

[1] Minimum subdivision lot size (Clause 4.1)

The development application as proposed is seeking to undertake an adjustment of the common boundary between the two existing lots. Under the *Environmental Planning and Assessment Act 1979*, this is defined as a form of subdivision within Section 6.2 Subsection 2(a) by virtue of the definition within Section 195 of the *Conveyancing Act* as defined below:

plan of subdivision means a plan that shows:

...

(b) *the consolidation of 2 or more existing lots and their simultaneous redivision, along new boundaries, into 2 or more new lots, or*

...

However, the proposed site area of Lot A is less than the required 460m² minimum lot size as defined within Clause 4.1(3) of CLEP 2012. Therefore, it requires a Clause 4.6 variation.

The applicant has submitted a Clause 4.6 Request for Variation to the minimum subdivision lot size standard prescribed by Clause 4.1(3) of CLEP 2012, in support of this application.

The request has been prepared in accordance with the provisions of Clause 4.6 - Exception to Development Standards of the CLEP which has as its objectives to allow a degree of flexibility in applying development standards, where a better outcome is able to be achieved.

Evaluation of Clause 4.6 request to vary development standard

The proposed variation

The application proposes to contravene the minimum subdivision lot size standard of clause 4.1 (3) of CLEP 2012.

282 m² - Proposed lot size

460m² – CLEP minimum lot size area

178m² – Difference from the minimum lot size requirement

38.6% – Degree of contravention

Circumstances of the case

The application involves a boundary adjustment between 92A Bayview Avenue (Lot A) and 92 Bayview Avenue (Lot B) by undertaking a boundary adjustment of the common boundary between the two lots. The lot area of Lot A is 232m².

Applicant's request to contravene the development standard, summarised

- a) The lots, 92 Bayview Avenue Earlwood and 92A Bayview Avenue Earlwood are existing lots.
- b) The implication of the boundary adjustment on the subject site does not result in the creation of any additional new lots,
- c) Despite Lot A lacking 178m² from the minimum lot size requirement of 460m², the current planning framework within the CDCP 2012 permits a dwelling house to be proposed on the subject site.
- d) Insisting on compliance with the standard would result in negligible positive benefits and in fact insisting on compliance is likely to result in an outcome with reduced amenity, and
- e) The subdivision pattern and consequent built form is consistent with the streetscape and does not present unusually despite the technical variation.
- f) It does not have unreasonable impact on the amenity of the area.

Consideration of proposed contravention**Consistency with objectives of the development standard**

The proposed development is consistent with relevant objectives of the development standard, as discussed below:

- (a) *To ensure that subdivision reflects and reinforces the predominant subdivision pattern of the area,*

Comment:

- i. The two lots that form the subject site are existing lots that already form a component of the subdivision pattern of the area. The proposed boundary adjustment of the common boundary would be conveying the deficient Lot A to be more reflective of the predominant subdivision pattern that is envisaged by the development standards of the CLEP 2012.

- (b) *To minimise any likely impact of subdivision and development on the amenity of neighbouring properties,*

Comment:

- i. The proposed boundary adjustment between the two lots does not propose any building works as part of this application. The adjustment of the common boundary is likely to have minimal impacts on the neighbouring properties as a lot boundary already exists between the two lots.

- (c) *To ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and retain special features such as trees and views.*

Comment:

- i. The proposed boundary adjustment will result in a lot size that is closer to the minimum lot size of 460m² permitted by CLEP 2012. In doing so, the adjusted lot size will allow for the redevelopment of that lot to incorporate a greater degree of amenity.

Consistency with objectives of the zone

The proposed development is consistent with relevant zone objectives, as discussed below:

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

Comment:

- i. The proposed boundary adjustment does not seek to alter the number of lots, nor does it seek to reduce the degree of developable land on the site.

Is compliance unnecessary or unreasonable in the circumstances of the case?

The applicant's request to vary the development standard has demonstrated that compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case.

Have sufficient environmental planning grounds been demonstrated, to vary the development standard?

Sufficient environmental planning grounds have been submitted to vary the standard, having regard to satisfaction of standard objectives and related DCP performance criteria and objectives.

Would better outcomes be achieved by allowing the proposed variation, in circumstances particular to the proposed development?

Increasing the area of Lot A will provide better amenity for the future occupants of the development and neighbours, mainly by improving the opportunities for greater building separation and amenity of available open space, so a better outcome is achieved due to variation of the minimum lot size standard.

Would an appropriate degree of flexibility be applied by approving the proposed variation?

For these reasons, the answer is yes.

(b) the concurrence of the Director-General has been obtained.

Comment:

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS-18-003. Having regard to the above commentary, it is considered appropriate in this instance to support the submission under Clause 4.6 of LEP 2012 to permit the proposed development.

The Clause 4.6 variation has been assessed in a manner that accords with the relevant Clause 4.6 matters established within the following case law; *Wehbe v Pittwater Council [2007] NSWLEC 827* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*.

The Clause 4.6 variation request submitted in support of the application has demonstrated that the variation to the minimum lot size standard of Clause 4.1B(3)(a) is appropriate pursuant to provisions of Clause 4.6 on the basis that a better outcome is able to be achieved. The variation is recommended for approval.

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

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

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

- **Canterbury Development Control Plan 2012**

CDCP 2012 does not have specific controls relating to subdivision of existing lots. As a general guide the application has been assessed against Part C1 – Dwelling Houses and Outbuildings to ensure that the site is capable of being developed.

| Requirement | Numerical requirements | Proposal | Complies |
|-----------------|---|--|----------|
| C1.2.1 Frontage | C1 - The minimum primary street frontage width for dwelling houses is 15m. | The proposed lot frontages are as follows: Lot A: 15.27m Lot B: 19.16m | Yes |
| | C2 - Lots must be generally rectangular. | The proposed lots are generally rectangular. | Yes |
| | C3 - Internal and battle-axe blocks and lots with irregular dimensions or shallow depths must satisfy the objectives of the DCP. | No battle-axe lots are proposed. | N/A |
| | C4 - The minimum width of access corridors serving internal or battle-axe lots is: (a) 3m when serving single lot; (b) 4m when serving two lots; and (c) 5m when serving more than two lots. | No battle-axe lots are proposed. | N/A |

| | | | |
|--|---|--|-----|
| | C5 - A right-of-carriageway is only permitted over an access corridor to an internal or battle-axe lot. | No battle-axe lots are proposed. | N/A |
| | C6 - The access corridor must be constructed in concrete, be unobtrusive in colour and be designed to enable vehicles to enter and leave the site in a forward direction: (a) Where the access corridor serves only one lot, two concrete strips within the access corridor are permitted, each to be 1m wide and spaced 0.75m apart. (b) Where the access corridor is to serve two or more lots, it must be constructed with kerb and gutter on at least one side, with sealed pavement and drainage discharged. | No battle-axe lots are proposed. | N/A |
| | C7 - Nothing in this section prevents Council giving consideration to the erection of a dwelling house on an allotment of land which existed as of 1/1/2013. | The plans submitted with the application have been compared to the plans on file and it was identified that the lots were created and existed prior to 2013. | Yes |

As shown above the development application proposal does not contravene the requirements of CDCP 2012 and is recommended for approval.

- **Canterbury Development Contributions Plan 2013**

Canterbury Development Contributions Plan 2013 does not apply to the site. The proposal does not seek to increase the number of structures or residential dwellings currently located on site. Therefore contribution fees are not required to be included within this development application as the demand on the surrounding infrastructure is not increased.

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

There are no planning agreements applicable to the proposed development.

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

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

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

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

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

The proposed boundary alignment of the common boundary between Lot A and Lot B is identified as permissible on the subject site. Whilst the proposal seeks to vary the minimum site lot requirements, the result of the boundary adjustment between the two lots will result in an outcome that provides greater amenity to Lot A without degrading the amenity of Lot B. Accordingly, the subject site is considered to be suitable for the proposed development.

Submissions [section 4.15 (1)(d)]

In accordance with Part A3 of the Canterbury Development Control Plan 2012 the proposed development was not required to be notified as the subject application was deemed to not have additional impacts on any adjoining or nearby properties; therefore notification to adjoining and surrounding properties was not undertaken.

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

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

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Canterbury Local Environmental Plan 2012* and *Canterbury Development Control Plan 2012*.

The proposal does contravene a development standard relating to the minimum lot size area requirements of 460m². However, as identified above the proposed subdivision is unlikely to have any significant impacts on the local natural, social or economic environments. The proposed variation to the minimum lot size area is considered to be acceptable based on the site characteristics and the result leading to a better planning outcome.

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

RECOMMENDATION

That the development application be **APPROVED** subject to the following conditions:

GENERAL

1. The development be carried out in accordance with the plans, specifications and details prepared by Simon Pak Yan Ho, Surveyor's Reference No. 3338-dp, Sheet No. 1 of 1, dated 1st May 2018; except where amended by the conditions specified in this Notice.

SUBDIVISION

2. An application and appropriate fees for the issue of a Subdivision Certificate shall be submitted to Council upon all works being completed.
3. Prior to the issue of the Subdivision Certificate, the following items are to be complied with:
 - 3.1. The developer shall create the following easements, where necessary over the relevant lots, on the plan of subdivision under provisions of the Conveyancing Act. A statement shall be placed on the Section 88B Instrument that nominates Canterbury-Bankstown Council as the authority empowered to release, vary or modify the easements created.
 - 3.1.1. Easements to drain water (for inter-allotment drainage).
 - 3.1.2. Easement for services (for utilities).
 - 3.1.3. Right of carriageway (for internal driveway, vehicle manoeuvring).
 - 3.1.4. Easement for overhang (for eaves and gutters).
 - 3.2. The following information shall be submitted to Council or accredited certifier (where applicable) with an application for a Subdivision Certificate:
 - 3.2.1. Original plan of subdivision prepared and signed by a qualified surveyor, plus five (5) copies;
 - 3.2.2. Copy of the relevant development consent, including all Section 4.55 Modifications if applicable,
 - 3.2.3. Evidence that all conditions of consent relevant to the release of the subdivision certificate have been complied with,
 - 3.2.4. A certificate of compliance (Section 73 Certificate) from Sydney Water if required,
 - 3.2.5. Certification by a registered surveyor that all services such as stormwater, drainage, water, gas, electricity and telephone are contained separately within each lot or within easements created to accommodate such services
 - 3.2.6. A certificate from a Registered Surveyor which demonstrates that the height and location of all floor slabs and external walls complies with the approved plans. In this regard, the certificate from the Registered Surveyor is required to identify the finished floor level of the floor slabs and external walls and the offsets to property boundaries, where required.
 - 3.2.7. Copy of the Work Permit Compliance Certificate, where required.

- 3.3. An application and appropriate fees for the issue of a Subdivision Certificate shall be submitted to Council upon submission of the information referred to in part (b) of this condition. **The subdivision certificate shall not be issued until the requirements of this condition have been complied with.**

WE ALSO ADVISE

1. Our decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
2. If you are not satisfied with this determination, you may:
 - 2.1. Apply for a review of a determination under Section 8.2 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination.; or
 - 2.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 8.7 or Section 8.9 of the Environmental Planning and Assessment Act 1979.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2019

| | |
|--------------------------|--|
| ITEM 5 | 599-603 Canterbury Road, Belmore |
| | Demolition of existing buildings and associated structures and the construction of a five storey residential flat building over two levels of basement parking. |
| FILE | DA-163/2018 – Canterbury |
| ZONING | R4 High Density Residential |
| DATE OF LODGEMENT | 19 April 2018 |
| APPLICANT | ZTA Group |
| OWNERS | Mr A Refai, Mr N Refai, Mr N Azar |
| ESTIMATED VALUE | \$6,957,311.99 |
| AUTHOR | Planning |

REPORT

This matter is reported to Council's Local Planning Panel as the application seeks consent for a development for which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is four or more storeys in height.

Development Application No. 163/2018 proposes the demolition of existing buildings and associated structures and the construction of a five storey residential flat building over two levels of basement parking.

In summary, based on the assessment undertaken, the Applicant has failed to address a number of matters outlined within Council's additional information request letter, including but not limited to:

- Variations to the criteria for communal open space, visual privacy, natural ventilation, apartment size, private open space and storage outlined within the Apartment Design Guide;

- Lack of information to enable an assessment against the solar access provisions within the Apartment Design Guide and various provisions of Canterbury Local Environmental Plan 2012;
- Variations to the relevant controls of Canterbury Development Control Plan 2012 including parking, traffic, CPTED, waste, isolated sites, setbacks, general building design, layout and orientation and building services; as well as
- Matters raised by Council's Landscape Architect, Team Leader – Traffic and Project Officer – Resource Recovery.

Furthermore, additional concerns have arisen as a result of the additional information submitted. For instance, the Geotech report submitted identifies that groundwater seepage was encountered at the site, however insufficient information has been provided to determine whether the application now becomes Integrated Development. Given the number and extent of the matters outstanding and the substantial redesign required to address the non-compliances, coupled with the substantial time afforded to the Applicant to address the concerns (approximately 5 months), refusal of the application is recommended.

The application was notified for a period of 21 days from 9 May 2018 to 30 May 2018. A total of seven submissions and one petition signed by 13 households was received. The matters raised relate to overdevelopment, height, lack of communal open space and landscaped area, traffic impacts and façade design. The majority of these matters have not been adequately addressed by the Applicant. The matters are discussed within the body of the report.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

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

ATTACHMENTS

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

DA-163/2018 ASSESSMENT REPORT

BACKGROUND

On 1 February 2017, Council refused Development Application (DA) DA-376/2015 under delegation for the demolition of existing structures and construction of a six storey residential flat building development containing 67 apartments and basement level car parking on the grounds of insufficient information. The DA was for 599-605 Canterbury Road, Belmore.

On 18 May 2017, a pre-DA meeting was held with the Applicant regarding a six storey residential flat building at the site known as 599-601 Canterbury Road Belmore. Detailed advice was provided to the applicant following the Pre-DA meeting indicating a number of substantive matters that would need to be resolved in order for the proposal to be given full merit consideration and consideration for approval. Matters included the need to maintain a 18m height limit, side and rear setbacks, frontage requirement, building separation and visual privacy.

The subject application DA-163/2018 was lodged with Council on 19 April 2018. On 20 July 2018, an additional information request letter was issued to the Applicant outlining a number of matters that needed to be addressed. A summary of the matters raised is outlined below:

- a) Non-compliances with the relevant requirements outlined within the Apartment Design Guide including but not limited to, communal open space, visual privacy, solar access, natural ventilation, ceiling heights, apartment size and layout, private open space and storage.
- b) Requirement for a revised acoustic assessment to address the relevant noise requirements outlined within State Environmental Planning Policy (Infrastructure) 2007.
- c) Non-compliances with the relevant provisions of Canterbury Local Environmental Plan 2012 including building height, floor space ratio, earthworks and essential services. It was noted that the survey plan submitted was insufficient and an updated survey plan was required to assist with Council's assessment of maximum building height.
- d) Non-compliances with the relevant provisions of Canterbury Development Control Plan 2012, including but not limited to, parking, accessible and adaptable design, isolated site, height, setbacks, building design, façade design, solar access. Fences and building services.
- e) Matters raised by Council's Landscape Architect, Traffic Engineer and Resource Recovery Officer.

The abovementioned information was to be submitted to Council by 24 August 2018. The Applicant submitted amended architectural plans on 21 September 2018. On 5 October 2018, the Applicant submitted a Geotech Report, Planning Report and Design Verification Statement. In response to this, Council advised via email that all

information requested within Council's letter dated 20 July 2018 is to be submitted to facilitate a detailed assessment. Subsequently, it was requested that the Applicant submit all information requested in a consolidated manner. A detailed response to Council's letter dated 20 July 2018 was submitted to Council on 18 December 2018.

The assessment outlined within this report relies on the information received on 18 December 2018.

SITE ANALYSIS

The site is located at 599-603 Canterbury Road and is legally described as follows:

- Lot 29 in DP 10105.
- Lot 30 in DP 10105.
- Lot 31 in DP 10105.

The lots, as consolidated, have a primary frontage to Canterbury Road of 41.19m and a secondary frontage to Waverley Lane of 41.19m. The site has a total site area of 1,458sqm and appears to slope to the north of the site by approximately two metres. It is noted that insufficient information has been provided to confirm the site topography details and site boundary lengths given the survey plan does not comprise sufficient survey points throughout the subject site or field measurements of the boundaries.

Access to the site is currently obtained via two separate vehicle entry points along Canterbury Road as well as separate vehicle entry points located at the rear of the three properties along Waverley Lane. The site currently accommodates three single storey residential dwellings with associated landscaping and structures.

The site is bound by Canterbury Road to the south, Waverley Lane to the north, part single storey and part two storey commercial building to the east and a single storey dwelling directly adjoins the development to the west.

Land to the north of the site, on the opposite side of Waverley Lane, is zoned R3 Medium Density Residential. Properties directly adjoining the lane to the north comprise single or two storey dwellings, despite the zoning.

The land to the south of the site, on the opposite side of Canterbury Road is zoned B5 Business Development. Properties directly adjoining Canterbury Road to the south are currently under construction for mixed use developments.

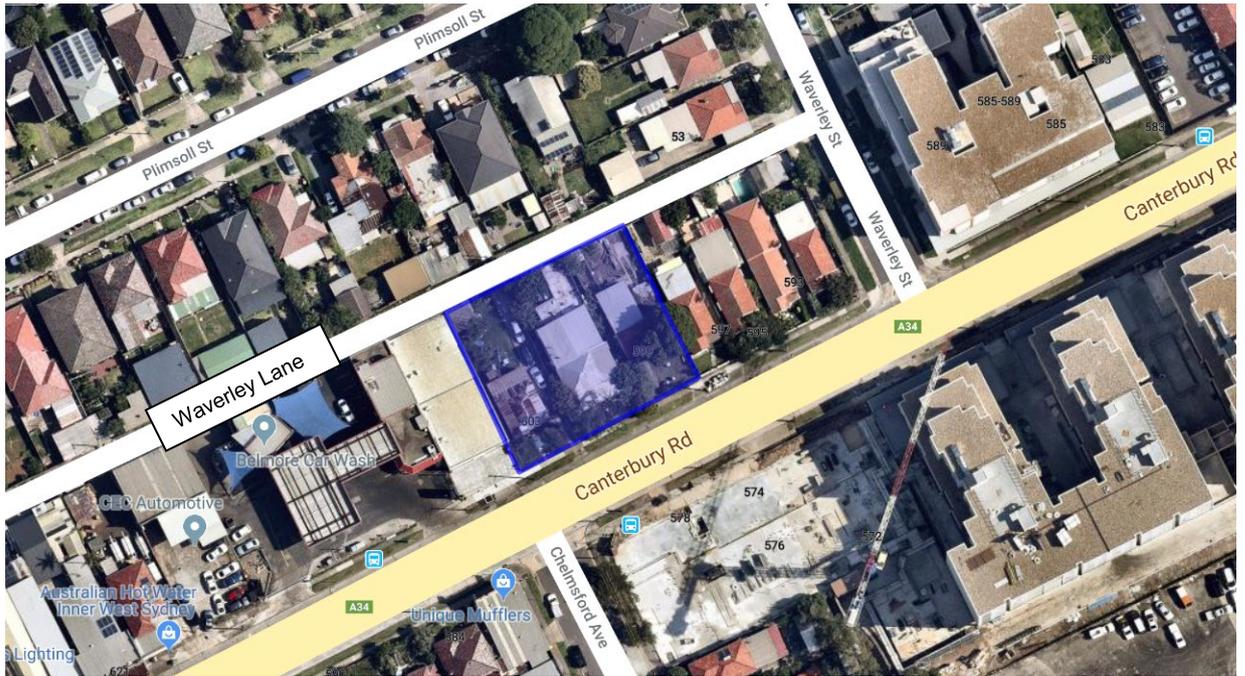


Figure: Aerial Map (subject site highlighted)
Source: NearMap 2019



Figure: Zoning Map (subject site outlined in yellow)
Source: Canterbury Bankstown Maps 2019

PROPOSAL

The proposed development involves the demolition of existing buildings, removal of four trees, and the construction of a five storey residential apartments above two levels of basement parking and associated landscaping. The development is discussed in detail below:

Lower Basement

- 24 residential car parking spaces (including 1 x disabled car parking space);
- 1 car wash bay;
- Storage cages;
- 10 bicycle parking spaces;
- Pump room;
- Fire stairs;
- Lift to upper levels.

Upper Basement

- 12 residential car parking spaces (including 2 x disabled parking spaces);
- 10 visitor car parking spaces;
- 2 motorcycle spaces;
- Fire stairs;
- Mechanical riser;
- Bulky waste storage;
- Lift to other levels.

Ground Level

- 2 x one bedroom apartments with associated private open space;
- 4 x two bedroom apartments with associated private open space (including 2 x accessible apartments);
- 80.83sqm of communal open space;
- Landscaped area;
- Garbage bin holding room;
- Fire exit;
- Lift and fire stairs to other levels;
- Dedication of portion of Waverley Lane to Council;
- Vehicular access from Waverley Lane.

Level 1

- 3 x one bedroom apartments with associated private open space;
- 4 x two bedroom apartments with associated private open space (including 1 x accessible apartment);
- Lift and fire stairs to other levels.

Level 2

- 3 x one bedroom apartments with associated private open space;
- 4 x two bedroom apartments with associated private open space space (including 1 x accessible apartment);
- Lift and fire stairs to other levels.

Level 3

- 3 x one bedroom apartments with associated private open space;
- 4 x two bedroom apartments with associated private open space;
- Lift and fire stairs to other levels.

Level 4

- 1 x one bedroom apartment with associated private open space;
- 2 x two bedroom apartments with associated private open space;
- 1 x three bedroom apartment with associated private open space;
- Lift and fire stairs to other levels.

STATUTORY CONSIDERATIONS

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

- a) State Environmental Planning Policy 55 – Contaminated Land (SEPP 55).
- b) State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65).
- c) State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007).
- d) State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX).
- e) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
- f) Canterbury Local Environmental Plan 2012 (CLEP 2012).
- g) Canterbury Development Control Plan 2012 (CDCP 2012).
- h) Canterbury Development Contributions Plan 2013 (Contributions Plan 2013).

SECTION 4.15 ASSESSMENT

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

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

- **Integrated Development**

A Geotechnical Report prepared by Geo-Environmental Engineering dated 27 September 2018 was submitted as part of the DA. The findings of the report outline that groundwater seepage was viewed at the site and therefore pump out of such water would be required during excavation and other techniques would need to be included in the design for long term water management.

These findings are considered to cause the development to be Integrated Development pursuant to Clause 91(3) of the Water Management Act 2000. However, the Applicant has not identified the application as Integrated Development, nor provided the relevant documentation (and fees) required to forward the documentation to NSW Urban Water Services for approval. Furthermore, the DA has not been publically advertised as Integrated Development given Council determined this requirement upon receipt of the Geotechnical Report within the information submitted to Council in December 2018.

- **State Environmental Planning Policy 55 – Contaminated Land (SEPP 55)**
Clause 7 of SEPP 55 – Remediation of Land requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state or can be satisfactorily remediated for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, we must be satisfied that the land will be remediated before the land is used for that purpose.

The subject site currently comprises three single storey residential dwellings and the historic use of the site is for residential. It is acknowledged that a service station is located approximately 23m west of the site at 607 Canterbury Road. A review of the NSW Environmental Protection Authority (EPA) confirmed that the service station site is not identified as a contaminated site. On this basis, there is no cause to believe that the subject site is contaminated. As recommended by Council's Environmental Health Officer, should the application be supported, conditions of consent could be included to ensure that should any contamination be found during the demolition and construction phase, works are to cease and the contamination is to be handled and disposed of appropriately.

- **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 three or more storeys and contain at least four 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. A Design Verification Statement was prepared and submitted by Arquero. Council confirmed that the Architect is Registered with the NSW Architects Registration Board.

In addition, SEPP 65 requires the assessment of any DA for residential apartment development against the nine design quality principles and to consider the matters contained in the ADG.

Principle 1: Context and Neighbourhood Character

Insufficient information has been submitted to determine whether the proposed development is consistent with Council's maximum building height control. Notwithstanding this, the design seeks departure from a number of development controls which represents an overdevelopment of the site. On this basis, the design is not considered to align with the desired future character of the locality.

Principle 2: Built Form and Scale

As outlined above, insufficient information has been submitted to determine whether the proposed development is consistent with Council's maximum building height control.

Furthermore, the design seeks variations to a number of key development controls, including but not limited to, setbacks, minimum communal open space areas, façade design and car parking. Departure from such controls results in a design that does not provide an appropriate built form on the site.

The façade presents as a flat façade to Canterbury Road given the lack of built form and mixed palette of building materials and finishes.

In light of the above, the design is not considered to be appropriate in terms of bulk and scale.

Principle 3: Density

Given the number of variations proposed to key development controls, the proposed density of the development is considered unsatisfactory and is not a reasonable response to the desired future context and built form.

Principle 4: Sustainability

The revised design has not been accompanied by a revised BASIX Certificate. Therefore, it is unknown whether the design incorporates sufficient resource, energy and water efficiency measures to facilitate sustainability.

Principle 5: Landscape

It is noted that the design complies with the minimum deep soil requirements specified within the ADG. However, the design does not comprise sufficient communal space to be enjoyed by future residents of the site.

Principle 6: Amenity

The proposed design does not satisfy the key design controls including communal open space, visual privacy, solar access, natural ventilation, minimum apartment size, minimum private open space and storage

requirements. On this basis, the design in its current form, does not provide for adequate amenity for future residents of the development.

Principle 7: Safety

The applicant has considered Crime Prevention Through Environmental Design (CPTED) principles as outlined in CDCP 2012 in the design of the project. The design generally complies with the relevant CPTED with the exception of the control relating to clear building entries. The proposed main pedestrian entry point from Canterbury Road is substantially setback within the building envelope. It is considered that the design does not facilitate a clear entry point through the proposed substantial setback and narrow presentation. This matter was raised with the Applicant, but was not addressed in the revised design.

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 lack of articulation of the external façades and non-compliance with the relevant built form standards increases the perception of bulk, as well as adversely impacts the internal and external amenity. These elements result in a design that does not contribute to the desired future character of the locality and do not enhance the existing surrounding streetscapes.

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 in accordance with Clause 28 (2) (c) of SEPP 65.

An assessment of the proposed development in regards to the following 'Design Criteria' controls of the ADG is demonstrated in the table below:

| Section | Design Criteria | Proposed | Complies |
|--------------------------------------|---|---|-----------|
| Part 3 Siting the Development | | | |
| 3D Communal and | Communal open space has a minimum area equal to 25% of the site. (364.5sqm) | A total of 120sqm is provided which equates to 7.12%. | No |

| Section | Design Criteria | Proposed | Complies | | | | | | | | | | | | |
|---|--|--|--------------------|---------------------------------|-----------------------------|---|----|---|----|----------------------------------|----|---|----|--|------------|
| Public Open Space | 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). | <p>The design doesn't meet minimum communal open space area requirement, therefore does not meet minimum solar access requirement to such an area.</p> <p>Furthermore, the overshadowing plans provided do not consider the shadow cast by existing adjoining development.</p> <p>In light of the above, compliance with this control could not be determined.</p> | No | | | | | | | | | | | | |
| 3E Deep Soil Zones | <p>Deep soil zones are to meet the following minimum dimensions:</p> <table border="1"> <thead> <tr> <th>Site Area</th> <th>Minimum Dimensions</th> <th>Deep Soil Zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m²</td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m² - 1,500m²</td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> </tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td> <td>6m</td> </tr> </tbody> </table> | Site Area | Minimum Dimensions | Deep Soil Zone (% of site area) | Less than 650m ² | - | 7% | 650m ² - 1,500m ² | 3m | Greater than 1,500m ² | 6m | Greater than 1,500m ² with significant existing tree cover | 6m | <p>The site comprises approximately 389.775sqm of deep soil area which equates to 23% of the site area. The deep soil area included in the calculations comprises a minimum dimension of 3m.</p> | Yes |
| Site Area | Minimum Dimensions | Deep Soil Zone (% of site area) | | | | | | | | | | | | | |
| Less than 650m ² | - | 7% | | | | | | | | | | | | | |
| 650m ² - 1,500m ² | 3m | | | | | | | | | | | | | | |
| Greater than 1,500m ² | 6m | | | | | | | | | | | | | | |
| Greater than 1,500m ² with significant existing tree cover | 6m | | | | | | | | | | | | | | |

| 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: | Ground: <u>North:</u> 10.5m <u>East:</u> 4m <u>West:</u> 4m | Yes No No | | | | | | | | | |
| | <table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable Rooms & Balconies</th> <th>Non-habitable Rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> </tbody> </table> | Building Height | Habitable Rooms & Balconies | Non-habitable Rooms | Up to 12m (4 storeys) | 6m | 3m | Up to 25m (5-8 storeys) | 9m | 4.5m | Level 1: <u>North:</u> 10.9m <u>East:</u> 3.8m <u>West:</u> 3.8m <u>Within site:</u> 1.6m | Yes No No No |
| | Building Height | Habitable Rooms & Balconies | Non-habitable Rooms | | | | | | | | | |
| | Up to 12m (4 storeys) | 6m | 3m | | | | | | | | | |
| | Up to 25m (5-8 storeys) | 9m | 4.5m | | | | | | | | | |
| Note: An increased 3m building separation is required given the land to the north is a different zone (R3 Zone) that permits lower density residential. | | Level 2: <u>North:</u> 10.9m <u>East:</u> 4m <u>West:</u> 3.8m | Yes No No | | | | | | | | | |
| | | Level 3: <u>North:</u> 10.9m <u>East:</u> 4m <u>West:</u> 4m | Yes No No | | | | | | | | | |
| | | Level 4: <u>North:</u> Min 11.3m <u>East:</u> 7m <u>West:</u> 7m | No No No | | | | | | | | | |
| 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 CDCP controls apply. | The site is located greater than 800m of the nearest railway station (Belmore Railway Station) and therefore the car parking generation rates outlined within Canterbury Development Control Plan 2012 applies to the site. An assessment against these provisions is outlined later in this report. | N/A | | | | | | | | | |
| | The car parking needs for a development must be provided off street. | All parking is provided within the basement parking areas. | 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. | Insufficient information has been provided to determine whether the design complies with the minimum solar access requirements. The | Unknown | | | | | | | | | |

| Section | Design Criteria | Proposed | Complies |
|-------------------------------|---|--|-----------|
| | A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter | <p>Applicant was requested to provide view from the sun diagrams (prepared on an hourly basis between 9am-3pm on 21 June) that also consider overshadowing cast by adjoining buildings.</p> <p>The overshadowing diagrams provided in Drawings DA16, DA17, DA18, DA19 and DA20 do not consider shadow cast by adjoining development and do not resemble view from the sun diagrams, as requested. Council is therefore unable to undertake a full and proper assessment.</p> | |
| 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. | 18 apartments (58% of total number of apartments proposed) are naturally cross ventilated. | No |
| | Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | All cross-through apartments do not exceed 18m. | Yes |

| Section | Design Criteria | Proposed | Complies | |
|---|--|---|-----------|---|
| 4C Ceiling Heights | Measured from finished floor level to finished ceiling level, minimum ceiling heights are: | The design comprises 3.1m floor to floor heights, which is consistent with the recommended 3.1m specified within Part 4C of the ADG to ensure 2.7m floor to ceiling height is provided. | Yes | |
| | 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: | Apartments 23 and 31 do not comply with the minimum internal area requirements. | No | |
| | Apartment Type Minimum Internal Area | | | |
| | Studio | | | 35m ² |
| | 1 bedroom | | | 50m ² |
| | 2 bedroom | | | 70m ² |
| | 3 bedroom | | | 90m ² |
| | The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. | | | |
| | A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each. | | | |

| Section | Design Criteria | Proposed | Complies |
|---------|---|--|----------|
| | 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 have a window in an external wall that exceeds 10% of the floor area of the room. This could be reinforced via condition of consent. | Yes |
| | In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. | For apartments with open plan layouts, the maximum habitable room depth is 8m from a window. | Yes |
| | Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space). | All master bedrooms comply with the minimum area requirement. All secondary bedrooms comply with the 9sqm minimum requirement. | Yes |
| | Bedrooms have a minimum dimension of 3m (excluding wardrobe space). | All bedrooms have a minimum dimension of 3m | Yes |
| | Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments | All living rooms comply with the minimum widths. | Yes |
| | The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. | All apartments comply with the minimum 4m internal width requirement. | Yes |

| Section | Design Criteria | Proposed | Complies | | | | | | | | | | | | | | | |
|--|---|--|-----------|------------------|---------------|---------------|-------------------|-----------------|---|----------------------|-----------------|----|----------------------|------------------|----|-----------------------|------------------|------|
| 4E Private Open Space and Balconies | All apartments are required to have primary balconies as follows: | Apartment 8 does not comply with the minimum private open space area requirements. | No | | | | | | | | | | | | | | | |
| | <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> | | | Dwelling type | Minimum Area | Minimum Depth | Studio apartments | 4m ² | - | 1 bedroom apartments | 8m ² | 2m | 2 bedroom apartments | 10m ² | 2m | 3+ bedroom apartments | 12m ² | 2.4m |
| | Dwelling type | | | Minimum Area | Minimum Depth | | | | | | | | | | | | | |
| | Studio apartments | | | 4m ² | - | | | | | | | | | | | | | |
| | 1 bedroom apartments | | | 8m ² | 2m | | | | | | | | | | | | | |
| | 2 bedroom apartments | | | 10m ² | 2m | | | | | | | | | | | | | |
| 3+ bedroom apartments | 12m ² | 2.4m | | | | | | | | | | | | | | | | |
| <ul style="list-style-type: none"> The minimum balcony depth to be counted as contributing to the balcony area is 1m. | | | | | | | | | | | | | | | | | | |
| <ul style="list-style-type: none"> For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m. | Apartment 6 does not comply with the 15sqm minimum requirement. | No | | | | | | | | | | | | | | | | |
| 4F Common Circulation and Spaces | The maximum number of apartments off a circulation core on a single level is eight. | A maximum of 7 apartments are proposed off one circulation core. | Yes | | | | | | | | | | | | | | | |

| Section | Design Criteria | Proposed | Complies | |
|---|--|--|-----------|----------------------------|
| 4G Storage | In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: | Apartments 9, 16, 23 and 26 do not comply with the minimum storage area or minimum percentage of storage area to be provided within the apartments. Apartments 1, 3, 7, 14 and 21 do not comply with the minimum percentage of storage area to be provided within the apartments. | No | |
| | Dwelling type | | | Storage size volume |
| | Studio apartments | | | 4m ³ |
| | 1 bedroom apartments | | | 6m ³ |
| | 2 bedroom apartments | | | 8m ³ |
| | 3+ bedroom apartments | | | 10m ³ |
| <ul style="list-style-type: none"> At least 50% of the required storage is to be located within the apartment. | | | | |

- State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007)**
 The subject site fronts Canterbury Road, which is a classified road. The proposed application triggers a number of Clauses outlined within the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). An assessment against the relevant Clauses is provided below:

Clause 101 of ISEPP applies to development fronting a classified road. The Clause seeks to ensure that new development does not compromise the ongoing operation and functionality of classified roads as well as preventing potential traffic noise and emissions on development adjacent to classified road. Clause 101(2) of the ISEPP states the following:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions*

within the site of the development arising from the adjacent classified road.

The disused vehicular access points along Canterbury Road are proposed to be removed as part of the subject application. A dual vehicle entry and exit point is proposed to be located along the Waverley Lane frontage.

An Acoustic Assessment prepared by Acoustic Noise & Vibration Solutions dated 20 November 2017 was submitted as part of the application. Parts 6 and 7 of the report outlines the recommendations to ensure the development complies with the relevant noise criterion. Part 6 specifically notes that mechanical ventilation is required for all residential dwellings facing Canterbury Road in order to achieve the indoor noise criterion for habitable spaces. The architectural plans submitted outline that ducted air-conditioning systems will be placed on the private open space for each dwelling. Should the application be supported, conditions of consent could be included to ensure ductwork and plenums are acoustically treated, in line with the recommendations outlined within Part 6 of the acoustic report. Council's Environmental Health Officer reviewed the design and raised no objection, subject to conditions of consent.

Clause 102 of ISEPP applies to development for residential use "on or adjacent to the road corridor for a freeway, tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RMS) and that the consent authority considered is likely to be adversely affected by road noise and vibration". Canterbury Road is a classified road which averages daily traffic numbers of over 40,000 vehicles per day as per the RMS traffic map (viewed 12.2.18).

In this regard, the acoustic requirements prescribed within Clause 102(3) of the ISEPP 2007 apply to the proposed development given that it relates to a residential development located adjacent to Canterbury Road. The acoustic report prepared by Acoustic Noise & Vibration Solutions undertook the assessment in accordance with the noise criterion outlined within the ISEPP. As outlined above and within the acoustic report, the design is able to achieve compliance with the relevant acoustic controls, with the inclusions of the recommendations outlined within Parts 6 and 7 of the acoustic report. As outlined above, the recommendations of the acoustic report could be enforced through condition of consent.

In addition to the above, given the design does not include use of the existing vehicle entry points located along Canterbury Road, the application was also referred to RMS in accordance with S138 of the Roads Act 1993. Based on RMS' response dated 19 July 2018, concurrence was provided, subject to inclusion of the conditions of consent.

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

BASIX Certificate No. 860907_02 dated 18 April 2018 accompanied the original application. The Certificate made a number of energy and resource commitments in regard to ventilation, provision of a central hot water system, at least three star water appliances, natural lighting and thermal comfort. These commitments were shown on the DA plans, where appropriate. The design achieved a pass against the targets for water, thermal comfort and energy.

Notwithstanding the above, an amended BASIX Certificate was not submitted to reflect the amended design submitted to Council on 18 December 2019. Therefore, it is unknown whether the revised design complies with the requirements of BASIX.

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

The survey plan submitted is at least three years old (at the time of lodgement) and did not comprise sufficient information. An amended survey plan was requested of the Applicant to ensure it adequately reflected the site in its current state, however this was not provided.

Based on the information submitted, it appears the application involves the removal of four trees, however this could not be confirmed. Council's Landscape Architect has reviewed the application and raised no objection to the removal of the four trees, subject to conditions.

- **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

This site is zoned R4 High Density Residential under CLEP 2012. The controls applicable to this application are discussed below.

Clause 2.3(2) of CLEP 2012 outline that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the R4 High Density Residential Zone are as follows:

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

The proposed development meets the objectives of the R4 zone as it provides for residential housing within a residential flat building. The design comprises a mix of residential types through incorporating one, two and three bedroom apartments to contribute to the needs of the community.

| Provision/ Standard | Requirement | Proposal | Complies |
|---|--|---|----------------|
| Part 2 Permitted or Prohibited Development | | | |
| 2.1-2.3 Zoning | R4 High Density Residential | The proposed development is classified as a residential flat building. Residential flat buildings are permitted with development consent. | Yes |
| 2.7 Demolition requires development consent | The demolition of a building or work may be carried out only with development consent. | Approval is sought for the demolition of all existing structures on the subject site. A demolition plan was included with the architectural plans submitted to Council. | Yes |
| Part 4 Principal Development Standards | | | |
| 4.3 Height of Buildings | 18m | <p>The Applicant claims that the design complies with the maximum building height standard and therefore no Clause 4.6 variation statement has been submitted.</p> <p>However, insufficient information has been submitted to determine whether the site complies with the maximum building height. The survey plan submitted is greater than 3 years old, does not comprise surveyed boundaries, does not comprise existing natural ground level plots for the subject site (specifically 599 and 603 Canterbury Road), does not comprise existing natural ground level plots for adjoining allotments and does not adequately represent the existing site (specifically in terms of vegetation).</p> <p>The Applicant was requested to provide an updated survey plan; however this was not submitted.</p> <p>In addition to the above, the Applicant was requested to provide a roof plan overlaid on the survey plan, to assist with Council's calculation of maximum building height. This was not provided.</p> | Unknown |

| Provision/ Standard | Requirement | Proposal | Complies |
|--------------------------------|---|---|-----------|
| 4.4 Floor Space Ratio | 1.6:1 | The design results in a gross floor area of 2,345sqm which equates to a 1.39:1 FSR. | Yes |
| Part 6 Local Provisions | | | |
| 6.2 Earthworks | <p>Before granting consent to development including earthworks, the following must be considered:</p> <p>(a) drainage patterns and soil stability</p> <p>(b) the likely future use or redevelopment of the land,</p> <p>(c) quality of the fill or the soil to be excavated, or both,</p> <p>(d) effect of development on existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> | <p>A Geotechnical Report prepared by Geo-Environmental Engineering dated 27 September 2018 was submitted as part of the DA.</p> <p>The report concludes that the proposed development is considered feasible. However, it notes that “further investigation (preferably post demolition) is recommended to more accurately define the strength and quality of the bedrock formation which will minimise the uncertainty for earthworks contractors and structural design engineers when planning and designing the proposed excavation and foundations”.</p> <p>Given this recommendation, it is Council’s preference that further investigation is undertaken at DA stage to ensure the proposed design is infact “feasible” without the need for a significant redesign.</p> <p>Furthermore, the report outlines that groundwater seepage was viewed at the site and would require pump out during excavation and other techniques to be included in the design for long term water management. This is therefore considered to trigger Integrated Development pursuant to Clause 91(3) of the Water Management Act 2000. The Applicant has not advised Council of this requirement, nor provided the relevant documentation required to forward the documentation to NSW Urban Water Services.</p> | No |

| Provision/ Standard | Requirement | Proposal | Complies |
|---------------------------|---|---|---------------------------------------|
| 6.4 Stormwater Management | <p>Consent must not be granted unless:</p> <p>(a) Water permeable surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration.</p> <p>(b) Includes on-site detention if practical as an alternative means of water supply.</p> <p>(c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.</p> | <p>The development incorporates deep soil zones and permeable services at the ground level.</p> <p>Council's Development Engineer raises no issues with the proposed management of stormwater subject to the imposition of suitable conditions of consent should the application be supported.</p> | Yes – via condition of consent |
| 6.6 Essential Services | <p>Essential services must be available or adequate arrangements have been made to make them available, including:</p> <ul style="list-style-type: none"> - the supply of water; - the supply of electricity; - the disposal and - management of sewage; - stormwater drainage or on-site conservation; - suitable vehicular access. | <p>In terms of vehicular access, Council's Traffic Engineer raises concern regarding the design.</p> <p>In terms of management of sewage and stormwater drainage, Council's Development Engineer raises no objection to the design, subject to conditions of consent.</p> <p>In terms of supply of electricity, the Applicant was requested to confirm whether a substation was required to support the proposed development.</p> <p>No response to this request was provided by the Applicant.</p> | No |

The proposed development generally complies with the design and numerical requirements of CLEP 2012 with exception to Clause 4.3 – Height of Buildings, Clause 6.2 – Earthworks and Clause 6.6 – Essential Services. As outlined above, insufficient information has been provided to demonstrate compliance with these requirements, which is not acceptable.

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

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

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

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

The proposed development has been compared to the requirements of CDCP 2012 as follows:

Part B1 – Transport and Parking

An assessment of the proposal against the car and bicycle parking rates in Part B1 of CDCP 2012 is provided below:

| Standard | Requirement | Proposal | Complies |
|--------------------|--|---|-----------|
| Car Parking | <ul style="list-style-type: none"> • 1 bedroom: 1 space per dwelling (12 x 1 = 12 spaces required). • 2 bedrooms: 1.2 spaces (the 0.2 space to remain as common property) per dwelling (1.2 x 18 = 21.6(22) spaces required (including 3.6 (4) x common property)). • 3 bedrooms: 2 spaces per dwelling (2 x 1 = 2 spaces required). • Visitor: 1 space per 3 dwellings (laneway < 11m wide) (31/3 = 10.3(11) spaces required). • Car wash bay: 1 car wash bay. <p>Total: 47 spaces plus 1 x car wash bay required.</p> | 46 residential spaces, 10 visitor parking spaces, plus 1 car wash bay provided. Therefore, the design is deficient 1 x visitor car parking space. | No |

| | | | |
|------------------------|--|--|-----------|
| Bicycle Parking | <ul style="list-style-type: none"> • Residents: 1 space per 5 dwellings (6.2(7) spaces required). • Visitors: 1 space per 10 dwellings (3.1(4) spaces required) <p>Total: 11 spaces required.</p> | 10 spaces provided in basement, therefore the design is deficient 1 x bicycle space. | No |
|------------------------|--|--|-----------|

In addition to the above, the application was referred to Council's Team Leader – Traffic who raised concern with the design and cannot support it in its current form. The concerns raised are discussed in further detail later within this report.

Part B2 – Landscaping and Part B3 – Tree Preservation

The application was referred to Council's Landscape Architect who raised concern with the design and cannot support it in its current form. The following matters were raised regarding the amended design:

- The communal open space area is limited and does not comprise adequate facilities to provide adequate amenity.
- The design lacks deep soil area within the setbacks as required within Canterbury Development Control Plan 2012.

The applicant was not provided to address the further matters raised by Council's Landscape Architect given the number of issues with the amended proposal, as outlined within this report.

Part B4 – Accessible and Adaptable Design

The access report prepared by Code Performance Pty Ltd dated December 2018 was submitted as part of the DA. The report concludes that the design generally complies with the relevant standards. Where the design includes some non-compliances, these matters can be resolved through minor design changes or BCA Performance Solutions at the relevant Construction Certificate stage. On this basis, the design is considered acceptable from an accessible and adaptable design perspective.

Part B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no objection with the current design, subject to conditions of consent.

Part B7 – Crime Prevention and Safety

An assessment of the proposed design against the relevant provisions of Part B7 is provided in the table below:

| • Standard | • Requirement | • Proposal | • Complies |
|---|--|---|-------------|
| • Crime Prevention Through Environmental Design | • Avoid blind corners | • The development has been designed to avoid blind corners. | • Yes |
| | • Provide natural surveillance for communal and public areas. | • The design incorporates windows to habitable rooms. These windows are orientated towards the street as well as internal communal areas. | • Yes |
| | • Provide clearly visible entries. | • The proposed primary entry point along the Canterbury Road frontage is substantially setback from the front façade. • • It is Council's view that the entry point should be brought forward to ensure it is clearly visible, when viewed from the street. | • No |
| | • Design the fence to maximise natural surveillance from the street to the building. | • The front fence comprises a maximum height of 1m which will facilitate natural surveillance from the street to the building. | • Yes |
| | • Avoid landscaping that obstructs natural surveillance. | • The proposed landscaping does not obstruct natural surveillance. | • Yes |
| | • Ensure buildings are clearly identified by street numbers. | • This requirement can be enforced via condition of consent. | • Yes |
| | • Use materials that reduce the opportunity for vandalism. | • This requirement can be enforced via condition of consent. | • Yes |
| | • Provide an appropriate level of security for individual dwellings and communal areas through use of intercoms, self closing doors and signage. | • This requirement can be enforced via condition of consent. | • Yes |

Part B9 - Waste

The application was referred to Council's Project Officer – Resource Recovery who raised the following concerns with the current design:

- The bin storage area does not comprise sufficient space to cater for the number of bins allocated to the development.
- The path of travel to the bin storage area comprises steps or obstructions. This is not acceptable.

The applicant was not provided the opportunity to address the further matters raised by Council's Project Officer – Resource Recovery given the substantive number of unresolved design issues with the amended proposal, as outlined within this report.

C4 - Residential Flat Buildings

An assessment of the proposal against the relevant provisions contained in Part C4 of CDCP 2012 is provided below:

| Standard | Requirement | Proposal | Complies |
|----------------------------------|---|--|----------------|
| C4.2.1.1 - Frontage | 4+ storey building: Min 30m frontage | 41.19m | Yes |
| C4.2.1.2 - Isolated Sites | Neighbouring properties are not to be isolated so that the property will be unable to reasonably accommodate coordinated development. | 605 Canterbury Road will be isolated as it comprises a site frontage of approximately 13m which does not comply with the minimum 27m frontage for 3 storey RFB or 30m frontage for 4+ storey RFB. | No |
| | Undertake negotiations with neighbouring owners to seek amalgamation and enable coordinated redevelopment. | The applicant was requested to address the controls outlined within C4.2.1.2 of CDCP 2012. | Unknown |
| | If adjoining owners do not agree on terms of amalgamation, provide evidence of reasonable offers and demonstrate that the isolated site is capable of reasonable redevelopment. | The information submitted in response to Council's request was insufficient as it did not comprise evidence of valuations or acceptable offers being provided. Notwithstanding the above, the Applicant noted that the offers provided were not accepted by the adjoining land owner. The | |

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| | | <p>information submitted did not comprise any concepts to demonstrate that the isolated site is capable of reasonable development.</p> <p>On this basis, the Applicant has failed to adequately address the isolated site provisions and therefore the subject development is considered to isolate the site at 605 Canterbury Road, which is not supported.</p> | |
| C4.2.1.3 - Open space and balconies | <p>Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum balcony provisions within the ADG has been undertaken earlier within this report.</p> <p>Furthermore, an assessment against the communal open space requirements specified within the ADG has also been undertaken earlier within this report.</p> | | |
| C4.2.1.4 – Layout and Orientation | <p>Orientate development to maximise solar access and natural lighting.</p> | <p>The site comprises a north-south orientation. A greater number of apartments have been orientated to the north to benefit from the northerly aspect.</p> | Yes |
| | <p>Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.</p> | <p>Insufficient information has been submitted to determine whether a suitable level of solar access is provided to adjoining properties. This matter is discussed further later within this report.</p> | Unknown |
| | <p>Site new development and private open space to avoid existing shadows cast from nearby dwellings.</p> | <p>It is noted that the existing development that adjoins the site consists of primarily single storey buildings. The overshadowing diagrams provided do not</p> | Unknown |

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| | | include the shadow cast from these buildings and therefore compliance with this control could not be confirmed. | |
| | Site a building to take maximum benefit from cross-breezes and prevailing winds. | The development does not comply with the minimum natural ventilation provisions outlined within the ADG. Therefore the building is not considered to be sited appropriately. | No |
| C4.2.2.2 - Height | Basement that projects greater than 1m above ground level comprises a storey | Insufficient information has been submitted to determine compliance with this control. As outlined earlier within this report, the survey plan submitted is not valid and therefore it is unknown whether the existing natural ground level RLs shown on the sections and elevations are adequate representations of the existing site conditions. | Unknown |
| C4.2.2.3 - Setbacks | Development, including basement and sub-floor areas fronting a major road must have minimum 9m front setback. | Front: Min 5.8m. | No |
| | Side: Min 4m | East: Min 600mm (communal open space) West: 3.8m | No No |
| | Rear: Min 6m | Rear: 2.2m to garbage bin on ground floor and 6m to building line (measured from existing boundary line). | No |
| | <u>Deep Soil – Setbacks:</u> Front and Rear: Min 5m Side: Min 2m | Front and Rear: 5m except for bin storage room in rear setback. Side (west): Min 3.8m Side (east): <2m | No |

| | | | |
|--|--|--|-----------|
| C4.2.2.4 - Building Depth and C4.2.2.5 - Separation | Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum building depth and separation provisions within the ADG has been undertaken earlier within this report. | | |
| C4.2.2.6 -Floor to Ceiling | Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum floor to ceiling provisions within the ADG has been undertaken earlier within this report. | | |
| Part C4.2.3 – Building Design | | | |
| Contemporary Built Form | New building forms and design features shall not mimic traditional features. | The proposed building does not mimic traditional features. | Yes |
| | Access to upper storeys must not be via external stairs. | Access to upper storeys is via internal lift. Internal fire stairs are also provided to upper storeys. | Yes |
| | All dwellings must contain one kitchen and laundry facility. | All dwellings contain a kitchen and laundry. | Yes |
| Building Entries | Entries to residential buildings must be clearly identifiable. | Entry points could be improved through bringing the entry point closer to the main building line and by making the entry point wider. A double entry should be provided to facilitate circulation and moving of furniture. | No |
| | A minimum of one habitable room per dwelling must be orientated towards the streets. | Habitable rooms are orientated towards Canterbury Road and Waverley Lane. | Yes |
| | Ground level private terraces located within the front setback must be setback at least 1m from the street boundary to accommodate a landscape strip which should remain in communal ownership. | 1m wide planter strip provided along Canterbury Road frontage. | Yes |
| Façade Design | Façade design should reflect the orientation of the site using elements such as sun shading devices etc. | Sun shading devices provided on northern elevations. | Yes |
| | <u>Articulating Façade Panels:</u> | | |

| | | | |
|--|--|--|-----------|
| | Street Elevations: 6m to 8m | >8m | No |
| | Side Elevations: 10m to 15m | <15m | Yes |
| | Avoid long flat walls along street frontages – stagger the wall alignment with a step. | The front façade presents as flat façade given the lack of articulation and use of materials and finishes. | No |
| | Incorporate contrasting elements in the façade. | | |
| | Layer and step facades in order to avoid buildings forms that are bland, bulky or over scaled. | | |
| Pavilions | Facades should be layered and stepped in order to avoid building forms that are bland, bulk and over scaled. | The Applicant was requested to amend the design to provide for further articulation through the incorporation of additional steps and layers, as well as use of materials and finishes. This was not considered as part of the amended design submitted. | |
| | Layering of facades should incorporate the base and upper storey elements. | | |
| | Layering of facades should incorporate the base and upper storey elements. | | |
| | Stepping of facades should be provided by balconies, staggered alignments for exterior walls and by contrasting design elements. | | |
| Windows | Windows must be rectangular. | Windows are rectangular. | Yes |
| | Windows and openings shall be appropriately located and shaded to reduce summer heat load and maximum winter sun. | Windows along the northern elevation comprise eaves and shading devices to reduce summer heat load. The windows are still of sufficient size to ensure maximum winter sun is obtained. | Yes |
| Roof Pitch | Max 10 degrees | <10 degrees. | Yes |
| C4.2.3.3 - Dwelling Layout and Dwelling Mix | Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the minimum dwelling layout provisions within the ADG has been undertaken earlier within this report. | | |
| | Min 10% of apartments to be adaptable or accessible | 3 of the 31 apartments proposed (9.6%) are proposed to be | No |

| | | | |
|---|---|---|----------------|
| | | adaptable. | |
| C4.2.4.1 - Solar Access and Overshadowing | Section 6A of SEPP 65 states that a DCP cannot be inconsistent with the provisions of the ADG made under that SEPP in relation to balconies and development to which the SEPP relates. An assessment against the solar access provisions within the ADG has been undertaken earlier within this report. | | |
| Solar Access and Overshadowing – Adjoining Development | Development to retain a minimum of 2 hours of sunlight between 9am-3pm on 21 June for existing living areas and 50% of the principal private open space. | <p>Given the orientation of the site, majority of the shadow cast by the proposal is cast over Canterbury Road.</p> <p>An existing single storey residential dwelling adjoins the site to the east. It is noted that this site will likely be redeveloped with the sites located further east. However no proposal for such amalgamation has been submitted to Council to date and therefore Council is required to consider potential overshadowing impacts to this property.</p> <p>The Applicant was requested to provide hourly overshadowing diagrams between 9am-3pm on 21 June which include the overshadowing cast by adjoining development, as well as the subject site to assist with the assessment against this control.</p> <p>Insufficient information has been provided to determine whether adequate solar access is maintained to the adjoining dwelling to the east. The overshadowing plans submitted do not comprise the shadow cast by adjoining</p> | Unknown |

| | | | |
|-------------------------------------|--|--|--|
| | | <p>development. Furthermore, they do not indicate the location of windows on the adjoining development to understand whether they are impacted by shadow cast from the proposal.</p> <p>The development directly adjoining the site to the west is commercial and therefore no solar access controls are provided for maintaining solar access to commercial properties.</p> | |
| C4.2.4.2 – Acoustic Privacy | Address all requirements in 'Development Near Rail Corridors and Busy Roads (Interim Guideline') which has been published by the NSW Department of Planning. | Acoustic privacy has been assessed against the requirements of SEPP 2007 earlier within this report. | Yes |
| C4.2.5.1 - Fences | Front fences within the front boundary setback are to be no higher than 1.2m | Max 1m | Yes – via condition of consent, should the application be supported. |
| C4.2.5.2 - Building services | Integrate systems, services and utility areas within the design of the whole development. | The Applicant was requested to better integrate the sprinkler pump valve proposed along the front boundary within the design of the development. Furthermore, the Applicant was requested to confirm whether a substation is required to support the design. The Applicant did not address this matter within the additional information submitted. | No |

Additional Considerations

Traffic

The application was referred to Council's Team Leader - Traffic and Transportation and Team Leader – Design who raised a number of concerns regarding the proposed design. These concerns were raised in Council's letter dated 20 July 2018 including the following:

- i. Swept path diagrams are required to demonstrate the entry and exit from the development onto Waverley Lane, demonstrating that two vehicles can pass each other.
- ii. To be consistent with development along the Canterbury Road corridor an access laneway shall be provided to service the proposed developments. The lane shall provide for passage of vehicles with a stationary vehicle being present. I.e. garbage truck.
- iii. To facilitate this, the laneway is to have a minimum 8.9m wide road reserve comprising of a 1.8m wide footpath, 6.5m carriageway and 0.6m to the kerb.
- iv. Any land to be dedicated to Council should be undertaken via a Voluntary Planning Agreement (VPA) in accordance with Council's VPA Policy. The policy is available on Council's website.

The abovementioned concerns have not been addressed to Council's satisfaction. No VPA letter of offer for the proposed laneway dedication has been provided to Council for consideration. In addition to the above, comments received from Council's Traffic and Parking Department on the amended design request that an amended traffic report be submitted for reassessment. This has not been requested of the Applicant given the substantive number of unresolved design issues with the amended proposal, as outlined within this report.

Canterbury Development Contributions Plan 2013 (Contributions Plan 2013)

Canterbury Development Contributions Plan 2013 applies to the site. However, given the application is recommended for refusal, the contributions payable has not been calculated.

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

There are no planning agreements applicable to the proposed development.

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

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

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

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

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

The key potential impacts of the development have been discussed through-out this report. Apart from those matters already addressed, the following likely impacts are considered:

- Survey
The Survey Plan submitted is unable to be relied upon given it is greater than 6 months old (dated 2015). Based on a site visit undertaken at the site, it was noted that the survey plan does not represent the existing site condition. Furthermore, as outlined within this report, the survey plan does not comprise adequate spot level references of the existing natural ground level provided within the site nor does it show existing ground levels on the adjoining site as well as the location and height of windows on adjoining development. It is also noted that the boundaries have not been surveyed. The Applicant was requested to provide an update survey plan, however this was not provided to Council.

The survey plan is a fundamental piece of documentation required to prepare the architectural plans as well as undertake a detailed assessment of the proposal. The abovementioned assessment has been undertaken based on the information submitted. Therefore, should a Development Application for a similar design be submitted in the future, further matters may be raised upon undertaking a detailed assessment against the relevant planning legislation.

- National Construction Code
The development application has been reviewed and assessed by Council's Building Officer who has raised no objection to the proposal subject to appropriate conditions being imposed, including that full compliance with the National Construction Code is to be achieved.
- Proposed excavation works
The proposed development involves excavation and construction works in close proximity to property boundaries and neighbouring properties. Should the application be recommended for approval, relevant conditions requiring the applicant to provide a dilapidation report for the adjoining properties, prior to the issue of the Construction Certificate could be included on any consent issued. Should any damage to adjoining properties result from the proposed excavation works at the subject site, the applicant would be required to rectify all damages.

- Sediment and Erosion Control
Standard conditions could be included regarding the installation and maintenance of the sediment and erosion control measures as part of the pre and during construction phase of the development, should the application be supported.

The development will involve excavation of part of the site to accommodate the development. Any excavated material not utilised elsewhere on the property, will require proper disposal and transport in accordance with the Waste Avoidance and Recovery Act, and the Protection of the Environment Operations Act. A condition will be imposed in this regard.

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 generally deficient of information to enable a detailed and thorough assessment of the application to be undertaken. Further information has been requested of the Applicant. It is acknowledged that there has been some attempt by the Applicant to address some concerns raised by Council. However, overall, the application is substantially deficient of information and the amended design still results in a number of variations to the relevant key planning controls, which represents an overdevelopment of the site.

As a result of the number of variations sought coupled with the lack of information submitted, the site is not suitable for the proposed development.

Submissions [section 4.15(1)(d)]

The development application was publically advertised for 21 days between 9-30 May 2018 in accordance with Part A3 of CDCP 2012. A total of seven submissions and one petition signed by 13 households was received, the matters raised within the submissions are discussed below:

- The proposal is an overdevelopment of the site and is out of character for the area.

Comment

Given the lack of information submitted to support the design and the proposed number of variations proposed to key development controls, Council considers the design to be an overdevelopment and inconsistent with the desired character of the area. The proposed development is not supported.

- The north facing windows and balconies will result in privacy impacts on the lower density residential properties to the north.

Comment

The design generally complies with the minimum building separation

requirements to the existing residential developments to the north, with the exception of the habitable spaces located on the 5th storey (Level 4). Given the non-compliance, Council also raises concerns regarding potential privacy impacts associated with this level.

- The development should be a maximum five storeys in height.

Comment

The design had been revised to comprise a maximum five storey development. Insufficient information was submitted to determine whether the revised design complied with the maximum building height development standard applicable to the site. Furthermore, the design seeks a number of variations to key design controls. On this basis, Council considers the design to be an overdevelopment of the site and is therefore not supported.

- There is no justification for the variation to Council's development standards.

Comment

The Applicant did submit a Clause 4.6 variation statement seeking variation to Council's maximum building height. Council did not support for the proposed variation and therefore the Applicant reduced the height of the development from six storeys to five storeys. Insufficient information was submitted to determine whether the revised five storey design complied with the maximum building height development standard.

- There is inadequate space for children to play on the site.

Comment

The proposed design does not comply with the minimum communal open space area and some apartments do not satisfy the minimum private open space area requirements. Council does not support the proposed variation to these controls given they result in a reduced level of amenity afforded to future occupants of the site (including children).

- The development will have adverse traffic impacts on Waverley Lane and surrounding road network.

Comment

The amended design was referred to Council's Traffic Engineer for review and comment. Council's Traffic Engineer requested that a revised traffic report be submitted to support the amended design. The Applicant was not provided the opportunity to address this concern given the number of outstanding matters.

- There is insufficient infrastructure to cater for the number of occupants on the site.

Comment

Insufficient information has been submitted to Council to determine whether adequate infrastructure has been included in the design to support the number of occupants. This forms part of the reason as to why Council is unable to support the design.

- No rooftop terrace should be supported.

Comment

The amended design submitted does not incorporate a rooftop terrace.

- The colours used for the façade will diminish the look of the area.

Comment

The proposed façade is inconsistent with the relevant controls outlined within Canterbury Development Control Plan 2012 (CDCP 2012). This forms part of the reason for refusal of the application.

- The amount of open space and landscaped area is inadequate for the site.

Comment

The design does comply with the minimum deep soil requirements applicable to the site. However, it does not comply with the minimum communal open space requirements, which is not accepted by Council and forms part of the reasons for refusal of the application.

- The developer should be required to fix the laneway post construction.

Comment

Should the application be supported, suitable conditions of consent would be imposed to ensure any damage to the kerb and gutter associated with the laneway would need to be rectified.

- Clear glazing to the balconies should not be supported as they result in adverse privacy impacts.

Comment

The clear glazing of the balconies is not supported by Council. The Applicant was requested to amend this design, but this matter was not addressed within the additional information submitted to Council. The proposed façade design as a whole is not supported by Council and forms part of the reason for refusal of the application.

- The density of the proposal will likely result in additional vehicles being parked on adjoining streets.

Comment

The proposed design does not satisfy the minimum parking generation requirements. Non-compliance with such controls is considered to reduce available on-street parking, which is not supported by Council. The proposed non-compliance with Council's minimum parking requirements forms part of the reason for refusal of the application.

- The development comprises insufficient parking to cater for the proposed intensity.

Comment

As outlined above, the proposed design does not satisfy the minimum parking generation requirements. The proposed non-compliance with Council's minimum parking requirements forms part of the reason for refusal of the application.

- It is likely that the apartments facing Canterbury Road will not comply with the minimum acoustic requirements.

Comment

An acoustic report was submitted as part of the application. The report concluded that the design is able to achieve compliance with the relevant acoustic controls, with the inclusions of the recommendations outlined within Parts 6 and 7 of the acoustic report. Should the application be supported, relevant conditions would be imposed to ensure the recommendations of the report would be undertaken. Furthermore, Council's Environmental Health Officer reviewed the application and raised no objection, subject to conditions of consent (including conditions imposing the recommendations of the acoustic report).

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

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

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 and all relevant State Environmental Planning Policies, development control plan, codes and policies. As outlined within the body of the report, the application is substantially deficient of information to enable Council to undertake a detailed and thorough assessment of the application. Furthermore, the current design seeks departure to a number of applicable planning controls which represents an overdevelopment of the site. Support of the number of departures proposed would result in a design that is

inconsistent with the character envisaged for the locality, specifically this portion of R4 zoned land along Canterbury Road.

The Applicant has been provided an opportunity to amend the design to address the matters raised by Council. A consolidated response to Council's letter was received four months after the date it was due to be submitted. On this basis, the Applicant has had substantial time to address the matters raised by Council.

In light of the above, it is recommended that the application be refused.

RECOMMENDATION

That Development Application (DA-163/2018) be refused for the reasons previously outlined at the commencement of the report.

REASONS FOR REFUSAL

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

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development application is not consistent with State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development with respect to Schedule 1 Design Quality Principles. The proposed development does not meet Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 4: Sustainability, Principle 5: Landscaping, Principle 6: Amenity, Principle 7: Safety and Principle 9: Aesthetics.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development with respect to the Apartment Design Guide. The proposed development is inconsistent with the criteria for communal open space, visual privacy, natural ventilation, apartment size, private open space and storage.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development with respect to the Apartment Design Guide. Insufficient information has been submitted to allow a proper and thorough assessment of the application against the criteria for solar access.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to determine whether the development is Integrated Development pursuant to Clause 91(3) of the Water Management Act 2000.
5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and thorough assessment of the application against the relevant provisions outlined within State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX).
6. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and through assessment of the design against the maximum building height development standard outlined within Clause 4.3 of Canterbury Local Environmental Plan 2012.

7. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and thorough assessment of the design against the provisions outlined within Clause 6.2 – Earthworks of Canterbury Local Environmental Plan 2012.
8. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and thorough assessment of the design against the provisions outlined within Clause 6.6 – Essential Services of Canterbury Local Environmental Plan 2012.
9. The proposed development is unsatisfactory, pursuant to the provisions Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls of the Canterbury Development Control Plan 2012 (CDCP 2012) including:
 - a) Part B1.3.1 – General Parking Rates
The development fails to comply with the minimum car parking and bicycle parking rate applicable for the development. The design is deficient one (1) visitor car parking space and one (1) bicycle parking space.
 - b) Part B1 – Traffic and Parking
Insufficient information has been submitted to allow a proper and thorough assessment of the application against the relevant traffic and parking controls outlined within Part B1 of CDCP 2012.
 - c) Part B7.2.1 – CPTED Principle: Surveillance and Part C4.2.3.1 – General Building Design (Building Entries)
The development fails to comply with Part B7.2.1(C3) and Part C4.2.3.1(C7) of CDCP 2012 as the proposed primary entry point along the Canterbury Road frontage is substantially setback from the façade and is therefore not located in a prominent position to facilitate visibility.
 - d) Part B9 – Waste
The development fails to comply with the relevant provisions of Part B9 of CDCP 2012 as the bin storage area is insufficient in size to store the required allocation of bins. Furthermore, the design incorporates obstructions along the travel path from the bin storage area to the kerbside collection point. This is required to facilitate safe bin carting. In addition, the surface of the proposed travel path is to be hard and even.
 - e) Part C4.2.1.2 – Isolated Sites
Insufficient information has been submitted to allow a proper and thorough assessment of the proposal against the isolated site provisions outlined within Part C4.2.1.2 of CDCP 2012.

- f) Part C4.2.1.4 – Layout and Orientation
The development fails to comply with Part C4.1.2.1.4 of CDCP 2012 as the design does not comply with the minimum natural ventilation requirements specified within the ADG and insufficient information has been submitted to allow a proper and thorough assessment against the remaining provisions outlined within this part of CDCP 2012.
 - g) Part C4.2.2.2 – Height
Insufficient information has been submitted to allow a proper and thorough assessment of the proposal against the basement controls outlined within Part C4.2.2.2(C2) of CDCP 2012.
 - h) Part C4.2.2.3 – Setbacks
The proposed development fails to comply with the minimum front, rear, side and deep soil setbacks outlined within Part C4.2.2.3(C1-C3) of CDCP 2012.
 - i) Part C4.2.3.1 – General Building Design (Façade Treatment and Pavilions)
The design fails to comply with the maximum width of articulating panels along the street elevations specified within Part C4.2.3.1(C17) of CDCP 2012 as they exceed 6m. Furthermore, the design fails to comply with the façade and pavilion controls outlined within Part C4.2.3.1 of CDCP 2012 resulting in a primarily flat bulky façade given the lack of articulation and use of a variety of materials and finishes.
 - j) Part C4.2.3.3 – Dwelling Layout and Mix
The design fails to comply with the minimum accessible apartment requirement outlined within Part C4.2.3.3(C1) of CDCP 2012. The design incorporates three (3) adaptable apartments which equates to 9.6% of the total number of apartments proposed. This does not comply with the minimum 10% requirement.
 - k) Part C4.2.5.2 – Building Services
The design fails to comply with Part C4.2.5.2(C3) of CDCP 2012 as the sprinkler pump valve is not integrated within the design of the development. Furthermore, insufficient information has been provided to determine whether a substation is required to cater for the site and its location within the design (if required).
10. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to allow a proper and through assessment of the design and its potential overshadowing impacts on adjoining residential development.
11. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in regards to the proposed laneway dedication.

12. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the survey plan submitted is invalid and insufficient. Therefore, insufficient information has been provided in terms of an acceptable survey plan to inform the architectural plans and subsequently facilitate a detailed and thorough assessment of the proposed design against the relevant planning controls.
13. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

WE ALSO ADVISE

1. Our decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
2. If you are not satisfied with this determination, you may:
 - 2.1. Apply for a review of a determination under Section 8.2 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination.; or
 - 2.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 8.7 of the Environmental Planning and Assessment Act 1979.

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2019

| | |
|--------------------------|--|
| ITEM 6 | 67 Burbank Avenue, Picnic Point |
| | Alterations and additions to the existing dwelling |
| FILE | DA-643/2017 – Revesby Ward |
| ZONING | R2 Low Density Residential and W1 Natural Waterways |
| DATE OF LODGEMENT | 18 July 2017 |
| APPLICANT | Ms Fiona Sheridan and Mark Sheridan |
| OWNERS | Ms Fiona Sheridan and Mark Sheridan |
| ESTIMATED VALUE | \$473,000 |
| AUTHOR | City Development |

REPORT

This matter is reported to the Canterbury Bankstown Local Planning Panel in response to the applicant seeking to vary Clause 4.3(2B)(b) of the Bankstown Local Environmental Plan 2015 by more than 10%. The applicant proposes a maximum wall height of 8.67 metres, resulting in a 21% departure to the wall height standard as contained in Clause 4.3(2B)(b) of the Bankstown Local Environmental Plan 2015.

Development Application No. DA-643/2017 proposes alterations and additions to the upper two floors of the existing three storey dwelling that currently occupies No 67 Burbank Avenue, Picnic Point.

The proposal has been assessed against the relevant provisions of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment* (a deemed SEPP), *Bankstown Local Environmental Plan 2015* (BLEP) and *Bankstown Development Control Plan 2015* (BDCP). The assessment identified non compliances in respect to wall height under the BLEP and the minimum side boundary setback and the maximum number of storeys control under the BDCP.

The Clause 4.6 submission made in respect to the proposed departure to the maximum permitted wall height standard failed to demonstrate that compliance with the standard was either unreasonable or unnecessary in the circumstances of the case nor that there were sufficient environmental planning grounds to support the variation. In response to Council's assessment of the Clause 4.6 submission, it was determined that approval of the proposed development would not be in the public interest.

The application was notified for a period of fourteen days commencing on 19 July 2017 and concluding on 2 August 2017. No submissions were received.

POLICY IMPACT

Allowing for the variations or the departures to Council's controls, such as those proposed through this application, would go to undermining the integrity of these particular controls. This would erode Council's ability to, in the future, enforce such controls and maintain a built form consistent with the aims and objectives of Council's adopted planning legislation.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

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

ATTACHMENTS

- A. Assessment Report
- B. Reasons for Refusal

DA-643/2017 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The site is legally described as Lot 14 in Deposited Plan 248997 however is more commonly known as 67 Burbank Avenue, Picnic Point. The site is located on the south western side of Burbank Avenue, approximately 20 metres west of the street's intersection with Riverside Avenue.

The site is a regular shaped allotment with a 14.895 metre frontage to Burbank Avenue, south eastern and north western boundaries of 79.045 metres and 82.98 metres respectively and a site area of 1,131m². The site enjoys a frontage to the Georges River to the south west.

The site falls from Burbank Avenue to the Georges River. The portion of the site in which the existing dwelling is located, comprises a fall of approximately 1 in 4. A number of trees are situated between the dwelling and the Georges River, none of which however are impacted by the proposal.

Occupying the site is a three storey brick dwelling with a pitched tile roof. The dwelling is largely obscured from the street as a result of a detached double garage and single carport (and associated hardstand area). Site landscaping within the front setback, coupled with the fall of the land, also results in the dwelling being largely hidden from view from the street. Along the Georges River frontage exists a boat shed, boat ramp and pontoon as well as an in-ground swimming pool.

Adjoining the site to the north-west is No. 65 Burbank Avenue, while to the south-east is No. 69 Burbank Avenue. Both these neighbouring properties are occupied by two storey dwelling houses which is typical of the development type found in the immediate locality.

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



Aerial Image – Site and Surrounding Locality

PROPOSED DEVELOPMENT

The applicant is seeking approval to undertake alterations and additions to the upper two floors of the existing three storey dwelling that currently occupies the site. The alterations and additions are confined to the rear of the dwelling and specifically comprise the following:

Lower ground floor*

The lower ground floor plan currently contains a laundry, bathroom, rumpus, family room, store room and an internal staircase providing access to the ground floor. No changes are proposed to this level although they do state that the existing shower will be refurbished.

** The applicant originally proposed alterations and additions to the lower ground floor however such works were subsequently removed from their application. The alterations and additions included enclosing 25.2m² of the existing ground floor terrace resulting in an enlarged family / rumpus room.*

Ground floor

The existing 'breakfast' and living room are proposed to be enlarged by way of enclosing a portion of the existing balcony. It results in a 25.4m² increase in GFA.

First floor

The existing 'Bedroom 1', 'study' and ensuite are proposed to be enlarged / extended by three metres. A new three metre wide balcony is proposed off this level. Additional internal works include a reconfigured bathroom and a new walk-in robe. Works on this floor result in a 33.2m² increase in GFA.

SECTION 4.15(1) ASSESSMENT

The proposed development has been assessed pursuant to section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

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

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP from 1 July 2009 under the then Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP No. 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications.

An assessment of the proposal indicates that it is generally consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of GMREP No. 2.

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

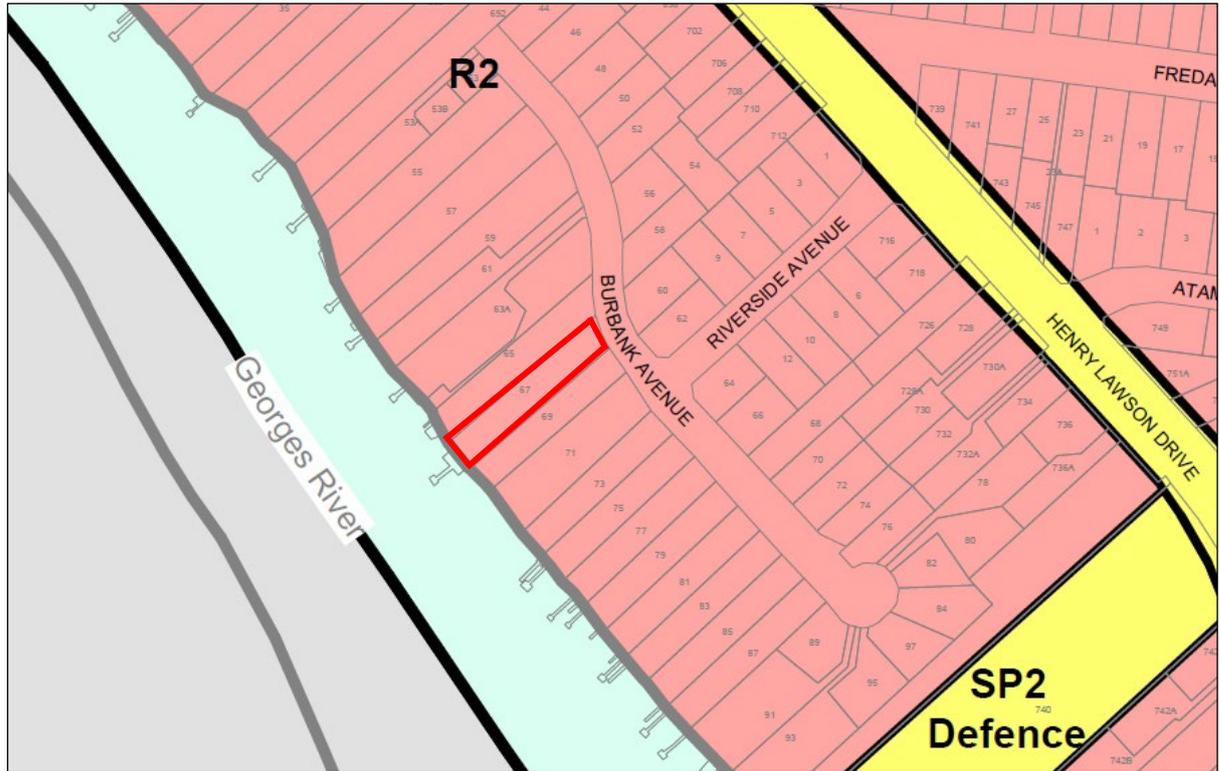
A valid BASIX certificate accompanied the development application. The certificate details the thermal, energy and water commitments which are identified on the submitted plans. Accordingly the proposal satisfies the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

Bankstown Local Environmental Plan 2015

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

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid sulfate soils
- Clause 6.3 – Flood planning
- Clause 6.5 – Limited development on foreshore area

The site is part zoned 'R2 Low Density Residential' and part zoned 'W1 Natural Waterways' under BLEP. The portion of the site in which the development is proposed to be carried out is zoned 'R2 Low Density Residential'. The development represents a permissible form of development having regard to the 'Land Use Table' in Part 2 of the BLEP.



The following table provides a summary of the development application against the numerical controls contained in the BLEP.

| STANDARD | PERMITTED / REQUIRED | PROPOSED | COMPLIES |
|-------------------------|-------------------------------------|---|----------------|
| Floor space ratio | Maximum of 0.5:1 | 0.35:1 | Yes |
| Wall height | Maximum of 7 metres | Maximum wall height of 8.67m (resulting in a 1.67m or 21% breach to the standard) | No – see below |
| Building height | Maximum of 9 metres | Maximum building height is approximately 8.97metres | Yes |
| Foreshore building line | Minimum 30 metre setback to the MHW | >30 metres | Yes |

The above table identifies a departure to the applicable wall height control. The merits or otherwise of the departure is provided below;

Wall Height

Clause 4.3(2B) of the BLEP states:

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

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

Clause 4.3(2C) of the LEP states that “**wall height** means the vertical distance between ground level (existing) and the underside of the eaves at the wall line or the top of the parapet or the flat roof (whichever is the highest).”

The alterations and additions will result in a maximum wall height of 8.67 metres along the dwelling’s south western (or rear) elevation. In response, the applicant lodged a Clause 4.6 submission. The merits or otherwise of the breach to the wall height control is discussed below.

Clause 4.6 of the BLEP reads as follows:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

During the course of the assessment of the application, Council was in receipt of a number of Clause 4.6 submissions that relate to the departure to the wall height development standard. Extracts of the most recent Clause 4.6 submission, as prepared by the applicant’s planning consultant as received by Council on 7 January 2019, are provided below with the submission in its entirety provided as an attachment to this report.

As required by subclause (3) to Clause 4.6, Council has considered the applicant's written request to vary Clause 4.3(2B)(b) of BLEP 2015.

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Subclause (3) requires the applicant to demonstrate the following;

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

It's Council's view that the applicant's written request has not demonstrated that compliance with the development standard is either unreasonable or unnecessary in the circumstances of the case. Considerable additional floor area is proposed so as to accommodate the enlargement to Bedroom 1, an enlargement of the existing bedroom/study and the enlargement of the ensuite on the upper floor. It is the proposed enlargement of these rooms that contributes or results in a departure to the wall height control. It is unclear as to how it could be argued that it is 'unnecessary' or 'unreasonable' to comply with the development standard given that these rooms, in their current state, remain functional, practical and afford suitable internal amenity for the residents for the purpose they are intended to be used for. A deletion of the proposed extension to the upper floor will bring about compliance with the wall height standard.

It's Council's view that the applicant's written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant argues that there exists an absence of harm or impact and that the development will not look out of character in the locality. The development proposes additional bulk and building mass to the dwelling. As such Council is of the view that this will have an impact on the visual character and amenity of the locality.

- (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*

For the development to be in the public interest it is necessary to determine whether the proposal is consistent with the objectives of the R2 Low Density Residential zone and the objectives of the wall height standard as contained in Clause 4.3(1) of BLEP.

The objectives of the R2 Low Density Residential Zone are as follows;

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow for certain non-residential development that is compatible with residential uses and does not adversely affect the living environment or amenity of the area.*
- *To allow for the development of low density housing that has regard to local amenity.*
- *To require landscape as a key characteristic in the low density residential environment.*

The applicant is of the view that the development satisfies the objectives of the R2 Low Density Residential zone for the following reasons;

“The proposed development complies with the above objectives of the R2 Low Density Residential Zone in that it remains a family residence with a small addition and alteration to improve the comfort level of the top floor for its occupants.”

For the purposes of this development, in the absence of any loss of site landscaping, the relevant objectives of the R2 zone are bullet points 1 and 4 above.

The departure to the wall height standard is confined to the extension to the rear upper floor being the extension to existing Bedroom 1, the existing bed/study and a reconfiguration of the ensuite.

Including the ‘reconfigured bathroom’ these rooms currently occupy a floor area of approximately 57m². It would be hard to substantiate a claim that it is critical that an additional 26m² in floor area be provided to these rooms so as to ‘provide for the housing needs of the community (of the resident)’ being an objective of the R2 zone.

With regard to bullet point 4, while the dwelling is currently in part three storeys, the application proposes to increase the extent of the non compliance by extending the depth of the upper floor. Not only is the applicant proposing to increase the portion of the dwelling that is three storeys in height, but provide for an addition to an otherwise compliant dwelling with respect to wall height to now one which is non compliant.

Throughout the submission it is argued that the development will be keeping with the adjoining built form going on to say that the “... *proposed altered dwelling fits in well with the existing character of the locality and in particular with its immediate neighbours with no impacts on the amenity of the locality*”. The development proposes additional bulk and building mass to the dwelling. As such it is Council’s view that the development will have an impact on the visual character and amenity of the locality.

The objectives of the wall height standard are contained in Clause 4.3(1) and read 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 applicant is of the view that the development satisfies the objectives of the development standard for the following reasons;

The proposed development is considered to perform favourably in relation to the objectives of Clause 4.3 on the following grounds:

The amount by which the standard is exceeded is not excessive, it is just 1.6 metres or 22% over the wall height standard and given the design of the proposed addition/alteration the extra height fits into the scene without being apparent to anyone.

Although the wall at the rear exceeds the wall height standard it will not be an obvious exceedance in a well designed building with the excess unlikely to stand out or be able to be clearly seen from the neighbouring properties or the River.

In terms of the relevant objectives it is considered that there are no significant impacts that occur as a result of the non-compliance with the wall height standard in this instance.

For the purposes of this development, the relevant objectives of the wall height standard are objectives (a) and (b).

With respect to objective (a) it is acknowledged that within the broader locality along the waterfront there are some dwellings that are, in part, three storeys and do contain wall heights greater than 7 metres. These dwellings however were approved and constructed prior to the gazettal of the 2015 Bankstown LEP, being the instrument in which the wall height controls were introduced. Both BLEP 2001 and, before that, the Bankstown Planning Scheme Ordinance did not contain any development standards relating to wall height. The emerging character of the locality is reflected in building forms responding to the development standards as contained within BLEP 2015.

Objective (b) seeks development to '*maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys*'. There is

currently a portion of the existing dwelling that is three storeys. The additional floor area proposed to the upper floor (being the floor area that contributes to the breach to the wall height standard) results in an increase in the extent of this three storey component. It is unclear therefore how this development satisfies objective (b) when the extent of the three storeys is in fact increased and it results in a dwelling that currently complies with the wall height control to a dwelling that fails this control.

In conclusion the applicant states;

While the proposed development slightly exceeds the wall height development standards contained in Clause 4.3 of the Bankstown LEP 2015 it never the less satisfies the broader zoning objectives of the locality such that:

- ***The proposed development is consistent with the Objectives of the R2 low density Residential Zone:***
- ***The siting, design and external appearance of the proposed development are considered to be appropriate as it complements the scale and character of adjacent development in the area or locality and will meet the expectations of neighbours;***
- ***The proposed development, on balance does not result in adverse impacts on surrounding properties or the neighbourhood.***
- ***The resulting dwelling will provide a significantly improved level of liveability for the residents thereof. This factor alone should over ride any concerns about non-compliance the terms of Clause 4.6 and the standards in the LEP. The relatively minor non compliances with the standards must be allowed to be over ridden by the needs of the residents for a quality standard of living in the expanded dwelling which does not stand out in the locality.***

In short, Council's assessment does not support the claim that the development is consistent with the objectives of the R2 zone, the development will complement the scale and character of adjacent development and that the development will not have any adverse visual impacts on the surrounding properties or the character of the immediate locality.

Furthermore Council does not support the argument that should the development provide 'a significantly improved level of liveability for the residents' then that alone should override any concerns relating to a non-compliant wall height. By supporting such a stance or such a position, the scale and built form of the developments would be dictated by the owners individual needs rather than the standards and objectives as contained in the BLEP.

Finally, reference is made to another extract of the applicant's Clause 4.6;

Council's Develop Control Plan does address the matter of Storeys and Wall and Roof heights and Clause 2.3 of the DCP reads:

"Storey limit (not including basements)

2.3 The storey limit for dwelling houses is two storeys. (In addition, dwelling houses in the foreshore protection area must ensure the wall height does not exceed 7 metres and the building height does not exceed 9 metres).

The DCP is seen as and regarded as a guideline to help explain or extend the Standards set in the BLEP of 2015. By the definition ... the DCP says that a basement does not constitute a storey and on that basis a wall and roof height limits could have 3 metres added to them for the standard if there is a basement and there is to be compliance with the DCP.

It is unclear as to the argument that a basement does not constitute a storey hence 'wall and roof height limits could have three metres added to them'. It is true, a basement is not a storey. The reference in the DCP to "storey limit (not including basements)" is provided merely to clarify that should a development contain a basement level then the basement level is not 'counted' as a storey for the purpose of Clause 2.3.

A basement is defined in BLEP 2015 as being as follows:

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

The 'lower ground floor' of the dwelling is not a basement having regard to the above definition. As such it is unclear as to how it could be argued that the wall and roof height limits could have 3 metres added to them.

In light of the above assessment, the applicant has failed to provide for a Clause 4.6 submission that supports a case to warrant supporting the wall height control.

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

There are no draft environmental planning instruments applicable.

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

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

| STANDARD | PERMITTED | BANKSTOWN DCP PART B1 | |
|--------------|------------------------|---|--|
| | | PROPOSED | COMPLIANCE |
| Storey limit | Maximum of two storeys | Currently the dwelling is three storeys | Existing non-compliance (see below for additional comment) |

| STANDARD | PERMITTED | BANKSTOWN DCP PART B1 | |
|--|---|---|--|
| | | PROPOSED | COMPLIANCE |
| Fill | Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property | None proposed | Yes |
| Front setback | Ground floor – 5.5m First floor – 6.5m | No changes are proposed to the existing setbacks to Burbank Avenue | Yes |
| Side setbacks | 0.9m (minimum) for walls up to 7 metres 1.5m (minimum) for walls above 7 metres | 1.3m along the dwelling's north western elevation and 1.5m along the dwelling's south eastern elevation | No - for the setback to the site's north western boundary (see below for additional comment) |
| Private open space | Min. 80m ² with a dimension of 5m throughout | Well in excess of 80m ² is retained with a minimum dimension in excess of 5 metres between the dwelling and Georges River | Yes |
| Solar access (site) | 3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area window of the dwelling | Solar access is achieved to the front lounge room of the dwelling for in excess of 3 hours | Yes |
| Solar access (private open space – site) | 3 hours sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space | Solar access is achieved to the rear private open space for in excess of 3 hours | Yes |
| Solar access (adjoining properties) | 3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area window of a dwelling on an adjoining allotment | Currently no sunlight is achieved to a living room window of the adjoining dwelling to the south east between the hours of 8:00am and 4:00pm at the mid-solstice. | Yes (see below for additional comment) |

| STANDARD | PERMITTED | BANKSTOWN DCP PART B1 | |
|--|---|---|--------------|
| | | PROPOSED | COMPLIANCE |
| Solar access (private open space – adjoining properties) | 3 hours sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space for a dwelling that adjoins the development | In excess of 3 hours solar access is achieved to the adjoining POS between the hours of 9am and 5pm | Yes |
| Solar access (solar collectors) | Development should avoid overshadowing any existing solar collector on the allotment and the neighbouring properties | No overshadowing of any solar collectors will occur as a result of the alterations and additions proposed | Yes |
| Visual privacy (living areas) | <p>Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</p> <p>(a) offset the windows between dwellings to minimise overlooking; or</p> <p>(b) provide the window with a minimum sill height of 1.5 metres above floor level; or</p> <p>(c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or</p> <p>(d) use another form of screening to the satisfaction of Council.</p> | <p>Additional openings / windows along the side elevations to the first floor include;</p> <p><u>South eastern elevation</u> – 2 x bedroom windows (with adjustable louvres) and a window off the walk-in-robe</p> <p><u>North western elevation</u> – a bathroom window and a window off the ‘extended bed/study’ (each with a minimum sill height of 1.4 metres) and a further window (again with adjustable louvres) off the ‘extended bed/study’</p> <p>Additional openings / windows along the side elevations to the ground floor are confined to a new sliding door off the extended dining room leading to the existing balcony.</p> <p>These additional openings will not provide for any unreasonable amenity impacts for the adjoining residents</p> | Satisfactory |

| STANDARD | PERMITTED | BANKSTOWN DCP PART B1 | |
|-------------------------------------|--|---|--------------|
| | | PROPOSED | COMPLIANCE |
| Visual privacy (private open space) | <p>Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where:</p> <p>(a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or</p> <p>(b) the window has a minimum sill height of 1.5 metres above floor level; or</p> <p>(c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or</p> <p>(d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.</p> | No adverse privacy impacts arise given that the dwelling sits forward of the neighbouring dwellings (closer to the waterfront) which in turn reduces the opportunity for the occupants of the dwelling to overlook the adjoining principal areas of private open space. | Satisfactory |

| STANDARD | PERMITTED | BANKSTOWN DCP PART B1 | |
|----------------------------|---|---|--------------|
| | | PROPOSED | COMPLIANCE |
| Visual privacy (balconies) | Council may allow dwelling houses to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design: <ul style="list-style-type: none"> (a) does not have an external staircase; and (b) does not exceed a width of 1.5 metres throughout; and (c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building. | <p><u>Ground floor</u> – the applicant proposes to enclose a considerable portion of the rear facing balcony whilst retaining the existing side balcony. Access to the balcony is proposed from the enlarged dining room. Given the reduction in the size of the balcony and the fact that it remains an area of a size that is not conducive to large gatherings, no additional privacy or amenity issues are likely to arise from that which currently occurs.</p> <p><u>First floor</u> – the applicant proposes to enclose the existing balcony and to provide a new balcony 3.06m x 11.07m. Access to the balcony is proposed from a bedroom. Should the Panel be of a mind to support the development, privacy screens along the side elevations of this balcony would sufficiently reduce the likelihood of overlooking into the adjoining properties.</p> | Satisfactory |
| Roof pitch | Maximum roof pitch 35 degrees | < 35 degrees | Yes |
| Car parking | Minimum two car parking spaces for a dwelling, one of which must be covered | Three existing covered car parking spaces currently provided on site | Yes |
| Landscaping | Retain and protect any significant trees on the allotment and adjoining allotments | No trees / vegetation is required to be removed to the accommodate the development | Yes |

The following comments are offered in respect to a number of the controls contained in the DCP.

Storey limit

Clause 2.3 of Part B1 of the Bankstown Development Control Plan 2015 reads as follows:

2.3 *The storey limit for dwelling houses is two storeys.*

In addition, dwelling houses in the foreshore protection area (refer to map in Appendix (1) must ensure the wall height does not exceed 7 metres and the building height does not exceed 9 metres.

The existing dwelling is currently three storeys. The applicant is not seeking to increase the number of storeys rather provide for additional floor area to the two upper floors of the dwelling, but still maintaining a three storey built form.

Notwithstanding that the existing dwelling provided for a three storey building, it remained in compliance with the wall and building height controls of 7 metres and 9 metres respectively. The alterations and additions not only results in an enlargement of the three storey building form, but it now fails the applicable wall height requirement.

Setbacks to the side boundary

Clauses 2.9 and 2.10 of Part B1 of the Bankstown Development Control Plan 2015 read as follows:

2.9 *For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side boundary of the allotment is 0.9 metre.*

2.10 *For the portion of the building wall that has a wall height greater than 7 metres, the minimum setback to the side boundary of the allotment is 1.5 metres. Council may vary this requirement where a second storey addition to an existing dwelling house demonstrates it must use the ground floor walls for structural support.*

Wall heights greater than 7 metres are proposed along the dwelling's south eastern and northern western elevations. While a minimum 1.5 metre side setback is observed to the site's south eastern boundary, a 1.3 metre setback is proposed to the site's north western boundary.

There exists merit in allowing for the applicant to accommodate the additional floor area to the upper floors having regard to the positioning of the lower ground floor walls (and footings). It would be onerous and unreasonable to require the new works to observe an additional 200mm setback to the site's south eastern boundary in light of the engineering and construction implications that would arise as a result.

Note – these controls pre-dated the inclusion of the wall height control in Clause 4.3(2B(b) of the Bankstown Local Environmental Plan 2015.

Access to sunlight

Clause 2.14 of Part B1 of the Bankstown Development Control Plan 20915 reads as follows:

2.14 *At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.*

Currently no sunlight is achieved to a living room window of the adjoining dwelling to the south east between the hours of 8:00am and 4:00pm at the mid-solstice. As such the development satisfies Clause 2.14.

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

A planning agreement has not been entered into under section 7.4 of the Environmental Planning and Assessment Act, 1979 nor has the applicant offered to enter in a draft planning agreement.

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

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

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

The development proposes additional bulk and building mass to the dwelling. As such it is Council's view that the development will have an impact on the visual character and amenity of the locality beyond that which would otherwise be expected of a compliant development.

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

The property falls from Burbank Avenue to the Georges River with the dwelling currently sited on portion of the site that has a slope of 1 in 4. As such it would be an appropriate response that any alterations and additions to the dwelling have regard to the fall of the land and be designed sensitive to the constraints that arise. The development seeks to provide additional floor area to the dwelling which results in departures to the controls relating to wall height and the maximum permitted number of storeys. Because of the current positioning of the dwelling on the site it is considered that the site is not suitable for the alterations and additions development that have been proposed.

Submissions [section 4.15(1)(d)]

Consistent with the provisions contained in the 'Introduction and List of Amendments' of the Bankstown Development Control Plan 2015, the adjoining and adjacent property owners were notified of the development and invited to comment. The exhibition period was for fourteen days commencing on 19 July 2017 and concluding on 2 August 2017. No submissions were received.

Note – while the plans have been amended since they were originally lodged with Council, the extent of the modifications did not require the application to be re-notified.

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

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and the environment are avoided. Allowing for the variations or the departures to Council's controls, such as those proposed through this application, would go to undermining the integrity of these particular controls. This would not be in the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, which included, amongst other things, an assessment against *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004: Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

The applicant has failed to adequately demonstrate that there is merit in breaching the wall height control as contained in Clause 4.3(2B)(b) of BLEP. Council's assessment does not support the claim that the development is consistent with the objectives of the R2 zone, the development will complement the scale and character of adjacent development and that the development will not have any adverse visual impacts on the surrounding properties or the character of the immediate locality.

RECOMMENDATION

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

REASONS FOR REFUSAL

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

1. The development fails to comply with Clause 4.3(2B)(b) of the Bankstown Local Environmental Plan 2015 in relation to wall height [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979*]
2. The development application does not demonstrate a suitable level of impact on the locality [*Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979*]
3. The site is considered unsuitable for the proposed development [*Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979*]
4. The development is not considered to be in the public interest [*Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979*]

-END-

Canterbury Bankstown Local Planning Panel - 3 April 2019

ITEM 7 **Application to amend Bankstown Local Environmental Plan 2015: 1–17 Segers Avenue, Padstow**

AUTHOR **Planning**

PURPOSE AND BACKGROUND

Council is in receipt of an application to prepare a planning proposal for the site at 1–17 Segers Avenue, Padstow. The application seeks to rezone the site from Zone R2 Low Density Residential (two storeys / 0.5:1 FSR) to Zone B2 Local Centre (six storeys / 2.5:1 FSR).

In relation to the proposed zone and building envelope, Council’s assessment findings indicate the proposal has strategic merit subject to implementing the recommendations of the urban design peer review as outlined in this report.

In relation to infrastructure improvements, the proposal to widen the Council lane (Padstow Pathway) is supported to better link the site to the Padstow Park Public School and railway station. An appropriate mechanism is required to realise the infrastructure improvements in a timely manner, together with further analysis on other social infrastructure needs arising from the proposal. This would ordinarily involve a planning agreement to legally capture the public benefits. The proposal does not include a planning agreement at this point.

ISSUE

The Local Planning Panel is requested to recommend whether a planning proposal for the site at 1–17 Segers Avenue Padstow should proceed to Gateway in accordance with the Local Planning Panels Direction, issued by the Minister for Planning.

RECOMMENDATION That -

1. The application to amend Bankstown Local Environmental Plan 2015 proceed to Gateway subject to the following:
 - (a) Rezone the site to Zone B2 Local Centre.
 - (b) Permit a maximum 2.5:1 FSR subject to:
 - (i) Requiring a minimum 40 metre lot width at the front building line to facilitate higher quality built form and urban design outcomes; and
 - (ii) Applying a minimum 0.5:1 FSR for the purposes of commercial development on the ground floor.Otherwise a maximum 2:1 FSR would apply.
 - (c) Permit a maximum 23 metre building height (six storeys). Any part of the building within two metres of the height limit is solely for the purposes of equipment servicing the building (such as plant, lift motor rooms, fire stairs and the like).

2. The Gateway process should require further analysis on local infrastructure needs to manage the likely effects of the proposal.
3. Council seek authority from the Department of Planning & Environment to exercise the delegation in relation to the plan making functions under section 3.36(2) of the Environmental Planning & Assessment Act 1979.
4. Council prepare a site specific DCP Amendment.

ATTACHMENTS

- A. Assessment Findings

POLICY IMPACT

This matter has no policy implications for Council.

FINANCIAL IMPACT

At this stage, this matter has no financial implications for Council.

COMMUNITY IMPACT

The application seeks to widen the Council lane, known as the Padstow Pathway at 5C Segers Avenue, Padstow. Whilst Council's assessment findings support this proposal, the findings also identify the need for a Social Impact and Community Needs Assessment to investigate other local infrastructure needs arising from the proposal.

DETAILED INFORMATION

SITE DESCRIPTION

The site at 1–17 Segers Avenue, Padstow comprises the following properties as shown in Figure 1. The Council lane (known as the Padstow Pathway, 5C Segers Avenue) divides the properties into two sites.

| Sites | Property Address | Property Description | Current Zone | Site Area | |
|-------------------|------------------|----------------------|---------------------------------|--------------------------|----------------------------|
| North | 1 Segers Avenue | Lot 650, DP 1107732 | Zone R2 Low Density Residential | 312m ² | |
| | 1A Segers Avenue | Lot 651, DP 1107732 | Zone R2 Low Density Residential | 312m ² | |
| | 3 Segers Avenue | Lot 21, DP 20572 | Zone R2 Low Density Residential | 598m ² | |
| | 5 Segers Avenue | Lot 221, DP 132286 | Zone R2 Low Density Residential | 543m ² | |
| | | | | Site (North) Area | 1,765 m² |
| South | 7 Segers Avenue | Lot 23, DP 660642 | Zone R2 Low Density Residential | 498m ² | |
| | 9 Segers Avenue | Lot 1, DP 385374 | Zone R2 Low Density Residential | 598m ² | |
| | | Lot 24, DP 20572 | Zone R2 Low Density Residential | 633m ² | |
| | 11 Segers Avenue | Lot 25, DP 20572 | Zone R2 Low Density Residential | 702m ² | |
| | 13 Segers Avenue | Lot 26, DP 20572 | Zone R2 Low Density Residential | 782m ² | |
| | 15 Segers Avenue | Lot 27, DP 20572 | Zone R2 Low Density Residential | 855m ² | |
| | 17 Segers Avenue | Lot 18, DP 16608 | Zone R2 Low Density Residential | 892m ² | |
| | | | | Site (South) Area | 4,960m² |
| Both sites | | | | Total Area | 6,725m² |

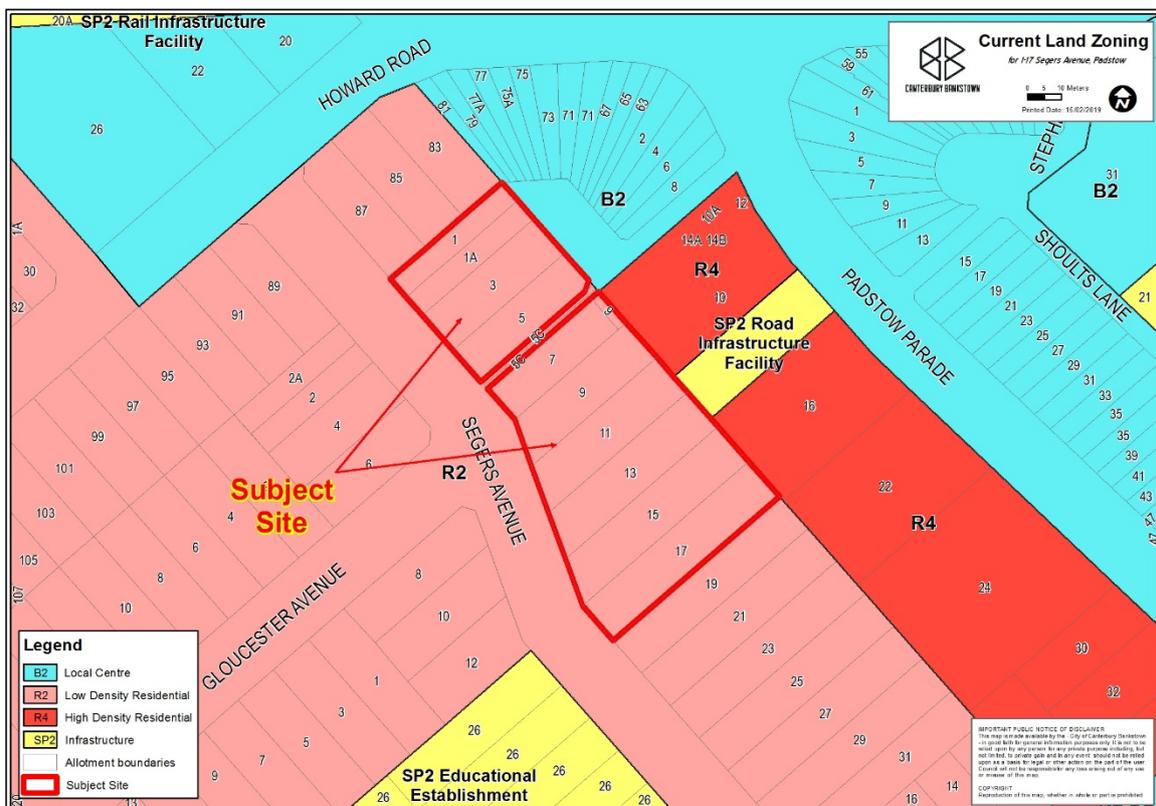
The site forms part of the low density residential area and is zoned R2 Low Density Residential under Bankstown Local Environmental Plan 2015. Single and two storey dwelling houses and a dual occupancy currently occupy the site. Adjacent to the site are dwellings houses and the Padstow Park Public School.

In relation to local context, the site adjoins the Padstow Village Centre (Zones B2/R4) to the east. A four storey limit applies to the village centre. The Council lane (Padstow Pathway) links the site to the railway station.

Figure 1: Site Map



Figure 2: Existing Zoning Map



PROPOSAL

In September 2018, Council received an application to amend Bankstown Local Environmental Plan 2015 as follows:

| 1–17 Segers Avenue | Current controls | Proposed controls |
|-------------------------|----------------------------|-----------------------|
| Zone | R2 Low Density Residential | B2 Local Centre |
| Maximum FSR | 0.5:1 | 2.5:1 |
| Maximum building height | 9 metres (2 storeys) | 24 metres (6 storeys) |

The application includes a planning proposal report, urban design report, economic impact assessment, concept design and traffic study. The application also includes additional information in response to Council’s urban design and economic impact peer reviews. These documents have been provided to the Local Planning Panel.

The concept design proposes a mixed use development in the form of six storey buildings with:

- A mix of commercial spaces and dwellings on the ground floor and first level.
- Dwellings on the upper levels.
- 234 parking spaces on the basement level and ground floor.
- Improvements to the Council lane (Padstow Pathway).

Figure 3–Application’s concept design, viewed from Segers Avenue



Figure 4—Existing Floor Space Ratio



Figure 5—Application's Proposed Floor Space Ratio

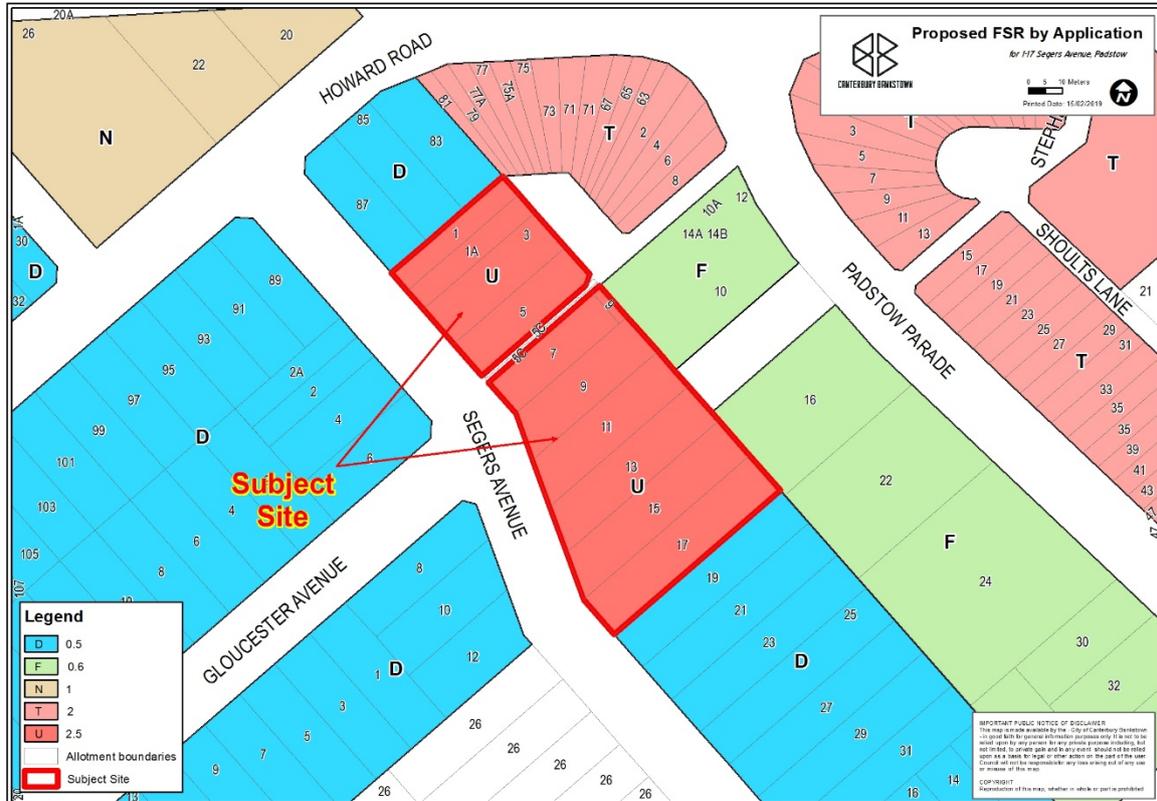


Figure 6—Existing Building Height

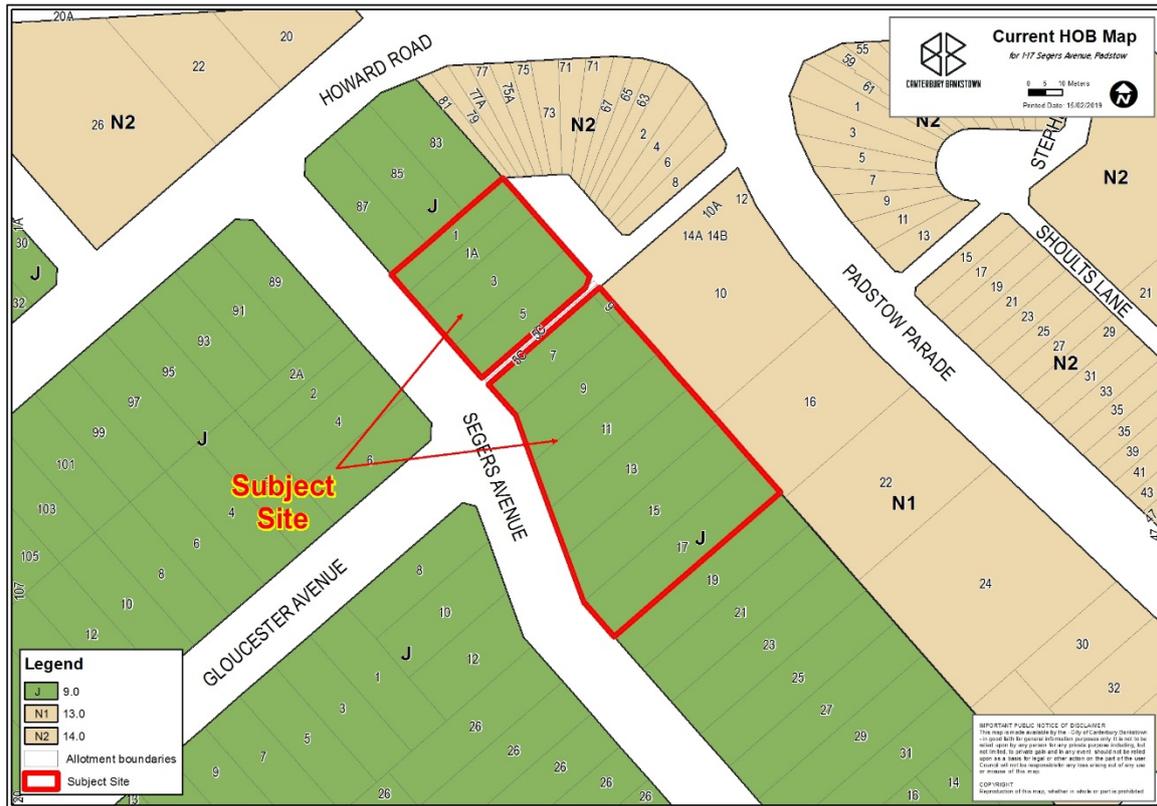


Figure 7—Application's Proposed Building Height



CONSIDERATIONS

Based on the Environmental Planning & Assessment Act 1979 and the Department of Planning & Environment's guidelines, the following key policies are relevant to Council's assessment of the application:

- Greater Sydney Region Plan
- South District Plan
- State Environmental Planning Policies
- Ministerial Directions
- Council's South East Local Area Plan
- Department of Planning and Environment's publications: *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

SUMMARY

In relation to the proposed zone and building envelope, Council's assessment findings indicate the proposal has strategic merit subject to implementing the recommendations of the urban design peer review as follows (refer to Figures 8–9):

| Controls | Current controls | Recommended controls based on peer reviews |
|---|--------------------------------------|---|
| Zone | R2 Low Density Residential | B2 Local Centre |
| FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development on the ground floor. |
| Building height | 9 metres (2 storeys) | 23 metres (6 storeys). Any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building (such as plant, lift motor rooms, fire stairs and the like). |
| Street setback (western boundary) | 5.5 metres | 3 metres (levels 1–4) and 6 metres (levels 5–6) |
| Side setback (northern and southern boundaries) | 0.9 metre | Nil setback (northern boundary) and 6–9 metres (southern boundary) |
| Rear setback (eastern boundary) | Determined by the private open space | 3–6 metres |

Should Council decide to proceed with a planning proposal, the planning proposal would incorporate the above recommendations.

Within the business zones, Council also applies a minimum lot width requirement to facilitate higher quality built form and urban design outcomes. In this regard, it is proposed to require a minimum 40 metre lot width at the front building line if development is to achieve the maximum floor space ratio. Otherwise a maximum 2:1 FSR would apply.

In relation to local context, the urban design peer review recommends 'that the properties within the block defined by Padstow Parade, Howard Road, Segers Avenue and Faraday Road have a building height of 4 storeys as a consistent scale, with additional height to 6 storeys on 1–17 Segers Avenue' (Urban Design Peer Review, page 13).

To address the inconsistencies in planning controls with adjoining and surrounding sites, a building height review of the remainder of the block would occur as part of the Comprehensive LEP Review process.

In relation to infrastructure improvements, Council's assessment findings support the proposed widening of the Council lane (Padstow Pathway) to better link the site to the Padstow Park Public School and railway station.

The findings also identify the need for a Social Impact and Community Needs Assessment to investigate other social infrastructure needs arising from the proposal. In this regard, an appropriate mechanism is required to realise these infrastructure works in a timely manner. This may involve a planning agreement to legally capture the public benefits.

Council's Assessment Findings are shown in Attachment A, the economic impact peer review is shown in Attachment B, and the urban design peer review is shown in Attachments C–D.

Figure 8—Recommended Floor Space Ratio Map (2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development on the ground floor)

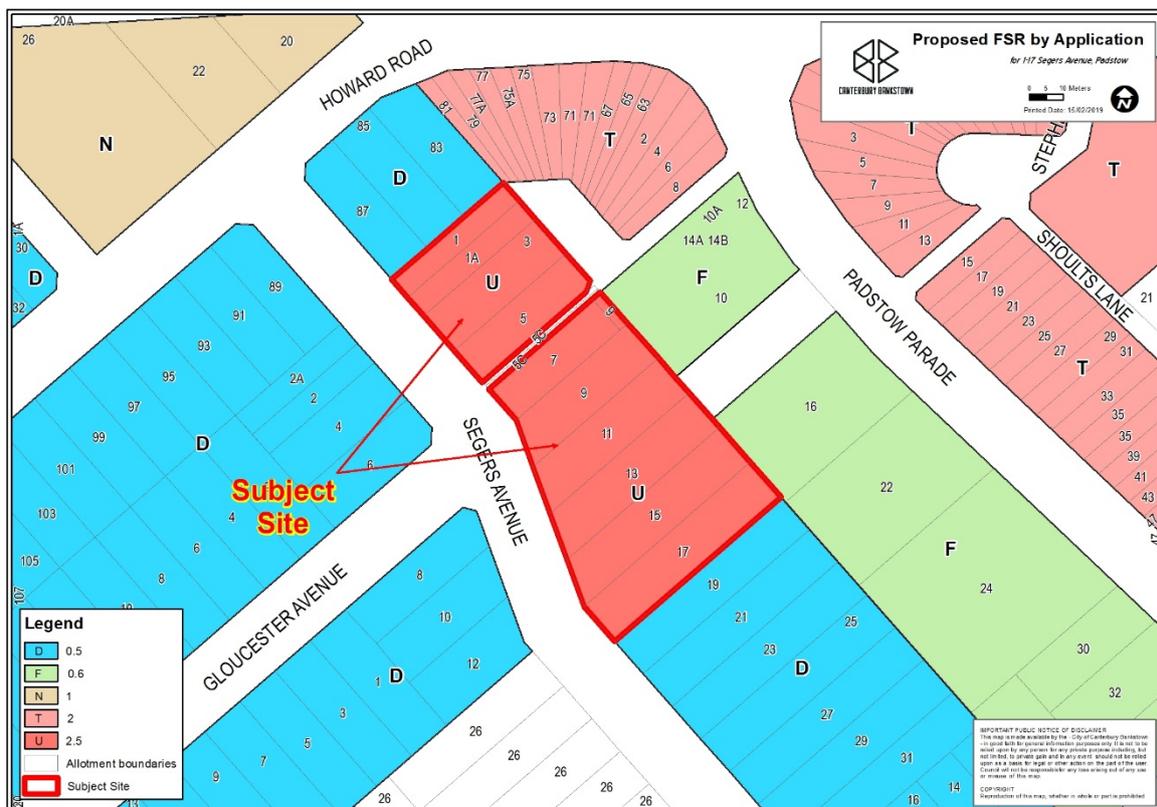


Figure 9—Recommended Height of Buildings Map



ASSESSMENT

Proposed Business Zone

The application proposes to rezone the site from Zone R2 Low Density Residential to Zone B2 Local Centre, and is supported by an Economic Impact Assessment Report (EIA). In March 2019, the proponent provided additional information, which concludes that the proposed business zone would result in net community benefits, namely increased retail and commercial choice, increased mixed uses in proximity to the railway station, and improvements to the public domain.

As part of the assessment process, Council must consider the Greater Sydney Region Plan and Ministerial Direction 1.1 (Business and Industrial Zones). The State policies encourage employment growth in suitable locations.

Council commissioned an independent specialist to undertake an economic impact peer review to determine whether the proposed business zone is appropriate. The independent specialist reviewed the application and in a letter dated March 2019, concludes that the proposed B2 Local Centre business zone is considered appropriate.

Proposed Building Envelope

The application proposes a six storey building envelope (2.5:1 FSR / 24 metre building height), and is supported by an Urban Design Report and concept design.

As part of the assessment process, Council must consider the Greater Sydney Region Plan, South District Plan, SEPP 65 and other relevant State policies. The State policies require the proposal to be of a good design standard.

Council commissioned an independent specialist to undertake an urban design peer review to determine whether the proposed building envelope is appropriate. The independent specialist reviewed the application and in a report dated March 2019, recommends the following changes to Council’s built form controls (based on the proposed business zone for the site):

Proposed FSR

| Current FSR control | Application’s proposed FSR | Recommended FSR based on peer review |
|----------------------------|-----------------------------------|---|
| 0.5:1 | 2.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development on the ground floor |

The urban design peer review supports the proposed 2.5:1 FSR provided:

- The ground floor is limited to commercial floor space (equivalent to 0.5:1 FSR). As the site is being rezoned to a business zone, active street frontages to the Council lane (Padstow Pathway) and Segers Avenue is desirable.
- The ground floor is limited to servicing access only. Car parking should be limited to the basement levels to better activate the ground floor.

Should Council decide to proceed with a planning proposal, the planning proposal would implement the recommendations of the urban design peer review.

Within the business zones, Council also applies a minimum lot width requirement to facilitate higher quality built form and urban design outcomes. In this regard, it is proposed to require a minimum 40 metre lot width at the front building line if development is to achieve the maximum floor space ratio. Otherwise a maximum 2:1 FSR would apply.

Proposed Building Height

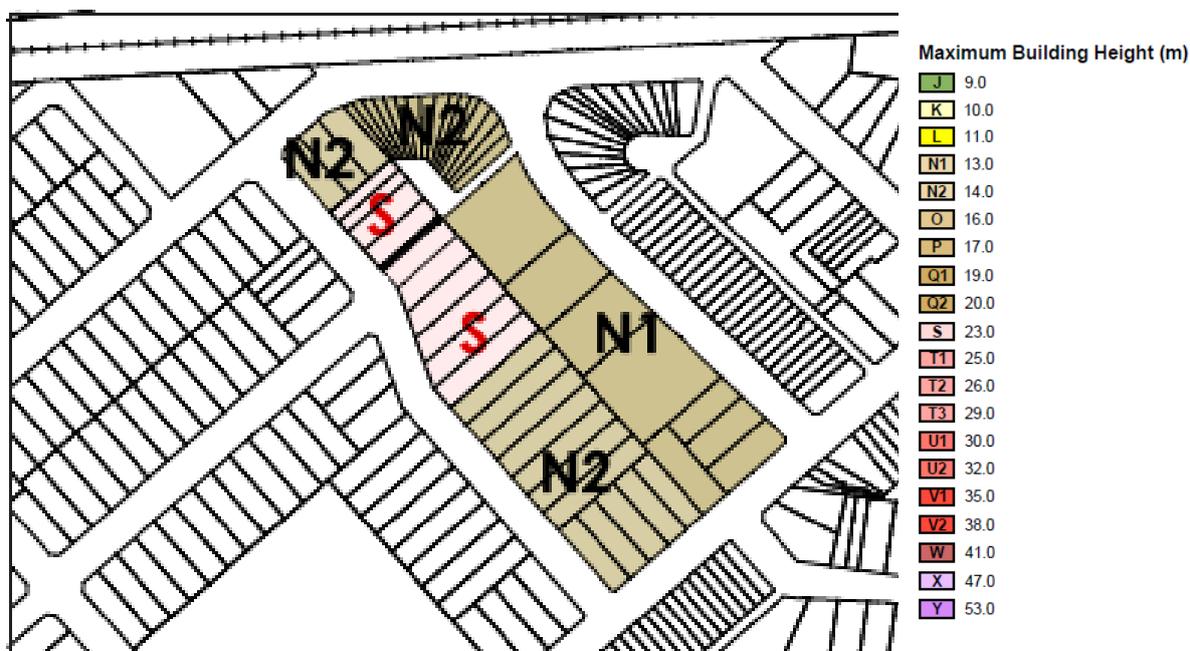
| Current building height control | Application’s proposed building height | Recommended height based on peer review |
|--|---|---|
| 9 metres (2 storeys + attic) | 24 metres (6 storeys) | 23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building. |

In relation to local context, the urban design peer review supports a six storey height limit with the recommendation that:

- *The block defined by Padstow Parade, Howard Road, Segers Avenue and Faraday Road have a building height of 4 storeys as a consistent scale, with additional height to 6 storeys on 1–17 Segers Avenue. This sits well within the existing context established by the 4 storey blocks of units developed at 16–24*

Padstow Parade, as well as the scale of the car park at 10 Padstow Parade. The retail corner transitioning between Padstow Parade and Howard Road would benefit from this uplift to 4 storeys. Heights along the southern end of Segers Avenue, currently occupied by one and two storey single residential properties, would also fit well within a 4 storey context, immediately adjacent to the retail/commercial hub of Padstow (Urban Design Peer Review, page 13).

Figure 10–Recommended building height changes (urban design peer review)



Should Council decide to proceed with a planning proposal, the planning proposal would apply a maximum 23 metre building height, noting there is a two metre allowance for equipment servicing the building (such as plant, lift motor rooms, fire stairs and the like).

Proposed Setbacks

| DCP Controls | Current controls | Application's proposed controls | Recommended controls based on peer review |
|---|--------------------------------------|---|--|
| Street setback (western boundary) | 5.5 metres | Nil–4.5 metres | 3 metres (ground floor + levels 1–3) and 6 metres (levels 4–5) |
| Side setback (northern and southern boundaries) | 0.9 metre | Nil–3 metres (northern boundary) and nil–9 metres (southern boundary) | Nil setback (northern boundary) and 6–9 metres (southern boundary) |
| Rear setback (eastern boundary) | Determined by the private open space | Nil–4 metres at the closest points to the boundary | 3–6 metres at the closest points to the boundary |

The proponent was provided an opportunity to comment on Council's urban design peer review. In a letter dated March 2019, the proponent concurred with most of the recommended suggestions, with the exception of the recommended 3 metre rear setback to the eastern boundary. The proponent considers a nil setback is achievable for the following reason:

- *It is considered that the nil setback adjacent to the car park is preferred as it avoids any visual and acoustic impacts from the car park whilst also avoiding light spill. A 3 metre setback would essentially provide a 'dead zone' as any unit design would avoid having an outlook to a car park. It is also noted that the concept design does not rely on the northern orientation to the car park to achieve the solar access requirements of the ADG (70%). In contrast, the concept scheme allows for an open aspect to the central courtyard or to the widened landscaped courtyard/laneway. The concept proposal also does not rely upon the 3 metre setback to achieve the 60% requirement for cross ventilation.*

Council's independent specialist reviewed the additional information submitted by the proponent, and in a letter dated March 2019 confirmed that the recommendation for a minimum 3 metre rear setback to the eastern boundary remains unchanged. According to the urban design peer review *'the proposed approach of building on the eastern boundary of the commuter car park would create a permanent blank wall visible from Padstow Parade above the car park. A small setback allowing for windows and articulation would be better'* (Urban Design Peer Review, page 11).

Should Council decide to proceed with a planning proposal, the planning proposal would implement the recommendations of the urban design peer review.

Infrastructure Needs

- The application is proposing to widen the Council lane that links the site to Padstow Parade. The lane, known as the Padstow Pathway is located at 5C Segers Avenue. The application comments that a planning agreement is not required as the development application process could enforce the lane widening requirements. At this point, the application does not include a planning agreement or any other proposed infrastructure upgrades.
- Should Council decide to proceed with a planning proposal, Council may also resolve to commence discussions with the proponent to prepare a planning agreement. The planning agreement would be exhibited jointly with the planning proposal.

The urban design peer review supports the proposed lane widening as it has the potential to link the Padstow Park Public School to the railway station with an attractive, active and largely car-free pedestrian link, subject to:

- Widening the lane from 3 metres to 6 metres at street level.
- Requiring continuous active retail frontages along the lane to provide pedestrian amenity and safety.
- Providing a pedestrian crossing (at the Gloucester Street intersection) to contribute to a safe journey from the school to the railway station.

Whilst Council's assessment findings support this proposal, the findings also identify the need for a Social Impact and Community Needs Assessment to investigate other local infrastructure needs arising from the proposal. In this regard, an appropriate mechanism is required to realise these infrastructure works in a timely manner. This may involve a planning agreement to legally capture the public benefits.

ATTACHMENT A–Assessment Findings

Attachment A outlines the assessment findings and is based on the justification matters as set out by the Department of Planning & Environment.

1. Strategic Merit Test

Section 1 assesses the proposal based on the Department of Planning & Environment's Strategic Merit Test as outlined in the Department's publication *A Guide to Preparing Local Environmental Plans*. The intended outcome is to determine whether a proposal demonstrates strategic and site specific merit to proceed to the Gateway. A proposal that seeks to amend controls that are less than 5 years old will only be considered where it clearly meets the Strategic Merit Test.

1.1 Is the proposal consistent with the relevant district plan within the Greater Sydney Region, or corridor / precinct plans applying to the site, including any draft regional, district or corridor / precinct plans released for public comment?

1.1.1 Greater Sydney Region Plan (*A Metropolis of Three Cities*)

| | Consistent |
|---|---|
| <p>Proponent's Submission: No comments.</p> <p>Council's Assessment: The proposal is generally consistent with the Greater Sydney Region Plan.</p> <p><u>Objective 22: Investment and business activity in centres</u></p> <p>According to Objective 22, local centres are important for day-to-day goods and services. Enhancing the accessibility, connectivity and amenity of walking paths in and around centres is required to improve walkability and desirable liveability outcomes. Improving road and footpath environments within centres enhances the centre's function as a destination and contributes to the vitality and viability of the centre.</p> <p>Council commissioned an independent specialist to undertake an economic impact peer review to determine whether the proposed business zone is appropriate. The review concludes that the proposed B2 Local Centre business zone is considered appropriate.</p> <p><u>Objective 10 to provide ongoing housing supply close to jobs</u></p> <p>According to Objective 10, the ongoing housing supply and a range of housing types in the right location will create more liveable neighbourhoods. Good strategic planning can link the delivery of new housing homes in the right location with local infrastructure.</p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |

Objective 10 identifies Padstow as a local centre. It recommends a place-based planning approach to the potential development of the local centre provided it meets the key aspects of good design and the delivery of enabling infrastructure.

Council commissioned an independent specialist to undertake an urban design peer review to determine whether the proposed building envelope is appropriate. The independent specialist reviewed the application and in a report dated March 2019, recommends the following changes to Council's built form controls (based on the proposed business zone for the site):

| Built form controls | Current controls | Recommended controls (urban design peer review) |
|---|--------------------------------------|--|
| FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development |
| Building height | 9 metres (2 storeys) | 23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building |
| Street setback (western boundary) | 5.5 metres | 3 metres (levels 1–4) and 6 metres (levels 5–6) |
| Side setback (northern and southern boundaries) | 0.9 metre | Nil setback (northern boundary) and 6–9 metres (southern boundary) |
| Rear setback (eastern boundary) | Determined by the private open space | 3–6 metres |
| Open space | 80m ² private open space | The site allows for some communal open space in the central courtyards. Business zones may have less communal open space if there is good access to public space. Carl Little Reserve and Clarke Reserve are in close proximity to the site. There is no need for rooftop communal open space, as there is sufficient communal open space in both courtyards, with the southern lot offering ample space for diverse activities. |

Should Council decide to proceed with a planning proposal, the planning proposal would implement the recommendations of the urban design peer review.

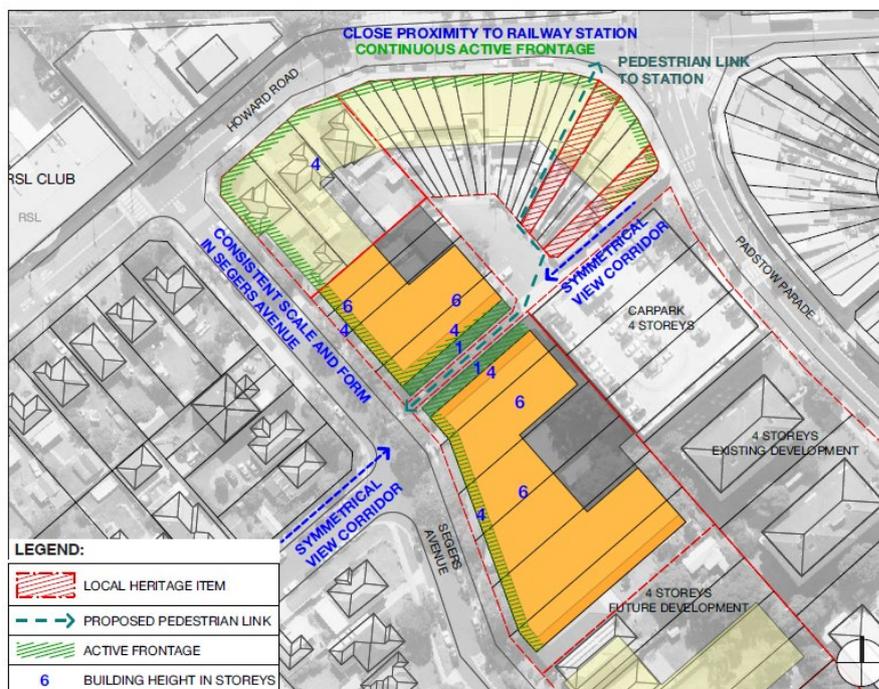
Within the business zones, Council also applies a minimum lot width requirement to facilitate higher quality built form and urban design outcomes. In this regard, it is proposed to require a minimum 40 metre lot width at the front building line if development is to achieve the maximum floor space ratio. Otherwise a maximum 2:1 FSR would apply.

In relation to supporting infrastructure, the urban design peer review supports the proposed widening of the Council lane (known as the Padstow Pathway at 5C Segers Avenue) as it has the potential to link the Padstow Park Public School to the railway station with an attractive, active and largely car-free pedestrian link, subject to:

- Widening the lane from 3 metres to 6 metres at street level.
- Requiring continuous active retail frontages along the lane to provide pedestrian amenity and safety.
- Providing a pedestrian crossing (at the Gloucester Street intersection) to contribute to a safe journey from the school to the railway station.

Whilst Council's assessment findings support this proposal, the findings also identify the need for a Social Impact and Community Needs Assessment to investigate other local infrastructure needs arising from the proposal.

Figure 1: Recommended pedestrian link improvements



Source: Urban Design Peer Review, page 13

1.1.2 South District Plan

| | | Consistent | | | | | | | | | | | |
|--|----------------------|--|---------------------|------------------|---|-----|-------|---|-----------------|----------------------|--|-----------------------------------|------------|
| <p>Proponent's Submission: The proposal is broadly consistent with the Greater Sydney Commission's <i>South District Plan</i>, which calls for a Liveable, Productive and Sustainable city.</p> <p>Council's Assessment: The proposal is generally consistent with the South District Plan.</p> <p><u>Planning Priority S5: Providing housing supply, choice and affordability, with access to jobs and services and Planning Priority S6: Creating and renewing great places and respecting the District's heritage</u></p> <p>According to Planning Priorities S5 and S6, accommodating homes must be linked to good design outcomes and appropriate provisions for local infrastructure. Council is required to consider local amenity constraints while undertaking strategic planning to link the delivery of new housing with appropriate levels of infrastructure.</p> <p>The Planning Priorities identify Padstow as a local centre, and recommend a place-based planning approach to the potential development of the local centre provided it meets the key aspects of good design and the delivery of enabling infrastructure.</p> <p>Council commissioned an independent specialist to undertake an urban design peer review to determine whether the proposed building envelope is appropriate. The independent specialist reviewed the application and in a report dated March 2019, recommends the following changes to Council's built form controls (based on the proposed business zone for the site):</p> | | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> | | | | | | | | | | | |
| <table border="1"> <thead> <tr> <th>Built form controls</th> <th>Current controls</th> <th>Recommended controls (urban design peer review)</th> </tr> </thead> <tbody> <tr> <td>FSR</td> <td>0.5:1</td> <td>2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development</td> </tr> <tr> <td>Building height</td> <td>9 metres (2 storeys)</td> <td>23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building</td> </tr> <tr> <td>Street setback (western boundary)</td> <td>5.5 metres</td> <td>3 metres (levels 1–4) and 6 metres (levels 5–6)</td> </tr> </tbody> </table> | | | Built form controls | Current controls | Recommended controls (urban design peer review) | FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development | Building height | 9 metres (2 storeys) | 23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building | Street setback (western boundary) | 5.5 metres |
| Built form controls | Current controls | Recommended controls (urban design peer review) | | | | | | | | | | | |
| FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development | | | | | | | | | | | |
| Building height | 9 metres (2 storeys) | 23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building | | | | | | | | | | | |
| Street setback (western boundary) | 5.5 metres | 3 metres (levels 1–4) and 6 metres (levels 5–6) | | | | | | | | | | | |

| | | |
|---|--------------------------------------|--|
| Side setback (northern and southern boundaries) | 0.9 metre | Nil setback (northern boundary) and 6–9 metres (southern boundary) |
| Rear setback (eastern boundary) | Determined by the private open space | 3–6 metres |
| Open space | 80m ² private open space | The site allows for some communal open space in the central courtyards. Business zones may have less communal open space if there is good access to public space. Carl Little Reserve and Clarke Reserve are in close proximity to the site. There is no need for rooftop communal open space, as there is sufficient communal open space in both courtyards, with the southern lot offering ample space for diverse activities. |

Should Council decide to proceed with a planning proposal, the planning proposal would implement the recommendations of the urban design peer review.

Within the business zones, Council also applies a minimum lot width requirement to facilitate higher quality built form and urban design outcomes. In this regard, it is proposed to require a minimum 40 metre lot width at the front building line if development is to achieve the maximum floor space ratio. Otherwise a maximum 2:1 FSR would apply.

In relation to supporting infrastructure, the urban design peer review supports the proposed widening of the Council lane (known as the Padstow Pathway at 5C Segers Avenue), subject to:

- Widening the lane from 3 metres to 6 metres at street level.
- Requiring continuous active retail frontages along the lane to provide pedestrian amenity and safety.
- Providing a pedestrian crossing (at the Gloucester Street intersection) to contribute to a safe journey from the school to the railway station.

Whilst Council’s assessment findings support this proposal, the findings also identify the need for a Social Impact and Community Needs Assessment to investigate other social infrastructure needs arising from the proposal.

1.2 Is the proposal consistent with a relevant local strategy that has been endorsed by the Department?

1.2.1 South East Local Area Plan

| | Consistent |
|--|---|
| <p>Proponent's Submission: This planning proposal seeks amendments to planning controls as follows:</p> <ul style="list-style-type: none"> • Land use zone as per 2016 Planning Proposal: B2 Local Centre. • Height of buildings as per original LAP: Q2 – 24 metres (6 storeys). • Floor space ratio as per 2016 Planning Proposal: U – 2.5:1. <p>The Padstow Town Centre is divided into Northern and Southern Commercial Cores, Residential Frame and Terrace Housing Precinct under the Bankstown South East LAP (2016). The subject site is located in the Residential Frame, at the edge of the Southern Commercial Core. This Planning Proposal seeks to extend the Southern Commercial Core to the subject site, achieving the Desired Precinct Character of both the Residential Frame and Southern Commercial Core</p> <p>In response to the 2016 Gateway determination that the variations to the LAP be disregarded due to lack of planning evidence, this planning proposal includes the following strategic studies and reports which provide the required planning evidence/statement of reasons to support the planning controls:</p> <ul style="list-style-type: none"> • Urban Design Report prepared by Smith & Tzannes Architects; • Economic Impact Assessment prepared by Hill PDA; and • Traffic Impact Assessment prepared by PDC Consultants. <p>Council's Assessment At the Extraordinary Meeting of 11 May 2016, the former Bankstown City Council adopted the South East Local Area Plan. The intended outcomes of the South East Local Area Plan are to set out the vision and spatial context for the local area, specify the best ways to accommodate residential and employment growth to 2031 and outline the delivery of supporting infrastructure, facilities and open space.</p> <p><u>Local Area Plan–Desired character</u></p> <p>According to Action L2, the site forms part of the Padstow Village Centre. The desired character reads:</p> <p><i>The Padstow Village Centre will continue to function as a successful and bustling centre that is commercially viable, well designed, reflecting the unique characteristics of the place, and recognised by</i></p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |

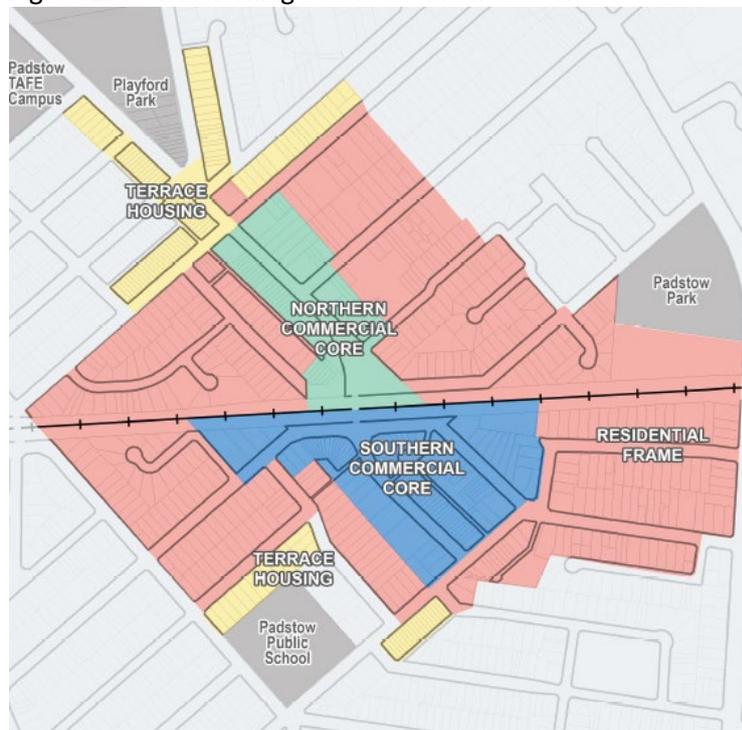
the community as one of the twin ‘hearts’ of the local area alongside the Revesby Village Centre.

Carl Little Reserve is the central point from which the village centre radiates, an enlivened mixed use destination that meets the needs of the growing community and is a catalyst for investment. Carl Little Reserve will be home to a modern multi-purpose community facility and civic space, a place for people to come together for events and social activities.

The Southern Commercial Core precinct is the local retail magnet with the anchor supermarket. Active street frontages along the main streets (Howard Road, Padstow Parade and Cahors Road) will create a vibrant streetscape where there is day and evening activity, and where shops and restaurants will stay open longer. The streets will be a place where cars travel slowly, making it easier to cross the street and creating a pleasant place to walk, sit and talk. The traditional terrace shops and historic shopfronts will continue to reflect the unique characteristics of the place.

Low and medium-rise buildings at appropriate locations will create a sense of enclosure, human scale, order, comfort and enjoyment for people walking in the small village centre. Leafy streets will connect people to the low-rise liveable neighbourhoods and provide a stunning platform from which to journey into the village centre.

Figure 2: Padstow Village Centre – Precinct Plan



Source: South East Local Area Plan, page 69

Local Area Plan–Actions

To achieve the desired character, Action L2 proposed to rezone the site to Zone R4 High Density Residential (6 storeys / 1.5:1 FSR). The intended outcome is to allow medium–rise living choices within a short walking distance of the commercial core and local services.

However at the Ordinary Meeting of 24 July 2018, Council resolved not to proceed with a planning proposal to implement the South East Local Area Plan. On this basis, the proponent submitted an application to rezone the site to Zone B2 Local Centre (6 storeys / 2.5:1 FSR).

Council’s Assessment of Application (proposed business zone)

Council commissioned an independent specialist to undertake an economic impact peer review to determine whether the proposed business zone is appropriate. The review considered key policies such as the Greater Sydney Region Plan, South District Plan, State Environmental Planning Policies and Ministerial Directions. The review concludes that the proposed B2 Local Centre business zone is considered appropriate.

Council’s Assessment of Application (proposed building envelope)

Council commissioned an independent specialist to undertake an urban design peer review to determine whether the proposed building envelope is appropriate. The review considered key policies such as the Greater Sydney Region Plan, South District Plan, State Environmental Planning Policies and Ministerial Directions.

In relation to local context, the urban design peer review recommends *‘that the properties within the block defined by Padstow Parade, Howard Road, Segers Avenue and Faraday Road have a building height of 4 storeys as a consistent scale, with additional height to 6 storeys on 1–17 Segers Avenue’* (Urban Design Peer Review, page 13). To address the inconsistencies in planning controls with adjoining and surrounding sites, a building height review of the remainder of the block would occur as part of the Comprehensive LEP Review process.

Figure 3: Recommended building height changes within the block defined by Padstow Parade, Howard Road, Segers Avenue and Faraday Road in Padstow



Source: Urban Design Peer Review, page 25

1.3 Is the proposal responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

| | Complies |
|--|----------|
| <p>Proponent’s Submission: The need to amend planning controls to respond to change in circumstances was identified in the original South East LAP and subsequent 2016 Planning Proposal. This Planning Proposal is broadly consistent with the intent of the LAP, with the exception of proposed land use zoning and FSR which are justified by supporting strategies and reports.</p> <p>Council’s Assessment: The proposal does not respond to a change in circumstances.</p> | No |

1.4 Does the proposal have regard to the natural environment (including known significant environmental values, resources or hazards)?

| | Complies |
|---|----------|
| <p>Proponent’s Submission: Under existing conditions, the subject site:</p> <ul style="list-style-type: none"> • Has suburban character with minimal vegetation which is unlikely to have significant environmental value; • Per Canterbury-Bankstown Council mapping, is not impacted by flooding or bushfire; • Is unlikely to be impacted by contamination due to: <ul style="list-style-type: none"> — The site having continuous residential use since urban development in the 1940s-50s; and — No hazardous uses within the locality. | Yes |

A portion of the subject site (1-5 Segers Avenue and rear of 7 and 9 Segers Avenue) is impacted by Class 5 Acid Sulfate Soils. It is expected that if any land capability issues associated with Acid Sulfate Soils (or otherwise) arise, these would be resolved in accordance with the requirements of SEPP 55.

Council's Assessment: The site is partially affected by acid sulfate soils (Class 5). Should Council decide to proceed with a planning proposal, the development application stage would consider this matter.

1.5 Does the proposal have regard to the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to a proposal?

| | Complies |
|---|---|
| <p>Proponent's Submission: The Planning Proposal enables redevelopment along Segers Avenue in accordance with the intent of the LAP. This, in addition to the eventual implementation of broader changes to the Bankstown LAP 2015 will enable uplift in the Padstow Town Centre as desired under the LAP.</p> <p>Council's Assessment: In relation to local context:</p> <ul style="list-style-type: none"> • In relation to the proposed zone, the economic impact peer review concludes that the proposed B2 Local Centre business zone is considered appropriate. • In relation to the proposed building envelope, the urban design peer review recommends <i>'that the properties within the block defined by Padstow Parade, Howard Road, Segers Avenue and Faraday Road have a building height of 4 storeys as a consistent scale, with additional height to 6 storeys on 1-17 Segers Avenue'</i> (Urban Design Peer Review, page 13). To address the inconsistencies in planning controls with adjoining and surrounding sites, a building height review of the remainder of the block would occur as part of the Comprehensive LEP Review process. | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |

1.6 Does the proposal have regard to the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?

| | Complies |
|---|--|
| <p>Proponent's Submission: The Traffic Impact Assessment prepared by PDC Consultants identified that the surrounding road network has adequate capacity to accommodate the additional vehicular traffic arising from potential development enabled by the Planning Proposal and that no additional infrastructure upgrades are required.</p> | <p>Yes, subject to implementing the recommendations of the urban design and traffic peer reviews</p> |

No additional embellishment works to Carl Little Reserve are required on the grounds that the subject site is within 200 metres of the reserve (approximately 165 metres measured from laneway at rear boundary), satisfying Planning Priority S16 of the South District Plan. Furthermore, the delivery of the widened (up to 12.5 metre-wide) laneway in place of the existing 2.6 metre-wide laneway can be achieved without VPA. If Council is of the mind, any necessary additional embellishment works desired by Council can be enforced through Conditions of Consent applied to the eventual Development Application enabled by this Planning Proposal.

Council's Assessment: In relation to infrastructure provision, the urban design peer review supports the proposed widening of the Council lane (known as the Padstow Pathway at 5C Segers Avenue) as it has the potential to link the Padstow Park Public School to the railway station with an attractive, active and largely car-free pedestrian link, subject to:

- Widening the lane from 3 metres to 6 metres at street level.
- Requiring continuous active retail frontages along the lane to provide pedestrian amenity and safety.
- Providing a pedestrian crossing (at the Gloucester Street intersection) to contribute to a safe journey from the school to the railway station.

Council's assessment findings also identify the need to:

- Prepare a Social Impact and Community Needs Assessment to investigate local infrastructure needs arising from the proposal.
- Clarify some data inconsistencies in the application's Traffic Impact Assessment to better quantify the impacts on intersections and surrounding road network.

Should Council decide to proceed with a planning proposal, the planning proposal would incorporate the recommendations of the urban design and traffic peer reviews to address the above issues.

2. Planning Proposals–Justification Matters

Section 2 assesses the proposal based on the justification matters as outlined in the Department of Planning & Environment's publication *A Guide to Preparing Planning Proposals*. The intended outcome is to demonstrate whether there is justification for a proposal to proceed to the Gateway.

2.1 Is the planning proposal a result of any strategic study or report?

| | Complies |
|---|----------|
| Proponent's Submission: Planning controls proposed under this Planning Proposal (the 2018 Planning Proposal) are in accordance | No |

with the 2016 Planning Proposal submitted to Gateway as a variation to the LAP planning controls. However, as part of its determination to implement the 2016 Planning Proposal, the variation (and other variations) was excluded on the grounds that it was “*not supported by planning evidence or a statement of reasons*” (NSW DoPE 2017, Gateway Determination).

Therefore, this Planning Proposal is in response to the following strategic studies and reports which provide the required planning evidence/statement of reasons to support the planning controls:

- Urban Design Report prepared by Smith & Tzannes Architects;
- Economic Impact Assessment prepared by Hill PDA; and
- Traffic Impact Assessment prepared by PDC Consultants.

Council’s Assessment: Whilst the objective to allow medium–rise living choices within a short walking distance of the commercial core and local services is consistent with the South East Local Area Plan, the proposal to rezone the site to Zone B2 Local Centre (6 storeys / 2.5:1 FSR) is not the result of a strategic study.

2.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

| | Complies |
|---|----------|
| <p>Proponent’s Submission: Amendment to planning controls is the best means of achieving the intended outcomes of this Planning Proposal.</p> <p>Council’s Assessment: The intended outcomes of the proposal are to rezone the site and to increase the building envelope controls. The proposal to amend the Local Environmental Plan via the planning proposal is the most appropriate method for achieving the intended outcome.</p> | Yes |

2.3 Is the planning proposal consistent with the objectives and actions of the applicable regional, subregional or district plan or strategy (including any exhibited draft plans or strategies)?

2.3.1 Greater Sydney Region Plan (A Metropolis of Three Cities)

| | Consistent |
|---|--|
| <p>Proponent’s Submission: Refer to Section 1.1 of this assessment.</p> <p>Council’s Assessment: The proposal is generally consistent with the Greater Sydney Region Plan for the reasons outlined in Section 1.1 of this assessment.</p> | Yes, subject to implementing the recommendations of the urban design peer review |

2.3.2 South District Plan

| | Consistent |
|--|---|
| <p>Proponent's Submission: Refer to Section 1.1 of this attachment.</p> <p>Council's Assessment: The proposal is generally consistent with the South District Plan for the reasons outlined in Section 1.1 of this assessment.</p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |

2.4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

2.4.1 CBCity 2028

| | Consistent |
|---|---|
| <p>Proponent's Submission: No comment.</p> <p>Council's Assessment: The vision of Council's Community Plan 'CBCity 2028' is to build a city that is <i>'thriving, dynamic and real'</i>. The 'Liveable & Distinctive' Direction will achieve this by promoting a well-designed city that offers housing diversity. 'Prosperous & Innovative' direction intends to achieve the vision by providing opportunities for economic and employment growth.</p> <p>Council's assessment findings indicate that quality design and adequate infrastructure provision are critical if the proposal is to justify a higher FSR on the site.</p> <p>Should Council decide to proceed with a planning proposal, the planning proposal would incorporate the recommendations of the urban design peer review to address the above issues.</p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |

2.4.2 South East Local Area Plan

| | Consistent |
|---|---|
| <p>Proponent's Submission: Refer to Section 1.2 of this assessment.</p> <p>Council's Assessment: Refer to Section 1.2 of this assessment.</p> <p>Council's assessment findings indicate that quality design and adequate infrastructure provision are critical if the proposal is to justify a higher FSR on the site.</p> <p>Should Council decide to proceed with a planning proposal, the planning proposal would incorporate the recommendations of the urban design peer review to address the above issues.</p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |

2.5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

| | | | Consistent |
|--|--------------------------------------|--|---|
| <p>State Environment Planning Policy No. 65—Design Quality of Residential Apartment Development</p> <p>Proponent’s Submission: The Concept Proposal prepared by Ross Howieson Architects has been designed in accordance the Design Criteria and Guidance set out in the Apartment Design Guide, as enabled by SEPP 65. The proposal is assessed against the SEPP 65 Design Quality Principles in the Urban Design Report prepared by Smith & Tzannes Architects forming part of this application.</p> <p>Council’s Assessment: State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development), Apartment Design Guide and NSW Government Architect’s Better Placed Policy require the proposal to be of a good design standard.</p> <p>Council commissioned an independent specialist to undertake an urban design peer review to determine whether the proposed building envelope is appropriate. The independent specialist reviewed the application and in a report dated March 2019, recommends the following changes to Council’s built form controls (based on the proposed business zone for the site):</p> | | | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |
| Built form controls | Current controls | Recommended controls (urban design peer review) | |
| FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development | |
| Building height | 9 metres (2 storeys) | 23 metres (six storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building | |
| Street setback (western boundary) | 5.5 metres | 3 metres (levels 1–4) and 6 metres (levels 5–6) | |
| Side setback (northern and southern boundaries) | 0.9 metre | Nil setback (northern boundary) and 6–9 metres (southern boundary) | |
| Rear setback (eastern boundary) | Determined by the private open space | 3–6 metres | |

| | | | |
|---|---|--|--|
| Open space | 80m ² private open space | The site allows for some communal open space in the central courtyards. Business zones may have less communal open space if there is good access to public space. Carl Little Reserve and Clarke Reserve are in close proximity to the site. There is no need for rooftop communal open space, as there is sufficient communal open space in both courtyards, with the southern lot offering ample space for diverse activities. | |
| <p>Should Council decide to proceed with a planning proposal, the planning proposal would implement the recommendations of the urban design peer review.</p> <p>Within the business zones, Council also applies a minimum lot width requirement to facilitate higher quality built form and urban design outcomes. In this regard, it is proposed to require a minimum 40 metre lot width at the front building line if development is to achieve the maximum floor space ratio. Otherwise a maximum 2:1 FSR would apply.</p> <p>In relation to local context, the urban design peer review recommends <i>'that the properties within the block defined by Padstow Parade, Howard Road, Segers Avenue and Faraday Road have a building height of 4 storeys as a consistent scale, with additional height to 6 storeys on 1–17 Segers Avenue'</i> (Urban Design Peer Review, page 13). To address the inconsistencies in planning controls with adjoining and surrounding sites, a building height review of the remainder of the block would occur as part of the Comprehensive LEP Review process.</p> | | | |

2.6 Is the planning proposal consistent with applicable Ministerial Directions?

| | Consistent |
|---|------------|
| <p>Direction 1.1–Business and Industrial Zones</p> <p>Proponent's Submission: The Planning Proposal enables the development of the Concept Proposal prepared by Ross Howieson Architects, incorporating 2,095m² of retail and 400m² of commercial floor space which, per Economic Impact Assessment (Hill PDA 2018), would create 118 new jobs. The Planning Proposal creates new employment land. Per the Economic Impact Assessment (Hill PDA 2018), the impact of the retail and commercial component of the proposal on surrounding centres <i>"would be minimal and absorbed quickly over the coming years"</i>.</p> | Yes |

| <p>Council's Assessment: An objective of this direction is to encourage employment growth in suitable locations.</p> <p>Council commissioned an independent specialist to undertake an economic impact peer review to determine whether the proposed business zone is appropriate. The review concludes that the proposed B2 Local Centre business zone is considered appropriate.</p> | | | | | | | | | | | | | | | | |
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| <p>Direction 3.1–Residential Zones</p> <p>Proponent's Submission: The Planning Proposal enables the development of the Concept Proposal prepared by Ross Howieson Architects, incorporating 143 additional residential apartments, contributing to housing supply, choice and affordability within the town centre. The Traffic Impact Assessment prepared by PDC Consultants identified that the surrounding road network has adequate capacity to accommodate the additional vehicular traffic arising from potential development enabled by the Planning Proposal and that no additional infrastructure upgrades are required.</p> <p>Council's Assessment: The objectives of this direction are to encourage a variety and choice of housing types, and to make efficient use of existing infrastructure. This direction applies to any zone in which significant residential development is permitted or proposed to be permitted. Clause 4(d) of this direction requires proposals to demonstrate the proposed housing are of a good design standard.</p> <p>Council commissioned an independent specialist to undertake an urban design peer review to determine whether the proposed building envelope is appropriate. The independent specialist reviewed the application and in a report dated March 2019, recommends the following changes to Council's built form controls (based on the proposed business zone for the site):</p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> | | | | | | | | | | | | | | | |
| <table border="1"> <thead> <tr> <th>Built form controls</th> <th>Current controls</th> <th>Recommended controls (urban design peer review)</th> </tr> </thead> <tbody> <tr> <td>FSR</td> <td>0.5:1</td> <td>2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development</td> </tr> <tr> <td>Building height</td> <td>9 metres (2 storeys)</td> <td>23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building</td> </tr> <tr> <td>Street setback (western boundary)</td> <td>5.5 metres</td> <td>3 metres (levels 1–4) and 6 metres (levels 5–6)</td> </tr> <tr> <td>Side setback (northern)</td> <td>0.9 metre</td> <td>Nil setback (northern boundary) and 6–9 metres (southern boundary)</td> </tr> </tbody> </table> | Built form controls | Current controls | Recommended controls (urban design peer review) | FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development | Building height | 9 metres (2 storeys) | 23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building | Street setback (western boundary) | 5.5 metres | 3 metres (levels 1–4) and 6 metres (levels 5–6) | Side setback (northern) | 0.9 metre | Nil setback (northern boundary) and 6–9 metres (southern boundary) | |
| Built form controls | Current controls | Recommended controls (urban design peer review) | | | | | | | | | | | | | | |
| FSR | 0.5:1 | 2.5:1, including a minimum 0.5:1 FSR for the purposes of commercial development | | | | | | | | | | | | | | |
| Building height | 9 metres (2 storeys) | 23 metres (6 storeys), with a requirement that any part of the building within 2 metres of the height limit is solely for the purposes of equipment servicing the building | | | | | | | | | | | | | | |
| Street setback (western boundary) | 5.5 metres | 3 metres (levels 1–4) and 6 metres (levels 5–6) | | | | | | | | | | | | | | |
| Side setback (northern) | 0.9 metre | Nil setback (northern boundary) and 6–9 metres (southern boundary) | | | | | | | | | | | | | | |

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| and southern boundaries) | | | |
| Rear setback (eastern boundary) | Determined by the private open space | 3–6 metres | |
| Open space | 80m ² private open space | The site allows for some communal open space in the central courtyards. Business zones may have less communal open space if there is good access to public space. Carl Little Reserve and Clarke Reserve are in close proximity to the site. There is no need for rooftop communal open space, as there is sufficient communal open space in both courtyards, with the southern lot offering ample space for diverse activities. | |
| <p>Should Council decide to proceed with a planning proposal, the planning proposal would implement the recommendations of the urban design peer review.</p> <p>Within the business zones, Council also applies a minimum lot width requirement to facilitate higher quality built form and urban design outcomes. In this regard, it is proposed to require a minimum 40 metre lot width at the front building line if development is to achieve the maximum floor space ratio. Otherwise a maximum 2:1 FSR would apply.</p> | | | |

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| <p>Direction 3.4–Integrating Land Use and Transport</p> <p>Proponent’s Submission: The Planning Proposal enables the development of the Concept Proposal prepared by Ross Howieson Architects which incorporates a widened (up to 12.5 metres) laneway in place of the existing 2.6 metre-wide laneway between Segers Avenue and Padstow Parade. The widened laneway will improve pedestrian access between jobs, services and public transport in Padstow Town Centre and housing in residential areas to the south and west.</p> <p>The Planning Proposal enables the development of the Concept Proposal prepared by Ross Howieson Architects which incorporates 2,095m² of retail space and 400m² of professional suites as well as 143 residential apartments, encouraging a “live-where-you-work” lifestyle which minimises the need for private vehicle travel.</p> | <p>Yes, subject to implementing the recommendations of the urban design peer review</p> |
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The Planning Proposal enables the development of the Concept Proposal prepared by Ross Howieson Architects which incorporates 143 residential apartments, providing an increase in local captive population in the order of 310 people (Hill PDA 2018, p. 28) a significant percentage of which are expected to take advantage of the site's proximity to public transport.

Council's Assessment: An objective of this direction is to improve access to housing, jobs and services by walking.

The urban design peer review supports the proposed widening of the Council lane (known as the Padstow Pathway at 5C Segers Avenue) as it has the potential to link the Padstow Park Public School to the railway station with an attractive, active and largely car-free pedestrian link, subject to:

- Widening the lane from 3 metres to 6 metres at street level.
- Requiring continuous active retail frontages along the lane to provide pedestrian amenity and safety.
- Providing a pedestrian crossing (at the Gloucester Street intersection) to contribute to a safe journey from the school to the railway station.

Council's assessment findings also identify the need to consider other possible infrastructure measures to integrate land use and transport. Should Council decide to proceed with a planning proposal, there is the need for a Social Impact and Community Needs Assessment to investigate other local infrastructure needs arising from the proposal.

Direction 4.1–Acid Sulfate Soils

Proponent's Submission: A portion of the subject site (1-5 Segers Avenue and rear of 7 and 9 Segers Avenue) is impacted by Class 5 Acid Sulfate Soils. It is expected that if any land capability issues associated with Acid Sulfate Soils (or otherwise) arise, these would be resolved in accordance with the requirements of SEPP 55.

Council's Assessment: The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

The site is partially affected by acid sulfate soils (Class 5). Due to its minor nature, the affectation can be satisfactorily addressed by applying the provisions of Bankstown Local Environmental Plan 2015 at the development application stage. According to clause 8, the

No

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| planning proposal may be inconsistent with the terms of this direction if the matter is of minor significance. | |
| <p>Direction 7.1–Implementation of A Plan for Growing Sydney</p> <p>Proponent’s Submission: No comment.</p> <p>Council’s Assessment: The proposal is consistent with the directions of the Metropolitan Plan, ‘A Plan for Growing Sydney’, namely Direction 2.1 to accelerate housing supply across Sydney. The proposal supports the growth of new housing near jobs and services.</p> | Yes |

2.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

| | Consistent |
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| <p>Proponent’s Submission: Under existing conditions, the subject site:</p> <ul style="list-style-type: none"> • Has suburban character with minimal vegetation which is unlikely to have significant environmental value; • Per Canterbury-Bankstown Council mapping, is not impacted by flooding or bushfire; • Is unlikely to be impacted by contamination due to: a. the site having continuous residential use since urban development in the 1940s-50s; and b. No hazardous uses within the locality. <p>Council’s Assessment: The proposal does not adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats.</p> | Yes |

2.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

| | Consistent |
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| <p>Proponent’s Submission: The likely environmental effects as a result of the planning proposal are limited to:</p> <ul style="list-style-type: none"> • Stormwater runoff, to be resolved at Development Application stage through: a. Landscape Plan maximising landscaped areas and deep soil planting to reduce runoff; and b. Stormwater Management Plan to ensure that the development has neutral or beneficial effect on water quality. • Overshadowing and overlooking, to be resolved at Development Application stage to mitigate impacts to private open space and north-facing windows associated with habitable rooms in neighbouring properties through: a. Manipulation of built form | Yes, subject to implementing the recommendations of the traffic peer review |

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| <p>envelope to maximise solar access; and b. Incorporation of louvres, screens and other privacy measures to deflect views away from neighbouring properties.</p> <p>Council's Assessment: Council assessment findings indicate the need to clarify some data inconsistencies in the application's Traffic Impact Assessment to better quantify the impacts on intersections and surrounding road network.</p> <p>Should Council decide to proceed with a planning proposal, the planning proposal would review the additional information prior to exhibition.</p> | |
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2.9 Has the planning proposal adequately addressed any social and economic effects?

| | Consistent |
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| <p>Proponent's Submission: The Planning Proposal will have a positive social and economic impact, enabling the development of the Concept Proposal prepared by Ross Howieson Architects which includes a number of public benefits.</p> <p>The first of these public benefits is an additional 143 residential apartments, contributing to housing mix, supply and affordability within the Padstow Town Centre. Per Economic Impact Assessment (Hill PDA 2018, p. 28), the 143 apartments will result in an additional 310 residents on top of the existing 32 within the subject site, contributing to the vitality and vibrancy of the Padstow Town Centre through total annual retail spend of \$4.34 million, of which 50-60% is expected to be within the town centre. Additionally, residents are expected to contribute to patronage of public transport services.</p> <p>The second public benefit arising from the Concept Proposal enabled by the Planning Proposal is an additional 2,095m² of retail space and 400m² of professional suites which, per the Economic Impact Assessment (Hill PDA 2018, Table 12, p. 27), would create 118 new jobs with each person filling those positions expected to contribute to a total of \$542,800 annual retail expenditure within and around the centre. Finally, the Planning Proposal enables the expansion of the existing 2.6 metre-wide laneway running from Segers Avenue and Padstow Parade between 5 and 7 Segers Avenue with a low safety level due to minimal lighting or opportunities for casual surveillance.</p> <p>Council's Assessment: The planning proposal adequately addresses social and economic effects for the reasons outlined in Section 1.1 of this assessment.</p> | Yes |

2.10 Is there adequate public infrastructure for the planning proposal?

| | Consistent |
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| <p>Proponent's Submission: The Traffic Impact Assessment prepared by PDC Consultants identified that the surrounding road network has adequate capacity to accommodate the additional vehicular traffic arising from potential development enabled by the Planning Proposal and that no additional infrastructure upgrades are required.</p> <p>No additional embellishment works to Carl Little Reserve are required on the grounds that the subject site is within 200 metres of the reserve (approximately 165 metres measured from laneway at rear boundary), satisfying Planning Priority S16 of the South District Plan. Furthermore, the delivery of the widened (up to 12.5 metre-wide) laneway in place of the existing 2.6 metre-wide laneway can be achieved without VPA.</p> <p>If Council is of the mind, any necessary additional embellishment works desired by Council can be enforced through Conditions of Consent applied to the eventual Development Application enabled by this Planning Proposal.</p> <p>Council's Assessment: In relation to infrastructure provision, the urban design peer review supports the proposed widening of the Council lane (known as the Padstow Pathway at 5C Segers Avenue) as it has the potential to link the Padstow Park Public School to the railway station with an attractive, active and largely car-free pedestrian link, subject to:</p> <ul style="list-style-type: none"> • Widening the lane from 3 metres to 6 metres at street level. • Requiring continuous active retail frontages along the lane to provide pedestrian amenity and safety. • Providing a pedestrian crossing (at the Gloucester Street intersection) to contribute to a safe journey from the school to the railway station. <p>Council's assessment findings also identify the need to:</p> <ul style="list-style-type: none"> • Prepare a Social Impact and Community Needs Assessment to investigate social infrastructure needs arising from the proposal. • Clarify some data inconsistencies in the application's Traffic Impact Assessment to better quantify the impacts on intersections and surrounding road network. <p>Should Council decide to proceed with a planning proposal, the planning proposal would incorporate the recommendations of the urban design and traffic peer reviews to address the above issues.</p> | <p>Yes, subject to implementing the recommendations of the urban design and traffic peer reviews</p> |

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| <p>An appropriate mechanism is also required to realise the infrastructure works in a timely manner. This would ordinarily involve a planning agreement to legally capture the public benefits. If a planning agreement is required, this would be subject to agreement by Council and would operate concurrently with the planning proposal.</p> | |
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2.11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

| | Complies |
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| <p>Proponent's Submission: Council, government agencies, businesses, community, adjoining properties and users or interest groups, where relevant, are encouraged to provide comment as part of the Planning Proposal process.</p> <p>Council's Assessment: The proposal has not been the subject of formal consultation with State and Commonwealth public authorities. This would be undertaken, should Council decide to proceed with a planning proposal.</p> | Yes |

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