



# AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

1 February 2021 - 6.00pm

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## ORDER OF BUSINESS

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### ORDER OF BUSINESS

### APOLOGIES AND DECLARATIONS

### CONFIRMATION OF MINUTES OF PREVIOUS MEETING

### REVESBY WARD

**1**      **26 and 28 Truro Parade, Padstow**

Demolition of existing structures and construction of a multi dwelling housing development comprising nine dwellings and strata title subdivision

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## Canterbury Bankstown Local Planning Panel - 01 February 2021

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<b>ITEM 1</b>	<b>26 and 28 Truro Parade, Padstow</b>
	<b>Demolition of existing structures and construction of a multi dwelling housing development comprising nine dwellings and strata title subdivision</b>
<b>FILE</b>	<b>DA-159/2019 – Revesby</b>
<b>ZONING</b>	<b>R2 Low Density ResidentialR2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>28 March 2019</b>
<b>APPLICANT</b>	<b>Monument Design Partnership</b>
<b>OWNERS</b>	<b>Salt Capital Pty Ltd</b>
<b>ESTIMATED VALUE</b>	<b>\$2,722,500.00</b>
<b>AUTHOR</b>	<b>Planning</b>

### **REPORT**

This matter is reported to Council's Local Planning Panel in response to the number of public submissions received. At the time of preparing this report, Council was in receipt of a total of 112 submissions from 41 authors.

Development Application No. DA-159/2019 proposes the demolition of existing structures occupying Nos 26 and 28 Truro Parade Padstow and construction of a multi dwelling housing development comprising nine dwellings. The development application has been assessed against the provisions contained within *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy No 55 – Remediation of Land*, *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*, *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, *Bankstown Local Environmental Plan 2015*, *Draft Canterbury Bankstown Local Environmental Plan 2020* and *Bankstown Development Control Plan 2015*. The application generally complies with the above legislation, with the exception of a variation to Clause 4.3(2B)(c)(ii) of BLEP 2015 which relates to maximum wall height and to Clause 7.1 of BDCP 2015 – Part B1 which relates to storey limit.

The application was initially notified for fourteen days and amended plans were subsequently re-notified on two occasions for fourteen days. During the notification periods a total of 112 submissions were received. The following concerns were raised in the submissions:

- Removal of well established, protected trees and fauna habitat
- Insufficient car parking spaces and the garages will be used for storage and not for car parking
- Bins – limited space
- 660L bins for the rear dwellings would require the garbage truck to reverse into the property – safety concerns
- Traffic congestion
- There are numerous DCP non-compliances
- Overdevelopment - each dwelling requires 300m<sup>2</sup> in accordance with the LEP
- The site does not comply with the frontage for dual occupancy development
- The 5.5m front building line is inconsistent with the street with most being >7m
- Brutalist façade is inconsistent with the streetscape
- Devaluation of property values
- Site is 900m from Padstow Train Station not within the required 800m for medium density housing
- Disruptions and increase personal, security and environmental risk due to scale of construction
- Water and sewerage management risks
- Overshadowing of properties to the north and south
- Adjoining properties to the south are having more solar panels installed in the coming weeks on the northern side of the roof which will be overshadowed
- No. 19 Truro Parade overshadows Nos. 28, 26 and 24 Truro Parade which is inconsistent with clause 2.14 of BDCP 2015
- Disruptions during the demolition and construction phase
- Increased noise
- Development out of character within the R2 Zone
- Narrow street – development should not be permitted
- Multi dwelling housing is now not permitted in the R2 Zone
- Two storey at the rear do not comply with the DCP and walls up to 8m in height will impact on the adjoining properties in terms of privacy
- The bin room at the rear of the site has swinging doors that interfere with the visitors car parking space
- Narrow driveway – resident disputes as the can't pass each other
- Conflict of interest
- Excessive or unnecessary excavation
- The development is inconsistent with the Medium Density Design Guide

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

The development as currently proposed provides for an acceptable outcome and is worthy for support based on a detailed merit assessment. It is recommended that the application be approved, subject to the conditions of consent attached to this report.

## **POLICY IMPACT**

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This matter has no direct policy implications.

## **FINANCIAL IMPACT**

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The matter will not result in any financial implications.

## **RECOMMENDATION**

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

## **ATTACHMENTS**

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- A. Assessment Report
- B. Conditions of Consent



## **DA-159/2019 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is known as 26 and 28 Truro Parade, Padstow and consists of two allotments identified as Lot 3 in DP 532390 and Lot Z in DP 420462 and has an area of 2744m<sup>2</sup>. The site is currently zoned R2 Low Density Residential.

This site has a frontage of 33.415m along Truro Parade to the west, is bounded by residential properties to the north and south, and the rear/eastern boundary adjoins an Ausgrid easement for transmission line and Salt Pan Creek.

The site is a regular allotment with a fall of approximately 8.5m from the front/west to the rear/east of the site and existing development on the site includes two residential cottages with ancillary structures including a swimming pool.

Surrounding development is primarily low density residential dwellings, with the occasional dual occupancy and multi dwelling housing development on the periphery. The site is located approximately 700m from Padstow Train Station.

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



Figure : Aerial of subject site in red. Source: NearMaps 2020

### **PROPOSED DEVELOPMENT**

The development application proposes the demolition of all existing structures on the site and construction of a multi dwelling housing development comprising nine dwellings.

## 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, draft environmental planning instruments, development control plans, codes and policies are relevant:

- State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment ('Deemed SEPP')
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX) 2004
- Bankstown Local Environmental Plan 2015 (BLEP 2015)
- Draft Canterbury Bankstown Local Environmental Plan 2020
- Bankstown Development Control Plan 2015 (BDCP 2015)
- Bankstown Section 94A Development Contributions Plan

### **SECTION 4.15 ASSESSMENT**

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

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

##### **Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (deemed SEPP)**

The site is located on land identified as being affected by *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment* (GMREP No. 2). The proposed works are consistent with the relevant planning principles outlined in Clause 8 of the GMREP No 2 and the proposal does not include any of the specific development types that have specific planning requirements as listed under the 'planning control table'.

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

A BASIX Certificate has been prepared in support of the application, which details the thermal, energy and water commitments associated with the development. The proposal satisfies the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and is supported in this instance.

##### **State Environmental Planning Policy (Infrastructure) 2007**

Clause 45 of *State Environmental Planning Policy (Infrastructure) 2007* requires proposed developments within 5 metres to an exposed overhead electricity power line to be referred to the relevant electricity supply authority. The review of this proposal has raised no objections subject to recommended conditions of consent.

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

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

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

It is understood the development site has a history of residential uses and the development application seeks to retain the use of the site for residential purposes. Council records do not suggest the site has been used for any purpose listed in Table 1 of '*Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land*' (1998) and a site inspection noted there to be no evidence of fill onsite or any indicators of potential contamination.

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

*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* applies to non-rural areas of the State, including the Canterbury-Bankstown LGA. While it is noted that there is the alleged illegal removal of several trees on the subject property (which is being actioned by Councils compliance team), any tree removal (legal or otherwise) will be offset by comprehensive replacement tree planting.

With regard to this development proposal, Council's Tree Management Officers have reviewed the proposal and raise no objection subject to the planting of an additional 21 trees through conditions of consent. The proposed development is consistent with the SEPP.

### Bankstown Local Environmental Plan 2015

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

- Clause 1.2 – Aims of Plan
- Clause 1.3 – Land to which Plan applies
- Clause 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 4.1B – Minimum Lot Sizes and Special Provisions for Certain Dwellings (now repealed)
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio

Clause 4.5 – Calculation of floor space ratio and site area  
 Clause 4.6 – Exceptions to development standards  
 Clause 5.9 – Preservation of Trees and Vegetation  
 Clause 6.1 – Acid sulfate soils  
 Clause 6.2 – Earthworks

An assessment of the development application revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015 with the exception of a non-compliance with the maximum wall height controls as provided in Clause 4.3(2B)(c)(ii). Refer to comments in the relevant section below.

### Clause 1.2 Aims of Plan

Clause 1.2 of BLEP 2015 reads as follows:

- (a) to manage growth in a way that contributes to the sustainability of Bankstown, and recognises the needs and aspirations of the community,*
- (b) to protect and enhance the landform and vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Bankstown,*
- (c) to protect the natural, cultural and built heritage of Bankstown,*
- (d) to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (e) to minimise risk to the community in areas subject to environmental hazards by restricting development in sensitive areas,*
- (f) to provide a range of housing opportunities to cater for changing demographics and population needs,*
- (g) to provide a range of business and industrial opportunities to encourage local employment and economic growth,*
- (h) to provide a range of recreational and community service opportunities to meet the needs of residents of and visitors to Bankstown,*
- (i) to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,*
- (j) to concentrate intensive trip-generating activities in locations most accessible to rail transport to reduce car dependence and to limit the potential for additional traffic on the road network,*
- (k) to consider the cumulative impact of development on the natural environment and waterways and on the capacity of infrastructure and the road network,*
- (l) to enhance the quality of life and the social well-being and amenity of the community.*

An assessment of the development application reveals that the proposal is consistent with the Aims of Plan stipulated in Clause 1.2 of BLEP 2015.

### Clause 2.2 – Zoning of land to which Plan applies

The site is located on land zoned R2 Low Density Residential.

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

The Land Use Table sets out which development may be carried out in each zone. The proposed use is defined as multi dwelling housing which was permissible at the time that the application was lodged (28 March 2019). BLEP 2015, was amended 22 November 2019 with all clauses permitting multi dwelling housing development in Zone R2 Low Density Residential were repealed.

Moreover, the proposal is consistent with the objectives of the Zone R2 Low Density Residential, being:

- *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.*

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

Clause 4.1B(2)(b) of BLEP 2015 sets the minimum lot area and width of the lot at the front building line for multi dwelling housing development in R2 Low Density Residential zone. Compliance with these standards are summarised in the table below

Note: The reference to multi dwelling housing in the R2 Zone has now been repealed).

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Requirement</i>	<i>Multi dwelling housing and boarding houses</i>	<i>Zone R2 Low Density Residential</i>	<i>1,200m<sup>2</sup></i>	<i>20m</i>
<i>Comment</i>	<i>The proposal is a multi dwelling housing development.</i>	<i>The land use zone is R2 Low Density Residential</i>	<i>The site is 2744m<sup>2</sup> Complies.</i>	<i>The site has a width at the front building line of 33.415m  Complies.</i>

Clause 4.1B(5) of BLEP 2015 (now repealed) stated that “*development consent must not be granted to development for the purpose of multi dwelling housing on land in Zone R2 Low Density Residential unless the site area per dwelling (excluding the area of access handles or rights of way for access) is at least 300 square metres.*”

The site has an area of area of 2744m<sup>2</sup> (including the driveway) this equates to an area of 304.88m<sup>2</sup> per dwelling. The development therefore complies with this clause.

### Clause 4.3 – Height of buildings

The Height of Buildings Map prescribes a maximum building height of 9m on the subject allotment. The proposal seeks a maximum building height of 7.3m for the front dwellings and 6m for the rear dwellings and therefore satisfies this requirement.

Further, Clause 4.3(2B) provides as follows:

(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.**

It is noted that the rear dwellings do not strictly comply with Clause 4.3(2B)(c)(ii) as in some places the wall heights exceed 3m. The end two dwellings (units 5 and 9) propose a gable end wall midway along the roofline. If additional roof were added (as shown in orange below) the wall would be hidden and would then technically comply with the 3m wall height control. It is not considered necessary or beneficial to hide the gable end wall (by additional roof) to achieve compliance as it would result in a bulkier roofline.



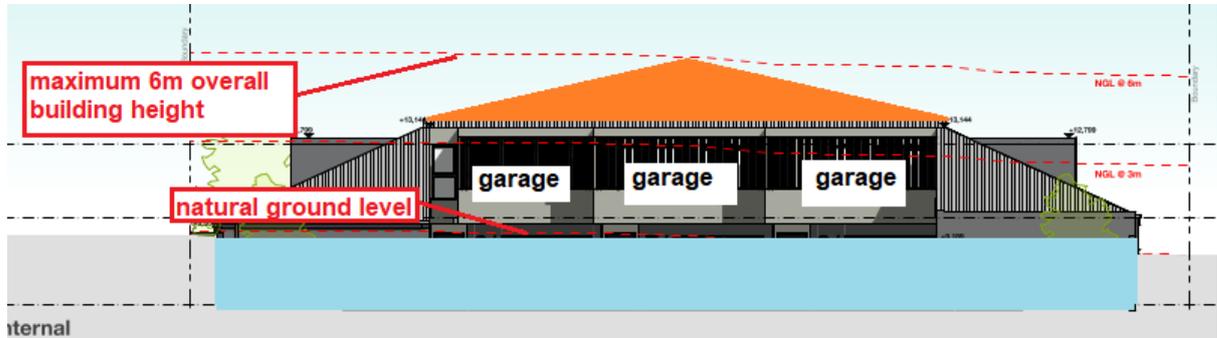
The roof could be extended as shown in orange however this would unnecessarily add bulk to the roofline

With regard to the central three dwellings along the rear (units 6, 7 and 8) the wall height exceeds 3m with a maximum wall height of 3.6m. See the image below.



West elevation of rear dwellings (facing centrally to the development)

The minor non-compliance of 600mm will not be visibly apparent and although it is technically the upper floor, this non-compliant portion is only one storey above natural ground level. Refer to the same image below, which has been modified to delete the excavated lower level and shows a compliant hipped roof in orange.



West elevation of rear dwellings (facing centrally to the development)

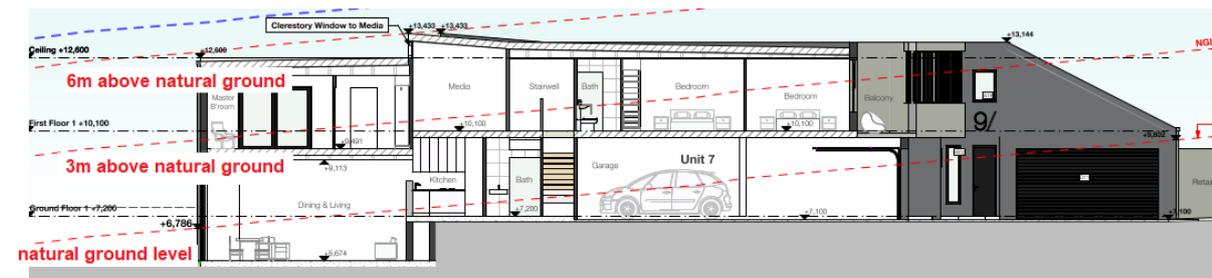
If the excavated lower floor were deleted altogether, the building could be amended to achieve compliance by shifting the upper level down to have a maximum wall height of 3m. However, this part of the building would then be associated with carparking (garages) and would unnecessarily restrict the remainder of the building footprint available for floor space and the internal amenity and design of the dwellings would be significantly reduced and compromised. In this regard, there is an electricity transmission easement at the rear of the property already restricting the buildable portion of the site.

As shown in the images above, this elevation with the non-compliant wall height of 3.6m is less visibly intrusive than would be a design that proposed a single level with a hipped roof.

Lastly, with regard to the rear elevation that faces Salt Pan Creek it is noted that the central three dwellings all have non-compliant wall heights of 6m. These dwellings face Salt Pan Creek, and the double storey design while not being visible from the adjoining residential properties maximises scenic views of the watercourse. See images below:



Rear east elevation facing Salt Pan Creek



Section through unit 7

The wall height variations do not result in any unfavourable impacts in terms of overshadowing, bulk and scale or visual privacy issues between the development and adjoining properties. The development suitably responds to the opportunities of the site (views to the water) having regard to the fall of the land (to the ease) whilst not compromising the amenity of the adjoining and nearby residents.

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

Clause 4.6 of BLEP 2015 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are listed within BLEP 2015 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.*

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

The variation to the maximum wall height requirement is considered worthy of approval with consideration of the arguments presented in the applicants Clause 4.6 submission, attached to this report. The applicants' written submission adequately demonstrates:

- (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.

Further, the proposed development is considered to be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the subject zone. Please refer to the following extract from the Applicant's Clause 4.6 submission.

“

**1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6(3)(a))**

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The common methods of establishing compliance with a development standard is unreasonable or unnecessary are examined below. This request relies on methods 1 and 2, noted below.

**1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard**

2.1.1 The context for assessment:

**In *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 it was noted the proper regulation of density [or by inference, any development standard] is a means to achieve the specific stated goals.**

Further clarity is provided by Preston CJ in his judgment delivered in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [87] (applied by the Court of Appeal in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at [189]):

***“Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. ...Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.”***

This precedent means that an application does not have to have no impact or less impact, but achieve the intent of the relevant objective.

2.1.2 Justification:

The Clause 4.3 objectives for height are:

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

Comment on Objective a):

The slope of the land ensures that the two-storey form is not readily visible from the street. Most of the homes in the area (on sloping sites) adopt a two storey form at the lower part of the site due to the natural fall of the land. There are numerous examples of two storey homes facing the reserve (such as Current Street just south of Truro Street). The character of the homes is in keeping with the zone and locality.

It is relevant that the specific control being breached is for the wall height of the rear dwellings only (as per sub-clause 2B). The wall height control doesn't have a specific objective of its own. It can be construed that it would relate to minimising loss of privacy and light at the rear of sites as well as ensuring that buildings are not visually intrusive.

The single-storey end dwellings of the five rear dwellings meets this objective. Further, there are no properties behind this site which also mitigates any impacts.

It is appropriate to revisit the legal framework for satisfying "consistency" with the objectives of the standard. Consistency has been interpreted to mean "compatible" or "capable of existing together in harmony" (Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Consistency is less onerous than that of achievement.

Therefore, the objective of "minimizing" impact has been achieved. The development "exists in harmony" with the objectives of the standard and is therefore "compatible". The proposal is consistent with objective (a).

Comment on Objective b):

The bulk is consistent with other homes around. It is the rear dwellings that breach only, as they are subject to a single-storey height limit. Refer to justification at Section 2.1 of this report. The proposal is consistent with objective (b).

Comment on Objective c):

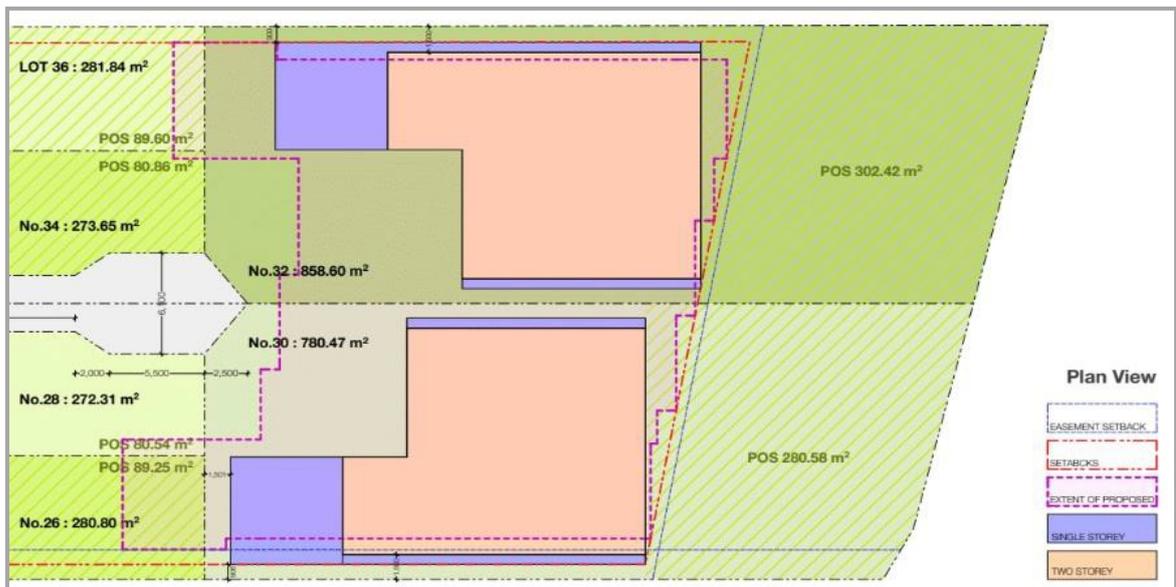
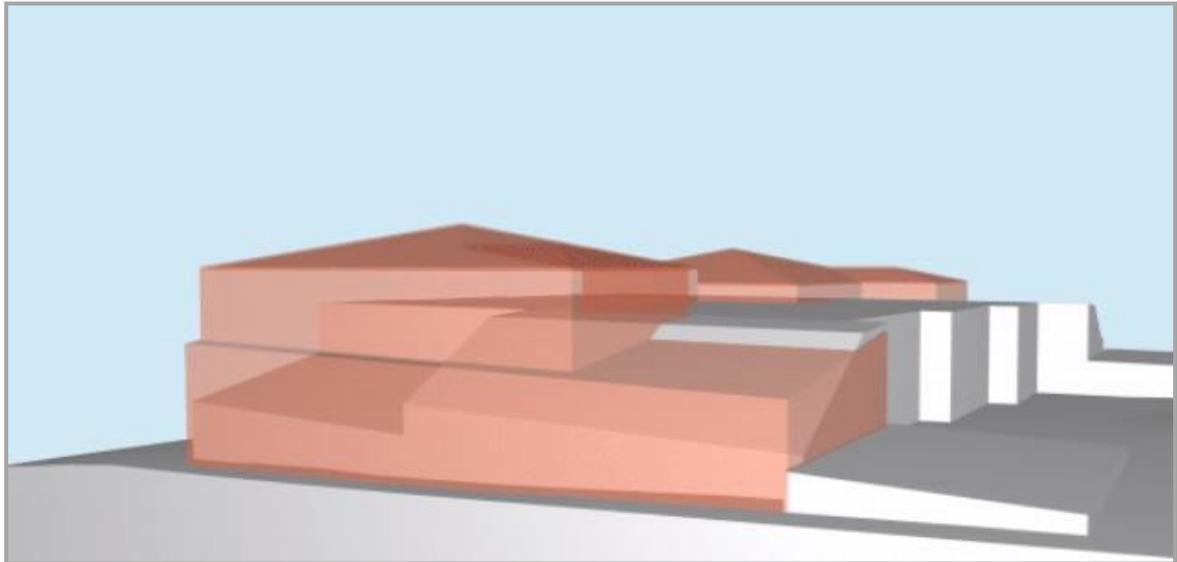
The site adjoins a reserve, however it is not transitional in the usual sense of changing densities. The presentation of a two-storey form to a reserve is desirable in terms of passive surveillance and appearance. It looks far better than a terracotta tile roof poking above a Colorbond fence, as it were. The proposal is consistent with objective (c).

Comment on Objective d):

N/A. The site is not a designated focal point for higher buildings.

General Justification around Compatibility and Character:

The plans include an alternate development scheme for a four-lot subdivision with two battle-axe blocks at the rear of the site. This is a possible scheme that complies with LEP and DCP control and could be approved on the subject site. This is examined as part of this Clause 4.6 justification. This scheme allows for two storey homes on the rear lots. This would place a much larger building form adjacent to the northern and southern boundaries at the rear of the site. These complying buildings have been overlayed onto the plans and elevations, demonstrating that the current proposal has less impact than what could exist for a complying subdivision and dwelling house (shown in pink below).



Relevantly, the rear lots in the above subdivision comply easily with key DCP controls contained in Part B1 – Section 2 – Dwelling Houses. Key attributes of the rear sites in this subdivision scenario are:

- Each lot is well above the 450m<sup>2</sup> (excluding the axe-handle area); Each lot has a width of approximately 16.5m;
- The axe-handle is 3.5m wide with appropriate passing bays;
- No more than 4 battle-axe lots are required to achieve the subdivision;
- A building footprint of 15m x 10m is available within the two rear sites;
- Side setbacks of 900mm and 1.5m (for wall heights of 7m) are achievable for both sites;
- Private open space of 80m<sup>2</sup> with a 5m minimum width is readily achievable;
- Private open space can achieve the required sunlight;

The development scenario above could be approved and two large two-storey houses built on the rear sites. Such approvals would establish setbacks and walls heights, greater than those proposed in this multi-dwelling housing proposal. This demonstrates the site's capacity to accommodate larger building form towards the rear of the site.

Additionally, the DCP allows for a 5m setback to rear boundaries and 2m if there are no living room windows. This control alone shows that 'privacy' is a key driver behind the single-storey control for town houses at the rear of the site. This is because it is usual for projects to have several other residential homes situated around the rear of the site. In most situations, two-storey homes would conceivably look into five different rear yards and this control mitigates against this possibility. However, in this case there are no dwellings to the rear of the site. Furthermore, the site has an electricity easement to the rear, or eastern boundary. The distance from the rear boundary is 16.788m along the northern boundary and 13.659m along the southern boundary. This means that no buildings are located within about 15m of the rear boundary.

This demonstrates the performance of the site in regard to the relationship between dwellings around the rear of the site. In support of the site's performance, the two relevant objectives for multi-dwelling housing in the DCP are set out below:

- (b) To ensure the building form and building design of multi dwelling housing provide appropriate amenity to residents in terms of private open space, access to sunlight and privacy.*
- (c) To ensure the building form and building design of multi dwelling housing do not adversely impact on the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.*

The proposed multi-dwelling housing design clearly performs better than the subdivision scenario in that it:

- Has no side facing living room windows;
- Presents only a 3m wall to each side boundary;
- Does not overlook the rear yards of the two neighbouring properties, but orientates views over the reserve.
- Centralises the two-storey built form ensuring no shadow impacts on neighbouring properties, in respect to a two-storey wall height.

Given the less-impactful relationship between buildings offered by this multi-dwelling housing proposal, it is unnecessary to strictly enforce a control when another fully-compliant proposal could be offered that resulted in a two storey-building at the same location. A subdivision such as that being modelled would have a potentially greater loss of general amenity on adjoining properties. In this proposal, the non-compliant wall heights are well away from the side boundaries and not visible from neighbouring properties. Given this, it is unnecessary to strictly enforce this control.

The clear aims of the wall-height control are to minimise impacts to rear and side neighbours. The presence of the subdivision permissibility, the absence of rear neighbours and the electricity easement all work together to dramatically mitigate against the impacts that this control seeks to manage. The fact that a complying scheme may have a greater impact, shows that this proposed multi-dwelling housing scheme is acceptable in the circumstance and strict enforcement is not necessary in that it doesn't result in a better planning outcome for the site.

**1.2 The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

Underlying objectives of all planning controls relate generally to: (1) enhancing amenity and (2) minimising impacts. The wall height breach is well away from any side boundary and not readily visible. The building form that presents to each neighbour is a single storey form with a roof attic. This accords with the intention of the clause. There are no residential sites located at the rear of the site.

The overall design concept has given careful consideration to the underlying objectives hence the way the building responds to the slope of the land and the adjoining sites and reserve. Strict compliance would not thwart the objectives, however it does restrict internal amenity, which is also implicit in any development standard. It would be overly harsh on a site capable of accommodating the proposed building forms, where the appearance of such buildings complies with the key controls when viewed by both neighbouring properties. The permissible subdivision scenario also demonstrates that a larger building form would be allowed on the site at the same location.

The principles raised in *Veloshin v Randwick City Council* [2007] NSWLEC 428 are relevant. This is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

**1.3 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.**

The standard has not been abandoned, however there are also other examples of two-storey buildings adjoining the reserve further to the south. Examples of these are located along Current Street and nearby streets.

**1.4 Compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

The zoning is appropriate.

**2 Are there sufficient environmental grounds to justify contravening the development standard? (Clause 4.6(3)(b))**

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**2.1 The nature of the variation to the control**

The control: 3m wall height for rear dwellings. The proposed variation:

- Units 5 and 9 propose a gable end roof form which has a wall height of 5.5m
- Western elevation of the rear dwellings has a wall height of 3.6m
- Eastern elevation of the rear dwellings has a wall height of 6.0m

**2.2 The environmental context**

The site has an area is 2744m<sup>2</sup>. Notably, the site falls approximately 9m from the street to the rear boundary, which backs onto the Salt Pan Creek Reserve. There are no rear neighbours towards the east.

The locality is dominated by one and two-storey buildings generally comprising single dwellings with some multi-dwelling housing in the vicinity. Views from adjoining sites are primarily towards the east over the reserve.

An electricity easement exists at the eastern end of the site which also will not be built upon. This serves to create generous rear setback to the reserve which are greater than sites that are not encumbered by such an easement.

The locality is quiet and traffic is of a domestic nature servicing homes in the area. There are no significant views towards the site from surrounding areas. Views over the reserve exist at the rear of the site. The proposed building complies with all setbacks and landscaping controls.

**2.3 Justification**

The end two dwellings (units 5 and 9) propose a gable end wall midway throughout the roofline, which has a wall height of 5.5m. If additional roof bulk were added to create a hip roof, the wall would be hidden and would technically comply with the 3m wall height control. It is not necessary or beneficial to hide the gable end wall by creating a more-bulkier roofline. On this basis, the variation reduces bulk and is justifiable.

The western elevation of the central three dwellings at the rear of the site (units 6, 7 and 8) adopts the wall height of 3.6m. This non-compliance of 600mm is reasonably minor and is not highly visible. While it is technically the upper floor, this wall is only one-storey above 'natural' ground level and has the appearance of a single-storey building form.

If the lower floor were deleted altogether, the building could be amended to achieve compliance. This would result in less internal amenity and unnecessarily restrict the building footprint available for floor space. This would apply a significant burden, particularly given the electricity transmission easement at the rear of the site also restricts the buildable portion of the site.

As shown in the images above, this elevation with the non-compliant wall height of 3.6m is less visibly intrusive than would be a design that proposed single level with a hipped roof.

Finally, the rear eastern elevation facing Salt Pan Creek adopts non-compliant wall heights of 6m for the central three dwellings. These dwellings adopt a double-storey design while not being visible from any adjoining residential property. This design maximises the scenic views of the watercourse. The wall height variations do not result in any unfavourable impacts in terms of overshadowing, bulk and scale or visual privacy issues between the development and adjoining properties.

Sufficient environmental planning grounds exist to justify varying the development standard.

#### **2.4 Consistency with the Act**

The Environmental Planning Grounds must, by their nature, be grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act)(including section 1.3 of the EPA Act);

As set out in Section 1.3, the objectives of the Act are:-

***"(a) to encourage:***

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) the protection, provision and co-ordination of communication and utility services,*
- (iv) the provision of land for public purposes,*
- (v) the provision and co-ordination of community services and facilities, and*
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) ecologically sustainable development, and*
- (viii) the provision and maintenance of affordable housing, and..."*

The proposed development is consistent with the provisions of orderly and economic development, environmental protection, health and safety, cultural heritage and a good built environment. This proposal will not hinder the objects of the Act.

The 'grounds' put forward as justification for the requested variation are within the subject matter, scope and purpose of the Act.

### **3 The proposed development be in the public interest**

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As set out in *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712, the proposed development will be in the public interest if 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.

#### **3.1 Objectives of the development standard**

Discussed in Section 2.1 of this report.

#### **3.2 Meeting the Objectives of the Zone**

The objectives of the R2 zone are:

- *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.*

Comments are provided for each objective below:

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

Achieved. The proposed housing type is in strong demand due to its affordability and smaller size.

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

N/A.

*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.*

N/A

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

The design offers a modern development on a large site backing onto a river reserve. Small housing products like this are affordable and highly sought after.

The design has sought to ensure compliant building and wall heights where they adjoin neighbouring properties, thereby containing the non-compliances within the site and towards the river reserve. This ensure no significant loss of amenity that warrants refusal.

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

The easement at the rear of the site assists in creating larger setbacks to the reserve, supporting a landscape characteristics.

The zone objectives are not compromised by the proposed non-compliances.”

#### **Clause 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. The floor space ratio map shows the maximum permitted floor space ratio as 0.5:1 on the subject site. The development complies with the maximum, by proposing a floor space ratio of 0.5:1.

#### **Clause 6.1 – Acid sulfate soils**

The development site is affected by Class 5 Acid Sulfate Soils. Further consideration would be required for works on Class 5 affected land within 500 metres of adjacent Class 1, 2, 3, or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. As the site and proposal do not fall into this category, an Acid Sulfate Soils Management Plan is therefore not required. The proposed development is satisfactory with regard to Clause 6.1 of the BLEP 2015.

#### **Clause 6.2 Earthworks**

According to clause 6.2, earthworks may be undertaken with consent, however only where certain criteria are met. The proposed development satisfies the relevant criteria, which include:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the 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 proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The development proposes excavation around the centre of the site to step the building down in order to reduce the overall building height and any associated adverse impacts on the adjoining properties such as bulk and scale. It is considered that the design meets the criteria of clause 6.2 of BLEP 2015. In this regard, the draining of the site towards Salt Pan Creek will not be adversely altered by the excavation, potential redevelopment of the site will not be constrained as a result and no unreasonable adverse impacts are envisaged as a result of the proposed excavation.

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

The following draft environmental planning instruments applies to the development.

*Draft Canterbury Bankstown Local Environmental Plan 2020*

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

Although the Draft Canterbury Bankstown Local Environmental Plan 2020 does not allow for multi dwelling housing development in the R2 residential zone, Bankstown Local Environmental Plan 2015 (Amendment No. 9) included the Savings provision:

*Clause 1.8A Savings provision relating to development applications Insert at the end of the clause— (2) If a development application has been made before the commencement of Bankstown Local Environmental Plan 2015 (Amendment No 9) in relation to land to which that Plan applies and the application has not been finally determined before that commencement, the application must be determined as if that Plan had not commenced.*

The Draft Canterbury Bankstown Local Environmental Plan 2020 does not supersede the savings provisions of Amendment No. 9 of Bankstown Local Environmental Plan 2015. Multi dwelling housing development was a permissible form of development at the time of lodgment of the development application, and given the inclusion of the Savings provision in amendment 9 (above) the development application is to be determined as if no amendments had been made to the plan.

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

The following table provides a summary of the development application against the controls contained in Bankstown Development Control Plan 2015 – Part B1 Residential Development and Part B5 - Parking.

<b>Part B1 - Residential Development</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
<b>Section 7 – Multi dwelling housing</b>			
7.1 Storey Limit	Storey limit is two storeys for front dwellings facing the street and single storey for the remaining dwellings at the rear.	Development proposes two storey dwellings at the front and single storey dwellings with attics at the rear.	No, see comment below.

7.3 Siting	Siting of multi dwelling housing and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns, or excessive rock excavation, retaining walls or reclamation.	The ground floor levels have been designed to step down with the contours of the site to minimise the scale of the development and the impact on the adjoining properties.	Yes
7.4	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the multi dwelling housing are required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the multi dwelling housing to a height no greater than one metre above the ground level (existing) of the allotment.	Retaining walls do not exceed 600mm above existing ground level.	Yes
7.5 Setback Restrictions	The erection of multi dwelling housing is prohibited within nine metres of an existing animal boarding or training establishment.	N/A – not located within nine metres of an existing animal boarding or training establishment.	N/A
7.6 Setbacks	Primary frontage – minimum setbacks: - 5.5m for ground floor - 6.5m for first floor	The front dwellings are setback 6.5m to the ground floor and 7.533m to the upper floor.	Yes
7.7 Secondary Road Frontages	Sets minimum setbacks to the secondary road frontage.	N/A	N/A
7.8 Side/Rear Setbacks	Side and rear setbacks:	The front dwellings have typical dwelling setbacks of 900mm to	Yes

	<ul style="list-style-type: none"> <li>- 5m for a building wall which contains a living area window or door</li> <li>- 2m for building wall which does not contain a living area window or door</li> <li>- 0.9m for a garage or carport</li> </ul> <p>Note: Front dwellings are permitted to have the same side setbacks as a dwelling house (which is 900mm)</p>	<p>the side boundaries. (Although not required, living room windows on the lower level have high sill heights of at least 2.3m).</p> <p>All other dwellings at the rear have a minimum side setback of over 2m to a building wall, over 900mm to a garage wall and there are no living room windows proposed to the rear dwellings that would require a 5m setback.</p>	
7.9	Minimum setback for a driveway to side and rear boundaries is 1m.	>1m provided	Yes
7.10 Open Space	A minimum of 60sqm of private open space provided per dwelling behind the front building line.	Unit 1: 70m <sup>2</sup> Unit 2: 60m <sup>2</sup> Unit 3: 74m <sup>2</sup> Unit 4: 88m <sup>2</sup> Unit 5: 139m <sup>2</sup> Unit 6: 97m <sup>2</sup> Unit 7: 95m <sup>2</sup> Unit 8: 93m <sup>2</sup> Unit 9: 128m <sup>2</sup>	Yes
7.11 Access Sunlight	At least one living area to each dwelling must receive minimum three hours solar access between 8.00am and 4.00pm at midwinter solstice.	All units achieve minimum three hours solar access.	Yes
7.12	At least one living area of dwelling on adjoining allotment must receive minimum three hours solar access between 8.00am and 4.00pm at mid-winter solstice.	Shadow diagrams demonstrate adjoining dwellings receive a minimum of three hours solar access to at least one living area during mid-winter.	Yes
7.13	A minimum of 50% of private open space for each dwelling and adjoining is to receive at least three hours solar access between 9am and 5pm at the equinox.	Shadow diagrams demonstrate that the minimum solar access is received to the private open space proposed on the subject site and on	Yes

		existing adjoining allotments.	
7.14	Development should avoid overshadowing any existing solar hot water systems or other solar collectors on allotment and adjoining.	Development does not overshadow existing solar hot water systems or other solar collectors.	Yes
7.15 Visual Privacy	Where development proposes windows, which overlook living area or bedroom windows of existing dwellings, the development must offset windows to minimise overlooking, or provide the window with minimum sill heights of 1.5m above floor level or ensure the window cannot open and has obscure glazing or use another form of screening to the satisfaction of Council.	The development does not result in any unreasonable adverse impact on the adjoining properties in terms of visual privacy or overlooking.	Yes
7.16	Where development proposes a window that directly looks into the private open space of an adjoining property, windows do not require screening where the window is to a bedroom, bathroom or other non-habitable room.	<p>The design incorporates suitable window placement.</p> <p>The windows that face the adjoining properties on the upper levels (of both the front and rear dwellings) and the lower level of the rear dwellings are bedrooms or bathroom windows and do not require screening.</p> <p>The living room windows that face the adjoining properties on the lower level of the front dwelling have a minimum sill height of 2.3m – which is considered satisfactory in maintaining privacy between dwellings.</p>	Yes.

7.17	Upper floor balconies may require screening where the open space overlooks more than 50% of adjoining private open space.	Privacy screening has been provided to the upper floor balconies of units 6, 7 and 8	Yes
7.18	Council does not allow roof top balconies.	Nil proposed.	N/A
7.19 Building Design	Development proposed for the purpose of multi dwelling housing developments must demolish all existing on the allotment	Demolition of all structures proposed.	Yes
7.20	Design of front dwellings must ensure a street façade where architectural elements are compatible with asymmetric appearance of neighbouring dwellings, ensure the front porch and windows are street facing and ensure any garage, driveway and front fence do not dominate the appearance of the development	The dwellings are asymmetrical	Yes
7.21	The maximum roof pitch for multi dwelling housing is 35 degrees	Maximum 35°.	Yes
7.22	Council may allow multi dwelling housing to have an attic. Contains no more than two small rooms (bedroom/study) and a bathroom	Unit 5 and 9 have attics each containing one bedroom/study and a bathroom.	Yes
7.23 Dormers	7.23 The design of dormers must: (a) be compatible with the form and pitch of the roof; and (b) must not project above the ridgeline of the main roof; and (c) must not exceed a width of two metres; and (d) the number of dormers must not dominate the roof plane.	The dormers are compatible with the form and pitch of the roof, do not project above the roofline, and are a maximum of two metres in width. The proposed dormers do not dominate the roof plane.	Yes

7.27	Design and siting of car parking structures must ensure vehicles can leave the allotment in a forward direction.	Vehicles accessing the common driveway can enter and leave in a forward direction.	Yes
7.28	Car parking must be provided behind the front building line with the exception of stacked spaces on the driveway in front of the garages of the dwellings facing the street.	All car parking located behind the front building line, with the exception of the front four dwellings which propose one stacked car parking space in front of the garage.	Yes
7.29	A garage with up to two car parking spaces per dwelling facing the street must ensure the garage architecturally integrates with the development and does not dominate the street facade.	All four dwellings facing the street propose a single garage which do not dominate the streetscape.	Yes.
7.30 Landscaping	Development must retain and protect any significant trees on the allotment and adjoining.	Council's Tree Management Officers have reviewed the proposal and require the planting of an additional 21 trees through conditions of consent.  It is noted that several trees were allegedly removed from the property. This allegation has been referred to Council's compliance team for action.	Yes.
7.31	Development must landscape areas in accordance with the following: - 45% of area between front dwellings and primary setback to be landscaped - Plant one 75L tree in the primary setback	Achieved.	Yes

Part B5 – Parking	1 space per one bed 1.5 spaces per two bed 2 spaces per three bed	9 dwellings x 2 spaces = 18 spaces required for the dwellings and 18 spaces have been provided.	Yes
	1 visitor space per five dwellings	An additional 2 visitor spaces are required which have been provided.	Yes

As the above table demonstrates, the proposal is seeking a variation to the maximum store limit as specified in 7.1 of BDCP 2015 – Part B1 (Note – this clause has now been repealed but was in place at the time of lodgment of the DA).

**Storey limit**

Clause 7.1 of BDCP 2015 – Part B1 provides as follows:

*The storey limit for multi dwelling housing is 2 storey for front dwellings facing the street and single storey for the remaining dwellings at the rear.*

With regard to the rear dwellings, the end two dwellings (units 5 and 9) propose a gable end wall midway along the roofline. If additional roof were added (as shown in orange below) the wall would be hidden and would technically be classified as single storey with a loft. It is not considered necessary or beneficial to hide the gable end wall (by adding additional roof) to achieve compliance as it would result in a bulkier roofline.



**The roof could be extended as shown in orange however this would unnecessarily add bulk to the roofline**

With regard to the central three dwellings along the rear (units 6, 7 and 8) they present as double storey on the front and rear elevation, see image below.



Front (west) elevation of rear dwellings (facing centrally to the development)

Although the three central dwellings present as double storey, the structure is only 3.6m above natural ground level – which is consistent with a single storey structure. If the lower level were not excavated for garages, this portion of the building would be classified as single storey and comply with the storey limit. In this regard, it is not considered that there would be any benefit in terms of improvement in the design or façade or improved amenity for adjoining properties if the proposal were to be amended to comply with the storey limit by deleting the lower garage level.

Lastly, with regard to the rear elevation it is noted that the central three dwellings (units 6, 7 and 8) again present as double storey. This elevation faces Salt Pan Creek, and the double storey design while not being visible from any adjoining residential property maximises scenic views of the watercourse. See the image below:



Rear east elevation facing Salt Pan Creek

The storey limit variation does not result in any unfavourable impacts in terms of overshadowing, bulk and scale or visual privacy issues between the development and adjoining properties and is considered worthy of approval in this case.

#### **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 proposed development is not considered likely to result in any significant detrimental environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development controls are proposed, they are considered to be reasonable and justified in this case. As such, it is considered that the impact of the proposed development on the locality is acceptable.

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

The site is considered to be suitable for the proposed development as recommended for approval. The subject site is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Potential impacts on existing surrounding development, have been addressed and impacts are adequately mitigated. Accordingly, it is considered that the development is suitable in the context of the site and surrounding locality

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

The application was initially notified for fourteen (14) days and amended plans were subsequently re-notified on two occasions for fourteen (14) days. During the notification periods a total of 112 submissions were received. The following concerns were raised in the submissions:

- **Removal of well established, protected trees and fauna habitat**

The alleged illegal removal of existing trees has been referred to Council's compliance team for action. With regard to this development proposal, Council's Tree Management Officers have reviewed the plans and require the planting of an additional 21 trees through conditions of consent.

- **Insufficient car parking spaces and the garages will be used for storage and not for car parking**

The development requires a total of twenty car parking spaces in accordance with BDCP 2015. Twenty car parking spaces have been provided - eighteen of which are dedicated to the dwellings (two spaces per dwelling) and the remaining two spaces will be dedicated as visitor car parking. The number of car parking spaces provided is consistent with BDCP 2015 and is considered to be sufficient to accommodate the car parking demand generated by the development.

With regard to storage, there is sufficient internal storage areas within the dwellings and space within the courtyards for the future owners to construct a storage shed if they choose to do so.

- **Bins – limited space**

The four dwellings that face the street (units 1, 2, 3 & 4) will be provided with individual mobile garbage bins. On bin collection day there will typically be 8 x 240L mobile garbage bins presented for collection on the kerb (4 garbage bins and either 4 green waste bins or 4 recycling bins (on alternate weeks).

The rear dwellings will have larger 660L communal garbage bins which will be collected by a different garbage truck from the temporary bin storage area (located on the northern side of the driveway at the front of the property) on a different collection day to the individual smaller bins for the front dwellings (units 1, 2, 3 & 4).

The site has sufficient kerb space to accommodate the bins as allocated - smaller individual bins for the front dwellings and communal bins for the rear dwellings.

The application was referred to Council waste management team for comment, who raise no objection to the current proposal and the bin allocation arrangement, subject to conditions of consent.

- **660L bins for the rear dwellings would require the garbage truck to reverse into the property – safety concerns**

The Council garbage truck will not enter the site to collect the large 660L bins from the rear of the site. The 660L bins will be collected from the temporary collection area on the northern side of the driveway at the front of the site. These bins will be moved to the collection area just prior to collection and returned to the bin room at the rear of the site by a private contractor after collection. The private contractor will be required have a bin carting aid to move the bins to and from the rear of the site for collection at the front of the site.

- **Traffic congestion**

It is considered that Truro Parade and the surrounding street network has sufficient capacity to accommodate any potential additional traffic that is generated by the proposed development.

- **There are numerous DCP non-compliances**

DCP non-compliances have been mentioned and justified in previous sections of this report and are considered worthy of support in this case.

- **Overdevelopment - each dwelling requires 300m<sup>2</sup> in accordance with the LEP (if the width of the driveway was excluded from the calculation)**

Clause 4.1B(5) of BLEP 2015 (now repealed) stated that *“development consent must not be granted to development for the purpose of multi dwelling housing on land in Zone R2 Low Density Residential unless the site area per dwelling (excluding the area of access handles or rights of way for access) is at least 300 square metres.”*

The clause excludes access handles or rights of way for access (for example an access handle to a battle-axe lot), however it does not exclude driveways.

The site has an area of area of 2744m<sup>2</sup> (including the driveway) this equates to an area of 304.88m<sup>2</sup> per dwelling. The development therefore complies with this clause.

- **The site does not comply with the frontage for dual occupancy development of 15m (i.e. 2 x 15m + 6.1m driveway would be 36.1m site width required)**

Multi dwelling housing sites are required to have a minimum 20m width at the front building line in accordance with clause 4.1B(2)(b) of BLEP 2015 (now repealed). The development site exceeds this requirement with a width at the front building line of 33.415m.

The development site is not required to meet the standards for dual occupancy development or have a site frontage of at least 36.1m.

- **The 5.5m front building line is inconsistent with the street with most being >7m**

With regard to setbacks to the front building line, the proposed development complies with Council’s Development Control Plan. In this regard, BDCP 2015 – Part B1 requires a front setback of 5.5m to the ground floor and 6m to the upper floor, the development proposes 6.5m to the ground floor and 7.533m to the upper floor.

- **Brutalist façade is inconsistent with the streetscape**

The external finishes proposed for this development are representative of more modern forms of architecture throughout the area. Although the finishes do not directly reflect or mimic the style or colour of those on the adjoining properties, it is considered that the development will result in a positive contribution to the streetscape.

- **Devaluation of property values**

No evidence substantiating the claim that the development will devalue the adjoining properties has been submitted to Council. In any case, the issue of property values and the factors that either contribute to increasing or reducing property values is outside the scope of the development assessment process.

- **Site is 900m from Padstow Train Station not within the required 800m for medium density housing**

There are no requirements for multi dwelling housing to be located within 800m from a train station.

- **Disruptions and increase personal, security and environmental risk due to scale of construction**

There are no particular design aspects of this development that would suggest that following the construction and the building being occupied, that the development will result in an increase in crime in the area.

- **Water and sewerage management risks**

Following a determination of the application, the developer would have to apply to the relevant authority to establish the additional service needs for the development. In a case where the services are inadequate, the developer will be required to liaise with the relevant authority with regards to the potential upgrading of facilities to cater for the increase in demand generated by the development. Any upgrade works would be required to be carried out prior to occupation of the development.

- **Overshadowing of properties to the north and south**

With regard to solar access to the existing adjoining residential properties, the development complies with the requirements of BDCP 2015 – Part B1 Residential. In this regard, there will be no overshadowing to the northern properties located within Trevone Street. It is noted that there will be some overshadowing to the south and west, however, the solar access maintained to the adjoining properties meets the minimum requirements of BDCP 2015 – Part B1 being 3 hours solar access to a living area between 8am-4pm during mid-winter and 3 hours to at least 50% of private open space between 9am-5pm at the equinox.

Specifically, with regard to the southern adjoining property (No. 24 Truro Parade), the east facing upper floor kitchen window will continue to receive 3 hours solar access during mid-winter and more than 50% of the the private open space receiving at least 3 hours solar access at the equinox.

The development therefore does not result in any unreasonable adverse impacts on the adjoining properties in terms of solar access. The development is considered satisfactory in this regard.

- **Adjoining properties to the south are having more solar panels installed in the coming weeks on the northern side of the roof which will be overshadowed**

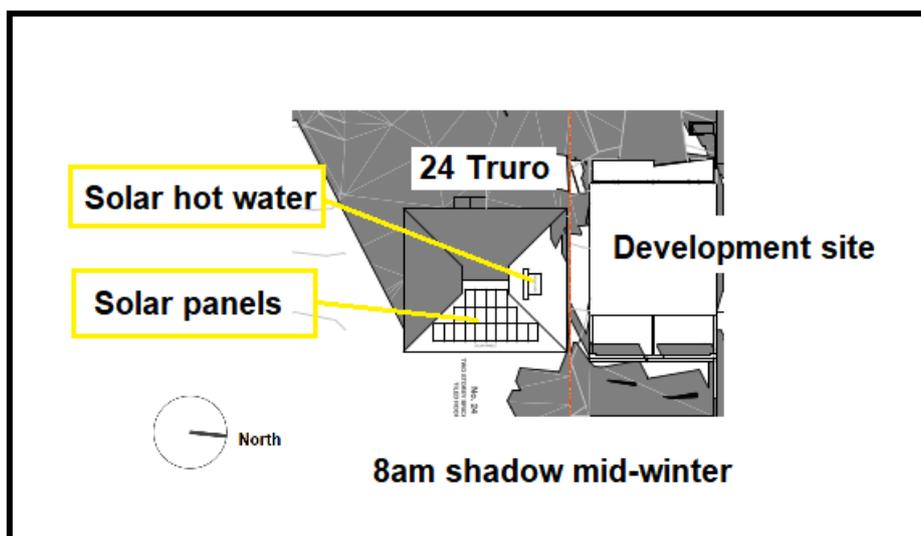
Bankstown Development Control Plan 2015 requires that *“Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties”*. The proposed development complies with this clause.

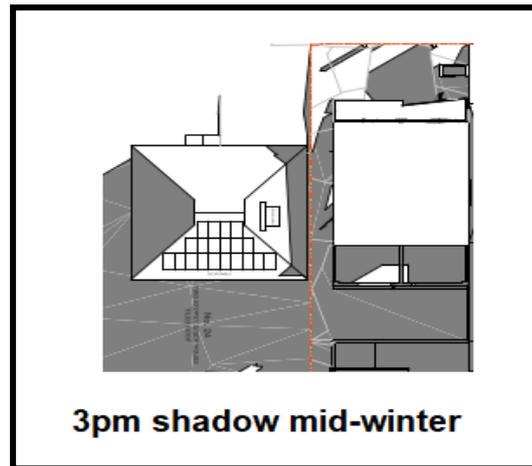
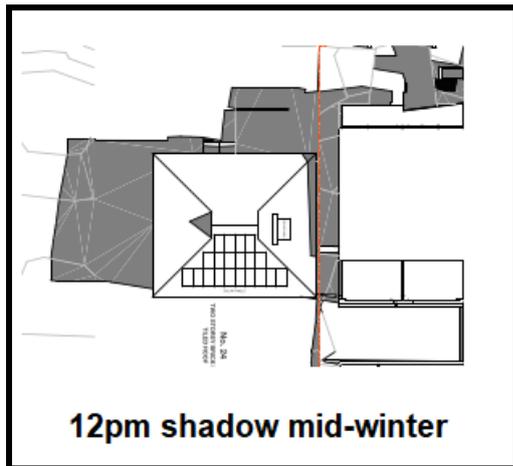
In this regard, the aerial image below shows the location of the existing solar panels located on the roof of the two storey dwelling located to the south. This image was taken on 1 October 2020 and is current at the time of this report (reflecting the existing location and number of solar panels).



Source nearmap – house numbers added for illustration purposes

The existing solar panels and existing solar hot water system will not be impacted by the development in terms of solar access – please refer to the 8am, 12pm and 3pm mid-winter shadow diagrams below. The development complies with the BDCP 2015 in this regard.





- **No. 19 Truro Parade overshadows Nos. 28, 26 and 24 Truro Parade which is inconsistent with clause 2.14 of BDCP 2015**

Clause 2.14 of BDCP 2015 – Part B1 (although this clause applies to single dwellings not to multi dwelling housing developments) states that *“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 overshadowing of existing dwelling at No. 19 Truro Parade on Nos. 28, 26 and 24 Truro Parade does not prevent these dwellings from receiving 3 hours solar access to the east/rear facing living areas during mid-winter. The proposed development complies with BDCP 2015 – Part B1 in relation to solar access to both the existing adjoining dwellings and to the proposed dwellings.

It is noted that these dwellings (No. 28, 26 and 24 Truro Parade) will continue to receive solar access to the western elevations around the middle of the day during mid-winter. See aerial photo below showing the shadow cast from No. 19 Truro Parade at approximately 1pm during mid-winter (image taken 16 June 2020).



Source Nearmap – house numbers added for illustration purposes

- **Disruptions during the demolition and construction phase**

Potential construction impacts of the development (including noise, traffic and waste) have been addressed in the conditions of consent including restriction on the hours of construction. Further, standard conditions of consent will require that the developer carries out demolition and construction in accordance with the Australian Standards and Work Health and Safety requirements.

- **Increased noise**

The proposed use of the site is for residential purposes. It is not anticipated that the development (once constructed) will result in any unreasonable adverse impacts on the adjoining property in terms of noise.

Any mechanical equipment will be required to operate in accordance with the *Protection of the Environment Operations Act 1997*.

- **Development out of character within the R2 Zone**

The development achieves good urban design in terms of building form, bulk, architectural treatment and visual amenity and is considered to result in a positive contribution to the streetscape.

The report identifies that with the exception of minor variations (relating to wall height and storey limit as previously mentioned in this report), each of the critical design parameters relating to design and density of the development are met. As such, it is not considered that the development is out of character with the locality or the zone.

- **Narrow street – development should not be permitted**

Council does not have any development controls for multi dwelling housing developments regarding the width of the street.

- **Multi dwelling housing is now not permitted in the R2 Zone – the development application should be refused**

Bankstown Local Environmental Plan 2015 (Amendment No. 9) included the following Savings provision retaining the ability to construct multi dwelling housing.

Within the same amendment, savings provisions were stated which provides as follows:

*Clause 1.8A Savings provision relating to development applications Insert at the end of the clause— (2) If a development application has been made before the commencement of Bankstown Local Environmental Plan 2015 (Amendment No 9) in relation to land to which that Plan applies and the application has not been finally determined before that commencement, the application must be determined as if that Plan had not commenced.*

Multi dwelling housing development was a permissible form of development at the time of lodgment of the development application meaning that the development application is to be determined as if no amendments had been made to the plan.

- **Two storey at the rear do not comply with the DCP and walls up to 8m in height will impact on the adjoining properties in terms of privacy**

It is noted that there is a two storey element for the dwellings at the rear of the site which has been discussed in earlier sections of this report. In this regard, the wall heights above natural ground level are a maximum of 3.6m on the front (west) elevation as viewed from adjoining residential properties and 6m on the rear (east) elevation - which is only visible from Salt Pan Creek).

It is considered that the design is sympathetic to the adjoining existing properties and that no unreasonable adverse visual and acoustic privacy impacts will result from the development. In this regard, there are no living room windows on the side elevations of the rear dwellings and balconies (of units 6, 7 & 8) are accessed off bedrooms and have privacy screening.

- **The bin room at the rear of the site has swinging doors that interfere with the visitors' car parking space**

A condition of consent will require the doors to the bin room to be self-closing.

- **Narrow driveway – resident disputes as the can't pass each other**

The driveway width allows two vehicles at the front of the site and narrows at the centre to restrict the driveway to a width of one vehicle only. This is an intentional safety design – forcing drivers to slowly maneuver while entering and existing the site.

- **Conflict of interest - the developer Monument Environments is member of the CBCity Planning Panel and they were also awarded a 2 year contract in July 2019 to the Minor Building Works Panel. We are concerned about conflicts of interest and personal relationships/ friendships with people in Council that will undermine the integrity of the review process. We trust that Council will ensure probity risks are well managed.**

Council's assessment is confined to the merits or otherwise of the development having regard to the matters for consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979* and the provisions contained within any other relevant planning legislation (i.e. the Regs, other Acts, etc).

The submitter stated that '*... we have noticed that the developer Monument Environments is member of the CBCity Planning Panel*' which has highlighted concerns '*... about conflicts of interest and personal relationships/friendships with people in council that will undermine the integrity of the review process*'.

Despite the author of the submission stating that Monument Environments is a member of the CBCity Planning Panel, this is incorrect and Monument has no representation on or relationship to the Canterbury Bankstown Local Planning Panel. Monument is however listed on Council's Minor Works Panel, which undertakes building and related works.

In Section I of the Development Application form, in response to the question '*Are you a staff member, Councillor, Contractor, or related to someone who is a staff member, Councillor or Contractor of Canterbury Bankstown Council?*', the applicant ticked the box 'YES' identifying the relationship as being as a '*Contractor*'.

It is understood that Monument Environments were accepted as an approved Panel Member by Council, following an open tender process. This however relates to Council's Minor Works Panel, not Local Planning Panel.

Notwithstanding that the applicant undertakes contract works for Council, their existing relationship with Council is quite separate with respect to this matter and does not prevent them from submitting a development application. Indeed, their application will be determined by the Local Planning Panel, independent of Council.

On this basis, there is no reason that the DA cannot be determined on the grounds of an apparent conflict of interest.

- **Excessive or unnecessary excavation**

The development proposes excavation around the centre of the site to step the building down in order to reduce the overall building height and any associated potential impacts on the adjoining properties such as bulk and scale.

- **The development is inconsistent with the Medium Density Design Guide**

The Medium Density Design Guide does not apply to this development.

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

The proposed development as recommended for approval would not contravene the public interest. The proposed development responds appropriately to *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015* and other relevant legislation previously listed in this report.

The public interest is best served by the consistent and correct application of the applicable planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed appropriately. Whilst there are variations to the planning controls, the departures have been assessed and the proposal is considered suitable and appropriate for the site and locality.

The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be satisfactory in terms of its impact on the site, the adjoining residential properties and the broader locality. Matters raised in public submissions have been satisfactorily addressed and/or mitigated.

**CONCLUSION**

The Development Application has been assessed against the matters for consideration contained within Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*, requiring an assessment against, amongst other things, the provisions contained within State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy No 55 – Remediation of Land, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Bankstown Local Environmental Plan 2015, Draft Canterbury Bankstown Local Environmental Plan 2020 and Bankstown Development Control Plan 2015.

In this regard, the proposal is consistent with the relevant NSW Planning and Development Provisions that applies to the development and any non-compliances have been appropriately justified.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and the development is recommended for approval.

**RECOMMENDATION**

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



## CONDITIONS OF CONSENT

- 1) The building work/s must comply with the conditions of this Determination Notice. A Construction Certificate must not be issued until the plans and specifications satisfy the required technical standards and the consent conditions of this Determination Notice. In the event of an inconsistency between this Determination Notice, the approved plans and supplementary documentation, this Determination Notice shall prevail.
- 2) Development shall take place in accordance with Development Application No.DA-159/2019, submitted by Monument Design Partnership, accompanied by the drawings as listed in the table below, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

Drawing No.	Drawing Title	Revision	Dated	Prepared by
DA.03	Demolition Plan	F	29/10/2020	monument design partnership
DA.04	Site Plan			
DA.05	Ground Floor			
DA.06	First Floor			
DA.07	Roof Plan			
DA.08	North Elevation   South Elevation			
DA.09	East Elevation   West Elevations			
DA.10	Sections 1			
DA.11	Sections 2			
DA.22	Draft Strata Plan			
20-4133 L01	Landscape Plan			
20-4133 L02	Landscape Plan			
20-4133 L03	Landscape Plan			
20-4133 L04	Landscape Plan			
20-4133 L05	Landscape Plan			

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

- 3) All substation, hydrants, boosters and other services must be contained within cabinets in the built form.

### **Ausgrid**

- 4) Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, [www.ausgrid.com.au](http://www.ausgrid.com.au)

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

## **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:*

- 5) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 6) The approved landscape plan is to be amended to include all requirements of condition No. 69 and include (but not be limited to) the following:

Planting within land identified as **Core Conservation Corridor** is to consist of;

- i. Not less than 70% locally native species;
- ii. Locally occurring canopy trees (reaching a minimum height of 15 metres or stated by these conditions of consent) or trees (also reaching a minimum height of 15 metres or stated by these conditions of consent) that will cope with the predicted increase in temperature south western Sydney can expect by 2050.
- iii. Species that reflect the relevant vegetation communities within the area and;
- iv. A mix of groundcover, shrubs and trees and is to exclude monocultures, i.e. plantings should be of high diversity.
- v. Dedicated fruit and vegetable gardens can be utilised in this framework (i.e. 30% of plantings in landscape area).

The amended Landscape Plan shall be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

- 7) The landscape plan shall include the provision for the replacement of all boundary fencing. A new 1.8m fence is to be erected along all side and rear boundaries of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material unless the type of material is stipulated in any flood study prepared for the site. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 8) 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.
- 9) 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.
- 10) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

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

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

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

- 11) 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.
- 12) 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.

- 13) 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 \$27,225.00 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.

- 14) 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.

- 15) A Work Permit shall be applied for and obtained from Council for the following engineering works in front of the site, at the applicant's expense:

- a) Three (3) medium duty VFC's at the property boundary with Truro Parade.
- b) Drainage connection to Council's system.
- c) Reconstruction of the existing Council's stormwater pipe within the drainage easement along the southern boundary line of the site.
- d) 1.2m wide Concrete footway paving along the sites entire frontage.
- e) Concrete kerb and gutter along the sites entire frontage.
- f) Removal of all driveway surfaces, reinstatement of laybacks to kerb and gutter and reshaping of the footway, all associated with redundant VFCs.
- g) Repair of any damage to the public road including the footway occurring during development works.
- h) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

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

- 16) The layout of the approved car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, and parking bay dimensions) should be in accordance with the AS 2890 parking series.

Furthermore, for internal driveways with a gradient exceeding 10% (1 in 10), longitudinal profiles of all vehicular driveways and ramps shall be submitted for approval by the Principal Certifier prior to the issue of the Construction Certificate. The maximum grade of the driveway/ramp shall not exceed 25% and shall comply with AS 2890 parking series. The profile shall be drawn at a reduction ratio of 1 to 25 vertical and horizontal and shall be related to the datum used for the issue of the footway design levels and shall also show the road centre line levels, Council issued footway design levels and gutter levels. Council's Car Clearance Profile in Council's Development Engineering Standards, (Plan No. S 006) shall be used to design the profile.

- 17) 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. 14567, rev E dated 17/05/2019 prepared by Engineering Studio Civil & Structural. The final plan shall include the following:

- A detailed plans, specification and associate civil works prepared for construction of Council's stormwater pipe within the existing drainage easement along the southern boundary of the site which is proposed for reconstruction.

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.

- 18) The subject site is located adjacent to Council's drainage easement and shall comply with the following:
- a) The proposed building(s) including eaves and gutters shall be located clear of existing and proposed Council easements within the site. Amended plans to this effect shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate. All approved construction details shall be consistent with this requirement. Proposed buildings shall be located clear of floodways through the site.
  - b) Concrete pier and beam type footings shall be provided for all structures adjacent to Council's stormwater pipe/easement in accordance with the requirements contained in Council's Development Engineering Standards. Plans and details prepared by a qualified practising Structural Engineer, with details suitable for construction in accordance with the above Policy shall be incorporated into the details for approval of the Construction Certificate. A copy of the approved details together with a report prepared by a registered surveyor showing location, size and depth of the stormwater system, shall be sent to Council for information.

- c) Landscaping within Council's drainage easement shall be limited to grassed or paved surfaces only. Where pavers are to be used they shall be constructed integral with a concrete base to prevent scour and uplifting. Final details suitable for construction prepared by a qualified professional Civil Engineer shall be submitted to the PCA prior to the issue of the Construction Certificate. A copy of the approved landscaping details shall be submitted to Council for information.
- 19) 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.

- 20) An all weather pavement shall be designed to withstand the anticipated wheel loads for all areas subjected to vehicular movements. Internal pavements specification prepared and certified by all qualified professional Civil Engineer to comply with the relevant Australian Standards, shall be submitted to the Principal Certifying Authority (PCA) for approval prior to the issue of a construction certificate.
- 21) The Construction Certificate plans shall include details of the garbage receptacle area. The garbage receptacle area shall not be visible from the street. The garbage receptacle area shall be located within the building or screened from the street by dense landscaping.
- 22) The development must be carried out in accordance with the commitments shown on the submitted BASIX Certificate. The BASIX commitments must be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 23) Any fire assemblies / facilities required to be on a frontage of a building must be integrated into the building design and screened from public view within cabinets and integrated into the built form using finishes and materials from the approved colours and finishes schedule. **Fire assemblies / facilities must not be located in the public domain or in landscaped areas.**

- 24) Any heat shield and/or associated fire assembly structures/facilities not shown on the approved plans are not permitted and a modification application is required for any such structures/facilities.
- 25) In the unforeseen event that a substation is required, contrary to the advice provided to Council, the size and location of the substation is to be submitted for approval to Council and Ausgrid, prior to the issue of any Construction Certificate or the commencement of use, whichever is earlier. A substation has not been approved and if required, must form part of a Section 4.55 modification application to Council.

The substation must not be situated within any landscaped area, must not be situated in any area visible from the public domain and must be integrated into the building.

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

- 26) All roof-top plant and associated equipment must be located within the approved building envelope and must not be visible from the public domain.
- 27) Individual air conditioning units to the facade or balconies of the building are not approved. Air-conditioning units must not be visible from the public domain. Equipment and associated wiring must be visually concealed. Air-conditioner units must not be located on an awning, any visible face of the building or on roofs in a way that would be visible from any street, footpath or park.
- 28) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the *Roads Act 1993* and/or Section 68 of the *Local Government Act 1993*, Council requires the person having benefit of this Determination Notice to obtain a Works Permit and or a Roadway / Footpath Building Occupation Permit prior to issue of any Construction Certificate for this development being issued where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,

- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road,
- h) Require a work zone on the public road for the unloading and or loading of vehicles,
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road,
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road,
- l) The work is greater than \$25,000, and
- m) Demolition is proposed.

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

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

- 29) A revised Waste Management Plan is to be submitted and approved by the Waste Development Referral team prior to the issue of a Construction Certificate.
- 30) A vacant land charge form is to accompany any Construction Certificate (CC) application for the removal of all domestic garbage and recycling bins.  
<https://www.cbcity.nsw.gov.au/council/forms/waste-recycling>
- 31) A design certificate and detailed plans are to accompany any Construction Certificate (CC) application which demonstrate that the waste storage room has been designed to be constructed in accordance with the Waste Management Guide for New Developments and including the following requirements.
  - a) Floors must be constructed of concrete at least 75mm thick and graded and drained to a Sydney Water approved drainage fitting.
  - b) The floors must be finished so that is non-slip and has a smooth and even surface.
  - c) The room is to be integrated within the building, a minimum 2.1m unobstructed room height is required in accordance with the Building Code of Australia;
  - d) The walls must be constructed of solid impervious material.
  - e) The ceilings must be finished with a smooth faced non-absorbent material capable of being cleaned.
  - f) Walls, ceiling and floors must be finished in a light colour.

- g) Is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
  - h) A self-closing door openable from within the room.
  - i) Must be constructed to prevent the entry of birds and vermin.
  - j) Be provided with adequate light and ventilation. Light source must be through controlled light switches located both outside and inside the room.
  - k) Any doorways must be 2m wide.
  - l) Designed to fit 1 x 660L recycling bins
  - m) Designed to fit 1 x 660L garbage bins
  - n) Designed to fit 2 x 240L green waste bins
  - o) Designed to fit the bin carting aid as specified in the WMP
- 32) A design certificate and detailed plans are to accompany any CC application which demonstrate that the bin carting route from the waste storage room to nominated collection point has been designed to be constructed in accordance with the following requirements:
- a) Direct and less than 10 metres,
  - b) Minimum 2m wide hard surface;
  - c) Non-slip, free from obstacles and steps;
  - d) Not within a driveway or carpark, this is considered a conflict point for vehicles and collection staff;
  - e) A maximum grade of 1:30 (3%); and
  - f) Layback installed at the nominated collection point.

### CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 33) The following tree protection measures are to be complied with to protect the *Camelia sp.* (Camelia) and a *Manifera indica* (Mango) located on the adjoining property at 22 Truro Parade:
- a) Excavation shall be carried out by hand within a 3.5 metre radius of either tree. No tree roots greater than 25mm in diameter are to be severed.
  - b) The stormwater line and associated pits are to be located no closer than 3.5 metres from either tree. Alternatively, the stormwater line and pits are to be installed by careful digging using hand tools or horizontal boring and passing the pipe beneath existing tree roots within 2.0 metre radius of the tree. No tree roots greater than 25mm in diameter are to be damaged.
  - c) Where a boundary fence is to be located within 3.5 metres from a trunk of these protected trees the boundary fence shall be of post and rail construction using lightweight construction materials
  - d) Posts shall not be located within 1.0 metres of any trunk of these protected trees.
  - e) Post holes within this section are to be dug by hand and located no closer than 100mm from any tree root greater than 25mm in diameter.

- 34) The following tree/s shall be retained and protected from removal and damage for the duration of the development:

Tree Species	Location	Protection Zones*
1x <i>Pittosporum undulatum</i> (Sweet Pittosporum)	Tree 2, In Rock wall at the rear of 24 Truro Parade, Padstow	TPZ – current distance of fence on eastern boundary at top of rock retaining wall. SRZ – As per TPZ
1x <i>Angophora costata</i> (Sydney Red Gum)	In Rock wall at the rear of 26 Truro Parade, Padstow	

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

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

- a) The tree/s to be retained and protected together with their relevant Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) shall be marked on all demolition and construction drawings.
- b) All contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.
- c) A designated Tree Protection Zone shall be created on site by maintaining the current colour bond fence along the eastern boundary. Should The colour bond fence be removed, a tree protection fence shall be erected in the same location at the current fence along the eastern boundary line at the top of the rock retaining wall and shall be constructed of chain wire mesh 1.80 metres high supported by steel posts. Any new Tree Protection Zone fence is to be installed prior to demolition / construction, shall not be removed or altered, and is to remain in place for the duration of the site works;
- d) All utility services, pipes, stormwater lines and pits shall be located outside the fenced Tree Protection Zone.
- e) Trees marked for retention must not be damaged or used to display signage, or as fence or cable supports for any reason.
- f) Wash out areas, and similar shall not be located within the fenced Tree Protection Zone. Similarly, any runoff from wash out areas is not to be permitted to run off into this Tree Protection Zone or outside the Eastern boundary line.
- g) If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery. Tree roots greater than 25mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 4 or equivalent – before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.

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

- 35) The applicant is to plant the following replacement tree/s on the nature strip forward of the property. The tree/s shall have a container size not less than 200 litres, shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003) or Australian Standard AS 2303 – 2015 Tree stock for landscape use, and be planted and maintained in accordance with Councils street tree planting specifications Standard Drawing No. S-201:

Tree Species	Location
2x <i>Backhousia myrtifolia</i> (Grey Myrtle) OR 2x <i>Hymenosporum flavum</i> (Native Frangipani) OR 2x <i>Tristaniopsis laurina + cvs.</i> (Water Gum)	No tree is to be planted within 1.5m of a new or existing vehicle footpath crossing or within 3.0m of any power pole located within the public domain.

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

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

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

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

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

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

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

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

Tree Species	Location
1x <i>Melia azedarach</i> (White Cedar)	Tree 1, Rear yard of 24 Truro Pde, Padstow
1x <i>Chamaecyparis lawsoniana</i> (Lawson Cypress)	Tree 4, Front yard of 26 Truro Pde, Padstow
1x <i>Lagunaria patersonii</i> (Norfolk Island Hibiscus)	Tree 5, Front yard of 26 Truro Pde, Padstow
1x <i>Pittosporum undulatum</i> (Sweet Pittosporum)	Tree 9, Rear yard of 26 Truro Pde, Padstow
3x <i>Pittosporum undulatum</i> (Sweet Pittosporum)	Trees 12, 13, 14, and other unnumbered <i>Pittosporum undulatum</i> trees within same stand in the Rear yard of 26 Truro Pde, Padstow
2x <i>Melia azedarach</i> (White Cedar)	Trees 15 and 16, Rear yard of 26 Truro Pde, Padstow
1x <i>Melaleuca sp.</i> (Paperbark)	Tree 17, Rear yard of 26 Truro Pde, Padstow

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

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

37) The demolition of all structures currently existing on the property must be undertaken, subject to strict compliance with the following: -

- a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.

- b) Written notice is to be given to Canterbury-Bankstown Council for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections shall be undertaken by Canterbury-Bankstown Council:
- (i) A *precommencement* inspection shall be carried out by Council when all the site works required as part of this consent are installed on the site and prior to demolition commencing.
  - (ii) A *final* inspection shall be carried out by Council when the demolition works have been completed to ensure that the site is left in a satisfactory manner, in accordance with the conditions of this consent.

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

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, license number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence or hoarding between the work site and any public place. Access to the site shall be restricted to Authorised Persons Only and the site shall be secured against unauthorised entry when the building work is not in progress or the site is otherwise unoccupied. Where demolition is to occur within 3m of a public place a Work Permit application for the construction of a Class A or Class B hoarding shall be submitted to Council for approval.
- e) The demolition plans must be submitted to the appropriate Sydney Water Office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the demolition plans will be stamped indicating that no further requirements are necessary.
- f) Demolition is to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001.
- g) The hours of demolition work shall be limited to between 7.00am and 6.00pm on weekdays, 7.00am and 1.00pm on Saturdays and no work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.

- h) Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.
- i) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.
- j) Demolition procedures shall maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- k) During demolition, the public footway and public road shall be clear at all times and shall not be obstructed by any demolished material or vehicles. The public road and footway shall be swept (NOT hosed) clean of any material, including clay, soil and sand. (NOTE: If required, Council will clean the public road/footway at the applicant's expense). On the spot fines may be levied by Council against the demolisher and or owner for failure to comply with this condition.
- l) All vehicles leaving the site with demolition materials shall have their loads covered and vehicles shall not track soil and other material onto the public roads and footways and the footway shall be suitably protected against damage when plant and vehicles access the site. All loading of vehicles with demolished materials shall occur on site.
- m) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
- n) Care shall be taken during demolition to ensure that existing services on the site (ie. sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services shall be repaired by the relevant authority at the applicant's expense.
- o) Suitable erosion and sediment control measures shall be erected prior to the commencement of demolition works and shall be maintained at all times.
- p) Prior to the demolition of any building constructed before 1970, a Work Plan shall be prepared and submitted to Council in accordance with Australian Standard AS2601-2001 by a person with suitable expertise and experience. The Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.

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

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

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

- a) the Principal Certifier has, no later than 2 days before the building work commences, notified the Consent Authority and the Council (if the council is not the Consent Authority) of his or her appointment as the Principal Certifier,
  - b) the Principal Certifier has, no later than 2 days before the building work commences, notified the person having the benefit of this Determination Notice of any inspections that are required to be carried out in respect of the building work,
  - c) the person carrying out the building work has notified the Principal Certifier that the person will carry out the building work as an owner-builder, if that is the case,
  - d) the person having the benefit of this Determination Notice, if not carrying out the work as an owner-builder, has:
    - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involve, and
    - ii. notified the Principal Certifier of the appointment, and
    - iii. unless that person is the principal contractor, notified the principal contractor of any inspections that are required to be carried out in respect of the building work,
  - e) the person having the benefit of this Determination Notice has given at least a 2-day notice to the Council, and the Principal Certifier if not the Council, of the person's intention to commence the erection of the building.
- 39) Residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act and that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 40) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- a) In the case of work for which a Principal Certifier is required to be appointed:
    - i. the name and licence number of the principal contractor, and
    - ii. the name of the insurer by which the work is insured under Part 6 of the Act,

- b) In the case of work to be carried out by an owner-builder:
  - i. the name of the owner-builder, and
  - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for carrying out the residential building work are changed while the work is in progress, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- 41) 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.
- 42) 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.
- 43) 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.
- 44) 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.
- 45) A section 73 compliance certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

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

- 46) 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.

- 47) 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.
- 48) 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.
- 49) 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**

- 50) Any new information revealed during building work/s that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier. Works are to cease until the new information is evaluated by an appropriately qualified and experienced environmental consultant and an appropriate response determined by the applicant and/or owner which is agreed to by Council. Council may also request that a NSW EPA accredited site auditor is involved to assist with the assessment of the new contamination information.
- 51) Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.
- 52) The building work must be carried out in accordance with the requirements of the Building Code of Australia.

- 53) 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.
- 54) 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.
- 55) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 56) 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.
- 57) 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.
- 58) All boundary fencing behind the building line shall be replaced by a 1.8m high lapped and capped timber or sheet metal fence, or as stipulated in a flood study prepared for the site, or as determined in consultation with the adjoining property owners at the developer's expense. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 59) 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.
- 60) 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.

- 61) 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.
- 62) Requirements of the approved Waste Management Plan (WMP) shall be complied with during all site preparation works, demolition (if proposed) and throughout all construction works.

When implementing the WMP the developer is to ensure:

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

- 63) 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.
- 64) Development located adjacent to Council's drainage pipe and/or easements shall comply with the following:
- a) Concrete Pier and beam type footings/foundations adjacent to Council's drainage easements shall be constructed in accordance with the approved details and Council's Development Engineering Standards. The applicant/developer shall arrange for an inspection to be carried out by Council to verify depth and location of piers in relation to the pipe and easement prior to pouring of concrete. A copy of the approved Structural plans detailing the pier locations and depths relative to the Council drainage pipe shall be provided to the Council prior to the inspection.
  - b) Any disturbance or damage caused to Council's drainage pipes within the site shall be repaired by Council at the applicant's expense. The applicant shall notify Council of such damage immediately after it occurs, and of any pre-existing damage prior to commencement of work within the site.

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

- 65) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 66) An 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 (where applicable).
- 67) Twenty (20) off street car spaces being provided in accordance with the submitted plans. This shall comprise:
- 18 residential spaces
  - 2 residential visitor spaces
- 68) Landscaping is to be installed in accordance with the approved landscape plan and all relevant conditions of consent. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.

69) The applicant is to plant 21 x replacement tree/s within the site as follows:

Trees shall be planted as per tree qualities required, known attainable mature heights and locations within proposed unit numbers as listed in Table 1 below;

Table 1 – Tree replacements required on the combined site of 24-26 Truro Parade, Padstow

Quantity of Replacement Trees Required	Known Attainable Minimum Mature Height of Trees	Location within the subject site of 24-26 Truro Parade, Padstow
1	1x 6.5 metres	Front Yard of Unit No.1
1	1x 15 metres	Rear Yard of Unit No.1
1	1x 15 metres	Front Yard of Unit No.2
1	1x 15 metres	Rear Yard of Unit No.2
1	1x 6.5 metres	Front Yard, Adjacent to Visitor Parking of Unit No.3
3	1x 10 metres, 2x 6.5 metres	Rear Yard of Unit No.3
2	1x 10 metres, 1x 6.5 metres	Rear Yard of Unit No.4
2	1x 10 metres, 1x 6.5 metres	Rear Yard of Unit No.5
2	1x 10 metres, 1x 6.5 metres	Rear Yard of Unit No.6
2	1x 10 metres, 1x 6.5 metres	Rear Yard of Unit No.7
1	1x 6.5 metres	Front Yard, Adjacent to Visitor Parking of Unit No.7
1	1x 15 metres	Front Yard of Unit No.8
1	1x 10 metres	Rear Yard of Unit No.8
1	1x 6.5 metres	Front Yard of Unit No.9
1	1x 10 metres	Rear Yard of Unit No.9

- Tree species used shall be locally occurring indigenous tree species – refer to Section 14 and Appendix C – Locally Occurring Indigenous Tree Species, in the Bankstown City Council Tree Management Manual;
  - The tree/s shall have a container size not less than 75 litres, shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003) or Australian Standard AS 2303 – 2015 Tree stock for landscape use;
  - The tree/s shall be planted no closer than 3.5metres from the wall of any approved dwelling on the property;
  - The tree/s shall be planted so that future growth is not in conflict with overhead electricity wires of clearance zones;
  - The tree/s shall be maintained for the life of the development.
- 70) 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.

- 71) 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.
- 72) 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.
- 73) The Section 73 compliance certificate under the Sydney Water Act 1994 must be submitted to the principal certifying authority before occupation of the development / release of the plan of subdivision.
- 74) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 75) Prior to the issue of any OC, an authorised Council waste officer is to inspect and approve all waste management facilities to ensure they comply with the development approval, Waste Management Plan. Specifically, the path of travel for all waste, from unit to point of waste collection, waste storage room sizing, access to water and sewer connections, finished materials, access and door way dimensions, truck turntables, and that all waste facilities are fit for purpose.
- 76) Prior to the issue of any OC, the developer is to enter into a formal agreement with Council for the utilisation of Council's Domestic Waste Collection Service.

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

The provision of Council's waste collection service will not commence until formalisation of the agreement.

The agreement shall include Council being provided an easement for unimpeded access to and from the waste collection locations for council and its contractors to enter and exit for the purpose of waste and recycling collection. In this regard, prior to the issue of a subdivision certificate, a positive covenant shall be placed on the property title, such as section 88B certificate.

- 77) The development is required to indemnify council and its waste contractors against claims for loss or damage or wear and tear of access roads or to other parts of the building in perpetuity.

- 78) Prior to the issue of any OC, the developer is to provide evidence of the purchase an appropriate bin carting aid, in keeping with the WMP.
- 79) As shown on the approved plans, the communal bin room at the rear of the property must be fitted with sliding doors and shall not be fitted with swinging doors.

### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

- 80) An application and appropriate fees for the issue of a Subdivision Certificate shall be submitted to Council upon all works being completed.
- 81) The following information shall be submitted to Council or accredited certifier (where applicable) with an application for a Subdivision Certificate:
- a) Original plan of subdivision prepared and signed by a qualified surveyor, plus five (5) copies;
  - b) Copy of the relevant development consent, including all Section 4.55 Modifications if applicable,
  - c) Works as executed engineering plans.
  - d) Evidence that all conditions of consent have been complied with,
  - e) A certificate of compliance (Section 73 Certificate) from Sydney Water if required,
  - f) Final occupation certificate for all works.
  - g) 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.
  - h) Copy of the Work Permit Compliance Certificate, where required.
- 82) A positive covenant shall be placed on title that allows Council unimpeded access to and from the waste collection locations for council and its contractors to enter and exit for the purpose of waste and recycling collection.

### **ONGOING USE OF THE SITE**

- 83) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- 84) The Developer or Strata Scheme (once strata subdivided) is required to maintain the bin carting aid throughout the occupation of the property.

By-Laws are to be included into the strata scheme governing the carting aids use and maintenance. Contingency plans are to be made in the event that the carting aid be out of service.

- 85) As this development is a combination of communal and individual bins, upon strata subdivision, bylaws are to be in place to govern the following:
- The 660L bins are for the use of the rear lots only,
  - The bin storage room is to remain locked, and access limited to occupants of the rear units.
  - The front units are supplied with their own private set of bins, these are to be stored according to the plans within their private lots and are not to be accessible to the occupants of the rear lots.
  - The 240L and 140L bins are not to be placed within the bin presentation area at any times.
- 86) The development must operate in full compliance with Council's Waste Management collection requirements.
- 87) The nominated kerbside collection point is to be utilised to facilitate the collection of waste and recycling bins for the development. All mobile garbage bins that are left kerbside for collection must be taken back within the property boundary on the same day of service.
- 88) The nominated collect and return collection point is to be utilised to facilitate the collection of waste and recycling bins for the development.
- 89) The temporary bin holding area will be required to be of sufficient size to allow the temporary storage of all allocated bins for the development.
- 90) This Development requires a caretaker to transfer all allocated bins from the bin storage area to the temporary holding area the day before the designated collection day and return them once emptied
- 91) Contracts (or agreements) with cleaners, building managers and tenants must clearly outline the waste management and collection system and must clearly identify everyone's role and responsibility. This is to include:
- a) Responsibility for cleaning and maintaining waste storage bins and containers
  - b) Responsibility for cleaning and maintaining waste storage room
  - c) Responsibility for the transfer of bins to the nominated collection point
  - d) Method of communication to new tenants and residents concerning the developments waste management system.
  - e) Cleaning up and management of bulky waste
  - f) Responsibility for maintaining the compost bin or wormfarm

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

- 92) No waste storage containers are to be located or placed outside the approved waste storage area at any time except for collection purposes.
- 93) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin.
- 94) Garages for units 6, 7 and 8 are to be maintained so as to accommodate two vehicles at all times, no works (or storage of large items) are to be carried out that would prevent such.

-END-