

Statement of Environmental Effects

**For a
Two Storey Dwelling
at
7 Sheffield Street**

Kingsgrove

Prepared for Wisdom Homes

**Planning Outcomes Pty Ltd
September 2022
0417 467 509**

Statement of Environmental Effects
Two storey dwelling house
7 Sheffield Street Kingsgrove
Lot 4 DP 15740
LGA: Canterbury Bankstown

1. Description of Proposal: Two storey dwelling house.

Ground Floor: Double garage, front porch, entry, guest/home office, powder room, foyer, internal stairs, laundry, linen press, sunken lounge, kitchen with butler's pantry, dining room, leisure room, rumpus room and outdoor leisure room.

First Floor: Master bedroom with his/her walk-in-robies and ensuite, two bedrooms with built-in-wardrobes, one bedroom with walk-in robe, upper lounge room, gallery, walk-in linen press and bathroom.

2. Site Analysis

The site has a rectangular shape with a frontage to Sheffield Street of 13.751m and a depth of 40.54m. The site area is 550.1m².

The site has a diagonal crossfall from the rear boundary to the front south-eastern corner, a fall of approximately 1.67m. The site has a generally east-west orientation. The site has an existing retaining wall and easement to drain water located parallel to the rear boundary.



Subject Site: 7 Sheffield Street Kingsgrove

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The subject site is surrounded by residential development to its east and south and by industrial development to its north and west.

3. Canterbury LEP 2012

The site is located within the Industrial Zone: IN2 - Light Industrial zone located on the western side of Sheffield Street as shown in the zoning extract below.



Zoning extract - Canterbury LEP 2012

Residential accommodation is prohibited in the Light Industrial IN2 zone. Residential accommodation includes dwelling houses. The proposed dwelling house is a prohibited use on the site under the provisions of the *Canterbury LEP 2012*. Sites on the opposite side of Sheffield Street have a residential zoning (R3 Medium Density Residential).

Draft Consolidating LEP for Canterbury-Bankstown

The site remains with the IN2 Light Industrial Zoning in the draft consolidating LEP for Canterbury-Bankstown which is expected to be gazetted shortly.

4. Existing Use Rights

4.1 Definition of Existing Use Rights

Under the provisions of the *Environmental Planning and Assessment Act* a use cannot be carried out on a site if it is a prohibited use.

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However, Clause 4.66 of the *Environmental Planning and Assessment Act* permits the continuance of an existing use even though the use is prohibited under the current environmental planning instrument that applies to the land.

Section 4.65 provides:

"4.65 Definition of "existing use"

4.65 Definition of "existing use"

(cf previous s 106)

In this Division, existing use means—

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
- (b) the use of a building, work or land—
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

This necessarily requires the following questions to be answered.

1. ***Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would have the effect of prohibiting that use?***
2. ***Was the use of the building, work or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?***
3. ***Has the use of the building, work or land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?***

Existing dwelling house at 7 Sheffield Street Kingsgrove

It is understood that the existing dwelling house on the site was lawfully approved and built in the 1940s or 1950s, prior to the use being prohibited by *Canterbury LEP 2012*. There is no evidence that the current use has ever been interrupted since that time and the existing dwelling house is still on the site and is in use. As such, the site benefits from existing use rights.



Existing dwelling house at 7 Sheffield Street (on the left) and adjoining houses.

Environmental Planning and Assessment Regulation

The Environmental Planning and Regulation contains provisions relating to the expansion, enlargement or intensification of an existing use.

4.2 Land on which the existing use was carried out

What is “*the land on which the existing use was carried out*” for the purposes of cl 164 of the Environmental Planning and Assessment Regulation 2000 (“the EP&A Regulation”)?

- (1) *Development consent is required for any enlargement, expansion or intensification of an existing use.*
- (2) *The enlargement, expansion or intensification:*
 - (a) *must be for the existing use and for no other use, and*
 - (b) *must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “*that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*”.

Having regard to the above case law, it is considered existing use rights apply to the dwelling house at 7 Sheffield Street Kingsgrove. The existing dwelling house and proposed dwelling house are both situated on Lot 4 DP 15740. Lot 4 DP 15740 was in existence prior to the commencement of the *Canterbury LEP 2012*.

4.3 Planning Principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The judgment in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The four principles adopted by the court in this case will have general application in dealing with DAs that rely on existing use rights.

The four principles are:

4.3.1 How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

The proposal involves the construction of a new dwelling house, which is similar in bulk and scale to the surrounding buildings and future development.

FSR

Future dwelling houses on the eastern side of Sheffield Street have a maximum FSR as follows:

The maximum floor space ratio for a building that is a dwelling house or a semidetached dwelling is as follows:

- 0.65:1—if the site area is less than 200 square metres,
- 0.55:1—if the site area is at least 200 square metres, but less than 600 square metres,
- 0.5:1—in any other case.

The subject site has an area of 550.1m² which gives a maximum FSR of 0.55:1 under the provisions of the *Canterbury LEP 2012*. The proposed dwelling house has a FSR of 0.34:1, consistent with the planning controls that would apply to the site if it had a residential zoning.

Height

The maximum height for buildings on the eastern side of Sheffield Street is 8.5m. The proposed dwelling house has a height of 8.143m. The proposed dwelling house is therefore consistent with the height for residential development permitted under the *Canterbury LEP 2012*.

Setbacks

The proposed dwelling house complies with the front, side and rear setback requirements contained in the Canterbury DCP. These setbacks will be applied to future development on the eastern side of Sheffield Street.

Landscaped Area

A minimum of 20% of the site is required to be a deep soil zone under the Canterbury DCP. The proposal complies with this requirement with approximately 52.83% of the site having a soft soil zone. The 20% minimum soft soil zone will be applied to future development on the eastern side of Sheffield Street.

4.3.2 What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

The proposal involves the demolition of the existing dwelling house and the construction of a new dwelling house. The new proposal does not increase the intensity of the land use but involves a larger building than the existing building. This is considered to be reasonable as the proposed dwelling house does not represent an intensification of use on the site and complies with the planning controls for dwelling houses contained in the *Canterbury LEP 2012* and Canterbury DCP.

4.3.3 What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

The proposed development would not unreasonably impact upon any public or private views. The proposal will maintain the amenity of surrounding properties in terms of solar access, visual amenity and sense of enclosure.

The proposal meets the requirements of the Canterbury DCP for privacy and overshadowing.

4.3.4 What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

The proposed dwelling house has good internal amenity with adequate solar access, light and ventilation. The rear internal living areas have direct access to the private open space and landscaped rear garden.

The proposed dwelling house, although larger than the existing dwelling house on the site, does not represent an increase in intensity of use as the proposal is for a single occupancy dwelling. There are dwelling houses on either side of the subject site in the IN2 Industrial zone.

In conclusion, it is considered that the proposal is consistent with the planning principles established by the Land and Environment Court for development applications seeking to carry out development on the basis of existing use rights.

5. Guidelines for Development on the Site

As the proposed dwelling house relies on existing use rights, the provisions of the *Canterbury LEP 2012* and the *Canterbury DCP* do not apply to the site. However, to ensure that the proposed dwelling house does not have an unreasonable impact on the streetscape and on the amenity of adjoining and adjacent properties, an assessment is made of the proposal according to the development standards and controls contained in the *Canterbury LEP 2012* and *DCP* .

FSR/Floor Area	The maximum floor space ratio for a building that is a dwelling house or a semi-detached dwelling is as follows: <ul style="list-style-type: none">• 0.65:1—if the site area is less than 200 square metres,
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	<ul style="list-style-type: none"> • 0.55:1—if the site area is at least 200 square metres, but less than 600 square metres, • 0.5:1—in any other case. <p><i>The proposed dwelling house has a FSR of 0.34:1</i></p>
Front Setback	<p>Minimum 6m.</p> <p>Elements that articulate a front elevation of a dwelling house, such as awnings, balconies, patios, pergolas, porches, porticos and verandas, may project up to 1.5m into the required front setback articulation zone.</p> <p>Garage to be 1m behind outermost alignment of external walls, verandas or balconies.</p> <p><i>Complies - minimum front setback of 6m and garage setback at 7.475m.</i></p>
Side Setbacks/Building Envelope	<p>Minimum 1m.</p> <p><i>Complies - minimum side setbacks of 1m and 1.006m.</i></p>
Rear Setback	<p>Minimum 6m</p> <p><i>Complies - minimum rear setback of 13.61m.</i></p>
Minimum Landscaped Area	<p>Minimum 20% landscaped area for a site with an area between 450m² and 599m²;</p> <p>*Deep soil zone to be a minimum 2.5m wide. For sites with a street frontage >12.5m, at least half of the deep soil zone must be located adjacent to rear boundary.</p> <p><i>Complies.</i></p>
Site Coverage of all buildings	<p>Maximum 50% for site coverage of buildings for a site with an area between 450m² and 599m²;</p> <p><i>Complies.</i></p>

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Design/Garages	<p>2 car parking spaces/ dwelling required. One space may be provided on driveway in front of carport/garage.</p> <p>The garage is to be setback at least 1m behind the outermost alignment of external walls, verandas or balconies, any garage or carport facing an internal driveway.</p> <p>Maximum length of unarticulated walls:</p> <ul style="list-style-type: none"> • facades that face the street 4-6m, • facades on side elevations 10-15m. <p><i>Complies.</i></p>
Site Orientation/Overshadowing	<p>The site has an east-west orientation.</p> <p>Proposed development must retain a minimum of 2 hours of sunlight between 9.00am and 3.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.</p> <p>Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following:</p> <ul style="list-style-type: none"> • Systems must receive at least 2 hours of direct sunlight between 9.00am and 3.00pm on 21 June. • If a system currently receives less than 2 hours sunlight, then the proposed development must not reduce the existing level of sunlight. <p>Clothes drying areas on adjoining residential properties must receive a minimum of 2 hours of sunlight on 21 June.</p> <p><i>The subject site has an east-west orientation. The adjoining house at 5 Sheffield Street will be overshadowed in the morning and afternoon during the winter solstice by the proposed</i></p>

	<p><i>development. However, this adjoining property will receive a minimum of:</i></p> <ul style="list-style-type: none"> <i>-more than 2 hours of sunlight from late morning to more than 50% of the rear private open space area</i> <i>-front facing living areas will receive solar access all morning during the winter solstice;</i> <i>-it is expected that rear facing living areas will receive some solar access between 1pm and 3pm during mid-winter.</i>
Cut and Fill	<p>Finished ground floor level is to be maximum of 1m above natural ground level.</p> <p>Maximum 1m cut below ground level where it will extend beyond an exterior wall of the building.</p> <p>Maximum 600mm fill above ground level where it would extend beyond an exterior wall of a building.</p> <p><i>Complies.</i></p>
Heritage	Not affected.

6. Matters for Consideration Pursuant to Section 4.15 (79C) of the Environmental Planning and Assessment (Amendment) Act, 1997

(a) The provisions of:

- (i) Any environmental planning instrument;**
- (ii) Any draft environmental planning instrument**
- (iii) Any planning agreement**
- (iv) Any development control plan;**
- (v) Any matters prescribed by the regulations**
- (vi) Any coastal management plans that apply to the land to which the development application relates.**

The proposed dwelling house at 7 Sheffield Street Kingsgrove is a prohibited use on the site under the provisions of the **Canterbury Local Environmental Plan 2012**. The proposed dwelling house replaces an existing dwelling house and represents the continuation of the existing residential use of the site. The proposed dwelling house is consistent with the planning guidelines for residential development contained in the Canterbury DCP.

(b) the likely impacts of the development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality.

In summary, it is considered that the proposed dwelling house will have minimal impact on the environment due to the following reasons:

- regarding solar access, there will be adequate sunlight access to the internal living areas of the proposed development and adjoining dwellings;
- a sediment control barrier will be used to control sediment during construction;
- stormwater will be adequately disposed of according to Council's requirements;
- the proposed dwelling meets Council's requirements for minimum landscape area and private open space for a dwelling house;
- the social and economic impacts of the development are considered minor due to the size of the development proposal. The new dwelling will make a positive net contribution to the residences in Sheffield Street Kingsgrove.

(c) the suitability of the site for the development

- the development is considered suitable for the site, for the reasons outlined above.

(d) any submissions made in accordance with this Act or the regulations

- the development will be subject to Council's Notification Policy

(e) the public interest

- the proposed development will make a positive contribution to residential properties in Sheffield Street Kingsgrove and is recommended for approval.

