

# STATEMENT OF ENVIRONMENTAL EFFECTS

**Lot 2, DP. 192509**

**324 Hume Highway**

**BANKSTOWN NSW 2200**

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Development Application for:

- demolition of existing buildings;
- construction of a three (3) storey commercial building with basement car parking.

**12 December 2022**

**HDC**  
Haskew de Chalain  
**PLANNING**

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# 1 Introduction

This report has been prepared as a Statement of Environmental Effects in assessment of a Development Application seeking approval for the:

- demolition of existing buildings;
- construction of a three (3) storey commercial building with basement car parking.

This proposal relates to Lot 2, DP. 192509, 324 Hume Highway BANKSTOWN NSW 2200

It should be noted that the subject site enjoys an existing development consent DA- 24/2017 for:

*Demolition of existing structures and construction of a three storey mixed use development comprising of 14 residential units, ground floor commercial premises and associated basement car parking*

This report is submitted in accordance with Clause 24(1) of the Environmental Planning and Assessment Regulation 2021 ("the EPAA Regulation 2021"). The purpose of this Statement of Environmental Effects is to provide a description and general information about the site and the proposed development. Furthermore, this Statement of Environmental Effects provides the following information:

This report considers the following matters:

- Description of the site, surrounding development and the wider locality;
- Description of the proposed development;
- Assessment of the proposed development in accordance with all statutory controls and Council's Development Control Plan (DCP); and,
- A broader environmental assessment of the proposal, having regard to the matters for consideration contained within Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The proposed development will occur upon land zoned B6: Enterprise Corridor. Permitted land uses within the zone include *Business and Office Premises* and the proposed building has been designed to accommodate such land uses.

The subject site is a single lot and provides a total land area of 1614.7 sqm and development as proposed satisfies the relevant parts of the *Bankstown Local Environmental Plan 2015*.

Provided with this Statement of Environmental Effects are architectural plans and supporting documentation to enable the determination of the development application.

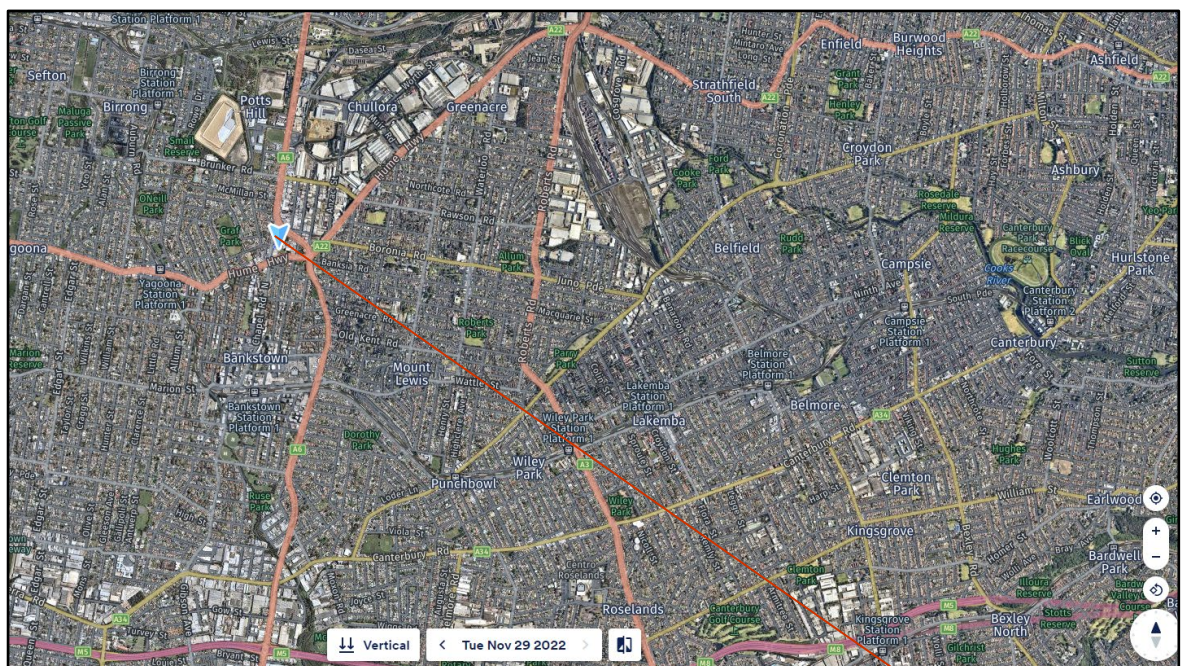
The site, proposal and development controls are discussed, and with a Section 4.15 summary assessment of the proposal, forms the required Statement of Environmental Effects.

## 2 Site details

### 2.1 SITE DESCRIPTION

The subject site is a single and generally level lot with an area of 1614.7 sqm. The Hume Highway forms the southern boundary, with Davis Lane to the north providing vehicular access to the site. Bankstown North Public School is located to the east of the site with existing commercial development to the west. Residential development within a R4 High Density Residential zone is located to the north of the site, north of Davis Lane. The site is considered "isolated" in that opportunity to consolidate is not likely due to the extent of existing commercial development to the west and extensive School development to the west.

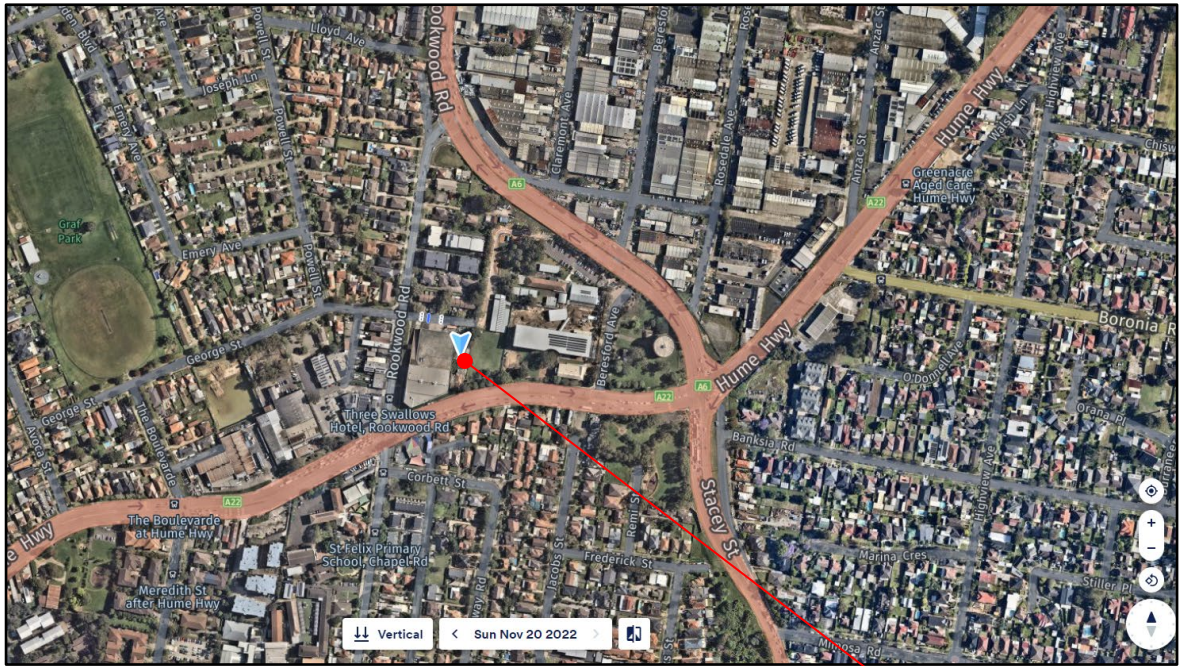
Currently the subject site supports a residential land uses in the form of a single storey dwelling and associated structures. Currently vehicular access to the site can be achieved from vehicular crossing and concrete driveway from the Hume Highway and also from Davis Lane. Figures 1-3 below shows the site, location and context.



**Figure 1:** Site Location (Regional Context)

Subject site





**Figure 2:** Site Location (Local Context)

Subject site



**Figure 3:** Aerial Photograph (Detailed Site View): Subject site

Subject site



## 2.2 EXISTING DEVELOPMENT

Existing improvements over the site consist of a dwelling house, outbuilding, concrete driveways and formal areas of garden/lawn. Reference should be made to the following image for a record of existing development. **A survey is provided with this application which details the location of the building and site levels.**



**Figure 4:** North Easterly view across the site

Subject site

## 2.3 VEGETATION

This proposal will result in the removal of a number of trees. Consent for the removal of trees was issued pursuant to development consent DA- 24/2017.

## 2.4 LOCAL SERVICES

A full range of services including, public transport, shopping, professional and educational facilities are accessible within the wider locality.



## 2.5 SUITABILITY OF THE SITE

The key opportunities from which the proposed development responds are:

- The development site is of proportions able to support development of the scale proposed.
- The site is within close proximity to existing commercial services and this proposal will add to these.
- The site is well located with regard to the public transport services and is accessible
- The site is an "isolated" site but is able to be redeveloped contributing to the urban renewal of the locality.

## 3 Proposed Development

### 3.1 OVERVIEW

This proposal will enable the site to be redeveloped in accordance with the applicable development standards (supported by a clause 4.6 request for variation in relation to minor exceedance in height) and satisfying zone and development standard objectives.

The proposed redevelopment of the site will involve demolition of aged structures and their replacement with a modern commercial building with basement car parking. The redevelopment will also result in the removal of vehicular access to the site from the Hume Highway.

The proposal comprises:

- three (3) basement levels with 62 car parking spaces, bicycle parking, servicing and storage;
- ground floor containing entry foyer off the Hume Highway and two (2) commercial tenancies opening onto common open space;
- first floor containing two (2) commercial tenancies opening onto common open space;
- second floor containing two (2) commercial tenancies.

It should be noted that the Council has previously issued development consent for the development of the subject site as a three (3) storey mixed use development (DA- 24/2017) and this proposal is generally within the approved building envelope.

### 3.2 DEVELOPMENT DATA

The project architect has provided a summary of development data below as table 1.

<b>Area Analysis:</b>	
324 HUME HIGHWAY, BANKSTOWN	
Site Area = 1614.7 m <sup>2</sup>	
Lot 2 in D.P. 192505	
Calculations - External Walls excluded in calc.	
<u>PROPOSED CALCULATIONS</u>	
GROUND FLOOR AREA =	615.51 m <sup>2</sup>
LEVEL 1 FLOOR AREA =	887.90 m <sup>2</sup>
LEVEL 2 FLOOR AREA =	1 125.89 m <sup>2</sup>
<u>TOTAL AREA =</u>	<u>2629.3 m<sup>2</sup></u>
<u>PROPOSED FSR =</u>	<u>1.6:1</u>
<u>ALLOWABLE FSR =</u>	<u>2:1</u>
PROPOSED DEEP SOIL = 171.86 m <sup>2</sup> - 10%	

**Table 1:** Development Data

### 3.3 VEHICULAR ACCESS AND PARKING

This proposal identifies car parking within a basement, providing car parking design and number to comply with Council's development controls. Car parking spaces and basement have been designed to allow for adequate maneuvering area and to comply with Australian Standards. **Reference should be made to the Traffic and Parking Assessment Report accompanying this application.**

### 3.4 BUILDING CODE OF AUSTRALIA (BCA) 2019

An assessment of the proposed development against the National Construction Code, Volume 2, Building Code of Australia, 2019 Amendment 1 (the "NCC") has been conducted. The assessment addresses all relevant Deemed-To-Satisfy (DTS) Clauses of the NCC and provides comment on the compliance status of the proposed development. If the development does not comply with a DTS Clause, where appropriate, a recommendation to prepare/obtain a Performance Solution is specified. **Reference should be made to the NCC Assessment Report, Access Assessment Report accompanying this application.**

### 3.5 WASTE MANAGEMENT

A construction and demolition waste management plan accompanies this application. This plan seeks to identify opportunities to recycle/reuse materials reducing the volume of waste directed to landfill. Significant opportunities have been identified and will be implemented.

An operational waste management plan has also been prepared for this proposal and based on the estimated volume of waste generated the appropriate number of bins and frequency of collection recommended.

The operational waste management plan considers the potential waste types and assigns procedures and responsibility for the management of the waste. **Reference should be made to the Waste Management plans accompanying this application.**

### 3.6 CONCEPT DRAINAGE DESIGN

This proposal is accompanied by a concept drainage design that demonstrates consistency with Council requirements. **Reference should be made to the Concept Drainage Design accompanying this application.**



### 3.7 OVERSHADOWING

Solar access diagrams provided with the application demonstrate that the shadow cast by the proposed development does not unreasonably impact on premises in the vicinity of the subject site. ***Reference should be made to the architectural package that includes comprehensive shadow analysis.***

## 4 Relevant Planning Controls

The relevant environmental planning instruments and development controls are outlined below and comment on compliance provided.

### 4.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 - CHAPTER 4

SEPP (Resilience and Hazards) 2021 requires the Consent Authority to consider whether land is contaminated. The subject site supported residential land uses and this proposal does not seek an alteration of land use to a more sensitive land use. Furthermore, development consent has recently been issued for the redevelopment of the site for mixed uses, including residential use. Therefore, it can be concluded that the potential for site contamination has been considered and that the risk of contamination and/or risk to environmental or human health has been investigated and does not limit development of the site as proposed.

### 4.2 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

The proposed development is not defined as a traffic generating development of size and/or capacity under Clause 2.122 of SEPP (Transport and Infrastructure) 2021. Therefore, formal referral to Transport for NSW (TfNSW) is not required.

However, the proposed development has frontage to classified road (No. 2 – Hume Highway) and therefore in accordance with Clause 2.119 of SEPP (Transport and Infrastructure) 2021 the development therefore must ensure that:

(b) the safety, efficiency, and ongoing operation of the classified road will not be adversely affected by the development as a result of:

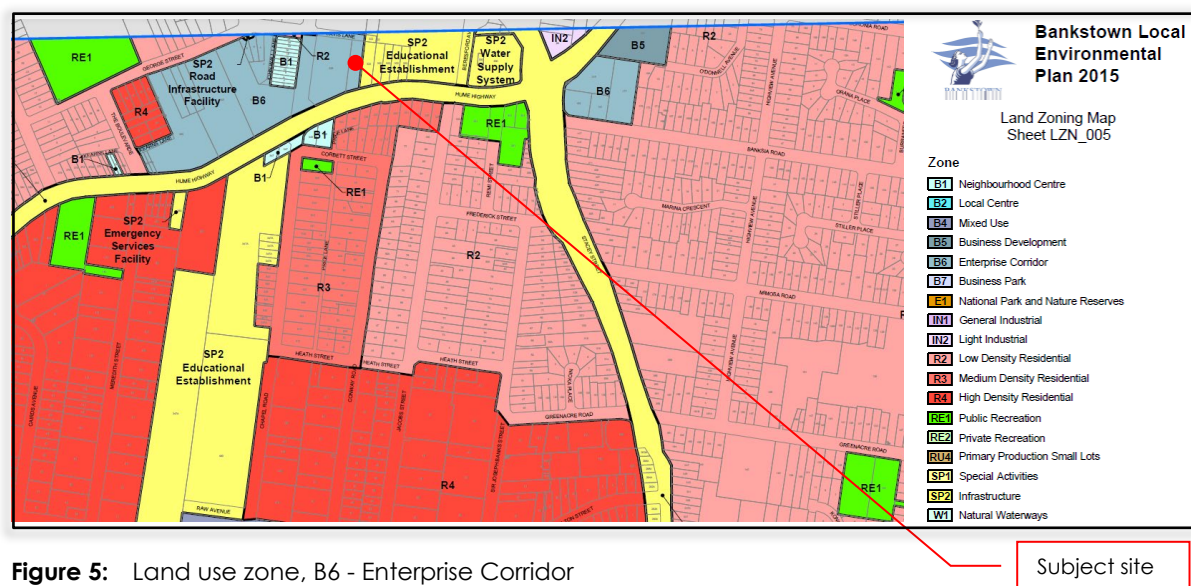
- (i) the design of the vehicular access to the land.
- (ii) the emission of smoke or dust from the development
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land.

The proposed development will provide vehicle access via Davis Lane, which means that the proposal will have no impact on the operation of the classified road, hence the Council can be satisfied that the development will not adversely impact on the safety, efficiency and ongoing operation of the Hume Highway (classified road) **Reference should be made to the traffic report accompanying this application.**

## 4.3 BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2015

The relevant clauses of the Bankstown Local Environmental Plan 2015 are addressed below.

The subject site is zoned B6 - Enterprise Corridor pursuant to the Bankstown Local Environmental Plan 2015 as depicted in the extract from the Local Environmental Plan.



**Figure 5:** Land use zone, B6 - Enterprise Corridor

### 4.3.1 Satisfying zone objectives

The objectives of the B6 - Enterprise Corridor zone are:

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

It is considered that the proposed commercial development will satisfy the relevant zone objectives. That is, this proposal will provide new commercial floor space that will facilitate the establishment of new businesses along a main road. The proposed building has been designed to enable the establishment of business premises and office premises in a desirable location. There is no doubt that development of the subject site as indicated in this application would satisfy the relevant B6 zone objectives.

### 4.3.2 Permissibility

Land uses permitted with consent within the B6 Zone are:

*Building identification signs; Business identification signs; **Business premises**; Community facilities; Food and drink premises; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Kiosks; Landscaping material supplies; Light industries; Markets; Multi dwelling housing; Neighbourhood shops; **Office premises**; Oyster aquaculture; Passenger transport facilities;*



*Plant nurseries; Residential flat buildings; Roads; Seniors housing; Specialised retail premises; Tank-based aquaculture; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Any other development not specified in item 2 or 4* This proposal relates to a residential flat development.

This proposal relates to the development of a site to facilitate the establishment of permitted land uses.

## 4.4 PRINCIPAL DEVELOPMENT STANDARDS

The North Sydney Local Environmental Plan 2013 sets a number of standards relevant to this proposal as summarised below.

### 4.4.1 Height of Buildings



**Figure 6:** Height of buildings

Subject site

The subject site enjoys two HOB standards of 11 metres and 23 metres. However, pursuant to cl. 4.3(2A), because the subject site has an area less than 5000sqm, the permitted HOB is 11 metres. The proposed building is generally 11 metres in height with minor non-compliance. The maximum height at the lift overruns is 11.9 metres. A clause 4.6 request is attached at appendix 2 of this Statement of Environmental Effects.

## 4.4.2 Floor Space Ratio



**Figure 7:** Floor Space Ratio

Subject site

The permitted FSR applicable is 2.0:1. This proposal results in a proposed FSR of 1.6:1 and is therefore compliant in terms of permitted GFA/FSR.

## 5 s.4.15 Planning Assessment

In determining the environmental effects of a development proposal' the consent authority, is required to consider those matters relevant as listed in section 4.15 of the Environmental Planning and Assessment Act, 1979. These matters are listed below with commentary where required.

### 5.1 ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 4.15(1)(A)(I)

The relevant environmental planning instruments have been identified and discussed in section 4 of this statement. This proposal is permissible subject to the provisions of the *Bankstown Local Environmental Plan 2015* and it is considered that the provisions of all relevant environmental planning instruments have been satisfactorily addressed within Section 4 of this statement.

### 5.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS - SECTION 4.15(1)(A)(II)

At the time of preparing this application there were no draft planning instruments which would affect the determination of this proposal.

### 5.3 DEVELOPMENT CONTROL PLANS - SECTION 4.15(1)(A)(III)

The Bankstown Development Control Plan applies to this proposal and it is argued that the proposal is consistent with the aims and objectives of the DCP and generally compliant with the specific controls applicable to the site and the type of development proposed. A summary of the relevant controls prescribed by the DCP and commentary is provided at appendix 1.

While the DCP is a relevant consideration when making a determination of this proposal, Council is reminded that the proclamation of the Environmental Planning and Assessment Amendment Act 2012 ("the Amendment Act") on 1 March 2013 confirmed the status and weight that should be placed on development control plans when making a determination of a development application. The amendments to the Environmental Planning and Assessment Act 1979 clarified the purpose, status and content of development control plans (DCPs), and how they are to be taken into account during the development assessment process.

The Amendment Act makes it clear that the principal purpose of a DCP is to provide guidance to a consent authority on land to which the DCP applies.



The Amendment Act reinforces that the provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Furthermore, it should be noted that the weight a consent authority gives to a DCP in assessing a development application will depend on a number of factors, including whether the DCP provides a sensible planning outcome.

The Amendment Act confirms that Council can confidently apply development control plans flexibly and if a development application does not comply with provisions in a DCP, a consent authority must be flexible in the way it applies the controls and also allow for reasonable alternative solutions to achieve the objectives of those standards.

### 5.3.1 Inconsistency with Bankstown DCP

This proposal is inconsistent with the Bankstown development control plan with respect to Storey Limit and Setbacks. It is argued that the subject site is essentially an isolated site without opportunity for amalgamation due to existing significant adjoining development and adjoining educational establishment. It is also noted that development consent has been granted for the redevelopment of the adjoining site, without amalgamation with the subject site. This proposal is generally consistent with the permitted HOB standard of 11 metres, but seeks consent for a three (3) storey development. It is argued that a building that reads as three storeys from the Hume Highway will not be considered as an incompatible development. Furthermore, it should also be acknowledged that the current development consent, DA- 24/2017, consents to the construction of the three (3) storey development.

The subject site is narrow, being only 19.52 metres wide. A six (6) meter setback to the side and rear boundaries are not proposed as such setbacks would render the site undevelopable. This proposal adopts zero side boundary setback to match the existing adjoining development. DA- 24/2017 also adopts zero side boundary setbacks.

This proposal does not provide a 5 metres landscape buffer to the Hume Highway, but adopts a front boundary alignment that is compatible with adjoining commercial premises and typical in the locality. Insisting on a 5 metre landscaped buffer to the subject site would unreasonably reduce development potential. A narrower landscaped strip is proposed.

***Reference should be made to Appendix 1 of this statement.***

## 5.4 ANY PLANNING AGREEMENT - SECTION 4.15(1)(A)(IIIA)

This proposal is not subject to a planning agreement.

## 5.5 THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH) - SECTION 4.15(1)(A)(IV)

Clause 61 of the Environmental Planning and Assessment Regulation 2021 requires that in the case of development involving demolition of a building the provisions of Australian Standard AS 2601 – 2001: The Demolition of Structures need to be taken into consideration.

## 5.6 ENVIRONMENTAL AND SOCIAL IMPACTS - SECTION 4.15(1)(B)

Section 4.15(1)(b) requires the consent authority to consider:-

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

The relevant matters are addressed below.

### 5.6.1 Impacts on The Natural Environment

It is argued that this proposal has considered the site attributes and has been designed to incorporate measures to minimise impact to the natural environment. Opportunity to conserve and reuse potable water and incorporation of energy efficient fittings have been explored. Furthermore, a Section J assessment will be undertaken to ensure that this proposal is able to achieve the requirements of the BCA.

### 5.6.2 Impacts on The Built Environment

#### **Bulk and scale**

The proposed design is of a scale which meets the objectives of Council's LEP and DCP controls which permits development at the scale proposed for this location. The proposed development will achieve the desired bulk and scale sought by Council.

#### **Overshadowing**

Solar access diagrams provided with the application demonstrate the shadow cast by the proposed development is not unacceptable.

### **Privacy and visual impacts**

The proposed buildings will not give rise to privacy or visual impacts. The building envelopes as proposed have been established with respect to the relevant development standards within the Local Environmental Plan and Development Control Plan.

### **Acoustic**

Preliminary acoustic assessment advises that Development as proposed is not likely to give rise to adverse acoustic impact.

### **Traffic and parking**

A traffic and parking report accompanies this application in support of the proposal. Parking with satisfactory access is proposed. Accessible parking is available, and parking is adequately secure.

### **Social and economic impacts**

It is to the benefit of the local government area to redevelop suitable sites. An increase in commercial floor space supply will enhance the local economy.

## **5.7 THE SUITABILITY OF THE SITE - SECTION 4.15(C)**

Section 4.15(c) requires the consent authority to consider:

"(c) the suitability of the site for the development."

The existing development site and the adjacent sites do not provide any constraints which would render the site unsuitable for development as proposed.

## **5.8 SUBMISSIONS - SECTION 4.15(D)**

Section 4.15(d) requires the consent authority to consider:

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

Any relevant submissions will require consideration by the consent authority in the determination of this proposal. The applicant will also seek the opportunity to respond to submissions if received after exhibition of this proposal.

## 5.9 PUBLIC INTEREST - SECTION 4.15(E)

Section 4.15(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best achieved by the orderly and economic use of land for permissible purposes that do not impact unreasonably on development and/or enjoyment of surrounding land. In this case, it is considered that this proposal represents an efficient, orderly and economic use of land while also satisfying a market demand for residential accommodation.

The proposal is in the public interest as it will:

- Allow for development of an appropriately zoned and serviced site; and,
- Contribute to commercial floor space supply in a desirable and accessible location.

## 5.10 DEVELOPMENT CONTROL PLANS- SECTION 4.15(3A)

Section 4.15(3A) of the Act the Environmental Planning and Assessment Act, 1979 requires Councils to be flexible in applying any provisions that apply to a proposal and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

As stated in this statement, the proposed development warrants a flexible application of the Bankstown DCP as the proposal achieves the applicable objectives of the controls and will provide a high level of amenity for future tenants, without adversely impacting on the natural, social or built environments.

## 6 Conclusion

This Development Application seeks approval for the redevelopment of B6 zoned land that will result in the redevelopment of the subject site for commercial purposes.

It is considered that the proposed development satisfies the relevant zone objectives. That is, this proposal will contribute to the supply of commercial floor space that can accommodate land uses permitted within the land use zone. The development site, being an isolated site requires careful and considered building design and it is argued that this proposal demonstrates an understanding of the local context and site constraints.


The overall development design is considered contemporary and sympathetic to the adjoining development and future development. The overall amenity of the proposed will be excellent in terms of location, access to facilities and services, appearance and layout.

The proposed development as submitted has the potential to deliver a well-designed, high-quality, residential development to Bankstown and is deserving a positive determination from the consent authority.



## 7 Appendix 1 – Development Control Consistency Summary Table

The following table summarises the **most relevant** (not all) development controls and consistency with such controls.

Clause	Guidance	Comment	Consistency
<b>SECTION 2A - Corridors</b>			
<b>5.0 Building form (Rookwood Enterprise Zone)</b>	<p><b>Site specific provisions: Nos. 324–364 Hume Highway, 2–24B George Street and 2–24 Rookwood Road in Bankstown</b></p> <p>5.1 Council may apply the storey limit (not including basements) shown in Figure 27 to land within Zone B6 Enterprise Corridor only if it is satisfied that:</p> <p>(a) development will consolidate all adjoining allotments shown edged with a heavy black line in Figure 26 into a single allotment; and</p> <p>(b) development will provide a 2 storey buffer along the George Street boundary of an allotment. Council does not allow development with 4 or more storeys to have attics.</p> <p>If in Council's opinion a development does not satisfy this clause, a 2 storey limit will apply to each allotment.</p> <p>Figure 26: Council may apply Figure 27 to land within Zone B6 Enterprise Corridor only if it is satisfied that a development consolidates the allotments at Nos. 324–326 Hume Highway into a single allotment; Nos. 342 Hume Highway and 2–8 George Street into a single allotment; No. 348 Hume Highway into a single allotment; and Nos. 350 Hume Highway and 18 George Street into a single allotment (as shown edged with a heavy black line).</p> 	<p>The subject site is located within the Rookwood precinct. However, this proposal does not involve any amalgamation of sites.</p> <p>Site is identified within figure 26, but this proposal does not seek site consolidation.</p> <p>No consolidation proposed.</p> <p>This proposal relates to a single development site with proposed building being three (3) storeys in height within the permitted HOB standard of 11 metres.</p> <p>Subject site identifies on figure 26, but no amalgamation proposed.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

Clause	Guidance	Comment	Consistency
	5.2 Development within Zone B1 Neighbourhood Centre must comply with the storey limit shown in Figure 27 and must ensure development does not exceed 4 storeys. Council does not allow development with 4 storeys to have attics.	This proposal is not within the B1 zone	N/A
	5.3 Development must comply with the minimum setbacks shown in Figure 27 and must ensure: (a) dwellings are setback a minimum 20 metres from the Hume Highway boundary of the allotment or a road related area (within the meaning of the Roads Act 1993) adjoining or associated with the Hume Highway; (b) commercial development is setback a minimum 5 metres from the Hume Highway boundary of the allotment; and (c) development provides appropriate solar access to neighbouring land within Zone R4 High Density Residential.	This proposal does not relate to a consolidation of sites and the development of the land for shop top housing.  No dwellings proposed  This proposal does not trigger the setback controls as this proposal does not involve the consolidation of lots and development for shop top housing as depicted in the DCP.	N/A  N/A  N/A
	5.4 Development must provide a minimum 5 metre wide landscape buffer zone to the Hume Highway boundary of the allotment to enhance the Remembrance Driveway landscape corridor.	This proposal does not trigger the landscape buffer controls as this proposal does not involve the consolidation of lots and development for shop top housing as depicted in the DCP.	N/A
	5.5 Vehicle access to the allotments may be permitted from George Street, Davis Lane, John Wall Lane and Kearns Lane.	While this proposal does not trigger these controls, it should be noted that vehicular access proposed is from Davis Lane.	N/A
	5.6 Development on one or more of the allotments at Nos. 342-350 Hume Highway in Bankstown must create a shared rear lane for vehicle access and servicing purposes. The proposed rear lane should connect with John Wall Lane and Kearns Lane as shown in Figure 27.	This proposal relates to development at 324 Hume Highway.	N/A
<b>SECTION 2B – Commercial Centres</b>			
<b>SECTION 4– ENTERPRISE CORRIDORS</b>	<b>Storey limit (not including basements)</b> 4.1 The storey limit for development is 2 storeys.	This proposal is consistent with the permitted HOB standard of 11 metres, but seeks consent for a three (3) storey development.	NO

Clause	Guidance	Comment	Consistency
	<p><b>Setbacks</b></p> <p>4.2 Development must provide a minimum 5 metre wide landscape buffer zone to the front boundary of an allotment.</p> <p>4.3 The minimum setback to the side and rear boundaries of an allotment is 6 metres, with preference given to deep soil planting within the setback.</p>	<p>This proposal does not provide a 5 metres landscape buffer, but adopts a front boundary alignment that is compatible with adjoining commercial premises and typical in the locality.</p> <p>A 6 meter setback to the side and rear boundaries are not proposed. This proposal relates to the development of a single lot with width of 19.524m. 6 metre setbacks would render the site undevelopable. This proposal adopts zero side boundary setback to match the existing adjoining development.</p>	NO
<b>SECTION 5– BUILDING DESIGN</b>	<p><b>Facade design</b></p> <p>5.1 Council applies the design quality principles of State Environmental Planning Policy No 65–Design Quality of Residential Apartment Development and the Apartment Design Guide to residential flat buildings, shop top housing, serviced apartments, boarding houses and mixed use development (containing dwellings). This includes buildings that are two storeys or less, or contain less than four dwellings.</p> <p>5.2 Development must articulate the facades to achieve a unique and contemporary architectural appearance that:</p> <ul style="list-style-type: none"> <li>(a) unites the facades with the whole building form;</li> <li>(b) composes the facades with an appropriate scale and proportion that responds to the use of the building and the desired contextual character;</li> <li>(c) combines high quality materials and finishes;</li> <li>(d) considers the architectural elements shown in the illustration to this clause; and</li> <li>(e) considers any other architectural elements to Council's satisfaction.</li> </ul> <p>5.3 Development must architecturally treat blank walls that can be viewed from the street and adjoining residential zoned land by incorporating public art, variation in building materials</p>	<p>This proposal does not include residential development.</p> <p>Refer to architectural plans. Articulation proposed.</p> <p>Blank wall not proposed at eastern elevation.</p>	<p>N/A</p> <p>TO BE CONSIDERED ON MERIT</p> <p>N/A</p>

Clause	Guidance	Comment	Consistency
	and/or other architectural design methods which reflect contemporary and interesting design.		
	5.4 The street facade of development on corner allotments should incorporate architectural corner features to add visual interest to the streetscape.	Not on a corner	N/A
	5.5 Development should restrict the use of the first storey (i.e. the ground floor) to business, retail or other non-residential uses: (a) to maintain business and retail floor space in the business zones; and (b) to maintain active street frontages in the business zones.	This proposal is for commercial purposes only	YES
	5.6 Development in enterprise corridors may have predominantly glazed facades provided it does not cause significant glare nuisance.	Noted	
	<b>Attic and roof design</b> 5.10 Development must incorporate a high quality roof design that: (a) achieves a unique and contemporary architectural appearance; and (b) combines high quality materials and finishes.	Refer to architectural plans	TO BE CONSIDERED ON MERIT
	5.11 Council does not allow the following development to have attics: (a) development with 4 or more storeys in the village, small village and neighbourhood centres that adjoin the Hume Highway; or (b) development in the enterprise corridors (this does not include residential development up to 2 storeys at the rear of an allotment).	Attic not proposed	N/A
	<b>Awnings</b> 5.13 A traditional box awning must be provided continuously along retail streets to provide pedestrian shelter to footpaths. Council may allow an awning other than a traditional box awning where it considers: (a) the awning design to be an integral feature of the building design; and	Not a "retail street"	N/A

Clause	Guidance	Comment	Consistency
	<p>(b) the awning design does not contain finishes susceptible to degradation (such as glazing material) that result in an unacceptable visual impact on the streetscape. Council does not support cut outs in awnings for trees and light poles.</p> <p>5.14 The height of an awning should:</p> <p>(a) match the height of an adjoining or nearby awning; and</p> <p>(b) have a consistent fascia height to accommodate a sign.</p> <p>5.15 Development may incorporate an awning design in the enterprise corridors that:</p> <p>(a) achieves a unique and contemporary architectural appearance; and</p> <p>(b) combines high quality materials and finishes.</p> <p><b>Landscaping</b></p> <p>5.26 This clause applies to development in the village centres, small village centres, neighbourhood centres and enterprise corridors that adjoin the Hume Highway. Development and a landscape buffer zone must plant a 75 litre tree at 5 metre intervals along the length of the Hume Highway boundary of an allotment, and must select the trees from the list in Appendix 1.</p> <p>5.27 Commercial development and residential flat buildings with a primary frontage of 5 metres or more must provide at least 1 street tree per 5 metres of primary frontage. Council may vary this requirement if a street tree already exists in good condition, if an awning or site constraints limit their inclusion, or a public domain plan is yet to determine the location of trees in a precinct.</p> <p><b>Entrances</b></p> <p>5.28 The main entrance or entrances to development must face the street.</p>	<p>Awning not proposed.</p> <p>Landscape buffer not proposed</p> <p>Noted</p> <p>Entrance faces the street.</p>	<p>N/A</p> <p>N/A</p> <p>ABLE TO COMPLY</p> <p>YES</p>



Clause	Guidance	Comment	Consistency
	<p>5.29 Access to the dwelling of shop top housing, mixed use development and residential flat buildings must be from the street. This may be provided:</p> <p>(a) as a passage or stairway that is separate to the non-residential area in the building; or</p> <p>(b) as a passage or stairway that shares access with the dwellings of an adjoining development provided there is a legal arrangement to allow access at all times.</p>	Not a shop top housing development	N/A
	<p>5.30 Council may permit rear lane access to the dwelling of shop top housing and mixed use development provided the rear lane achieves an appropriate level of safety, security, and lighting for residents and visitors. This clause solely applies to the following neighbourhood centres:</p> <p>(a) Nos. 90–100 Columbine Avenue, Bankstown;</p> <p>(b) Nos. 101–109 Denham Road, Bass Hill;</p> <p>(c) Nos. 1–7 Eldon Avenue and 48 Surrey Avenue, Georges Hall;</p> <p>(d) Nos. 118–120 Rawson Road, Greenacre;</p> <p>(e) Nos. 134–150 Centaur Street, Revesby Heights; and</p> <p>(f) Nos. 63–79 Middleton Road, Villawood.</p> <p>Building design and natural surveillance</p>	Not a shop top housing development	N/A
	<p>5.31 Windows to the living areas of front dwellings, or the windows on the upper floors of development must overlook the street.</p>	Not a shop top housing development	N/A
	<p>5.32 Where the ground floor of development faces the street, the ground floor must incorporate shopfront style windows with clear glazing so that pedestrians can see into the premises and vice versa. The use of obscure or opaque glass, or other types of screening is discouraged.</p>	Noted and proposed	YES
	<p>5.33 Above ground car parking must be setback a minimum 6 metres from the front building line to allow the gross floor area at the front of the building to be used</p>	Above ground parking not proposed	N/A

Clause	Guidance	Comment	Consistency
	for commercial, retail, or residential purposes. This clause does not apply to the front building line that faces a rear lane.		
	5.34 A public arcade or underpass in buildings must be wide and direct to avoid potential hiding places. Access to the arcade or underpass should be closed to the public between 11.00pm to 6.00am daily via a lockable door.	Public arcade or underpass not proposed	N/A
	5.35 Lighting must be provided to the underside of an awning using vandal resistant, high mounted light fixtures. Security devices for commercial development	Awning not proposed	N/A
	5.36 The security door or grille to a shopfront facing the street must be transparent or an open grille type shutter. A solid roller door or shutter is not permitted.	Noted	ABLE TO COMPLY
	<b>Development adjacent to residential zones</b> 5.38 In determining a development application that relates to land adjoining land in Zone R2, R3 or R4, Council must take into consideration the following matters: (a) whether any proposed building is compatible with the height, scale, siting and character of existing residential development within the adjoining residential zone; (b) whether any goods, plant, equipment and other material used in carrying out the proposed development will be stored or suitably screened from residential development; (c) whether the proposed development will maintain reasonable solar access to residential development between the hours of 8.00am and 4.00pm at the mid-winter solstice; (d) whether noise generation from fixed sources or motor vehicles associated with the proposed development will be effectively insulated or otherwise minimised;	Residential development located to the north of the subject site over Davis Lane. This proposal is considered compatible	TO BE CONSIDERED ON MERIT
		Significant separation from proposal to residential development. Plant and equipment suitably screened	TO BE CONSIDERED ON MERIT
		Refer to shadow diagrams. No shadow impact to residential development	YES
		Refer to acoustic assessment	YES

Clause	Guidance	Comment	Consistency
	(e) whether the proposed development will otherwise cause nuisance to residents, by way of hours of operation, traffic movement, parking, headlight glare, security lighting, fumes, gases, smoke, dust or odours, or the like; and (f) whether any windows or balconies facing residential areas will be treated to avoid overlooking of private yard space or windows in residences.	Amenity impact not likely  No balconies or windows proposed overlooking residential development	TO BE CONSIDERED ON MERIT  TO BE CONSIDERED ON MERIT
<b>PART B4 SUSTAINABLE DEVELOPMENT</b>			
<b>Summary of development controls</b>	Summary of development controls Table 1 summarises the development controls that are included in Part B4 of this DCP	This part of the DCP applies to this proposal.  This proposal is able to include sustainability measures suggested in the DCP including water conserving fixtures and Energy efficient hot water systems, air conditioners and lighting	ABLE TO COMPLY
<b>PART B5 PARKING</b>			
<b>SECTION 2-OFF STREET PARKING</b>	Business premises/ Office premises  1 car space per 40m2 gross floor area of the premises	Refer to traffic assessment report.  59 car parking spaces required, 62 car parking spaces proposed.  Carparking proposed exceeds DCP requirements.	YES
<b>SECTION 3-OFF STREET PARKING DESIGN AND LAYOUTS</b>		Refer to traffic assessment report.  Carping design satisfies design Standards	YES
<b>PART B13 WASTE MANAGEMENT AND MINIMISATION</b>			
<b>SECTION 2-DEMOLITION AND CONSTRUCTION</b>	The development controls to achieve the objectives are: 1.1 All development applications are to be accompanied by a Waste Management Plan prepared in accordance with the Waste Management Guide for New Developments and the Bankstown Demolition and Construction Guidelines.	Refer to waste management plan accompanying this application	YES

Clause	Guidance	Comment	Consistency
<b>SECTION 5– COMMERCIAL DEVELOPMENT</b>	All commercial development types		
	3.1 Development must provide bin storage and separation facilities.	Bin and separation facilities are able to be provided	YES
	3.2 Development must provide an appropriate and efficient waste storage system that considers: (a) the volume of waste generated on-site; (b) the number of bins required for the development and their size; and (c) waste and recycling collection frequencies.	Refer to waste management plan	YES
	3.3 Where development involves multiple tenancies, individual bins for each tenancy is to be provided.	Noted	ABLE TO COMPLY
	3.4 Where development involves multiple tenancies, the design of development is to ensure each tenancy will be able to obtain a Trade Waste Licence.	Noted	ABLE TO COMPLY
	3.5 Bin storage areas are to integrate with the overall design and functionality of development and are to locate within the building envelope to enable these areas to be screened from view from the public domain.	Noted	ABLE TO COMPLY
	3.6 The design of the bin storage area must comply with the requirements of the Waste Management Guide for New Developments.	Noted	ABLE TO COMPLY
	3.7 An on-site collection point is to be nominated for development. The location of the collection point must allow collection vehicles to enter and exit the site in a forward direction and allow all vehicle movements to comply with AS 2890.2. The location of the collection point must ensure waste servicing does not impact on any access points, internal roads and car parking areas.	Collection to occur from nominated location	YES
	3.8 Waste collection frequency is to be a minimum of once per week. Higher collection frequency may be required for development with larger	Refer to waste management plan	ABLE TO COMPLY

Clause	Guidance	Comment	Consistency
	<p>waste generation rates and to ensure bin storage areas are kept clean, hygienic and free from odours.</p> <p>3.9 Collection frequency for commercial tenancies producing more than 50 litres of meat, seafood or poultry waste must have daily waste collection or be designed to be provided with a dedicated refrigerated room for waste storage between collections.</p>	Office/Business premises proposed.	N/A

## 8 Appendix 2 – Clause 4.6 Request to vary the Height of Building Development Standard

This request has been prepared as the Applicant's Written Request for Variation to a Development Standard and is made in accordance with the provisions of clause 4.6 of the *Bankstown Local Environmental Plan 2015 (BLEP 2015)*:

The Request for Variation is made in respect of a Development Application seeking development consent for the:

- demolition of existing buildings;
- construction of a three (3) storey commercial building with basement car parking.

This proposal relates to Lot 2, DP. 192509, 324 Hume Highway BANKSTOWN NSW 2200

The proposed development will occur upon land zoned B6: Enterprise Corridor. Permitted land uses within the zone include *Business and Office Premises* and the proposed building has been designed to accommodate such land uses.

### Background and Development Description

The subject site is a single and generally level lot with an area of 1614.7 sqm. The Hume Highway forms the southern boundary, with Davis Lane to the north providing vehicular access to the site. Bankstown North Public School is located to the east of the site with existing commercial development to the west. Residential development within a R4 High Density Residential zone is located to the north of the site, north of Davis Lane. The site is considered "isolated" in that opportunity to consolidate is not likely due to the extent of existing commercial development to the west and extensive School development to the west.

Currently the subject site supports a residential land uses in the form of a single storey dwelling and associated structures. Currently vehicular access to the site can be achieved from vehicular crossing and concrete driveway from the Hume Highway and also from Davis Lane.

### Purpose of Request

This Clause 4.6 variation has been submitted to assess the proposed non-compliance with the Height of Buildings (HOB) standard provided under Clause 4.3 of the BLEP2015. A maximum HOB of 11.0 metres is applicable to the site.

The proposed development proposes a maximum height of building of 11.937 metres to the lift overrun, this represents an exceedance in height of 0.937 metres. Architectural plans provide a visual interpretation of the maximum building height proposed.

The Request for Variation has been generally set out in accordance with the structure recommended by the Department of Planning in its publication entitled *Varying Development Standards – A Guide*.



In brief terms, this variation request says that:

- The extent of proposed non-compliance is not so significant as to have any demonstrable impacts on the desired future character of the area in relation to building bulk, form and scale.
- The proposed development is consistent with the desired future character of the area in relation to the building form and scale as expressed in the Bankstown DCP.
- The portion over height standard does not create additional overshadowing above the existing condition or strictly compliant building envelope.

The proposed HOB is in the public interest because it is consistent and compatible with:

- the objectives of the HOB development standard;
- the objectives for development within the B6 zone in which the development is proposed to be carried out; and,
- permitting the non-compliance with the height of building standard delivers a superior built form.

Requiring strict compliance with the HOB development standard is unreasonable in the circumstances of the case. This is because:

- the objectives of both the zone and standard are achieved notwithstanding non-compliance with the standard; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

## Clause 4.6 Request for Variation

Clause 4.6 of BLEP 2015 allows for variation to development standards. Components of Clause 4.6 relevant to the preparation of a Request for Variation are:

### **4.6 Exceptions to development standards**

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

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) .....

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 4.4, to the extent that it applies to land in Zone B4 Mixed Use that has a maximum floor space ratio of 3:1,

(cb) clause 4.4A.

**Clause 4.3 is not identified as being excluded from the operation of clause 4.6. Therefore a request to vary the Height of Buildings development standard may be made by the applicant.**

### **What is the name of the environmental Planning instrument that applies to the land?**

Bankstown Local Environmental Plan 2015.

### **What is the zoning of the Land?**

The subject site is zoned B6 – Enterprise Corridor.

### **What Are the objectives of the zone?**

The objectives of the B6 Enterprise Corridor zone are:

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

It is considered that the proposed commercial development will satisfy the relevant zone objectives. That is, this proposal will provide new commercial floor space that will facilitate the establishment of new businesses along a main road. The proposed building has been designed to enable the establishment of business premises and office premises in a desirable location. There is no doubt that development of the subject site as indicated in this application would satisfy the relevant B6 zone objectives.

### **What Is The Development Standard Being Varied?**

The subject Request for Variation relates to the maximum height of building standard pursuant to clause 4.3(2) of the BLEP2015. Therefore, the proposed development seeks exception to the 11m HOB standard.

## **What are the objectives of the Development Standard?**

The objectives of this clause are as follows—

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

With respect to the objectives of the development standard it is argued that this proposal satisfies the objectives. That is, the minor exceedance in building height proposed:

- does not result in a building that is incompatible with the character, amenity and landform of the area;
- does not impact on prevailing suburban character and has no impact on the number of storeys in the R2 Low Density Residential;
- has no impact on height transitions between development; and,
- has no impact on overall building height

## **What Is the Numeric Value of the Development Standard in the Environmental Planning Instrument?**

Clause 4.3 prescribes a maximum HOB of **11.0 m** by reference to the HOB map.

## **What Is The Numeric Value Of The Development Standard In The Development Application?**

The proposed development proposes a maximum height of building of 11.937 metres to the lift overrun, this represents an exceedance in height of 0.937 metres.

## **What is the percentage variation between the proposal and the environmental planning instrument?**

The lift overrun is 11.937 metres representing a 8.2% per cent exceedance. It should be noted that the lift overruns are centrally located. The degree of height exceedance over permitted building height is best demonstrated diagrammatically as shown on the architectural plans accompanying this application.

Whilst the NSW Department of Planning and Environment includes a requirement to identify the percentage variation in its *Guide to Varying Development Standards* there are a number of case law examples that demonstrate that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

The following examples relate to Floor Space Ratio and Height of Buildings development standards and assist in demonstrating that the degree of exceedance alone is not determinative in assessment of a Request for Variation to a development standard.

Clause 4.6 of the LEP is in similar terms to SEPP 1. Relevantly, like SEPP 1, there are no provisions that make necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life* equally applicable to clause 4.6. This means that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

Some examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- (a) In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a **floor space ratio variation of 187 per cent**.
- (b) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a **38 per cent height exceedance over a 15-metre building height standard**.
- (c) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **28 per cent height exceedance over a 22-metre building height standard**.
- (d) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **21 per cent height exceedance over a 18-metre building height standard**.

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

### **How is strict compliance with the development unreasonable or unnecessary in this particular case?**

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out five ways in which strict compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case.

The 5 ways are:

1. *if the proposed development proffers an alternative means of achieving the [development standard] objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served);*
2. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary*
3. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
4. *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*
5. *"the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Compliance with a development standard might be shown as unreasonable or unnecessary in circumstances where the development achieves the objectives of the development standard, notwithstanding non-compliance with the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved.

Reference should be made to figures 2 and 3 above, for a clear understanding of site topography and extent of height exceedance.

Strict compliance with the HOB development standard is considered to be unreasonable and unnecessary in the circumstances of the case for the following reasons:

#### **The proposal achieves the objectives of the Zone.**

As detailed above, this proposal achieves the objectives of the zone. That is, this proposal will provide new commercial floor space that will facilitate the establishment of new businesses along a main road. The proposed building has been designed to enable the establishment of business premises and office premises in a desirable location.

#### **The proposal achieves the objective of clause 4.3**

As detailed above, this proposal achieves the objectives of the development standard. That is, the minor exceedance in building height proposed:

- does not result in a building that is incompatible with the character, amenity and landform of the area;
- does not impact on prevailing suburban character and has no impact on the number of storeys in the R2 Low Density Residential;
- has no impact on height transitions between development; and,
- has no impact on overall building height



Furthermore, the amenity of adjoining premises has been considered in the design process ensuring that this proposal does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises.

### **Sufficient environmental planning grounds to justify contravening the development standard**

The term “environmental planning grounds” is not defined in NSLEP2013 nor any other environmental planning instrument. It is also not defined in the Department of Planning’s Guide to Varying Development Standards

Nevertheless, given that demonstration of sufficient environmental planning grounds is a separate test under clause 4.6(3) to the test of “unreasonable or unnecessary in the circumstances of the case”; and that case law relevant to SEPP 1 such as *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) and *Winten Property v North Sydney* (2001) 130 LGERA 79 deal with demonstration of “unreasonable and unnecessary in the circumstances of the case”, it must therefore be concluded that “environmental planning grounds” are a different test which cannot necessarily rely on the same methodology as laid down in SEPP 1 relevant Court decisions.

The matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some helpful guidance on the subject of “environmental planning grounds”, however it is in fact limited to defining some factors which are not environmental planning grounds. Paragraph 60 of Commissioner Pearson’s decision states:

*The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site that are also in the B4 zone. **These grounds are not particular to the circumstances of this proposed development on this site.** To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the “environmental planning grounds” referred to in cl 4.6(4)(a)(i) of the LEP. (emphasis added)*

30. On Appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (3 June 2015), the Court considered whether the Commissioner had erred in law in confining environmental planning grounds to those particular to a site or proposed development. The Court held at [29] and [30] that this was a matter which the Commissioner was entitled to consider in her exercising of discretion:

*Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the particular site.*

*Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner's finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.*

*To the extent the issue raised can be described as a question of mixed fact and law, the Commissioner is exercising a discretion under subclause (4)(a)(i) in relation to the written report where the terms in subclause (3)(b) of sufficient environmental planning grounds are not defined and have wide import,*

From this we interpret that particular circumstances of the site or development is an appropriate (although not exclusive) filter through which to view the sufficiency of environmental planning grounds.

In the absence of a legislative or other definition we adopt a definition for "environmental planning grounds" as 'any matter arising from consideration of either Section 4.15 of the EP&A Act 1979 or its Objectives which in the circumstances of the particular development on the particular site, warrants variation from the development standard'.

Based on that methodology, the environmental planning grounds which support variation to the HOB standard in this instance are:

#### **Environmental Planning Ground 1 – Negligible amenity or visual impacts**

Numerically, the HOB exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given the minor extent of non-compliance.

It is argued that the exceedance in height does not cause visual impact or shadow/amenity impact and satisfies the objectives of the standard. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB which is proposed.

#### **Environmental Planning Ground 2 – Street Character**

The particular design including the central location of the lift overrun means that the proposed HOB is not perceived from the public domain and therefore does not have any adverse impact on the streetscape or urban form otherwise anticipated by the controls. The non-complying building height is so minor to not be obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The HOB exceedance allows for the achievement of each of the zone and HOB objectives.

#### **Public Interest**

The proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the zone. As the Court recently reminded in *Initial Action* (2018) at [26] – [27], this is what is required, rather than broad statements about general 'public interest' considerations at large.

The arguments outlined earlier in relation to consistency with clause 4.3 and B6 zone objectives of the BLEP 2015 are relied upon as detailed above.

## Secretary's Concurrence

It is understood that the Secretary's concurrence under clause 4.6(4) of BLEP 2015 has been delegated to Council. Nevertheless, Council may wish to consider the concurrence requirements, being:

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

In this matter, for the reasons outlined above – and particularly having regard to the minimal adverse amenity impacts stemming from the non-compliance – there is nothing about this proposed variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters required to be taken into consideration before granting concurrence.

## Conclusion

For the reasons outlined above, the objection to Clause 4.3 of BLEP 2014 is considered well-founded on the basis that the development in fact demonstrates achievement of the objectives of the development standard and the objectives of the B6 zone. In this regard, strict compliance with the development standard is considered unreasonable or unnecessary, particularly noting the following:

- there are no unreasonable impacts associated with the proposed development with respect to overshadowing, amenity and privacy concerns;
- the proposed development is consistent with the existing and future character of the area in relation to the building bulk, form and scale.

As demonstrated within this submission and the Architectural plans, the overall massing, scale, bulk and height of the proposed development is considered appropriate to the locality and not influenced by the minor exceedance in height caused by the lift overrun.

Council can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is therefore requested that the Council not withhold development consent for the proposed development due to a noncompliance with the HOB development standard.