

JRPP REF NO:	2010SYW037
DA NO:	580/2010 - East Ward
PROPOSED DEVELOPMENT:	Construction of a Mixed Commercial and Residential Development Containing Eighty (80) Residential Units including Five (5) SOHO (Small Office/Home Office) Units and Two (2) Retail Units with Strata Subdivision, 443-445 Chapel Road, Bankstown
ZONING:	3(a) - Business - CBD
DATE OF LODGEMENT:	21 June 2010
APPLICANT:	Merhis Constructions Pty Ltd
OWNERS:	Chapel Business Pty Ltd
ESTIMATED VALUE:	\$13,322,147
AUTHOR:	Development Services (Sindhu Kaphle)

Assessment and Recommendation Report

SUMMARY REPORT

This matter is reported to the Joint Regional Planning Panel for determination, due to the value of works exceeding \$10 million.

The Development Application No. DA-580/2010 originally proposed the Construction of a Mixed Commercial and Residential Development containing Eighty (80) Residential Units and five (5) Retail Units with Strata Subdivision. The application was later modified to include five (5) SOHO units and to reduce the number of retail units to two. A SOHO refers to a small office or single office/home office with residential accommodation

DA-580/2010 has been assessed in accordance with the provisions of the *Environmental Planning and Assessment Act, 1979* and in particular the Objects of the Act and the matters for consideration under S79C(1). The development fails to comply with *State Environmental Planning Policy No 65 (SEPP 65) - Design Quality of Residential Flat Development*, *Bankstown Local Environmental Plan 2001* and *Bankstown Development Control Plan 2005* and is recommended for refusal.

The application was advertised for a period of twenty-one (21) days. One (1) objection was received during this period, which raised concerns relating to the location of proposed vehicle access, car parking and traffic generation. The application was subsequently amended twice and re-advertised each time for a period of twenty-one (21) days. One (1) objection was received from the previous objector against the proposal raising concerns relating to car parking and traffic generation. The points of objection alone are not considered sufficient to warrant refusal or a major redesign of the proposal. However, there are other issues associated with the proposal which do pose sufficient grounds for refusal and these issues are discussed in greater detail in the following sections.

BACKGROUND / HISTORY:

In 2005, Bankstown City Council granted approval to a mixed use development on this site for two levels of commercial use and fifty seven (57) residential units on a 'deferred commencement' basis. The applicant had to obtain approval from the Bankstown Airport Limited (BAL) for the proposed building height and consent of the adjoining owner to the east for removal of a number of trees located within the proximity of the boundary prior the consent being operational. Whilst the applicant was able to obtain the approval from the BAL, they could not obtain consent of the adjoining owner for the removal of the trees. Subsequently the consent lapsed on 1 September 2010.

Based on the report presented to the Council, the previous development was assessed to have a FSR of 3.3:1. The gross floor area (GFA) figure used to calculate the FSR was based on a detailed calculation provided by the designing architect and comprised commercial GFA of 2549.2m² and residential GFA of 5034.08m². However, it appears that the actual FSR of the development was slightly higher. The discrepancy was discovered when the current applicant submitted a detailed calculation for the previous development which has since been verified by Council's Urban Designer and showed a FSR of 3.436:1.

POLICY IMPACT

If the application was to be approved, it would have major policy implications as the approval could create a precedent in terms of the floor space ratio control applicable to the Bankstown CBD.

The development has policy implications as the applicant is seeking a variation to the 3:1 floor space ratio (FSR) applying to the development site, by means of an objection to this standard under the provisions of *State Environmental Planning Policy No.1* (SEPP 1). The proposed development has a FSR of 3.463:1 which exceeds the permitted FSR by 15.4%

In determining whether a variation to the FSR standard is reasonable and can be supported certain principles could be considered such as the following:

- Whether site conditions, including the shape and frontage of the land, and any other site constraints may adversely impact on the potential development of

the site, or part of the site, and would warrant consideration of a variation to the maximum allowable FSR.

- Whether the applicant has needed to retain a site feature, building or tree on one part of the site and then sought to retain and transfer the FSR loss on that part of the site to an adjoining site.
- Whether other development controls and standards are not compromised such as applicable height, car parking, setback controls, and including consideration of recommended design parameters of the Residential Flat Design Code.
- Whether the site is a prominent gateway site or other significant site where a FSR concession may facilitate a development of greater merit and design.
- Whether any concession or variation could establish an unacceptable precedent or expectation for future FSR increases in the area.

The site is not burdened by any significant constraints which would mean compliance with the FSR standard is unreasonable, neither is there a need to retain any site features.

In terms of the quality of the design, the proposed development does not meet some of the design parameters specified in SEPP 65 in terms of communal open space, solar access, cross ventilation and storage areas. The proposal also does not provide a proper finish to the building in terms of a roof feature.

Currently, the site is not identified as a gateway or key site where a FSR concession might be considered necessary as an incentive for its redevelopment. When the previous DA was submitted the four corner sites in the Chapel Road/Rickard Road intersection were identified as gateway sites in a draft study prepared for the Bankstown CBD. However, this study has since been abandoned and these sites are referenced only as corner sites like other corner sites in the CBD as marked in Figure 5.1 of Part D4 of the Bankstown DCP. Other reasons for accepting a variation to the FSR for the previous proposal included design merits and possible location of a large commercial tenant (the NAB Bank).

The current design, whilst reflecting a contemporary architecture, does not demonstrate a superior design in terms of the apartment layout, solar access, cross ventilation and overall amenity for the residents.

The possible location of the NAB Bank was seen by Council in the past as a positive aspect for the city with potential to act as a catalyst for other institutions to relocate their offices in Bankstown. The current proposal contains limited first floor commercial floor space. As a comparison, the total first floor office area associated with the SOHO units in the current scheme is 144.2m² compared to 1385.8m² in the previous scheme.

Based on the above, it is considered that this application does not establish that compliance with the 3:1 floor space ratio standard would be unreasonable or unnecessary in this case, and there is no compelling reason to support a FSR variation above 3:1. Any concession or bonus FSR will establish a pattern for further expected FSR increases for the remainder of the block, having a cumulative effect

and increasing the intensity of development in the business zone and this part of the CBD not envisaged in the local plan making for the area.

FINANCIAL IMPACT

The matter has no direct financial implications.

RECOMMENDATION

That:

- A. JRPP not support the objection pursuant to SEPP 1 in relation to the floor space ratio as contained in Clause 30 of the Bankstown Local Environmental Plan 2001, and
- B. That Development Application DA-580/2010 be refused, for the following reasons:
 - 1. The application fails to comply with the objectives of the Bankstown Local Environmental Plan 2001 in that the proposal does not provide a good urban design outcome and has inadequate commercial floor space for the site. (Pursuant to Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979).
 - 2. The application fails to comply with the floor space ratio standard contained in Bankstown Local Environmental Plan 2001 resulting in a development that exceeds the density and scale envisaged for the site. (Pursuant to Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979).
 - 3. The proposal is inconsistent with the objectives of Clause 30 of Bankstown Local Environmental Plan 2001 in that the approval of such developments with excessive floor space not planned for in the Bankstown LEP is likely to put undue stress in a cumulative manner on the existing infrastructure and services. (Pursuant to Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979).
 - 4. The proposed fails to satisfy a number of design quality principles and design parameters specified in State Environmental Planning Policy No. 65 and the Residential Flat Design Code. (Pursuant to Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979).
 - 5. The proposal fails to satisfy the Bankstown Development Control Plan 2005 with regards to the provision of the ground floor and first floor to be commercial area (Pursuant to Section 79C(1)(a)(iii) Environmental Planning and Assessment Act, 1979).

6. The proposal is likely to create an undesirable precedent and if approved, could lead to an overuse of existing infrastructure and services through a cumulative impact not envisaged in the plan making. (Pursuant to Section 79C(1)(b) Environmental Planning and Assessment Act, 1979).

ATTACHMENTS

- A - Section 79C Assessment Report
- B - Locality Plan
- C - Objectors Map *
- D - Site Plan
- E - Elevations

ATTACHMENT A

DA-580/2010 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is irregular shaped with frontages of 56.6m to Chapel Road and 35.7m to Rickard Road. The combined area of the site is 2297.4m².

The site was previously used as a caryard and is currently vacant. The land slopes from the north towards the south along Chapel Road by approximately 1.8m and from west to east along Rickard Road by approximately 600mm. A number of mature Eucalypt trees located along the northern and eastern boundary of the site have been removed since the lodgement of the application. Three trees including two large Camphor laurels located on the adjoining land to the east have also been removed.

To the north and east of the site are 2-storey commercial buildings. Opposite the site on Chapel Road is an ALDI supermarket and a disused fruit shop building. To the southwest across the intersection is a newly constructed two (2) storey commercial building. To the south across Rickard Road is the Bankstown Council Town Hall which is the subject of an as yet undetermined DA for adaptive reuse including the construction of a three level public library. The surrounding area is characterized by a mixture of commercial, retail and mixed-use developments of varying scale and height.



Figure 1: The site - 443-445 Chapel Road, Bankstown (Source: Google)

PROPOSED DEVELOPMENT

The development application proposes the construction of a mixed commercial and residential development containing eighty (80) residential units including five (5) SOHO units and two (2) retail units with strata subdivision and will involve the following works:

- Site preparation works and site excavation to provide 2 levels of basement parking for a total of 109 parking spaces comprising 79 for residents, 16 for visitors and 14 for retail/SOHO units.
- Construction of a 9 level building, with ground floor to contain five SOHO units, 2 retail shops, lift lobbies, garbage store, loading dock, plant rooms and stores. Levels 1 to 8 contain a total of five SOHO units and seventy five (75) residential apartments divided between two towers.
- Landscaping and paving at ground level.
- Strata subdivision of the development.

Vehicular access to the basement car park is provided from Chapel Road via an entry/exit driveway ramp located to the north-western corner of the site. A second vehicle access is proposed from Rickard Road located to the south-eastern corner of the site for use by waste collection and service vehicles.



Figure 2: - Perspective of the Proposed Development (Source - Tony Owen Ptnrs)

The designing architect in his design statement has described the building in following terms:

"... The apartments are intended to set a bench mark for contemporary urban design for this area. The clean lines of the facades and curves create a bold and sophisticated statement that is appropriate for this urban location. The facade design is the result of an analysis of the key height lines of the surrounding buildings. The resulting form creates a fluid expression of function and style. This form tempered by glazing and glass louvers for sun control and shelter from wind to create a simple and unique contemporary urban expression".

Building materials used include precast concrete panels, terracotta wall cladding, framed glassed balustrade and painted metal louvers.

Amendment to the Development

The application plans were amended on two occasions. First on 3 September 2010 involving modification to the floor plans including the reduction of retail units from 5 to 4, additional/amended drainage information and revised loading dock design. The second amendment was submitted on 15 November 2010 involving modification to the floor plans including the reduction of retail units from 4 to 2 and inclusion of 5 SOHO units on the building facing Chapel Road.

SECTION 79C ASSESSMENT

The proposed development has been assessed pursuant to section 79C of the *Environmental Planning and Assessment Act, 1979*.

Environmental planning instruments [section 79C(1)(a)(i)]

State Environmental Planning Policy (Major Development) 2005

Part 3 (Regional Development) of this SEPP applies to this development as the capital investment value exceeds \$10 million, specified under Clause 13B. The application is therefore to be determined by the Joint Regional Planning Panel.

State Environmental Planning Policy No 55 - Remediation of Land

Under the provisions of Clause 7 of State Environmental Planning Policy No. 55, 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.*

Comments:

The site has been used as a car yard. A Phase 1 preliminary site investigation report was submitted with the previous development application. The report concluded that *"... Given the concentrations of contaminants across the site and the existing site zoning as 3a Business - CBD no further consideration for remediation is required. However, ... the removal of the UST's and fuel dispensing systems should be undertaken in accordance with WorkCover and NSW EPA requirements. Included with the tank would be the remediation of the UST tank pits and service line trenches"*.

As the site has been vacant since the report was prepared for the previous DA, the conclusions reached in the previous report are considered valid. Council's Environmental Officer has reviewed the proposal and recommended that conditions requiring removal of underground fuel tanks and remediation and validation of the tank pit area prior to issue of a construction certificate for civil and building work be imposed if an approval is granted. The removal of the USTs and the associated remedial works is considered to render the site suitable for the proposed development, thus satisfying Clause 7 of the SEPP.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

SEPP 65 aims to improve the design quality of residential flat buildings and provides an assessment framework, the Residential Flat Design Code (RFDC) for assessing 'good design'.

Clause 50(1A) of the EPA Regulation 2000 requires the submission of a design verification statement from the building designer at lodgment of the development application. This document has been submitted and is considered to satisfy the submission requirement.

Design Review Panel

The proposal was presented to the Bankstown Council's internal Design Review Panel for review. The Panel raised a number of issues with the design and recommended that the applicant amend the design to address the issues raised by the Panel and submit the amended proposal to the Panel for consideration prior to determining the development application. The issues raised were:

- Reduction to the building bulk to comply with the maximum FSR.
- Building conflict with trees on adjoining land.
- SEPP 65 issues:
 - Provision of a secure, amenable and useable communal open space.
 - Achieving solar access to 70% of the dwellings and private open space.
 - Achieving cross-ventilation to at least 60% of the dwellings.
 - Ensuring the layout of the ground floor to provide a pleasant environment for uses with active uses to encourage natural surveillance by:
 - Relocating plant rooms, switch rooms etc to the basement,
 - Having the residential lobby to Chapel Road face and address the street and increasing the residential lobby to Rickard Road to accommodate the moving of furniture and deliveries.

- Relocating loading dock and activate the street facade.
- The proposal needs to be of a higher quality of contemporary architectural design that incorporates:
 - Better treatment to the corner element and overall better articulation to the facades as required by the Residential Flat Design Code.
 - Termination of the tower with a high quality roof design.
- Ways to minimise loss of privacy between the corner units of the east elevation.
- Size of the balconies should comply with the RFDC.
- Size of the dwellings meeting the apartment layout requirements of the RFDC
- Providing storage space for each dwelling consistent with the storage requirements of the RFDC.

Subsequently the design was modified and resubmitted to Council and was presented to the Design Review Panel for review. The panel reiterated its previous comments, except for the privacy issues between the corner units of the east elevation and balcony sizes, recommending that the proposal be amended to address the issues and submitted back to the Panel for reconsideration.

The applicant further amended the design which saw the introduction of 5 SOHO units along the Chapel Road frontage, relocation of the ramp to align with the upper floors, reduction in the plant rooms area at ground floor level, modification to the communal open space, modification to the front corner units and introduction of ventilation louvers on the eastern facade of the Rickard Road block.

The panel reviewed the amended proposal, which is the subject of this report, on 2 December 2010 and provided the following comments:

- *The Panel recognises the proposal must reduce the building bulk to comply with the maximum floor space ratio.*
- *The proposal must comply with SEPP 65 and the Residential Flat Design Code by:*
 - *Providing a secure, amenable and useable communal open space for residents, with deep soil planting.*

In addition, the Panel notes the revised communal open space raises the following issues:

- *The size of the revised space would not achieve the desired area of between 25 and 30 percent of the site area, when excluding areas such as the narrow strip between the driveway and the northern boundary.*
- *The location of the revised space adjacent to the waste storage areas would not result in a desirable outcome.*

- *The communal open space on the first floor does not provide direct access to dwellings and common areas on the first floor.*
- *Achieving better solar access to the dwellings and private open spaces, in order to provide winter sun to 70% of the dwellings.*
- *Achieving cross-ventilation to at least 60% of the dwellings.*

The Panel notes the proposed ventilation louvres on the eastern boundary would be ineffective should the neighbouring property redevelop with a nil setback to the common boundary.

- *Ensuring the layout of the ground floor provides a pleasant environment for users with active uses to encourage natural surveillance. The preferred option is to:*
 - *Have the residential entry lobby to Chapel Road face the street or have a clear address from the footpath. This will help to improve legibility and natural surveillance.*
 - *Ensure the size of the residential entry lobby to Rickard Road is sufficient to accommodate the moving of furniture and deliveries.*
 - *Ensure the service vehicle entries are integrated with the development and do not compromise the street character or pedestrian and safety along the Rickard Road frontage.*
- *The proposal needs to be of a higher quality of contemporary architectural design that incorporates:*
 - *Better treatment to the corner element and overall better articulation to the facades as required by the Residential Flat Design Code.*
 - *Attention to the detail of the termination of the tower with a high quality roof design.*
- *Identifying the storage space for each dwelling consistent with the storage requirements of the Residential Flat Design Code.*
- *The proposal should ensure the details of the circular setback at the corner of Rickard Road and Chapel Road as shown on the elevation plans correspond with the floor plans.*
- *The proposal should ensure compliance with the Building Code of Australia.*

Panel Decision:

The applicant should amend the proposal to address the issues raised by the Panel, and submit an amended proposal to the Panel for consideration prior to determining the development application.

It is apparent that the Design Review Panel is not satisfied with the amended scheme. The issues not satisfactorily resolved include FSR, communal open space, solar access, cross ventilation, storage areas, street frontage, corner element and facade articulation and roof design.

The SEPP requires the assessment of any development application for residential flat development against 10 design quality principles and the matters contained in the publication "Residential Flat Design Code". As such the following consideration has been given to the requirements of the SEPP and the Design Code.

The ten design principles are listed below, together with comments from Council's Urban Designer (shown in italics) where the design fails to meet the principle.

Principle 1 - Context

The site is located within 'Rickard Road Precinct' in the Bankstown CBD as identified in Part D4 of the Bankstown Development Control Plan 2005. The precinct vision as outlined in the DCP is for a "*high-rise mixed use commercial precinct addressing the Rickard Road Boulevard*". The site is also identified as a 'corner site' with specific controls to address the corner.

Principle 2 – Scale

Whilst the visual scale of the building in terms of its massing and height is considered appropriate for the context, the additional floor area has resulted in a denser development with amenity implications to the future residents of the development.

Principle 3 - Built Form

Proposed built form is similar to the previously approved DA in 2005, but there are unresolved areas requiring more thoughts:

- ❑ *The proposed corner element consisting of a curved wall of residential units presents a disproportioned corner solution. This important corner should be consisting of a better articulated & proportioned built form to mark the arrival point to Bankstown CBD, and the backdrop of Civic Precinct.*
- ❑ *The built form defining the public domain should consist of retail- commercial activities along both edges on ground level. As proposed, Rickard Rd side does not have these required uses providing active frontages.*
- ❑ *The submitted plan include inconsistencies with the floor plans and the elevations at the corner of Rickard Road and Chapel Road.*

Principle 4- Density

The proposed density measured in terms of the FSR allowed for the site is 15.4% over the allowed limits. The result is a much denser development with impact on the

layout and design of the buildings and the amenity of the future residents of the development.

Principle 5- Resources, Energy and water efficiency

- ❑ *Overall, the statement provided does not directly address all of the sustainability issues raised under this clause within “Design Code”. Sustainable materials, adaptability and reuse, layouts and built form, soil zones for vegetation etc. are not taking place in the statement and the proposed design itself.*
- ❑ *All proposed units cannot be described as “corner units” as the description of corner units is not applicable to the proposed layouts. Proposed DA achieves a 40% cross-ventilation ratio. It is to be noted that the plan structure of the previously approved DA; was far more efficient in respect to the provision of cross- ventilation throughout the building.*
- ❑ *Solar access to 70% of the units could not be achieved with the proposed plan structure.*

Principle 6- Landscape

- ❑ *Communal Open Space:*
 - *Access to Communal Open Space at first level terrace has to be provided through residential units; as well as common areas*
 - *The size of the total C.O.S. provided is less than 25% of the site area.*
 - *The space quality of the C.O.S. provided is not the best considering:*
 - *The proximity to the SOHO units and plant rooms with potential privacy issue and*
 - *The use of some leftover space, which is located next to waste collection areas, which would eventually become a thoroughfare for waste bins.*

Principle 7- Amenity

- ❑ *Natural Ventilation:*
 - *The building is not compliant as six out of ten units in each floor don’t get cross ventilation.*
 - *The proposed plan layout provides a double loaded corridor which prevents unit layouts having natural ventilation.*
 - *The L-shaped living areas cannot be considered suitable for achieving natural ventilation as per the Design Code.*
 - *The proposed ventilation louvers on the east elevation are not supported as it will become ineffective should there be a future development on the adjoining property No. 67 Rickard Road. This part would need further design resolution to incorporate the possible future development of the adjacent property.*
- ❑ *Sun penetration*
 - *As proposed less than 70% of the units would get northern sun for three hours during mid-winter. Design Code states that 70% of the units should have solar access during mid-winter.*
 - *Solar access to the units (B2); at the corner of Rickard Road and Chapel Road; through narrow gap would not be satisfactory. This unit could be identified as a south facing rather than north facing.*

- *Solar access into the living areas of the rear block along Rickard Road is not satisfactory due to their deep balconies. Only a small percentage of the living areas would benefit from the sunlight.*
- Building depth, unit depth, kitchens locations, balcony depths and ceiling heights are satisfactory.
- Units off corridors
The proposed plan layout is not supported as it provides a double-loaded corridor which prevents unit layouts having cross-ventilation.
- Storage
The proposed storage areas for the units are not satisfactory as external storage spaces for sporting, leisure, fitness and hobby equipment should be provided for units, ideally within basement or other allocated areas. 8m³ storage calculation should not include indoor storage areas such as cupboards.

Principle 8 - Safety & Security

- *Communal open space at ground level does not have the required privacy and security.*
- *The main residential entries have issues with their sizes (southern entry) and addresses (northern entry is not providing a clear and safe street address).*
- *Lack of retail/commercial activities would create an unsafe environment with no passive surveillance along Rickard Road side.*

Principle 9- Social Dimensions

- *The design should respond to the optimisation of housing to suit the social mix for the people with various lifestyles. The proposal provides 3 & 2 bedroom units; there is a lack of studio and one bedroom units other than work and live types (SOHO).*

Principle 10- Aesthetics

- *Being on a prominent location in Bankstown CBD, the built form at the corner of Rickard and Chapel Rd needs to be better articulated and better emphasised than proposed.*
- *The East elevation of the southern block should be rearranged by considering the adjacent site's future development.*

Based on the above assessment the proposal is failing in a number of the design quality principles.

Greater Metropolitan Regional Environmental Plan No. 2: Georges River Catchment (deemed SEPP)

The subject site is within the area covered by the REP. The REP contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that it is generally consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of the REP.

Bankstown Local Environmental Plan 2001

The following clauses of the Bankstown Local Environmental Plan 2001 were taken into consideration:

Clause 2 – Objectives of this plan

Clause 11 – Development which is allowed or prohibited within a zone

Clause 13 – Other development which require consent

Clause 19 – Ecologically sustainable development

Clause 20 - Trees

Clause 24 - Airports

Clause 30 – Floor space ratio

Clause 32 – Access for people with disabilities

Clause 48 – Objectives of the Business zones

Clause 2 – Objectives of this plan

The relevant objectives of the LEP are:

- (a) *to regulate development in accordance with the following principles:*
 - (i) *new buildings should be designed to achieve:*
 - (A) *good urban design, and*
 - (B) *public and private safety, and*
 - (C) *energy and resource efficiency, and*
 - (iv) *new development should not diminish the role of the Bankstown central business district (CBD) as a sub-regional centre,*

The proposal fails to satisfy a number of design quality principles under SEPP 65 thus failing the objective (a)(i)(A) of the LEP. The proposal also fails to satisfy objective (a)(iv) by providing only limited commercial area at first floor level contrary to the whole of both ground floor and first floor being used for commercial/non-residential purpose aimed to strengthen the role of the CBD.

Clause 11 – Development which is allowed or prohibited within a zone.

Permissibility

The proposed retail shops and residential apartments are permissible in 3a zone with consent. Regarding the SOHO units, the BLEP does not contain a definition however, both dwellings and offices are permissible in the zone.

Council's Principle Strategic Planner commented on the SOHO units as follows:

Considering the ... provisions in the BLEP and the Standard Instrument, the proposed SOHO Units would comply with clause 2.1 as home businesses (otherwise known as SOHO dwellings) but would not otherwise meet the criteria of home business:

- (a) *To maintain business and retail floor space in the business core area, as the ability for home businesses to employ staff is constrained.*
- (b) *To maintain active street frontages in the business core area, as home businesses cannot involve the retailing of goods, the display of goods or*

the display of advertising that would typically characterise a business core area".

It is noted that both Home Business and Home Office are also permissible in 3(a) zone.

Clause 11(3) requires the consent authority to have regards to the following matters before granting consent to a development:

- (a) the general objectives of this plan, and*
- (b) the objectives of the zone in which it is proposed to be carried out, and*
- (c) the other provisions of this plan*

As discussed above the proposal fails the general objective of the LEP in terms of not providing a good urban design. The proposal also fails to meet some of the objectives of 3(a) zone which is discussed in the following section.

Clause 20 - Trees

The site contained five (5) trees located along the eastern and northern boundary which were proposed for removal. One (1) tree located on Chapel Road was to be retained. Two (2) large Camphor laurels located on the adjoining land to the east which were the subject of 'deferred commencement' requirements of an earlier approval, were also proposed to be retained.

Since the lodgment of the application all trees located within the site and the Camphor laurels located on the adjoining land impacted by the development have been removed with Council's approval.

Clause 24 – Airports

This application proposes a building height of up to 56.08m AHD. This will penetrate the Obstacle Limitation Surface (OLS) of 51m AHD at this location. The maximum height approved for the previous development was 59m AHD. This approval was granted by the Commonwealth Department of Transport and Regional Service through a letter dated 30 August 2005.

The applicant was requested to get confirmation from the Bankstown Airport whether the previous approval granted in 2005 still holds for the current application. The BAL has advised that *"The previous approval still applies as it pertains to the maximum allowable height at the site. If the height is lower that is fine. If the height was to be higher than a new application would have to be assessed and processed by the airport"*.

Clause 30 - Floor space ratio

An assessment of the development application revealed that the proposal fails to comply with the provisions of *Bankstown Local Environmental Plan 2001* relating to maximum floor space ratios under clause 30 of Bankstown LEP 2001 and as indicated on the floor space ratio maps.

In this part of the CBD a floor space ratio (FSR) of 3:1 applies where the site has a minimum primary frontage of 30m. The site has a width of 56.6m to Chapel Road and 35.7m to Rickard Road. On a corner lot, the shortest frontage is regarded as the primary frontage. Accordingly, Rickard Road is taken as the primary frontage in this instance. Based on this a FSR of 3:1 applies to the whole site.

The proposed development has a total floor space ratio of 3.463:1 and does not comply with Clause 30 of the Bankstown LEP 2001. The proposed FSR exceeds the allowable ratio by 15.4% in numerical terms with the extra floor area of 1064.7m² equating to approximately 11 residential units (a typical floor has 10 units).

Applicant's objection under State Environmental Planning Policy No. 1 seeking variation of maximum FSR

Pursuant to the Environmental Planning and Assessment Act, 1979, the applicant has submitted an Objection under the State Environmental Planning Policy No. 1 (SEPP 1) with regard to the variation to FSR for the JRPP's consideration on the basis that the development standard is, in this particular case, unreasonable and unnecessary.

The SEPP 1 objection primarily relies on a similar FSR approved for the previous development and that the proposed development has a reduced height and mass. In particular, the following arguments have been provided by the applicant in support of the variation:

- ❑ *Despite the continued non-compliance the proposed amendments to the approved development bring about a reduction in building mass and impact, including traffic impacts, and a substantial improvement in the quality of the design both in terms of aesthetics and dwelling amenity under SEPP 65.*
- ❑ *The proposal has marginally less GFA than the approved development that remains capable of being constructed on the site. For all practical purposes the proposal is the same development as approved, including the provision of 2 commercial levels, arranged in a superior form.*
- ❑ *The proposed development that reflects the non-compliance has no apparent significant implications for other land. That is, there is no significant shadow, privacy or visual implications for other land that arises from non-compliance. The modifications to the approved development have the effect of reducing shadows and other physical effects compared to the approved development, because of the reduced building height.*
- ❑ *The development site is a large, consolidated site on a street corner, which has the capacity to accommodate a more intensive level of development than a regular allotment.*
- ❑ *Land owned by the Council on the opposite side of Rickard Road is zoned to permit development at an FSR of 4.5:1. In this context, the non-compliance has no material implications. The locality of the site is clearly one where more intensive forms of development are expected and promoted.*
- ❑ *The proposal does not offend any of the objectives of the standard. In particular, in relation to the objectives cited above-*

- *The scale and bulk of the development is not materially different to that of a complying development, and is less than that currently able to be constructed on the site under the existing consent. The non-compliance will not create any significant adverse visual impact on the other land, or lead to any adverse relationships with adjoining land.*
- *Objective (d) is satisfied to the extent that the site is nominated as a key CBD site and the proposed FSR has already been accepted by the Council as necessary to promote the redevelopment of the site in accordance with the objective. It is understood that the site is no longer classified as a key site, but that does not diminish the significance of its location or capacity to accommodate a significant building.*
- *Variation of the standard would be consistent with the objectives of the Act related to the economic use of the built environment. No adverse natural environmental consequences flow from the proposal.*
- *The variation of the standard is consistent with the Objectives of SEPP 1.*

Comments

Pursuant to SEPP 1, the JRPP may vary a development standard if it is satisfied that the objection lodged by the applicant is well founded and is also of the opinion that granting consent of the development application is consistent with the aims of this policy.

The aims and objectives of the policy, as set out in Clause 3 of SEPP 1, are to provide “... flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act”.

The objects of the Act are:

- 5(a) (i) *to encourage 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) *to encourage the promotion and coordination of the orderly and economic use and development of land.*

In considering a SEPP 1 objection, JRPP is required to assess the objection having particular regards to the following matters:

- ***Is the planning control in question a development standard?***

The floor space ratio is a numerical control and is therefore a development standard.

❑ ***What is the underlying object or purpose of the standard?***

As a matter of general principle, an FSR standard is imposed to control bulk, scale and built form of structures. Notwithstanding the general principle, in the absence of other controls it can be also regarded as a control on density.

The relevant objectives of the floor space ratio clause in the Bankstown LEP are:

- (a) *to generally regulate the scale and bulk of development consistently with the capacity and character of the area of the development site.*
- (b) *to regulate the intensity of development in business zones consistently with the role and function of the particular business centre, the capacity of the road network to accommodate business related traffic, and the availability of public transport.*
- (c) *to provide an incentive for redevelopment of key sites in the Bankstown CBD.*

Council prepared a comprehensive LEP in 2001. FSR control is one of the core development standards in the LEP which provides control over not only the physical bulk of a development but also the density and intensity of the land use with impacts on utility services and infrastructure. In this regard, compliance with the FSR standard is seen as a primary tool to control both the physical form of the city and ensuring the adequacy of the infrastructure and utility services.

Whilst the proposed development is considered to have a built form of acceptable height and bulk, the additional floor area has produced a much denser building which fails to meet a number of SEPP 65 requirements leading to amenity issues for future residents.

As a result of the additional floor area, the proposal is considered an overdevelopment of the site not consistent with the capacity and character of the area where it is located. The proposal fails the objective of FSR control to regulate the intensity of development so that the future development of the area is managed in an orderly manner and within the capacity of the existing road network, infrastructure and services.

❑ ***Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a) (i) and (ii) of the EP & A Act?***

Compliance with the FSR standard is one of the ways to ensure the orderly development of the land. There is no overriding reason to support that compliance with the development standard in this instance will tend to hinder the attainment of the objects of the Act.

This is demonstrated by recent approvals granted for developments in the area with complying FSR. The specific circumstances under which the previous development was granted FSR variation no longer exist.

Further, the mix of the commercial and residential floor space is inconsistent with that envisaged for the area and the provision of inadequate commercial area has impact on the city's regional strategies e.g. employment creation.

❑ ***Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? and***

Compliance with the standard is considered necessary to avoid significant policy implications such variation could create in terms of precedents and eventually defeating the objective of the LEP to regulate the bulk and intensity of developments in the CBD.

Further, strict compliance with the standard is not considered unreasonable or unnecessary in the present context as other developments in the street and in the immediate vicinity have generally been designed with complying FSR. This provides a consistent approach without impacting the right to develop the land to its fullest capacity.

If such a large variation is to be considered then the standard itself may need to be reviewed at strategic level so that a more consistent approach can be adopted. And if justified by demand, Council may decide to upgrade such controls to allow more dense and intensified land use.

❑ ***Is the objection well founded?***

A summary of the grounds of objections has been provided above. These include:

- development being of acceptable scale, height and bulk
- FSR similar to previously approved building
- Large consolidated corner site can accommodate more intensive development.
- No adverse impact
- Consistent with the objectives of Council Policies and the Act.

The impact of the proposal is assessed in following sections of this report. Whilst the proposal is unlikely to contribute to a significant adverse impact on the adjoining developments, it is considered that the inadequate separation from the neighbouring boundaries could pose constraints to future SEPP 65 type developments of these sites.

It is considered that this application does not establish that compliance with the 3:1 floor space ratio standard would be unreasonable or unnecessary in this case, and there is no compelling reason to support a FSR variation above 3:1. Any concession or bonus FSR will establish a pattern for further expected FSR

increases for the remainder of the block, having a cumulative effect and increasing the intensity of development in the business zone and the CBD.

The additional floor area has also given rise to other issues including SEPP 65 design issues ultimately impacting on the quality of the development and the amenity of future residents of the buildings.

In conclusion, the SEPP 1 objection is not considered well founded and it is a recommendation of this report that the objection not be supported.

Clause 48 – Objectives of the Business zones

(1) *The objectives of Zone 3 (a) are:*

- (a) *to reinforce the status of Bankstown CBD as a metropolitan regional centre, and*
- (b) *to define the scale and type of development in Bankstown CBD, and*
- (c) *to link the three key retail precincts—Bankstown Square, the Compass Centre block, and the Town Centre Plaza—and ensure a broad range of consumer choice, and*
- (d) *to establish a clear structure of land uses within Bankstown CBD to help focus the desired future character of the different activity precincts in the centre, and*
- (e) *to permit a diversity of uses to reinforce the multi-use character of Bankstown CBD, and*
- (f) *to encourage mixed-use development within the zone to create a living centre with a 24-hour life, and*
- (g) *to ensure the scale and density of development complements the desired future character of each precinct and its location in the centre, and*
- (h) *to introduce floor space incentives to encourage the redevelopment of key sites, and*
- (i) *to define the parameters for retail activities within the centre, and*
- (j) *to encourage the development of offices and other commercial activities in the CBD and promote the centre as a place for employment.*

Comments:

The proposal fails to satisfy objectives (b), (g) and (j).

The proposal conflicts with objectives (b) and (g) due to the excessive FSR proposed contrary to the desired future character of the precinct in terms of the location and density. The development fails in the scale resulting into a denser building having unacceptable impacts on the amenity of the residents due to lack of appropriate communal openspace, inadequate storage area and inadequate solar access and cross ventilation to the development. A variation to the FSR provision in the context is likely to have precedent implication with potential to change the desired future character in terms of density and scale.

It is relevant to note here that the Land and Environment Court has held in the past that "*.. the risk of establishing a precedent readily invocable by prospective*

developers of other land in the vicinity is a valid consideration". (Goldin v Minister for Transport (2002) 121 LGERA].

Objective (j) is compromised by not providing business related uses to the whole of the first floor level thereby reducing opportunities for activities that promote the centre as a place for employment. This matter is dealt with in greater detail in a later section of this report under assessment of Part D4 of the Bankstown DCP.

Draft environmental planning instruments [section 79C(1)(a)(ii)]

There are no draft environmental planning instruments applicable to the proposed development.

Development control plans [section 79C(1)(a)(iii)]

The development has been assessed against the following provisions of Bankstown Development Control Plan 2005 (Bankstown DCP 2005):

- Part D4 - Business zones
- Part D7 - Sustainable Commercial and Industrial Development
- Part D8 - Parking
- Part E1 - Demolition and construction
- Part E2 - Tree Preservation Order
- Development Engineering Standards

The development is within the Rickard Road planning precinct. The objectives of this precinct are to create a high rise mixed use precinct addressing the Rickard Road boulevard. The character to be created by buildings facing Rickard Road is to be well designed and commercial in appearance with quality material finishes and a high standard of facade and entry design. Part D4 of the DCP provides detailed guidelines for developments generally in the Business zones and specifically in the CBD.

The following table provides a summary of the development application against the controls contained in Part D4 - Business zones of *Bankstown Development Control Plan 2005*.

STANDARD	PROPOSED	BDCP 2005 PART D4		LEP 2001 COMPLIANCE
		REQUIRED/PERMITTED	COMPLIANCE	
FSR	3.463:1	3:1	No	No (This FSR variation is discussed above)
Frontage	35.7m to Rickard Road 56.6m to Chapel Road	30m for 3:1 FSR	Yes	

STANDARD	PROPOSED	BDCP 2005 PART D4		LEP 2001 COMPLIANCE
		REQUIRED/PERMITTED	COMPLIANCE	
Car Parking	Resident: 79 spaces	Resident - minimum 75 spaces up to maximum 225 spaces (1 per unit up to 3 per unit).	Yes	N/A
	SOHO Units: 10 spaces	SOHO Units: 14 spaces	No (can be satisfied subject to condition)	
	Visitor - 16 spaces	Visitor - 16 spaces	Yes	
	Retail: 4 spaces	Retail: 4 spaces	Yes	
	Total - 109 spaces	Total - 109 spaces	Yes	
Height	29.8m	30m	Yes	
Setbacks: Rickard Rd	GF: 0m to 2.2m FF & upper floors: 1.5m to 3.5m	0m to GF & FF 5m to upper floors	Yes No	
Chapel Road	GF: 4m FF: 0m to 4m Upper levels: 0m corner; Other 5m-14m	0m to GF & FF 3m to upper floors	Yes No	
Side/rear	Partly on side boundary and partly variable setback 3m to 9m	Business development may have zero setback to side and rear Residential buildings must consider Residential Flat Design Code	Yes	
Solar Access	62.5%	70% of units to receive 3 hours to a living area window	No	
Balconies	3 units $\geq 15m^2$ & 3m wide 53 units $\geq 15m^2$ & $< 3m$ wide 24 units $< 15m^2$ & $< 3m$ wide	$15m^2$ and minimum depth of 3m	No	
Adaptable units	2	2	Yes	
Residential Storage areas	9 storage cells in basement, remaining within units	$8m^3$ /dwelling	No	
Loading /unloading	Loading and unloading facilities off Rickard Road, no dedicated area off Chapel Road	Mixed use developments to provide appropriate on site facilities	Yes	
Non-residential use	Ground floor and part of first floor	All of ground and first floor	No	

As the above table demonstrates, the application is seeking variation to the following requirements:

Floor Space Ratio

The non-compliance with the floor space ratio has been discussed previously in this report.

Non-residential Use

Clause 2.1 of Part D4 of the DCP requires that a development on land within the business core of the Bankstown CBD must restrict the use of the ground and first floor to solely business, retail, community or other non-residential uses. The purpose of this requirement is:

- (a) *To maintain business and retail floor space in the business core area; and*
- (b) *To maintain active street frontages in the business core area.*

The proposed development does not satisfy this provision in that only part of the first floor is proposed as SOHO type use and the remainder of the floor is all residential and the Rickard Road frontage has limited active street frontage area.

The applicant has requested variation to this standard on the following grounds:

- *There is no readily definable market for non-residential floor space at first floor level. This has been a factor in the approved development being stalled. It may relate to the barrier effect of Rickard Road in separating predominantly business and predominantly residential areas.*
- *In the absence of any identifiable user, the proposal strikes a reasonable balance in providing a link between ground floor and first floor business spaces, with the advantage of attachment to a dwelling. This would encourage use by owner/operators of small businesses, and provides potential parking efficiencies.*
- *Any notional loss of employment generating potential is likely to be offset by the likely use of a proportion of dwellings for various kinds of working from home.*

In addition to the above justification the applicant has submitted a market assessment prepared by Hill PDA looking at the viability of a first floor commercial use. The report concluded: *"Based on research in the foregoing sections and given the fringe location of the site, commercial development does not appear feasible at the present time for the following reasons:*

- *Prevailing market dynamics and preferences are demonstrated in the poor market reception experienced not just by the site but by 462 Chapel Road and 41-45 Rickard Road.*
- *Off-the-plan leasing faced market resistance from a market not accustomed to pre-committing to space prior to completion, much less commencement of construction. With financiers mandating pre-commitments and pre-sales before disbursement of project financing, it is no surprise many commercial developments have not proceeded.*
- *The viability of development into commercial land uses is impeded by the prevailing low rental rates and market demand, consequently making commercial development less viable now and into the foreseeable future.*

- *The viability of commercial development is not likely to improve in the short term pending the absorption of surplus stock in the precinct.*

Residential is at present the most economically viable land use, providing a sufficient incentive for redevelopment by developers (evidenced by the recent site sales at 17 Kitchener Parade and 4-6 French Avenue approved for residential development).

Planning Comment

Council's Strategic Planning Unit commented on the issue as follows:

An objective of Zone 3(a) under Bankstown LEP 2001 is to encourage the development of offices and other commercial activities in the CBD and promote the centre as a place of employment.

To support this objective, clause 2.1 of Bankstown DCP 2005–Part D4 reads:

"A development on land within the business core area of the Bankstown Central Business District (refer to Figure 2.1) must restrict the use of the first and second storey to solely business, retail, community, or other non–residential uses:

(a) to maintain business and retail floor space in the business core area; and

(b) to maintain active street frontages in the business core area."

The property at No 443–445 Chapel Road in Bankstown is located within the business core area.

As part of the Development Application, a report by Hill PDA (dated 27 August 2010) recommends that commercial development does not appear feasible at the present time. Residential is at present the most economically viable land use.

In considering the request, it is recommended that the Development Application should comply with clause 2.1 for the following reasons:

- *The intent of clause 2.1 is to maintain business and retail floor space in the business core area for present and future population and employment needs.*

As part of the State Government's Metropolitan Strategy, the Bankstown CBD must accommodate an additional 4,000 jobs. Council adopted the Employment Lands Development Study in September 2009 to recommend how to achieve this job target over the next 25 years. Key actions of the Study for the Bankstown CBD read (page 49):

ACTION 1. *Establish a Mixed Use zoning in the majority of the Bankstown Major Centre. This zone would require ground floor active retail, first floor commercial office or retail extension and residential*

above. FSR incentives for commercial could also be considered in this zone, for example additional/bonus FSR for commercial space.

ACTION 2. *Promote more commercial and civic activities on the north side of the rail line east of Chapel Road and around Rickard Road. Commercial development in this precinct will complement the redevelopment of the Civic precinct proposed to occur in this area.*

These actions reinforce the continued implementation of Council's current policy (i.e. clause 2.1 of Bankstown DCP 2005) consistent with the Department of Planning's directions to cater for population and employment needs over the next 25 years.

- *The report by Hill PDA highlights that tenant enquiry appears to be predominantly for smaller office suites.*

Although the report makes comparison with 'premier' commercial buildings that contain larger spaces, it does not make comparison with the new commercial building located at No 434 Chapel Road in Bankstown. This building demonstrates there is demand for smaller office suites within the business core area, which includes the intersection of Chapel Road and Rickard Road. The first storey (i.e. ground floor) and the second storey of the proposed development should cater for this demand.

Based on the above, it is concluded that there is insufficient ground to vary the DCP requirement of providing all of the first floor as commercial.

Setback

A variation to setback requirement is proposed from the street frontages. The applicant has submitted the following arguments in support of seeking the variation to the setbacks.

- ❑ *The extent of non-compliance is not significant.*
- ❑ *The proposed non-compliance is less than that in the approved development for the site.*
- ❑ *The non-compliance does not lead to any implications for other land.*
- ❑ *The non-compliance is more than off-set by the greater and variable setbacks achieved by the balance of the building, particularly on the Chapel Road frontage.*
- ❑ *The corner nature of the site and its relatively narrow width to Rickard Road do not allow for full compliance with the standard, at the same time as achieving urban design objectives to reinforce the prominence of the corner and to present a strong character to Rickard Road.*
- ❑ *The standard is more applicable to a mid-block site than a corner site.*

Comment

The Design Review Panel raised no objections to the proposed setbacks. The setback to Rickard Road varies from nil to 3.5m. The setback from Chapel Road is encroached only by the corner element. These variations to the setback are considered acceptable as a continuation of the corner element and to reinforce the street edge.

Solar Access

The non-compliance with solar access was identified by the Design Review Panel and the Urban Designer. Under the Residential Flat Design Code and Council's DCP, 70% of the units must have a minimum of 3 hours of direct solar access to their living rooms between 9am and 3pm at mid-winter.

The proposal has 75 residential apartments and 5 SOHO units. The living quarters of the SOHO units get only limited solar access in the morning and would not meet the Code requirement. Out of the remaining 75 apartments, 50 (66.6%) are likely to achieve technical compliance although at least 13 units would have only a small portion of the living rooms exposed to direct sun light because of the size of the openings (Units B102 to B802) and/or the balcony overhang (B604, B703, B704, B803 & B804).

Storage area

The non-compliance with storage area has been discussed in a previous section of this report. There are 9 storage shells provided in the basement which is insufficient to meet the storage requirements for the units. Whilst storage space has been marked in each unit this is along one of the walls of the living area and could only be used for TV cabinets/showcase type of storage. This is not considered to satisfy the intent of storage area required by the RFDC and the DCP.

Balconies

Clause 8.1 of Part D4 of DCP 2005 requires that each unit be provided with a balcony that is at least 15sqm and has a minimum dimension of 3m. Some of units within the development do not satisfy the minimum area and/or width requirements of the DCP. All balconies will however have depths greater than the minimum 2m recommended by the Residential Flat Design Code (SEPP 65). Whilst the balconies fail the technical controls of BDCP 2005, they satisfy the requirements of the Residential Flat Design Code. On balance, the development provides for appropriate private open space.

Part D7 - Sustainable Commercial and Industrial Development

Part D7 of the Bankstown DCP provides water and energy conservation measures for new commercial and industrial developments based on the floor area. The proposal has a total commercial floor area of 524.5m², including the SOHO office area. The DCP requirements for new developments with less than 5000m² floor area include installation of water efficient fixtures, building design to enhance energy performance and installation of energy efficient hot water systems, air conditioners and lighting. The proposal is considered capable of satisfying these requirements and if an approval is to be granted, conditions should be imposed requiring compliance with installation of water efficient fixtures and installation of energy efficient hot water systems, air conditioners and lighting.

Part D8 - Car Parking

The application was accompanied by a Traffic and Parking Assessment Report which assessed the minimum parking requirement for the development as follows:

Residential units 75 dwellings @ 1 space per dwelling 75 spaces

SOHO Units	5 dwellings @ 2 spaces per dwelling	10 spaces
Resident visitors	80 dwellings @ 1 space for 5 dwellings	16 spaces
Retail shops	155.3m ² @ 1 space per 40m ² GFA	4 spaces
Minimum Total		105 spaces

The parking requirement under the DCP is as follows:

Residential units: 1 to 3 spaces per unit
Residential visitors: 1 per 5 units
Retail: 1 space per 40m² of gross floor area

The DCP has no specific parking requirement for SOHO type units. Shop-top type housing requires 1 carspace per dwelling plus standard parking requirement for non-residential gross floor area. However, a shop-top housing by definition in BDCP may only contain a single dwelling attached to an office, shop or other non-residential use. If each SOHO Unit was assessed as a shop-top housing, a total of 18 spaces would be required. On the other hand a home business/home office requires 2 spaces per dwelling with provision for additional parking if required by the home business.

Based on the above requirements, the proposed 109 spaces are considered to meet the total requirement subject to the SOHO Units being allocated the remaining 4 spaces.

Bankstown DCP 2005, Part E1 - Demolition and construction

There are no structures to be demolished as the site is vacant. Contamination of the site has been considered in relation to the provisions of State Environmental Planning Policy No 55. Removal of underground storage tanks and site validation will be required prior to building work commencing on site.

Suitable erosion and sediment control measures and a soil and water management plan will need to be put in place prior to commencement of construction works and retained during construction in accordance with relevant requirements and standard consent conditions.

Bankstown DCP 2005, Part E2 - Tree Preservation Order

Six trees located within the site and three trees located on the adjoining land to the east have already been removed. This matter has been previously dealt with in this report.

Bankstown Development Engineering Standards

The proposal has been assessed against the relevant provisions of the Council's Development Engineering Standards (DES) and appropriate concept drainage plans have been provided by the applicant. These concept drainage plans have been assessed and found to be generally satisfactory.

Planning agreements [section 79C(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

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

The proposed development is not inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

The likely impacts of the development [section 79C(1)(b)]

An assessment of the likely impacts of the proposed development has revealed the following issues that require particular attention:

Context and Setting

The excessive FSR and the resultant design issues arising from this has been discussed above.

Access, parking and traffic

The applicant submitted a Traffic and Parking Assessment Report which concluded that the proposed development will have no unacceptable traffic-related effect.

Both Rickard Road and Chapel Road are classified as Regional Road under the RTA's road hierarchy. Given the location of the site at an intersection of two regional roads, the RTA requested that the plans be referred to them for comments. In their reply RTA raised no objection, in principle, however provided some advisory comments for Council's consideration. They are:

- a) *that Council should consider restricting access to the development from Chapel Road to left-in and left-out only by extending the existing concrete median to a point north of proposed driveway.*
- b) *that the layout of the proposed car parking areas be in accordance with AS 2890.1-2004 and AS2890.2 - 2002 for heavy vehicle usage;*
- c) *that all vehicles, including service vehicles, to enter and exit the subject site in a forward direction.*

Council's Traffic Engineer reviewed the proposal and the RTA's comments and advised that whilst points (b) and (c) could be addressed through condition of consent, point (a) "... is not considered viable at this location as there is not sufficient road width to accommodate a pedestrian safe median. However to avoid that the traffic may be held up by motorists turning into the development the parking spaces on the western and eastern side of Chapel Road between the development and Rickard Road is to be restricted with "No Stopping 6.30 - 9.30 am and 3.30 - 6 pm Mon - Fri". The change of signage is to be funded by the applicant. The applicant is also to fund the installation of "1 P 9.30 am - 3.30 pm Mon-Fri 8.30 am - 12.30 pm Sat" signage across the Chapel Road frontage, north of the 'No Stopping' zone on the approach to the Rickard Road traffic lights".

Safety, security & crime prevention

The development requires a formal crime risk assessment given the number of apartments exceeding the trigger of 20 units under the RFDC however, no assessment was provided. The applicant in the SEE states that the proposal enables surveillance of surrounding public places and access to the building is to be controlled.

Given its location and scale of the development, it was referred to Council's Community and Development Unit and Bankstown Police. The Bankstown Local Area Command has advised that it has conducted a Safer by Design Crime Risk Evaluation and identified an overall crime risk as **medium**, on a sliding scale of low, medium and high crime risk. The Police have recommended conditions that cover the following Technical/Mechanical (CEPTED) treatment options for the development in order to reduce opportunities for crime.

- CCTV (Closed Circuit Television)
- Lighting
- Signage
- Access Control
- Retail Stores

These matters are such that it can be dealt with during the building design/construction phase.

Site design and internal design

The proposed layout has a number of issues which have been discussed above. These include:

- The residential entry to Chapel Road lacks a clearly identifiable and direct physical and visual connection between the street and the entry.
- Lack of retail/commercial frontage to the Rickard Road to activate the street.
- Unsatisfactory location/design of the communal openspace in terms of its size, accessibility, usability and solar access.
- Solar access and ventilation

Cumulative impacts

The likely impact of the development has been considered within this report. The development is deemed to be unacceptable due to its excessive density and the resultant cumulative impact on the built environment and the infrastructure and services of the area when taken in the context of the surrounding CBD area.

Suitability of the site [section 79C(1)(c)]

The site is assessed to be suitable to support a large mixed-use development, but not the proposed development due to the issues raised previously. It is noted that the proposal is generally consistent with Bankstown DCP 2005 objective for this precinct of the CBD to create a high rise mixed use precinct especially along Rickard Road except for the need to have the first two floors as non-residential and the building providing active street frontage to Rickard Road.

Submissions [section 79C(1)(d)]

The application was advertised for a period of twenty-one (21) days. One (1) objection was received during this period, which raised concerns relating to a proposed pedestrian link to vehicle access, car parking and traffic generation. The application was subsequently amended twice and re-advertised each time for a period of twenty-one (21) days. One (1) objection was received from the previous objector against the proposal raising concerns relating to car parking and traffic generation.

Objection: *Carparking for retail use*

The objector requests that at least 50% of carparking for retail and SOHO units be allocated to the customers.

Comment: Council's DCP does not mandate carparking for retail/office floor space be accessible to the customers. Given the site's location and the size of the retail areas and SOHO units, the development is unlikely to generate significant retail/office parking demand.

Objection: *Traffic generation for retail use*

The objector requests that the traffic generation for the development be based on smaller scale retail developments rather than general retail/commercial use

Comment: The Roads and Traffic Authority and the Council's Traffic Engineer reviewed the proposal and have raised no issues with the way the traffic generation was assessed. Based on the traffic report the total traffic generation potential of the proposed development is calculated to be 30 vehicle trips per hour (vtph) which is approximately 2.2% to 3.2% of the peak vehicle per hour traffic in Chapel Road.

The public interest [section 79C(1)(e)]

In the circumstances the public interest would not be served as there would be no apparent public benefit from a development which exceeds the maximum 3:1 FSR. This could also establish a precedent for expected additional FSR in the area adding to the intensity of development, beyond that envisaged by the local planning controls. The proposal in its present form does not meet the design quality expected under SEPP 65 and would not serve the interest of future residents of the development who will have poor solar access, natural ventilation and access to inadequate communal openspace.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*, *Bankstown Local Environmental Plan 2001* and *Bankstown Development Control Plan 2005*.

The floor space ratio (FSR) exceeds the maximum 3:1 applicable to the development site under clause 30 of *Bankstown Local Environmental Plan 2001*. The applicant has submitted an objection under *State Environmental Planning Policy No. 1* seeking JRPP support for a variation of the maximum FSR.

It is considered that this application does not establish that compliance with the 3:1 FSR standard would be unreasonable or unnecessary in this case, and there is no compelling reason for the JRPP to support a FSR variation above 3:1.

Any further concession or bonus FSR will establish a pattern for further expected FSR increases for the remainder of the block, having a cumulative effect and increasing the intensity of development in the business zone and the CBD.

As detailed in the assessment above, the proposal also fails in a number of SEPP 65 design quality principles ultimately impacting upon the amenity of the future residents of the development.

It is therefore recommended that the application be refused.

Sindhu Kaphle
Development Assessment Officer

Recommendation Endorsed

Ian Woodward
Acting Coordinator - Development Services