

JRPP No.	2011SYW027
DA Number	DA-76/2011
Local Government Area	Bankstown City Council
Proposed Development	Demolition of the existing dwellings and associated site structures and the construction of a part two / part three storey residential flat building development containing 144 dwellings with basement car parking, an internal road and strata subdivision pursuant to the provisions contained in <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> .
Street Address	81 to 95 Boronia Road, Greenacre
Applicant	Creative Planning Solutions Pty Limited
Owner	GPV Investments Pty Limited
Number of Submissions	283
Recommendation	Refusal
Report by	Ray Lawlor, Development Assessment Officer, City Planning and Environment

SUMMARY REPORT

Creative Planning Solutions Pty Limited submitted a development application, on 2 February 2011, seeking approval for the construction of a residential flat building development, under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, containing 144 dwellings, at 81-95 Boronia Road, Greenacre.

As the estimated capital investment value of the development is \$23,489,000 it is subject to the provisions of Part 3 Regional Development of *State Environmental Planning Policy (Major Development) 2005* and is therefore to be determined by the Joint Regional Planning Panel.

The site is located on the northern side of Boronia Road, between the intersections with Boronia Road at Noble and Hillcrest Avenues. The subject site is approximately 500m west of the Greenacre town centre, on Waterloo Road.

The subject site comprises six (6) lots. The combined site is a regular parcel of land with a site area of 11,479sqm and front and rear boundaries of 114.11m and side boundaries of approximately 100.6m. It is zoned 2(a) - Residential A under *Bankstown Local Environmental Plan 2001*.

The site is occupied by single dwellings houses and an older single storey villa style development. Development adjoining the site comprises single storey villa units to the east, 4 single storey dwellings to the west, and a two storey building of the Bankstown Aged Care facility at 74 Chiswick Road (with a wall height of approximately 7m and approximately 5.5m from the boundary), and single storey dwellings adjoining the rear or northern boundary.

Pedestrian and vehicular access to Banksia Road Public School is opposite the site and there are time limited parking zones along the opposite side of Boronia Road, morning and afternoon during school times.

Approval is sought for the following proposed development:

- The demolition of existing dwellings and all associated site structures, and the removal of existing vegetation.
- The construction of a part two/part three storey residential flat building development containing 144 dwellings, in 12 buildings, with eight (8) of these buildings (Buildings A, B, C, D, I, J, K & L) located around the site perimeter and being interconnected by single storey units and the remaining four (4) buildings (Buildings F/G and E/H) located at the centre of the site to the north and south of a central communal open space area.
- 144 apartments comprising 34 x studio apartments, 34 x 1 bedroom apartments, 72 x 2 bedroom apartments and 4 x 3 bedroom apartments.
- Provision of affordable rental housing pursuant to *State Environmental Planning Policy (Affordable Rental Housing) 2009*, with 50% of the dwellings to be managed by Affordable Community Housing Ltd, a registered community housing provider.

- Provision of an internal one way circular access road, minimum 4.5m wide, with separate ingress and egress driveways to Boronia Road.
- Provision of 147 parking spaces, comprising 124 basement and lower ground level spaces beneath the buildings and 23 spaces at grade off the central access road. 19 of the spaces off the central driveway could be provided as visitor parking spaces.
- Provision of a central area of communal open space of approximately 905sqm.
- Provision of storm water infrastructure connecting via a 2m wide easement, over the adjoining property to the north of the site at 74 Chiswick Road, into an existing storm water drainage channel.
- Materials of construction include split face and rendered and painted block work, and prefinished external cladding system (CSR cemental rendaline wall system) with light/white coloured painted finishes (no detailed schedule of materials and finishes has been provided).
- The development is provided with elevated habitable floor levels at RL 43m for dwellings in Buildings C, D, I & J, which will be 500mm above the 1 in 100 year flood level (from local catchment flooding) affecting this part of the site.

The application was advertised for 21 days including an additional advertising period related to amended plans. Two hundred and eighty three (283) submissions were received objecting to the proposal primarily related to traffic and parking concerns.

The application was referred to the Roads and Traffic Authority as traffic generating development under the provisions of the *State Environmental Planning Policy (Infrastructure) 2007*. Advice has been received from the RTA granting concurrence to the development and provision of entry and exit driveways on Boronia Road, an arterial road. This is subject to certain requirements being incorporated into the development consent, in particular left in and left out traffic movements and the provision of a raised concrete median island in Boronia Road to prohibit right turn movements. Also full time "No Stopping" parking restrictions are required along the frontage of the subject site.

The application was referred to the NSW State Office of Water as integrated development in relation to a potential controlled activity approval under the *Water Management Act 2000*. The NSW State Office of Water has advised that a controlled activity approval is not required.

A submission was received from the NSW Department of Education which advises that additional student demand for government education services are anticipated to be able to be catered for at local schools.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The application has been made based upon the provisions of *State Environmental Planning Policy Affordable Rental Housing 2009* (repealed ARH SEPP), as in force when the development application was made.

The repealed ARH SEPP will not apply to the proposed development as a determination of equivalent land use zones under clause 5(1)(b) has not been properly made and the Residential 2(a) zoning of the land under Bankstown LEP 2001 is not an equivalent zone to those listed in Clause 10. The JRPP may

however make a determination in regard to equivalent land use zones, and therefore determine that the repealed ARH SEPP applies to the proposed development.

Clause 54(2) of *State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011* (amended ARH SEPP) indicates the application 'may' be determined as if the amended ARH SEPP had not been made. Legal advice obtained by Council indicates that an application may be assessed and determined under the amended ARH SEPP.

If the application is assessed and determined under the provisions of the amended ARH SEPP, Clause 10 (as amended) requires that the form of the development is permissible with consent in an environmental planning instrument. 'Residential flat buildings' are prohibited pursuant to clause 11 of the Bankstown Local Environmental Plan 2001, in the Residential 2(a) zoning applying to the land. Accordingly it is considered that the ARH SEPP does not apply to this proposed development.

Bankstown Local Environmental Plan 2001

The proposed development should, therefore, be assessed and determined under the provisions of Bankstown Local Environmental Plan 2001. Apart from the proposed development being prohibited within the Residential 2(a) zone applying to the land, it is inconsistent with the objectives of the zone and clause 45 where the proposed development would be incompatible with the character and amenity of existing and likely future buildings on adjoining land in terms of its scale, bulk, design, privacy and stormwater drainage.

The floor space ratio of the proposed development (being approximately 0.745:1, based on the definition of gross floor area in Bankstown LEP 2001) will not comply with the maximum 0.5:1 floor space ratio applying to the land under clause 30 of Bankstown LEP 2001. The density of the proposed development being approximately 1 dwelling per 80sqm of site area is well in excess of the density of 1 dwelling per 300sqm of site area for villa development which would be permissible within the 2(a) zone.

A character test of the development under the provisions of the amended ARH SEPP has identified that the design of the development is incompatible with the character of the local area and existing and expected development under Bankstown LEP 2001. The density and the form of the proposed development, being two to three storey residential flat buildings and approximately one dwelling per 80sqm of site area is not characteristic of the low to medium density residential development in this area.

Outstanding issues have also been identified in relation to the design and impact of the proposed development, in particular the following matters:

- Solar Access
- Dwelling Sizes
- Privacy and Overlooking
- Built Form
- Pedestrian access
- Communal open space
- Ceiling heights

- Side and rear boundary setbacks, to balconies and decks
- Lack of communal drying areas.
- Off street car parking
- Loading and unloading areas for removalist vehicles or the like

Additionally, outstanding information has been identified in regard to the following matters:

- The provision of a raised median island in Boronia Road (as required by the RTA), and any requirement to amend the proposed development as a result of the need to provide this median island.
- Identification of the dwellings to be managed as affordable housing to meet requirements of the ARH SEPP that 50% of the gross floor area of the proposed development is provided as affordable housing.
- Information required under schedule 1 of the *Environmental Planning and Assessment Regulation 2000*, in relation to SEPP 65, and in relation to a draft strata subdivision plan, and elevations/sections of the proposed community room.
- Waste management arrangements.
- Storm water drainage.
- A preliminary site investigation of potential contamination resulting from unauthorised use of part of the site for storage of vehicles.

Based upon the assessment of the application and the outstanding issues that have been identified, it is recommended that the proposed development be refused.

RECOMMENDATION

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

1. The *State Environmental Planning Policy (Affordable Rental Housing) 2009*, as in force when the application was made is not applicable to the proposed development. The proposed development is defined under the Bankstown Local Environmental Plan 2001 as a '*residential flat building*' and is prohibited in the 2(a) - Residential A zone, (Pursuant to Section 79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).
2. The proposed development is inconsistent with the objectives of the Bankstown Local Environmental Plan 2001 clause 2(a)(v) as it would not be compatible with the prevailing suburban character and amenity of the locality of the development site, (Pursuant to Section 79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).
3. The proposed development is inconsistent with the objectives of the 2(a) - Residential A zone clause 44(1) of the Bankstown Local Environmental Plan 2001 as it would not complement the single dwelling suburban character of the residential areas of Bankstown City, (Pursuant to Section 79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).

4. The application lacks adequate information as required by schedule 1 of the *Environmental Planning and Assessment Regulation 2000*, and in particular in regard to *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development*, and plan details, (Pursuant to Section 79C(1)(a)(iv) *Environmental Planning and Assessment Act 1979*).
5. The application lacks adequate information regarding stormwater drainage including easements for drainage over down stream properties, and has not therefore established that the proposed development can be suitably drained, (Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
6. The application lacks adequate information in regard to the impact of a median island required by the RTA in Boronia Road, including any requirements for amendments to the proposed development, (Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
7. The proposed development will not provide sufficient on site visitor parking and lacks suitable loading and unloading facilities, having regard to the scale of the proposed development, its location on an arterial road, 'no stopping' restrictions required by the RTA and a bus stop along the site frontage, Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
8. The bulk, scale and design of the proposed development will result in adverse amenity impacts for neighbouring residential properties, including privacy and overlooking impacts, and an inadequate living environment and amenity for future residents of the development, (Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
9. For the reasons stated above the proposed development is unsuitable for the site, will be inconsistent with the objects under section 5(a) of the *Environmental Planning and Assessment Act 1979* related to encouraging development for the purposes of promoting a better environment and the promotion and co-ordination of the orderly development of land, and therefore is not in the public interest, (Pursuant to Section 79C(1)(c)&(e) *Environmental Planning and Assessment Act 1979*).

ATTACHMENTS

- A - Assessment report to the Joint Regional Planning Panel regarding DA-76/2011 - 81-95 Boronia Road, Greenacre.
- B - Assessment of the application against provision of State Environmental Planning Policy (Affordable Rental Housing) 2009, and against the provisions of Bankstown Development Control Plan 2005.
- C - Application plans - Site/floor plans
- D - Application plans - Sections & elevations.
- E - Schedule of dwellings and dwelling sizes and three dimensional solar access diagrams.

ATTACHMENT A - DEVELOPMENT APPLICATION ASSESSMENT REPORT

DA-76/2011 (2011SYW027)

1. SITE & LOCALITY DESCRIPTION

The subject site is known as 81 to 95 Boronia Road, Greenacre, and is located on the northern side of Boronia Road, between the intersections with Boronia Road at Noble and Hillcrest Avenues. The subject site is approximately 500m west of the Greenacre town centre, on Waterloo Road. Boronia Road is a state road, and a main road classified under the *Roads Act, 1993*.

The subject site comprises six (6) lots. The combined site is a regular parcel of land with a site area of 11,479sqm and front and rear boundaries of 114.11m and side boundaries of approximately 100.6m. It is zoned 2(a) - Residential A under Bankstown Local Environmental Plan 2001.



Figure 1 - Subject site - 81-95 Boronia Road, Greenacre

The site is occupied by single dwellings houses and an older single storey villa style development described as follows:

- Five (5) dwelling houses located towards the Boronia Road frontage, at 87 to 95 Boronia Road, with largely vacant rear yard areas except for a number of outbuildings. No's 87 to 93 Boronia Road contain four of these dwellings on one lot (Lot 1 DP 1050027) which was consolidated in 2003 from the previous 4 lots. The rear of 87 to 93 Boronia Road includes the parking and/or storage of vehicles, without consent.
- The eastern portion of the site, 81 to 85 Boronia Road (Lots X & Y DP 418826, Lot 1 DP 1074206, Lot B DP 320327), is occupied by the older villa style development comprising fourteen (14) mostly fibro clad single storey buildings, which extend from the Boronia Road frontage towards the rear or northern boundary and contain approximately 40 dwelling units. The erection of these dwellings was originally approved by Council in 1959, as aged persons' accommodation.

Site levels fall approximately 5m from the Boronia Road frontage to the rear. This cross fall occurs over a distance of approximately 105m or an average grade of approximately 1:21.

The rear northern and north western portion of the site, comprising approximately 1890sqm or 16.5% of the site, is affected by medium risk flooding related to potential storm water inundation from the local catchment and localized storm water flooding.

There is limited existing vegetation on the site, with no significant trees. There are melaleuca trees adjacent to the boundaries of 95 Boronia Road on the western side of the site, which provide some screening for adjacent dwellings.

Development adjoining the site comprises:

- 9 x single storey villa units to the east at 77-79 Boronia Road,
- 4 single storey dwellings to the west at 99, 99A, 99B and 101 Boronia Road, on a front allotment and three battle axe or rear allotments, and
- a two storey building of the Bankstown Aged Care facility at 74 Chiswick Road (with a wall height of approximately 7m and approximately 5.5m from the boundary), and single storey dwellings at 6 and 7 Welch Avenue, at the rear or northern boundary.

There is an easement to drain storm water, 2m wide, over the adjoining property to the north, No. 74 Chiswick Road (Lot 778, DP 748013, Bankstown Aged Care Facility) in favour of part of the subject site, which drains to an existing Sydney Water storm water channel.

Pedestrian and vehicular access to Banksia Road Public School is opposite the site and there are time limited parking zones along the opposite side of Boronia Road, morning and afternoon during school times.

There is a regular bus service along Boronia Road (M90 metro bus, between Burwood and Liverpool, via Bankstown) with a bus stop adjacent to the site frontage,

adjacent to the boundary of No's 93 and 95 Boronia Road, for buses travelling to Burwood. There is also a bus stop on the opposite side of Boronia Road, for buses travelling to Bankstown and Liverpool.

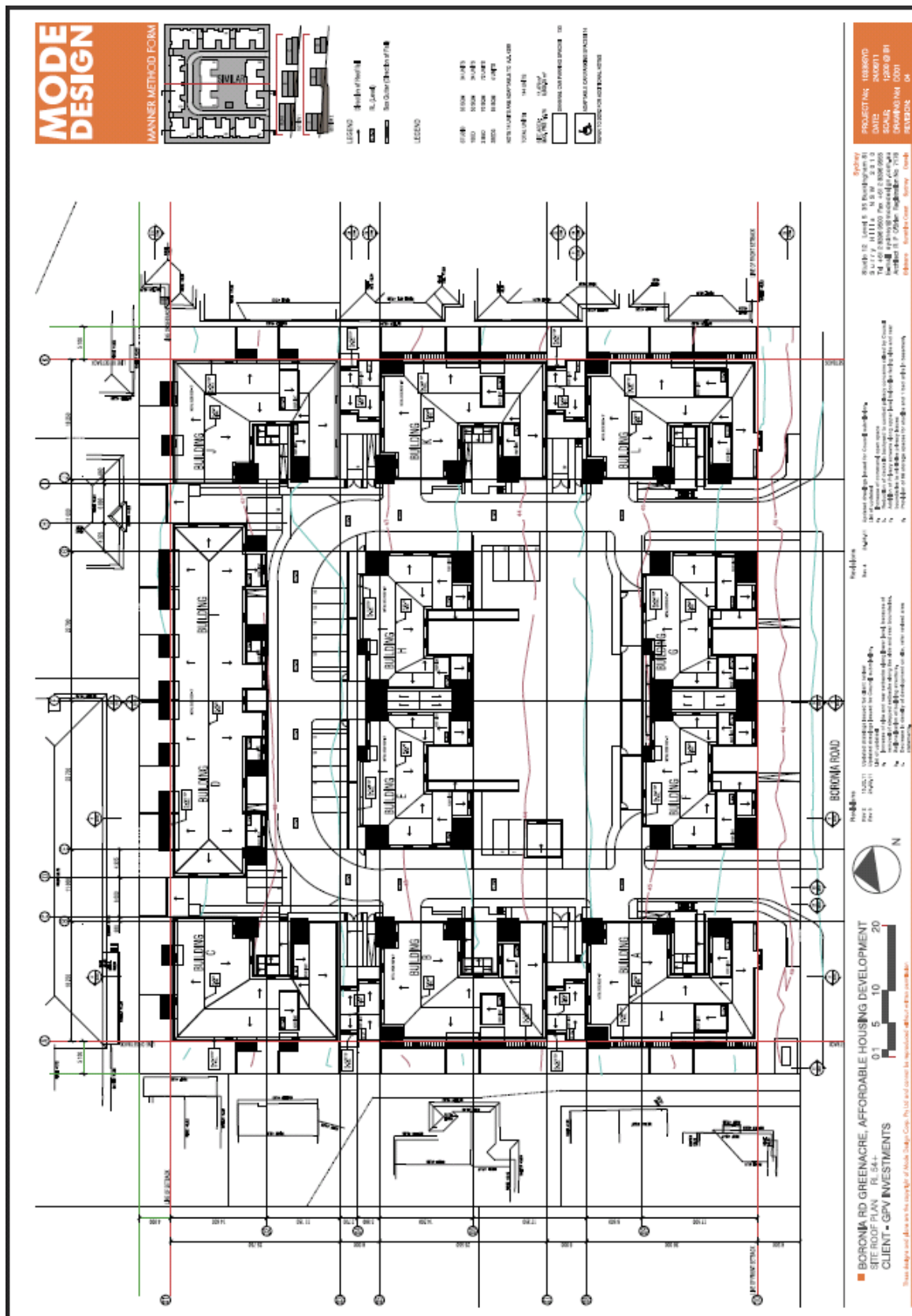
2. PROPOSED DEVELOPMENT

The estimated capital investment value of the proposed development is \$23,489,000. The proposed development comprises:

- The demolition of existing dwellings and all associated site structures, and the removal of existing vegetation.
- The construction of a part two/part three storey residential flat building development containing 144 dwellings, in 12 buildings, with eight (8) of these buildings (Buildings A, B, C, D, I, J, K & L) located around the site perimeter and being interconnected by single storey units and the remaining four (4) buildings (Buildings F/G and E/H) located at the centre of the site to the north and south of a central communal open space area.
- Provision of affordable rental housing pursuant to *State Environmental Planning Policy (Affordable Rental Housing) 2009*, with 50% of the dwellings to be managed by Affordable Community Housing Ltd, a registered community housing provider.
- Provision of an internal one way circular access road, minimum 4.5m wide, with separate ingress and egress driveways to Boronia Road.
- Provision of 147 parking spaces, comprising 124 basement and lower ground level spaces beneath the buildings and 23 spaces at grade off the central access road. 19 of the spaces off the central driveway could be provided as visitor parking spaces.
- Provision of a central area of communal open space of approximately 905sqm.
- Provision of storm water infrastructure connecting via a 2m wide easement, over the adjoining property to the north of the site at 74 Chiswick Road, into an existing storm water drainage channel.
- Materials of construction include split face and rendered and painted block work, and prefinished external cladding system (CSR cemental rendaline wall system) with light/white coloured painted finishes (no detailed schedule of materials and finishes has been provided).
- The development is provided with elevated habitable floor levels at RL 43m for dwellings in Buildings C, D, I & J, which will be 500mm above the 1 in 100 year flood level (from local catchment flooding) affecting this part of the site.

SUMMARY OF KEY ELEMENTS OF THE PROPOSED DEVELOPMENT

Element	Proposed
Site Area	11, 479sqm
Gross Floor Area (GFA)	8,559.94sqm (as per definition of GFA under Bankstown LEP 2001)
Floor Space Ratio	0.676:1 as indicted by the applicant and based on the definition of GFA in the standard instrument.
Total Number of Apartments	144 apartments
Number of Studio Apartments	34 apartments
Number of 1 - Bedroom Apartments	34 apartments
Number of 2 - Bedroom Apartments	72 apartments
Number of 3 - Bedroom Apartments	4 apartments
Adaptable dwellings to AS4299	14 of the above apartments nominated as adaptable units, seven each within buildings A and L.
Number of Car Parking Spaces	147 car parking spaces (133 general spaces and 14 spaces nominated as disabled parking spaces), comprising 124 spaces beneath the buildings (basement and lower level parking) and 23 spaces at grade.



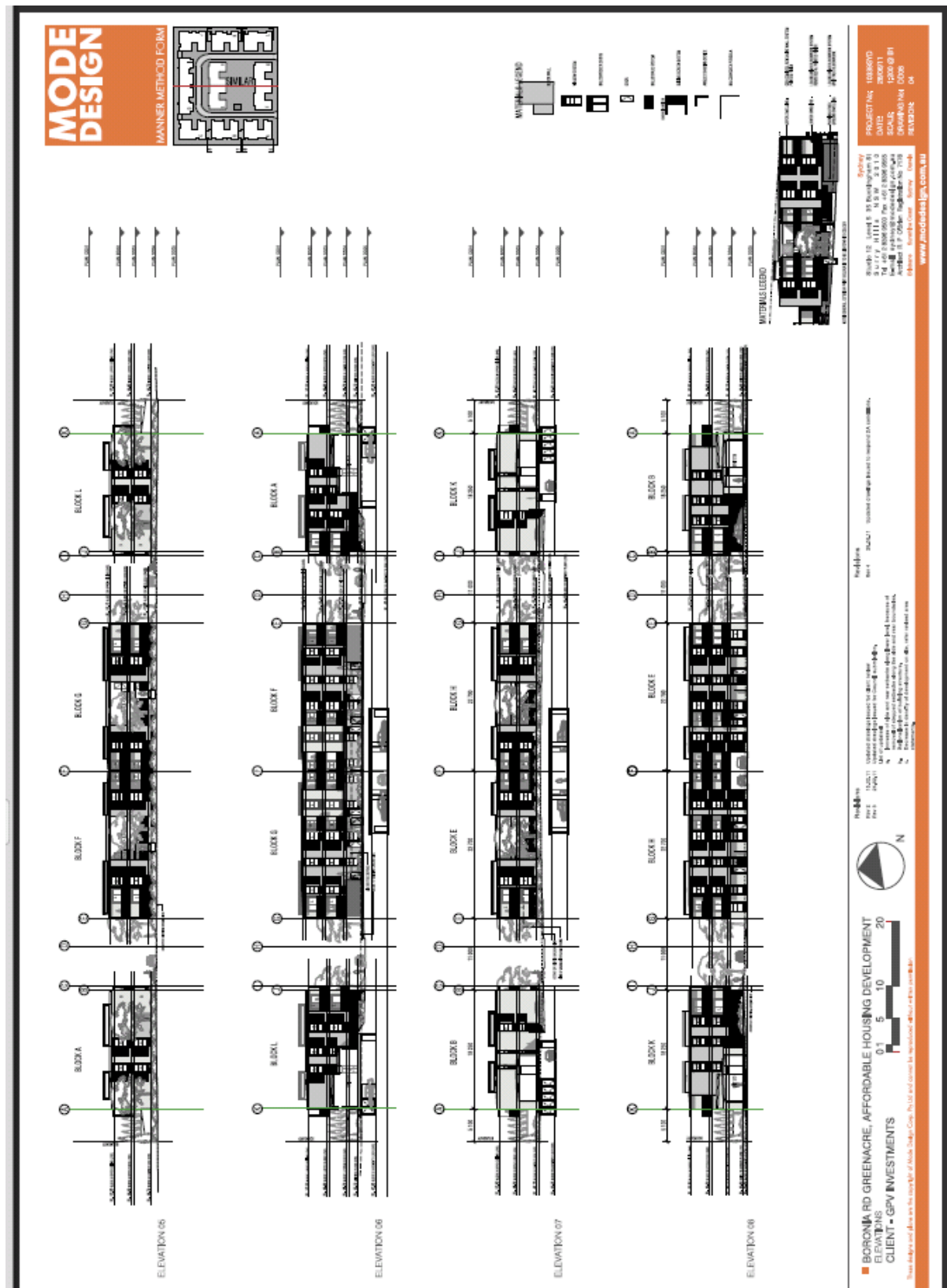


Figure 3: Elevations of the proposed development including Street Elevation, at top.

Information accompanying the application

In addition to the application plans the following reports accompanied the application:

- Statement of Environmental Effects, prepared by Creative Planning Solutions, dated February 2011.
- SEPP 65 Planning Statement, prepared by Mode Design, dated 30 January 2011.
- Noise Impact Assessment, prepared by Benbow Environmental, dated 25 January 2011.
- Building Code of Australia Compliance Report, prepared by Tom Miskovich & associates, dated 27 January 2011.
- Geotechnical Investigation, prepared by SMEC Testing dated October 2010.
- Traffic & Parking Impact Report, prepared by ML Traffic Engineers, dated January 2011.

Amendments

The proposal was amended by the applicant on 29 June 2011, in response to issues raised in Council's letter of 17 May 2011 regarding outstanding issues and request for additional information.

The amendments made to the proposed development on 29 June 2011 included:

- An increase of communal open space, primarily by removing nine (9) at grade car parking spaces previously located off the central driveway adjacent to this area and also removing parts of the pedestrian footpaths adjacent to this area.
- Shifting the location of a proposed community room approximately 5m west, towards the western edge of the communal open space area.
- Enlarging and reorganising of the central basement car park beneath blocks B, E, H and K.
- Reduction in the depth of the projecting decks, adjacent to side and rear boundaries, for lower level dwellings to address potential privacy impacts.
- Addition of privacy screens along upper level balconies facing side and rear boundaries to address potential privacy impacts.
- Provision of storage spaces for studios and 1 bed units in the basement parking areas.
- Provision of low pitch metal roofs to the single storey units (in between the blocks) by rearranging the floor levels.

Matters or issues that remain outstanding are discussed in this assessment report and are summarised in the conclusion at the end of this report.

3. ASSESSMENT UNDER SECTION 79C(1) - Matters for Consideration-General

The proposed development has been assessed pursuant to section 79C(1) of the *Environmental Planning and Assessment Act, 1979*. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

3.1 The provision of any environmental planning instrument - section 79C(1)(a)(i)

3.1.1 State Environmental Planning Policy (Major Development) 2005

Part 3 (Regional Development) of this SEPP applies to the proposed development as the capital investment value of \$23,489,000 exceeds \$10 million, specified under clause 13B. The development application is therefore to be determined by the Joint Regional Planning Panel (Sydney West Regional Panel).

3.1.2 State Environmental Planning Policy (Affordable Rental Housing) 2009, as in force at the submission of the application [repealed ARH SEPP].

The application was submitted, on 2 February 2011, under the provisions of Division 1 'In-fill affordable housing' of this SEPP, with 50% of the dwellings to be provided as affordable housing, to be managed by Affordable Community Housing Ltd, a registered community housing provider.

A detailed table detailing an assessment of the proposed development against the relevant provisions of the SEPP, as well as Bankstown DCP 2005, is provided in Attachment B.

Clause 10 - Accessibility

Clause 10(c) required that there is a bus service at least once an hour between 6.00am and 6.00pm each day from Monday to Friday (both days inclusive). This has been amended, since the submission of the application, and now requires that there is at least one bus per hour servicing the bus stop between 6.00am and 9.00pm each day from Monday to Friday (both days inclusive) and between 8.00am and 6.00pm on each Saturday and Sunday.

There is a regular bus service along Boronia Road (M90 metro bus, between Burwood and Liverpool, via Bankstown) stopping adjacent to the frontage of the site, which meets the requirement of clause 10(2) of the SEPP. There is at least one bus per hour running to Strathfield or Burwood from 5.14am to 10.26pm on weekdays, with buses every 10 minutes in peak hours and 15-20 minutes at most other times, and buses between at least 7.29am to 6.46pm on weekends. Buses to Bankstown or Liverpool via Bankstown, stopping on the opposite side of Boronia Road, operate from 6.04am to 11.12pm on weekdays and from at least 8.54am to 8.02pm on weekends.

Clauses 5 and 10 - Test of Equivalent Land Use Zones

Clause 10(1), Division 1 In-fill affordable housing, of the SEPP provides that:

This Division applies to a development site on land if the development site is within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of dwelling houses, multi-dwelling housing or residential flat buildings is permissible within the zone:

- (a) Zone R1 General Residential,*
- (b) Zone R2 Low Density Residential,*
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential.*

The provisions of the repealed ARH SEPP will therefore only apply if the subject site is within one of the named zones, listed in Clause 10(1), or if the zoning of the land is an equivalent land use zone.

The development site is not within one of the named zones but is zoned Residential 2(a) under Bankstown LEP 2001. The applicant has suggested that the Residential 2(a) zone is equivalent to Zone R2 Low Density Residential.

The Residential 2(a) zone is not equivalent to Zone R2 Low Density Residential as dual occupancy development and villas/multi dwelling housing are permissible within consent in the 2(a) zone but prohibited in the R2 zone.

Clause 5 of the repealed ARH SEPP provides for the 'test' of equivalency of land use zones. This refers to the provisions of clause 1.6(3) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and whether the Director-General has made a determination, by means of an order in the NSW Gazette, under clause 1.6 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* that a particular land use zone in Bankstown LEP is equivalent to a named land use zone.

Legal advice obtained by Council in May 2011 in relation to the test of equivalent zones under clause 5 of the repealed ARH SEPP (as in force at the time the application was made) indicates that the repealed ARH SEPP will not apply to this development.

No determination of equivalent zones under Clause 5(1)(a) by the Director-General

The Director-General has not made a determination, by means of an order in the NSW Gazette, under clause 1.6 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* that a particular land use zone in Bankstown LEP is equivalent to a named land use zone (e.g. 2(a) zone is equivalent to R2 - Low Density Residential). The table of equivalent zones from the Housing Code does not satisfy clause 1.6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* as this has not been established by order published in the Gazette.

Determination of equivalent zones under Clause 5(1)(b) by the relevant authority

Clause 5(1)(b) of SEPP Affordable Housing provides that the equivalent zone *"is a land use zone in which (in the opinion of the relevant authority) equivalent land uses are permitted to those permitted in that named land use zone"*.

The relevant authority is the consent authority for development that is carried out by or on behalf of a person other than a public authority. While Council is the consent authority, the JRPP is empowered to carry out Council's functions as the consent authority in the determination of this development application.

There is no obligation to form an opinion under clause 5(1)(b), and Council has made no such determination. In this case Council's legal advice indicates that the JRPP can form the opinion and determine the equivalency of the zones, in accordance with clause 5(1)(b).

In the absence of a determination of equivalent land use zones under clause 5(1)(b) the repealed ARH SEPP will not apply.

3.1.3 State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 [amended ARH SEPP]

On 20 May 2011 legislation was gazetted which amended provisions contained within the SEPP, referred to as the amended ARH SEPP. The Savings and Transitional provisions in the amended ARH SEPP states (in Clause 54A(2)):

"If a development application (an existing application) has been made before the commencement of the amending SEPP in relation to development to which this SEPP applied before that commencement, the application may be determined as if the amending SEPP had not been made".

As Clause 54(2) indicates that the application 'may' be determined as if the amended SEPP had not been made, Council has legal advice that an application may also be assessed and determined under the amended ARH SEPP. Council has been consistently applying the provisions of the amended ARH SEPP to development applications submitted under the provision of this SEPP.

If the application is assessed and determined under the provisions of the amended SEPP, Clause 5 does not apply as changes to Division 1 Affordable Infill Clause 10 have removed the need for a test of equivalent land use zones. Clause 10 (as amended) now requires that this form of development is permissible with consent in an environmental planning instrument. Residential flat buildings are prohibited pursuant to clause 11 of the Bankstown Local Environmental Plan 2001, in the Residential 2(a) zoning applying to the land and so the ARH SEPP does not apply. In the absence of the applicant being able to utilise the provisions contained in the SEPP, an assessment is confined to an assessment against the relevant provisions of Bankstown Local Environmental Plan 2001 and Bankstown Development Control Plan 2005.

If the Panel chooses to continue to assess and determine the application under the repealed ARH SEPP then the savings and transitional provisions within the amended ARH SEPP include requirements related to a character test and the percentage of affordable dwellings provided within the proposed development.

The remainder of Section 3.1.3 of this report deals with assessment matters under the ARH SEPP. Earlier sections of this assessment report have concluded that the SEPP does not apply to this development, and that the proposal must therefore be assessed under the provisions of Council's LEP & DCP.

However, the ARH SEPP contains choices which the determining authority must make which go to the heart of whether the SEPP does or does not apply. In this case, the determining authority is the JRPP. For completeness, should the JRPP decide that the SEPP does apply, then it is necessary that this report deal with the assessment of the development application under the SEPP. The remainder of Section 3.1.3 of this report provides this assessment.

However, if the JRPP decide that the SEPP does not apply, then the remainder of Section 3.1.3 is irrelevant to the assessment of this application.

Character test - Clause 54A(3)

Under clause 54A(3) of the amended ARH SEPP, applications that have been lodged prior to the amendments and which are currently under assessment must satisfy a local character test, and take into consideration whether the design of the development is compatible with the character of the local area. The design of the development is considered to be incompatible with the character of the local area.

Other than the Bankstown Aged Care facility at 74 Chiswick Road, adjoining the northern boundary of the site, the height, scale and density of the proposed development is not in character with surrounding residential development, being single dwellings or medium density villa/ townhouse style development.

Medium density developments adjoining the site or within the surrounding area typically comprise one to two storey town houses and villas. These have significantly lower densities within the range of 1 dwelling per 288sqm to approximately 1 dwelling per 350sqm of site area, compared to this proposed development with approximately 1 dwelling per 80sqm of site area.

There is a complex of town houses on the northern side of Chiswick Road, (comprising 5 separate strata complexes, at 55, 65, 75 & 95 Chiswick Road and 99 Rawson Road) where there are a total of 159 two storey dwellings (2 and 3 bedroom dwellings) over a combined site area of approximately 45,850sqm, which includes large areas of intervening common open space. This is a density of 1 dwelling per 288sqm.

Under the residential 2(a) zoning that generally applies within the surrounding area, medium density villa or town house development would be permissible with consent under Bankstown LEP at a density of one dwelling per 300sqm of site area.

The density and the form of the proposed development, being two to three storey residential flat buildings at a density of approximately 1 dwelling per 80sqm of site area, is not characteristic of the low to medium density residential development in this area, and is akin to higher density development adjacent to Bankstown CBD and town centres.

Planning principles: compatibility in the urban environment

It is noted that no guidelines have yet been established regarding a character test under the ARH SEPP. In the absence of any other guidelines it would be reasonable to undertake this test based upon principles regarding a development's compatibility with the character of its area which have been established in the Land and Environment Court, in considering an appeal on the refusal of a development application for a 3 storey residential flat building (Project Venture Developments v Pittwater Council [2005] NSWLEC 191).

It was indicated that the most apposite (or appropriate) meaning of compatibility in an urban context is *capable of existing together in harmony*. Buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

Two major aspects of a building's compatibility with its surroundings are physical impact and visual impact, with the following two questions being suggested:

Are the proposal's physical impacts on surrounding development acceptable?

The physical impacts include constraints on the development potential of surrounding sites.

Is the proposal's appearance in harmony with the buildings around it and the character of the street?

Physical Impacts

The physical impacts of a development that were considered by the Court included noise, overlooking, overshadowing and constraining of development potential.

Noise associated with the subject development will be limited. While the density of the development and proximity of the buildings to site boundaries will increase noise impacts for neighbouring properties/dwellings, this is related to residential uses only. There will be also be noise impacts during the construction of the development, but the hours of construction activities can be restricted to reduce these impacts. The proposal would not result in any constraining of development potential. The site has potential to be developed for villas or townhouses under the provisions of Bankstown LEP 2001.

The proposed development will result in overlooking and overshadowing impacts. Satisfactory solar access is expected to be retained for neighbouring properties, to achieve a minimum 3 hours solar access at midwinter.

The more immediate impacts will relate to potential overlooking with the proximity of two to three storey buildings to side and rear boundaries. Living area windows and associated balconies/decks will have potential to overlook neighbouring properties,

and their areas of private open space, in particular (but not necessarily limited to) the neighbouring dwellings at 6 Welch Ave, at 99-101 Boronia Road and dwellings/villas at the rear of 77 Boronia Road.

To reduce overlooking impacts, the application was amended, on 29 June 2011, with decks for lower level dwellings reduced in size and depth, in particular, adjacent to the site boundaries with 6 Welch Ave and 99 Boronia Road. These elevated decks would previously have been as close as approximately 1.5m to the side and rear boundaries, they now are proposed to be approximately 3.5m to 4m off the boundaries, with decks elevated up to 1.5m along the rear or northern elevation and up to 1m to 2m for decks along the side elevations. Privacy screens are also to be provided and landscaping increased within the areas where there will be potential visual privacy concerns. Amended elevation drawings indicate screening to upper level balconies, not lower level decks. However this screening is only approximately 1.2m wide and would not necessarily restrict overlooking for all of the balcony areas. No amended landscaping details or plans have been provided.

The extent of these potential for privacy and overlooking impacts would not be expected if the site were to be developed for villas or town houses in line with the densities and controls within Bankstown LEP 2001 and Bankstown DCP 2005, and with single storey development at the rear of the site.

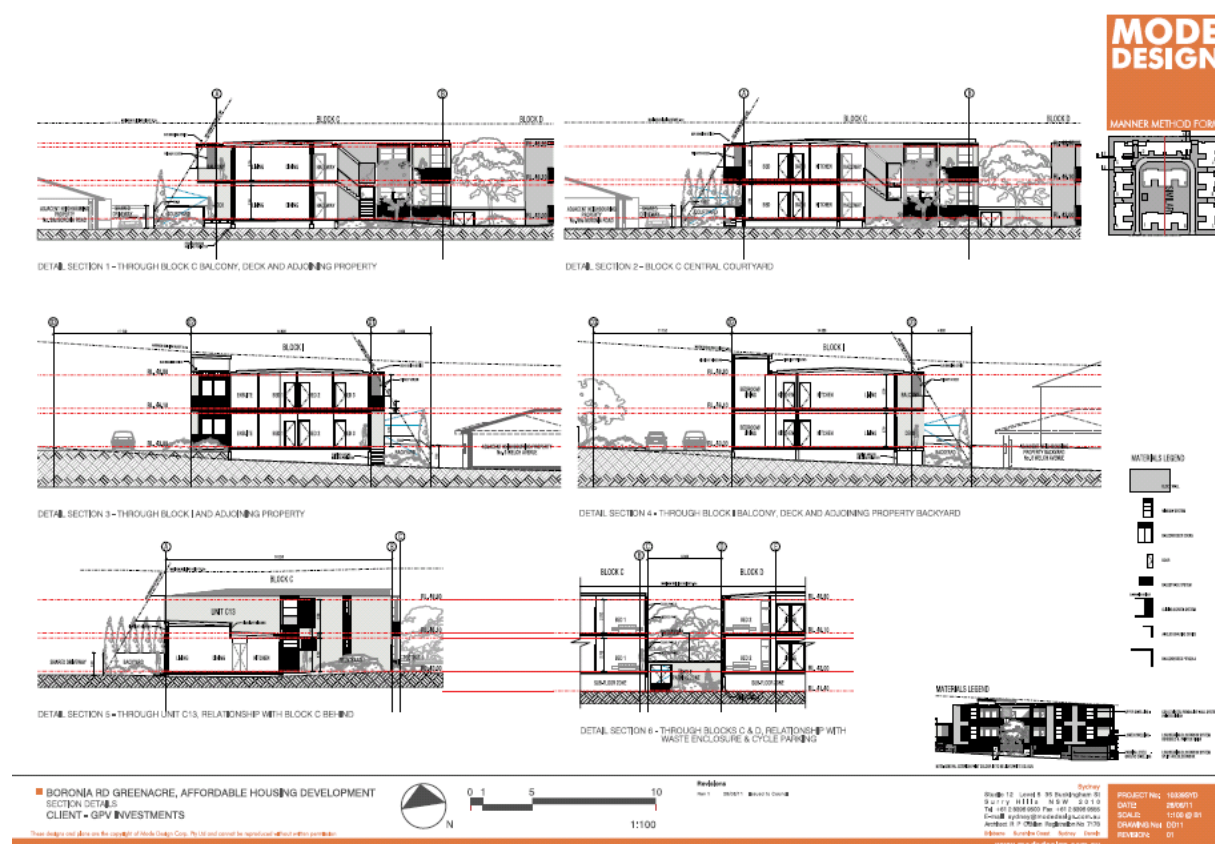


Figure 4: Relationship of balconies and decks to neighbouring properties

Development's height, setbacks and landscaping

It was indicated by the Court that the most important contributor to urban character is the relationship of the built form to the surrounding space, a relationship that is created by building height, setbacks and landscaping. Buildings do not have to be the same height to be compatible. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.

Existing development fronting this section of Boronia Road is a mixture of single storey and two storey dwellings, without extended or continuous two storey development. Existing development comprises predominantly single dwellings with typical side separations, landscaped setbacks, and generally with pitched roofs and a mixture of brick, fibro or weatherboard construction. The extent and continuous elevations along Boronia Road of the proposed development are not characteristic of the streetscape, despite that there is a mixture of existing two storey development. The use of concrete block work and pre finished panel construction with flat or low pitched roofs are not typical or characteristic of existing development.

Percentage of affordable dwellings - Clause 54A(4)

The requirement in the amended SEPP for a minimum 50% of GFA to be managed as affordable housing (instead of a minimum 50% of dwellings to be managed as affordable housing) will not apply if this application is assessed under the repealed SEPP, as the savings and transitional provision in clause 54A(4) only applies this change in relation to clause 13, which under the repealed SEPP does not apply to this development. If the Panel chooses to assess and determine the application under the amended SEPP, then a minimum 50% of the gross floor area of the development will be required to be managed as affordable housing and further clarification will be required from the applicant to indicate the dwellings that will be managed as affordable housing based on this percentage of the overall GFA.

Clause 14 - Standards that can not be used to refuse consent.

Apart from the above matters, an assessment of the proposed development against the relevant provisions of the repealed and amended ARH SEPP has also highlighted the following outstanding matters.

Solar Access

Living rooms and private open spaces to a minimum of 70 per cent of the dwellings (101 dwellings) must be provided with a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. The application as originally submitted was accompanied by shadow diagrams for the overall site and dwellings with solar access compliance notated on plan.

An assessment of the original plans by Council's Urban Designer/architect indicated that only 67 of the proposed dwellings would achieve a full 3 hours of solar access between 9am and 3pm at mid winter, only 46.5% of the dwellings within the development. Building footprints and orientation (in particular 'U shaped footprints and proximity of buildings) did not allow for adequate solar access to all dwellings, particularly lower level dwellings. Further information was required to verify that a minimum 70% of the dwellings received the required solar access.

Three dimensional solar access diagrams for each building have been provided and a schedule of the dwellings which indicates those which receive solar access to comply with the ARH SEPP. The applicant has indicated that the living rooms and open space of 109 or approximately 75.7% of the dwellings achieve a minimum 3 hours of direct sunlight between 9am and 3pm in mid winter. On the application plans, 106 dwellings are notated as having solar access in compliance with the ARH SEPP. This includes 28 south facing dwellings on the top levels of the development where solar access is provided to living area by means of roof lights or skylights. Most of these 28 dwellings will have south facing balconies (private open space) without suitable solar access.

It is considered that additional information such as plan, section and elevation information is required to verify the extent of overshadowing or solar access in the development, as it is difficult to verify that the required solar access is achieved from the three dimensional diagrams, particularly for lower levels dwellings.

Dwelling Size

Clause 14 (2)(b) specifies minimum dwelling sizes (gross floor areas or GFA) of 35sqm for a bedsitter or studio, 50sqm for a 1 bedroom dwelling, 70sqm for a 2 bedroom dwelling and 95sqm for a 3 bedroom dwelling. Only 13 dwellings have GFA at or above the areas nominated in clause 14(2)(b), where these are the areas if achieved can not be used to refuse the development. The dwelling sizes in the proposed development include dwellings down to 30.01sqm for studios; 43.53sqm for 1 bedroom dwellings; 61.32sqm for 2 bedroom dwellings; and 87.1sqm for 3 bedroom dwellings. (A schedule of dwellings and their gross floor areas, as provided by the applicant, is provided at Attachment D to this report) This assessment is based on the definition of GFA in the standard instrument, which excludes external wall thicknesses (whereas wall thicknesses are included under the definition of GFA within Bankstown Local Environmental Plan 2001).

The applicant has provided justification for lower dwelling sizes related to:

- Consistency with Dwelling Sizes under BLEP 2001 and Residential Flat Design Code.
- Consistency with Residential Flat Design Code, and daylight access and natural ventilation.
- Provision of supplementary basement storage.
- The review of ARH SEPP, December 2010, and suggested reduction in size of studio dwellings to 25sqm.
- Spare floor space ratio (FSR) as the FSR of the proposed development will be less than maximum 0.75:1.



Figure 5: Dwelling sizes, typical dwelling layouts

If the dwelling sizes were to be assessed under the definition of GFA in Bankstown LEP (which includes wall thicknesses) then the dwelling sizes within the development would largely comply with the provisions of clause 14(2)(b) and the Residential Flat Design Code. However the definition of GFA within the standard instrument applies under the ARH SEPP. The extent of smaller dwellings could be considered to be more typical of inner urban higher density development, where greater demand for smaller dwellings, such as for student accommodation and boarding house style accommodation, can be expected.

The smaller size of many of the dwellings needs to be appropriately balanced against provision of adequate internal amenity for each of the dwellings. The amenity of the dwellings should not be compromised by any perceived need to expand the diversity and amount of rental housing stock at the lower end of the market. The applicant has indicated that the development will achieve satisfactory solar access and natural ventilation, to meet recommended standards within the Residential Flat Design Code, however potential internal amenity issues remain. This includes issues such as privacy and lack of adequate separation across central U shaped courtyards, and the lack of suitable information provided with the application to justify that adequate solar access will be achieved.

Accordingly this assessment concludes that if the ARH SEPP were applied to the development application it would fail key aspects of the SEPP.

3.1.4 State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development [SEPP 65]

This SEPP applies to residential flat buildings of 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and 4 or more self-contained dwellings. As the proposed development is part two and part three storeys, SEPP 65 applies.

The application must be accompanied by design verification from a qualified designer, being a statement in which the qualified designer verifies:

- (a) that he or she designed, or directed the design, of the residential flat development, and*
- (b) that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development are achieved for the residential flat development.*

The Statement of Environmental Effects that accompanied the application indicates that the design of the building was directed by R P O' Brien of Mode Design, a registered architect. A design verification statement also accompanied the application addressing the design principles of the SEPP and that the building has been designed with regard to the Residential Flat Design Code. A specific design verification statement is however required in accordance with the requirements of the SEPP.

The application is also required to be accompanied by the information listed in schedule 1 of the Regulations. The application is lacking the following required information:

- photomontages of the proposed development in the context of surrounding development,
- drawings of the proposed development in the context of surrounding development, including the streetscape,
- a sample board of the proposed materials and colours of the facade.

The applicant has been requested to provide a detailed materials schedule and/or sample board.

Residential Flat Design Code

An assessment of the proposal under the provisions and 'rules of thumb' in Residential Flat Design Code indicates that the proposal varies from the recommended design standards listed below.

Built Form (Building Separation)

The U shaped building footprints (in particular to Buildings A, B, C, J, K & L) include approximately 5m to 5.5m wide internal entry court areas, and 5m to 5.5m dwelling separation across these courtyards. Balconies, living room windows or living room and bedroom windows face each across these areas. This built form will lead to potential amenity issues between dwellings within the development.

The suggested minimum 12m separation distances (between habitable rooms/balconies) within the Design Code apply only to buildings over 3 storeys, and to separation between buildings. However the design code indicates that buildings which are too close together create amenity problems inside the building and that this includes lack of visual and acoustic privacy and loss of daylight access. These amenity issues will potentially arise in relation to the limited separation between dwellings across these internal courtyards.

The applicant considers that the building footprints allow for adequate solar access and that the orientation of dwellings will minimize potential for overlooking as well as encourage passive surveillance. The applicant also indicates that balcony separation distances will be generally equivalent to side boundary setbacks.

It is noted that if the design of these areas aims at allowing for passive surveillance then overlooking will also potentially arise, where windows and balconies face each other across this space. Removal of dwellings on the northern side of the internal courts would increase separation distances between dwellings, improve internal amenity and solar access and reduce the enclosed nature of this area.

Pedestrian Access

The design code indicates that objectives for pedestrian access include the need to ensure users of strollers and wheelchairs and people with bicycles are able to reach and enter their apartments and use communal open space areas via minimum grade ramps, paths, access ways or lifts. Access through the site and to communal open space will be impeded for residents using strollers and wheelchairs as the internal footpaths include stairs adjacent to Buildings A and L. Adaptable units are located within Buildings A and L.

The applicant has indicated that options have been considered for removal of these stairs but that due to site grades at this point alternative arrangements result in less accessible outcomes and the current design provides for the most equitable and efficient pedestrian access. Footpaths on the opposite side of the internal road are discontinuous as sections of the pedestrian access/footpath adjacent to the central communal open space have been removed in order to increase the landscaped area. A continuous footpath on both sides of the roadway is desirable, with at least one being without intervening stairs.

Communal Open Space

The Design Code recommends that at least 25% to 30% of the site is dedicated to communal open space (between 2869.75sqm to 3443.70sqm). The applicant has indicated that the 'total landscaped area' on the site will be 3981sqm or 34.6%. The central communal open space area, excluding paved access areas, perimeter parking spaces and communal room, has been assessed as being approximately 905sqm, or 7.8% of the site area (of this area approximately 670sqm will be above basement parking with approximately 1m soil depths).

The SEPP 65 statement submitted with the application indicates that the communal open space areas will be approximately 1200sqm. A communal area of 1200sqm represents only 10.45% of the site area.

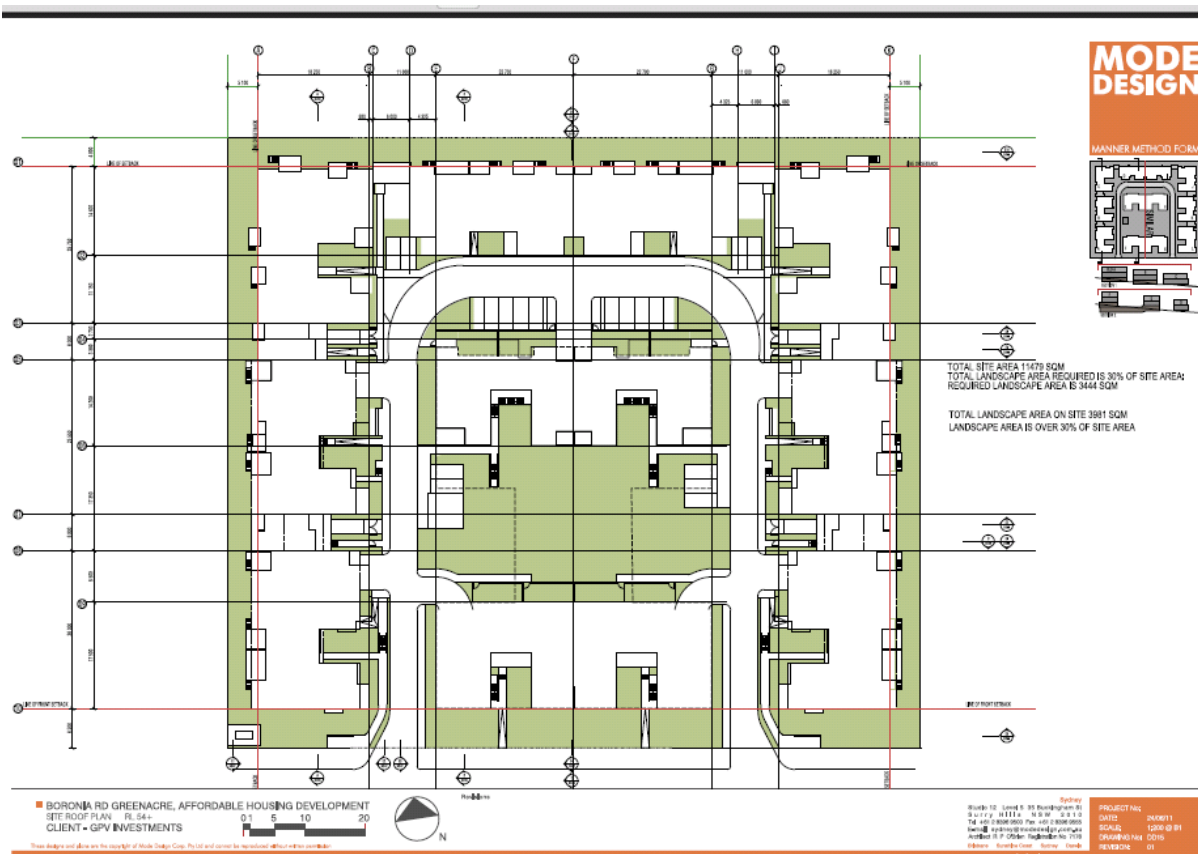


Figure 6: Open space areas

In support of the proposed communal open space area, the applicant has indicated that the size of the area was consolidated and increased in the preliminary design

stage by increasing the number of storeys in buildings E and H, to the north of this area, and by reducing front setbacks. Further amendments have been made to increase the central communal open space area by removing 9 of the at grade parking spaces adjacent to this area.

The applicant has also indicated that where possible open space has been dedicated as private open space between buildings and setbacks, which will provide tenants with a sense of ownership over open space areas, limiting arguments over use and ownership, limiting potential disturbance, minimizing dead space areas, and assisting with maintenance. The applicant also notes that public open space areas are located within close proximity to the subject site, including Greenacre civic centre (including swimming centre) 188m to the south east, Gosling Park 230m to the north east and Leo Reserve 320m to the south west.

Provision of suitable private open space should not detract from the need to also provide for suitable sized and designed communal open space, which will also provide relief between the dwellings and buildings within the development. The provision of suitable private and communal open space areas are both important having regard to the number of dwellings in the proposed development and the number smaller studio and 1 bedroom dwellings. The development should not rely upon existing public open space to compensate for any reductions in suggested communal open space within the development.

The proposed area of communal open spaces is also partly compromised by the provision 4m x 4m community room (with an attached accessible toilet facility, meter room, and an awning). This is to be provided on the western side of the central communal open space and will have a total footprint of approximately 30sqm. The applicant is of the view that the communal room is better served in the proposed location where it can be better utilised and accessed. However a communal room provided at the lower level of Buildings F and G would still be accessible from the communal open space area.

Private Open Space

The minimum recommended areas of private open space for each apartment at ground level, or similar space on a structure such as a podium or car park, is 25sqm; with a minimum preferred dimension in one direction of 4 metres. The ground or lower level dwellings located around the perimeter of the development facing side and rear boundaries and eight ground level dwellings in buildings E, F, G & H will have private open space areas in accordance with this requirement. Twenty eight lower level dwellings, south facing dwellings and dwellings facing the internal driveway have private open space areas that are the same in appearance and treatment as balconies with minimum 2m depth.

Ceiling Heights

The ceiling heights of the 24 dwellings within Building E & H will be approximately 2.55m being less than the recommended 2.7m.

The applicant has indicated these reduced ceiling heights were used so as to respond to recommendations of Council's Design Review Panel and as a way of reducing the footprint of the buildings and increase the size of the communal open

space. However there would also be potential to redesign this building and/or reduce the number of dwellings, thereby providing for 2.7m minimum ceiling heights.

The applicant has also indicated that the ceiling height variations are acceptable where developments can demonstrate that apartments receive satisfactory day light access, being a minimum of 3 hours of direct sunlight between 9am and 3pm at mid winter to 70% of the dwellings in the development, and that 87.5% of the dwellings in this building receive satisfactory direct sunlight. It is noted that in context of satisfactory daylight the design code refers to shallow apartments with a large amount of window area. Smaller south facing units and lower level units adjacent to parking areas will not necessarily provide for large window areas with suitable daylight access.

Solar Access

As previously discussed in this report in relation to the provisions of the ARH SEPP sufficient information has not been provided to verify that at least 70% of the dwellings achieve 3 hours of direct sunlight access between 9am and 3pm in mid winter.

Storage

The Design Code recommends that in addition to kitchen cupboards and bedroom wardrobes accessible storage facilities are provided at the following rates:

- Studio and 1 bedroom apartments = 6m³
- Two bedroom apartments = 8m³
- Three bedroom apartments = 10m³

The applicant indicates that 8m³ of storage is to be provided internally within each of the 2 and 3 bedroom dwellings, while supplementary storage areas have been provided for all standard 1 bedroom and studio dwellings within basement car parking areas to achieve a minimum 6m³.

It is not clear whether suitable storage will be available for all 2 and 3 bedroom dwellings, apart from kitchen cupboards and wardrobes.

The applicant considers that the allocated storage spaces are adequate for the proposed development, with 8m³ of storage is to be provided internally within each of the 2 and 3 bedroom dwellings, while supplementary storage areas have been provided for all standard 1 bedroom and studio dwellings within basement car parking areas to achieve a minimum 6m³.

Design Quality Principles - SEPP 65

The applicant considers that the proposed development, along with the design amendments and justifications in regards to matters such as communal open space and ceiling heights, results in a development that satisfactorily addresses the SEPP 65 design principles, particularly in regard to built form, landscaping and amenity.

As noted above there are outstanding issues in relation to building form, and the provisions of the Design Code in relation to open space, ceiling heights and solar access. Outstanding design issues means that the suitability of the proposed development in relation to the SEPP 65 design principles is questioned.

3.1.5 State Environmental Planning Policy (infrastructure) 2007

Clause 101 Development with a frontage to a classified road

The development has frontage to Boronia Road, which is a classified road. Under clause 101, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Vehicular access to the site is only possible from Boronia Road. The application has been considered by the RTA who has addressed requirements related to the access to the development from Boronia Road. Their requirements are discussed below.

The application was accompanied by a noise impact assessment report which addresses traffic noise impacts and provides recommendations and requirements regarding transmission noise reduction levels and the sound transmission class of building components for specific dwellings, based upon measured noise levels and recommended design sound levels specified in AS/NZS 2107:2000. Further details will be required prior to the issue of any construction certificates.

The application was also accompanied by a traffic and parking impact report which was considered by Council and considered by the RTA as part of its review of the application. The findings of these reports are discussed further in this report related to likely impacts of the development.

Clause 102 - Impact of road noise or vibration on non-road development

Clause 102 will not apply to the development as annual average daily traffic volumes on Boronia Road, are less than 40,000 vehicles (based on the traffic volume data published on the website of the RTA).

Clause 104 - Traffic-generating development

The proposal is traffic generating development, as specified under schedule 3 of this SEPP.

Advice and concurrence from the Roads and Traffic Authority (RTA)

In accordance with the provisions of clause 104 the application was referred to the Roads and Traffic Authority (RTA) for consideration, on 18 February 2011. Advice has been received from the RTA granting concurrence to the entry and exit

driveways on Boronia Road. This is subject certain requirements being incorporated into the development consent as outlined below.

Raised concrete median island

The RTA requires that a raised central concrete median island is provided on Boronia Road across the proposed driveways and extending an appropriate distance on either side of the driveways to legally prohibit right turn movements. A minimum width of 900mm is required for the median island.

The RTA has advised that provision of a median island may require land dedication from the development site and may affect properties on the opposite side of Boronia Road. Any land dedication will be required prior to release of a construction certificate.

The RTA has also indicated that the applicant, in consultation with Council, should consult any residents/business owners affected by the provision of the raised median and that this is to be undertaken prior to lodgement of detailed road design plans. No such consultation has been undertaken at this stage and the provision of a median did not form part of the advertised application.

This provision of a median island may affect the layout of the proposed development and further consideration of this is required prior to any determination approving the proposed development.

No stopping restrictions

Full time "No Stopping" parking restrictions are to be provided along the frontage of the subject site.

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

BASIX certificates have been submitted with the application in accordance with the requirements of this SEPP.

3.1.7 Bankstown Local Environmental Plan 2001

The following clauses of the *Bankstown Local Environmental Plan 2001* are relevant to the proposed development and were taken into consideration:

- Clause 2 - Objectives of this Plan
- Clause 6 - Definitions
- Clause 11 - Development which is allowed or prohibited within the zone
- Clause 13 - Other Development which requires consent
- Clause 16 - General Objectives of the Special Provisions
- Clause 19 - Ecologically Sustainable Development
- Clause 20 - Trees
- Clause 26 - Flood liable land
- Clause 30 - Floor Space Ratios
- Clause 32 - Access for People with Disabilities
- Clause 44 - Objectives of the Residential Zones

- Clause 45 - General restrictions on development
- Clause 46 - Core residential development standards
- Schedule 1 - Dictionary

The proposal does not comply with the matters raised clauses 2, 11, 30, 32, 44, 45 and 46.

Clause 2, Objectives of the Plan

The objectives of this plan 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*
 - (ii) *remnant bush land, natural watercourses and threatened species should be protected, and*
 - (iii) *intensive trip generating activities should be concentrated in locations most accessible to rail transport, and*
 - (iv) *new development should not diminish the role of the Bankstown central business district (CBD) as a sub-regional centre, and*
 - (v) *new development in or affecting residential areas should be compatible with the prevailing suburban character and amenity of the locality of the development site, and*
- (b) *to provide a framework within which the Council may prepare development control plans to make more detailed provisions.*

Having regard to the character test and SEPP 65 considerations and issues raised in regard to matters such as built form, the proposed development will not provide for a development of good urban design and is incompatible with the prevailing suburban character and amenity of the locality of the development site.

Clause 6 - Definition - and schedule 1 - Dictionary

The proposed development will fall within the definition of residential flat building, as defined in the schedule 1 of Bankstown LEP 2001, which is defined as follows:

residential flat building means a building containing two or more attached dwellings (and includes dwellings attached to a shop or office) with shared arrangements for access and parking and shared communal open space in lieu of or as well as private open space, but does not include a dual occupancy.

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

The land is zoned Residential 2(a). Residential flat buildings are prohibited within this zone. The applicant is relying on the provisions of the ARH SEPP to permit the proposed development.

As previously discussed in this assessment report it is considered that the ARH SEPP will not apply to the proposed development and that therefore the proposed development is prohibited within the Residential 2(a) zone.

Under clause 11(3) the consent authority may grant consent to development only if it has had regard to:

- (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.*

The proposed development will be in consistent with these considerations. As discussed above the proposed development is inconsistent with the objectives of the plan. In respect to the remaining clauses of Bankstown LEP 2001, the proposed development will not comply with other provisions of relevant clauses, including the objectives of the residential 2(a) zone:

Clause 30 - Floor Space Ratios

Under clause 30(2) the consent authority must not grant consent to development if it has a floor space ratio in excess of that indicated for the development site on the Floor Space Ratio Map. The floor space ratio (FSR) specified for this site on the Floor Space Ratio Map is 0.5:1. The proposed development will have an FSR of approximately 0.745:1 (based on the definition of gross floor area in Bankstown LEP 2001 which includes wall thicknesses). The applicant is relying upon the provisions of the ARH SEPP and a maximum FSR of 0.75:1. However as this assessment concludes that the ARH SEPP does not apply, the FSR of the proposed development when measured under Bankstown LEP 2001 fails and no objection under State Environmental Planning Policy No1 has been submitted to address this matter.

Clause 32 - Access for people with disabilities

As indicated in the SEPP 65 assessment the internal footpaths include stairs adjacent to Buildings A and L which will potentially impede disabled access within the proposed development.

Clause 44 - Objectives of the Residential Zones

Having regard to the character test and SEPP 65 considerations, the proposed development will not meet relevant objectives for the Residential 2(a) zone related to complimenting the single dwelling suburban character of the area, and requirements for a development to be of a height and scale complimenting existing buildings and streetscapes.

Clause 45 - General restrictions on development

Under Clause 45(1) consent may be granted for a building on land within Zone 2 (a) or 2 (b) only if it would be compatible with the character and amenity of existing and likely future buildings on adjoining land in terms of:

- (a) its scale, bulk, design, height, siting and landscaping, and*
- (b) its operation, and*
- (c) traffic generation and car parking, and*
- (d) noise, dust, light and odour nuisance, and*
- (e) privacy, and*
- (f) stormwater drainage, and*
- (g) hours of operation, and*

(h) *overshadowing.*

Having regard to the character test, referred to earlier in this assessment report, the scale, bulk, and design of the proposed development will be incompatible with the character of existing development on neighbouring land and will potentially compromise neighbouring amenity, in particular in relation to privacy and overlooking.

Stormwater drainage from the development is to be drained via on site detention tanks and existing easements to an existing Sydney Water drainage channel on the adjoining property to the north of the site, at 74 Chiswick Road. The application lacks satisfactory or complete information in regard to the design of the proposed stormwater drainage system to ensure that this will not impact on the adjoining land. This is discussed further in relation to requirements of Council's Development Engineering Standards.

Clause 46 - Core residential development standards

Residential flat buildings are prohibited within the 2(a) zone applying to the land under Bankstown LEP 2001. Where residential flat buildings are permissible with consent, within the 2(b) zones, then the site area required per dwelling, in a residential flat building, is either 90sqm or 120sqm. For villa developments, which are permissible with consent in the 2(a) zone, the minimum site area required per villa dwelling is 300sqm.

The proposed development with approximately one dwelling per 80sqm of site area would not comply with the minimum site area requirements per dwelling of clause 46 related to residential flat buildings or villas, and would therefore be denser than any permissible residential flat development or villa development under Bankstown LEP 2001.

3.2. The provision of any draft planning instrument - section 79C(1)(a)(ii)

There are no draft planning instruments relevant to the consideration and assessment of this development application.

3.3. The provision of any development control plan - section 79C(1)(a)(iii)

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

3.3.1. Bankstown DCP 2005, Part D2 - Residential Zones

A detailed assessment of the application against the relevant provisions of Part D2 of the DCP is provided in Attachment B. The proposed development will not comply with the following provisions of Part D2 of the DCP.

- Density - approximately 1 dwelling per 80m² of site area exceeds the maximum of 1 dwelling per 90m² or 120m² for dwellings within a residential flat building development [clause 2.17(c)];
- Floor Space Ratio - FSR of proposed development 0.745:1 (based upon the definition of gross floor area within the DCP) exceeds maximum 0.5:1 [clause 3.6];
- Floor to ceiling heights - Floor to ceiling height of 24 dwellings in Buildings E & H will be approximately 2.55m compared to minimum 2.7m [clause 4.8];

- Front Setbacks - 6m to 6.5m front setback, less than the minimum required 7.5m and average 9m [clause 5.32];
- Side and rear setbacks - minimum 4.5m setbacks required, but balconies and decks 3m to 4m from side and rear boundaries [clause 5.33, and definitions in Part C of the DCP];
- Roof Design - 25-35 degree roof pitch required [clause 6.12];
- Solar Access - insufficient information to verify minimum of 70 per cent of the dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter [clause 7.2];
- Open Space - minimum 6990m² required (for residential flat buildings in 2(b) zone), 3981m² provided [clause 10.10];
- Balconies - a minimum area of 15m² and/or a minimum width of 3 metres will not be achieved for most of the dwellings [clause 10.13].
- Safety and security - common access areas to buildings E and H face the central communal open space area instead of the street or internal access road, as required. Not all ground floor dwellings achieve street access or include external entrances [clause 11.2].
- Access and Parking - covered parking spaces will not be available for all dwellings, with 23 of the proposed parking spaces being uncovered [clause 12.4].
- Retaining walls - partly exceed max 600mm above natural ground level [clause 13.7].
- Clothes drying areas - no communal open drying areas [clause 14.3].
- Storage areas - only 6m³ provided for studio and 1 bed room dwellings, not minimum required 8m³, and 8m³ of internal storage for 2 and 3 bedroom dwellings [clause 14.7]
- Waste Storage - this matter is discussed in relation to section 79C(1)(b) and the likely impacts of the development.

It is noted that the proposed development has been designed under the relevant provisions of the ARH SEPP, where the controls in the SEPP take precedence over the DCP controls related to density, floor space ratio, solar access, open space, and the required minimum number of parking spaces.

In regard to variations of the remaining DCP controls, the applicant has addressed certain variations of DCP requirements, as discussed below. Those variations related to safety and security and retaining walls are justified and can be supported. However other variations related to front setbacks, storage facilities, side and rear setbacks, ceiling heights and communal drying areas are not supported. The dimensions of balconies and private open space areas have been considered in relation to SEPP 65 and the design code.

Front setbacks

The applicant has requested that the required front setback for residential flat buildings be varied in this instance, as the proposed 6m to 6.5m front setback will allow for increased open space areas at the centre of the site and having regard to

setbacks of adjoining development, being approximately 3.5m for the dwelling to the west and approximately 7m for the dwelling to the east.

The potential for a reduced front setback was originally considered by Council's Major Development Design Assessment Panel at a pre-lodgement meeting in December 2010. It was indicated that the front building setback along Boronia Road could be reduced to allow for increased communal open space area. There is however no particular site constraints which would necessarily warrant support of such a general variation to the front setback requirement in the DCP for residential flat buildings. The required front setback could be achieved by amendments to the design and a less denser development, without necessarily comprising the areas of open space within the proposed development.

Safety and Security

The applicant is seeking variation to the DCP requirements in respect to access to buildings E & H which will not be directly from the street, but from the central communal open space area. The entries will be visible from the central open space area, adjoining dwellings and internal access road. Passive surveillance from internal areas and private open space over central communal open space will contribute to safety and security. On this basis the access to these buildings is satisfactory.

Retaining walls

The applicant indicates that retaining walls throughout the site are proposed to exceed the maximum 600mm by up to 4m due to the inclusion of basement car parking. The applicant indicates that such a variation is necessary in these circumstances and should be supported. As retaining walls will not be located directly adjacent to site boundaries, the variations to this DCP requirement are reasonable and can be supported.

Storage

This matter has been discussed in relation to the provisions of SEPP 65 and the Residential Flat Design Code. It is not clear whether suitable storage will be available for all 2 and 3 bedroom dwellings, apart from kitchen cupboards and wardrobes.

Side/rear setbacks (visual privacy impacts)

Decks and balconies project beyond the external walls of the buildings adjacent to side and rear boundaries and will encroach the minimum side and rear setbacks specified under the DCP. The proximity of proposed decks to the side and rear boundaries, in Buildings A, B, C, D, I, J, K & L have the potential to adversely impact on the amenity of neighbouring properties, which needs to be addressed. The potential privacy and overlooking impacts of the proposed development have been discussed in relation to the character test under the AREH SEPP.

Amended plans have provided for a reduction in the size and depth of decks, particularly where these would impact on the neighbouring dwellings at 6 Welch Avenue and 99A and 99B Boronia Road. Privacy screens have been added to balconies of dwellings. It is also proposed to increase the density and scale of landscaping where there are potential visual privacy concerns, so as to provide more

established vegetation and screening. The proposed screening would not necessarily restrict overlooking for all the balcony areas. As the screen planting will be provided within the courtyards of the ground level dwellings there is no guarantee that this will be maintained by the future owners or residents of these dwellings. No amended landscaping plans have been provided. Accordingly reduced side and rear setbacks are not supported.

Ceiling Heights

This matter has been discussed in relation to SEPP 65 and the Residential Flat Design Code. Ceiling heights for 24 dwellings in Buildings E & H will be approximately 2.55m. The applicant sought to justify these reduced ceiling heights based on suitable day light or solar access to most of the dwellings. However there would be the potential to redesign these buildings and dwellings to provide for a minimum 2.7m ceiling height, which may involve a reduced number of dwellings, and the reduced ceiling heights are therefore not supported.

Communal clothes drying

The proposed development will not provide for any communal open drying areas, with direct midwinter sunlight and screened from the street. The applicant has indicated that private clothes drying facilities are to be located on balconies and within private open space areas of the dwellings. Also drying facilities on balconies will be confined so as to be no higher than non transparent balustrades, so as not to distract from the appearance of the development.

Thirty lower level dwellings will have access to private courtyards, adjacent to the side and rear boundaries of the site, where individual clothes drying facilities can be provided. However it is considered unreasonable for the remaining 114 dwellings in the development to rely only on balcony areas for clothes drying, where these will include south facing balconies lacking direct solar access and where some of the balconies will be directly visible from Boronia Road.

3.3.2. Bankstown DCP 2005, Part D8 - Parking

Under Part D8 one parking space is required for each studio and 1 bedroom dwelling and 1.2 spaces for each 2 bedroom dwelling. One visitor parking space is required per 5 dwellings. This requires provision of a minimum of 179 parking spaces, including 29 visitor parking spaces. The proposed development provides for 147 parking spaces, which will comply with the ARH SEPP.

Due to the low parking requirements for Affordable Housing (0.5 parking space for dwelling), it is not suitable to locate such developments in areas with existing or potential on street parking issues. The RTA requires that "No Stopping" restrictions be provided along the frontage of the site. A bus stop is also provided along the site frontage. As Boronia Road is a state arterial road it is expected that further no stopping zones will in future be implemented to maintain existing levels of service. This limits options for on street parking, and the number of parking spaces to be provided is assessed as being inadequate to cater to the proposed development.

3.3.3. Bankstown DCP 2005, Part E3 - Flood Risk Management

The development site is partly affected by medium risk flooding due to stormwater inundation from the upstream catchment and also associated with the open trunk storm water drainage channel through the neighbouring property at 74 Chiswick

Road. This flooding impact relates to the rear northern and north western portion of the development site, comprising approximately 1890sqm or 16.5% of the development site, which would potentially be subject to stormwater inundation during large storm events.

The 1 in 100 year flood depths vary from 0.1 to 1.25m at the northern boundary, up to RL 42.5m contour. Minimum floor levels of RL 43 are to be provided within the flood affected parts of the proposed development, which includes 500mm of required freeboard. Structures that may be subject to inundation will need to be built using flood compatible materials. Louvres will also be required to be provided at base of any affected courtyard and boundary fencing to allow for the movement of stormwater overflows.

3.3.4. Bankstown Development Engineering Standards

The proposed development has been assessed under Council's Development Engineering Standards. The following engineering matters remain outstanding:

- A further easement to drain water is required to be registered over the existing easement, over 74 Chiswick Road, so that it will also be in favour of the four eastern lots of the development site (lots X & Y DP 418826, lot 1 DP 1074206, and lot DP 320327), as this portion of the site is currently not benefitted by this easement.
- The concept stormwater drainage plans need to be amended so that they match the most current architectural plans and layout.
- The proposed on-site detention is ineffective as the top water level is affected by the downstream flooding. The on-site detention tank outlet or effective storage will need to be set above the downstream flood level, i.e. above RL 42.2.
- The concept stormwater plans need to show all buildings and associated drainage infrastructure. Buildings A, F, G & L have been omitted from the design.
- A detail is required for the proposed louvre fencing along the northern boundary of the site (required for overland stormwater flows) and also provide details of the height of the louvres.
- The concept stormwater drainage plans show an existing 300 diameter pipe exiting the 600 x 600 pit to be upgraded and travelling outside of the easement. This pipe will need to be abandoned and properly sealed off.
- The concept stormwater drainage plans need to show where the basement pump out tank rising main will discharge to.
- The on-site detention volume will also need to be approved by Sydney Water. The applicant must seek approval from Sydney Water and incorporate their requirements or conditions prior to submitting final concept drainage plans.
- The concept stormwater drainage plans need to show consistent information. The proposed 450 diameter pipe within the downstream easement is referred to as a 600mm pipe on sheet H001.
- A digital copy of the DRAINS file is to be submitted for checking.
- The concept stormwater drainage plans must show the location of the kerb and gutter along Boronia Road frontage and all existing site features such as trees, services, and power poles. The plans must provide for a minimum 600mm clearance to the existing power pole, otherwise this will need to be relocated.

These matters are required to be resolved before any determination approving the proposed development.

3.4. The provision of Planning Agreements - section 79C(1)(a)(iia)

There are no planning agreements relevant to this development application.

Bankstown Section 94A Contribution Plan requires a levy of 1% of the cost of carrying out of the development.

The Direction by the Minister under section 94E dated 10 November 2006 in regard to levies under section 94A indicates that that such a levy can not be imposed on development "for the sole purpose of affordable housing".

Clause 25J(3) of the *Environmental Planning & Assessment Regulation 2000* indicates that in determining the purpose cost of development for the purpose of a section 94A levy the cost and expenses are not to be included in relation to the cost of any development that is provided as affordable housing.

The proposed development is not for the sole purpose of affordable housing but will include only 50% of the development as affordable rental housing, which will be excluded from the section 94A levy.

3.5. The provisions of the Regulations - section 79C(1)(a)(iv)

In accordance with clause 92(1)(b) demolition of existing structures on the development site will be required to be undertaken in accordance with the provisions of Australian Standard AS 2601—1991: *The Demolition of Structures*, which is specified in Council's standard condition/s regarding demolition works.

The application is also required to be accompanied by the information listed in schedule 1 of the Regulations. The application is lacking certain information in relation to SEPP 65, as previously discussed in this report. The application is also lacking a draft strata plan of the proposed development, which forms part of the application.

The community room on the western side of the central communal open space has been detailed on plan drawings but no elevation or section details have been provided with the application.

3.6. Any Coastal zone management plan - section 79C(1)(a)(v)

The development site is not within the coastal zone, and there is no relevant coastal management plan.

3.7. The likely impacts of the development - section 79C(1)(b)

Traffic

A traffic and parking impact assessment was undertaken by ML Traffic Engineers on the applicant's behalf, in January 2011.

A traffic survey was undertaken at peak hour periods at 7.45am to 8.45am and 5pm to 6pm at the intersections of:

- Hume Highway with Boronia Road (approximately 800m to west of the development site), and

- Roberts Road with Juno Parade (approximately 1200m to east of the development site).

This intersection assessment concluded that the surveyed intersections had an acceptable level of service; expect for right turn peak hour movements into Boronia Road at Hume Highway. It was also concluded that there is spare capacity at these intersections.

The applicant's traffic consultant has estimated that there will be 73 car trips generated by the proposed development in weekday morning and evening peak hours. This is based upon trip or traffic generation rates in the RTA's Guide to Traffic Generating Development.

An assessment of the impact of the development on the immediately adjacent intersections at Noble Avenue and Hillcrest Street was not undertaken. However no issues have been raised by the RTA in regard to this.

The applicant's traffic consultant has concluded that:

- The expected trips to be generated by the residential development can be accommodated by the nearby intersections.
- There are no traffic engineering reasons why a planning permit for the proposed residential development...should be refused.

Council's Traffic Engineers have reviewed the proposed development and the traffic assessment submitted with the application and have provided the following comments:

- From the point of view of sustainable development, concentration of the higher density development within the 400 to 800 metres of a railway station would maximise access to and encourage use of public transport.
- Due to the low parking requirements for Affordable Housing (0.5 parking space for dwelling), it is not suitable to locate such developments in areas with existing or potential on street parking issues.
- A further traffic assessment should be carried having regard to the concrete median required by the RTA to be provided in Boronia Road restricting access to the proposed development to left in and left out.
- It is necessary to assess the traffic impacts on the intersections of Boronia Road with Noble Avenue and Hillcrest Avenue due to the proposed development and having regard to the Coles supermarket development currently under construction, at 13-19 Boronia Road, approximately 450m to the east of the site.

Access

Access to and through the site will be by means of 4.5m wide internal access road, with separate entry and exit driveways and one way traffic movements. The entry and exit driveways are to be splayed to provide for left in and left out traffic movements only. The 4.5m width of the internal access road will be sufficient to allow for the one way movement of cars and trucks associated with the proposed development. (A minimum width of 5.5m would be required for two way traffic movements). Truck movements will be associated with Council's garbage trucks and with removalist vehicles, up to 12.5m in length. Garbage trucks movements through the site will be of limited duration and would not lead to any significant issues.

Removalist vehicles would need to park along the internal road, particularly as there will be a bus stop and no stopping zone along the Boronia Road frontage. No dedicated passing bays or loading and unloading areas are to be provided. Trucks could be up to 2.5m wide, leaving limited area or width for other vehicles to pass by. Following initial movements of residents into the development, the use of removalist trucks would also be expected to be a regular occurrence due to the number of dwellings. The design of the driveway entry and exit splays will also need to take account of these truck movements.

Parking

In regard to car parking the traffic and parking assessment report notes that only 72 spaces would be required under the parking requirements in the ARH SEPP of 0.5 car spaces per dwelling. Therefore it is indicated that the 147 car parking spaces that are to be provided are sufficient parking for residents and any expected visitors. It is also indicated that parking overspill to external areas is unlikely to occur.

It is noted that if the proposed development is assessed under the increased car parking requirements of the amended ARH SEPP then 112 spaces would be required. If the proposed development is assessed under the parking requirements within Bankstown DCP 2005 then a minimum of 179 car parking spaces would be required, including at least 29 visitor parking spaces].

The traffic and parking assessment report also indicates that during the period of the traffic surveys there were about five cars parked within 200m of the development site on the same side of Boronia Road (outside the school arrival and departure period) and that on the opposite side of the road there were about 3 cars parked. While it was indicated that there is sufficient on street parking should the parking demand of the proposed development spill over, this is questionable due to parking restrictions required by the RTA in Boronia Road.

The consultant's report concludes that:

- The proposed residential development meets the parking requirements of the residents and visitors.
- The on site car park is generally compliant with Australian Standards.
- The expected trips to be generated by the residential development can be accommodated by the nearby intersections.
- There are no traffic engineering reasons why a planning permit for the proposed residential development...should be refused.

As discussed in relation to the provisions of Infrastructure SEPP, the RTA has considered the proposed development and granted concurrence. The RTA's concurrence is subject to provision of full time "No Stopping" parking restrictions along the frontage of the subject site. There is also an existing bus stop which will need to be retained along part of the frontage of the development site.

The bus stop and "No Stopping" restrictions mean that there will be no kerb side parking available along the Boronia Road frontage of the site.

Visitor parking

It is expected that there will be limited visitor parking available on the site. Under the relevant provisions in the ARH SEPP, no visitor parking is specifically required. For development of this size with 144 dwellings this is potentially a significant problem.

While the proposed development includes 75 more parking spaces than required under the ARH SEPP, if one parking space is allocated for each of the 144 dwellings there would then be only 3 spare parking spaces, depending on whether all residents will require on site parking.

If the development proposal was assessed under the parking provisions in Bankstown DCP 2005 then 29 visitor parking spaces would be required for a development of 144 dwellings.

It may be possible to allocate some of the parking spaces as visitor parking, such as the space proposed to be provided at grade off the central internal road. If the 19 proposed parking spaces allocated at grade off the central internal road were to be allocated for visitor parking this would then leave 128 parking spaces for the 144 dwellings.

Bus stop relocation

The proposed access arrangements to the development and the location of the proposed ingress driveway to the site will conflict with the location of the existing bus stop, currently located outside 91 and 93 Boronia Road.

The applicant has indicated that it is intended to relocate the existing bus stop eastwards to ensure that there is no conflict with access to the site, and to maintain a bus stop location close to the nearby primary school and adjacent bus stop on the southern side of Boronia Road. No specific details however have been provided of the siting of the intended relocated bus stop; however a 20m bus zone would be required. This could be accommodated between the entry and exit driveways.

This matter was referred to Veolia Transport who operate the bus service stopping outside the site for any comments regarding relocation of the existing bus stop. No response has been received at the time of preparation of this report.

Privacy/overlooking

As previously discussed in this report in relation to the character test required under the savings and transitional provisions of the amended ARH SEPP, the design of the development will lead to potential privacy overlooking impacts for neighbouring residential properties, due to the proximity of the buildings and particularly decks and balconies, and associated living areas to side and rear boundaries. The applicant is relying upon screening and landscaping to overcome this potential impact. However the decks and balconies will still be located approximately 3m to 4m from side and rear boundaries, with decks elevated up to 1.5m along the rear or northern elevation and up to 1m to 2m for decks along the side elevations. Additionally privacy screens are to be provided and landscaping increased within the areas where there will be potential visual privacy concerns. Amended elevation drawings indicate screening to upper level balconies, not lower level decks. However this screening is only approximately 1.2m wide and would not necessarily restrict overlooking for the all of the balcony areas. No amended landscaping plans have been provided.

Community Safety

The Crime Prevention Officer of Bankstown Area Command has undertaken a 'Safer by Design' Crime Risk Evaluation of the proposed development, and has provided recommendations regarding lighting, access controls for the units and car parking areas, provision of a video intercom system, use of swipe cards or keys maintained by the strata management, provision of a CCTV system, landscaping treatment to provide clear sightlines, and provision of signage throughout the complex providing directions to units and the car parking areas. These matters may be dealt with as conditions of any consent.

The applicant has advised that it is not intended to provide controlled access to building entries, but that a video intercom system or CCTV camera system are part of the proposed development. It is acknowledged that controlled access to car parking areas will be required along with appropriate site lighting, landscaping and signage.

The applicant has also indicated that an on site manager will be present 24 hours a day 7 days a week.

Waste Management

Waste and garbage bin storage areas are to be provided within parking areas and adjacent to the rear buildings. Bins are to be moved from these storage areas to designated areas along the internal driveway for collection by Council's waste management service. This includes bin locations on the right side of the internal access road which are unsuitable (in respect to four of the five nominated bin collection locations). The bins can not be serviced from these nominated locations on the right hand side of the internal access road, with the required one way traffic flow, as 240L waste bins are collected by a left hand drive side loader. Suitable waste management arrangements have not yet been resolved.

A Waste Management Plan will also be required outlining:

- The management of bins in general.
- The management of presentation of the bins and their return to bin storage area on the same day of collection.
- The means of managing risks associated with the wheeling of the bins on driveways/ramps due to gradients.

The applicant has requested that this be included as a condition of any development consent.

Flooding

The development site is partly affected by flooding due to stormwater inundation, and the buildings along the northern part of the site are required to be provided with elevated habitable floor levels above the 1 in 100 year flood level, which has a depth up to approximately 1.25m. This exacerbates potential impacts including overlooking and privacy issues raised elsewhere in this report.

detailed investigation is required. This investigation may involve a more thorough site inspection and a preliminary site contamination investigation, if oil spills, or the like, are observed or detected.

3.8. The suitability of the site for the development - section 79C(1)(c)

The proposed development is unsuitable to the site. The site is located within a residential area characterised by single dwellings or medium density villa/town house development. The density and the form of the proposed development, being two to three storey residential flat buildings at a density of approximately 1 dwelling per 80sqm of site area, is not characteristic of the low to medium density residential development in this area, and is akin to higher density development adjacent to Bankstown CBD and town centres. It will result in adverse amenity impacts for neighbouring properties and an inadequate living environment for residents of the development. It will lack satisfactory on site parking, particularly for visitors and lacks suitable loading and unloading facilities.

3.9 Any submissions made in accordance with the Act or the regulations - section 79C(1)(d)

Following adverting and notification of the application 283 submissions were received. Issues raised in the submissions relate primarily to expected traffic and parking impacts from the proposed development, and the impacts in this regard for Banksia Road public school. A summary of the issues raised are provided in the table below, along with the applicant's response to the submissions and Council officers' comments.

ISSUES RAISED IN PUBLIC SUBMISSIONS		
Traffic and parking concerns	Applicant's response to submissions	Council officers comments
The proposed development, with 144 dwellings, represents an increase of 220% compared to the current 45 dwellings on the site. The 147 parking spaces will not be sufficient for the residents (and their visitors).	The ARHSEPP indicates that car parking should be provided at a rate of 0.5 spaces per dwelling. The proposed development will provide 144 car parking spaces for the proposed 144 dwellings. Accordingly this represents the provision of 100% more car parking spaces that the minimum standards specified under the AHSEPP provisions.	Increasing the density of residential areas to accommodate the increase of population is inevitable. However, from the point of view of higher density development relying on public transport, it would be more sustainable and beneficial to concentrate higher densities around rail stations and major public transport nodes. The subject development is not located close to the train station, and will rely on a bus service. This is likely to increase car usage and therefore the concern about the lack of parking spaces is valid.

<p>Contrary to the findings of the traffic report conducted by M.L Traffic Engineers, there is limited parking available on Boronia Road.</p>	<p>Refer to comments above.</p> <p>The traffic and parking impact report (<i>submitted with the application</i>) concludes that:</p> <ul style="list-style-type: none"> - the proposed development meets the parking requirements of residents and visitors; - the on site car parking is generally compliant with Australian Standards; - the expected trips to be generated by the residential development can be accommodated by the nearby intersections; - there are no traffic engineering reasons why planning permit for the proposed development...should be refused. 	<p>Boronia Road is a state road with a functional classification of an arterial road in the road network.</p> <p>The RTA requires that a 'No Stopping' zone be provided along the site frontage. There is also a bus stop located along the site frontage. This means that there will be no parking available along the frontage of the site.</p> <p>Future development along and within Boronia Road, and more generally within the Bankstown City Council area, may add to pressures to provide further full time "No Stopping" zones along Boronia Road so as to maintain the existing Level of Service.</p>
<p>Banksia Road Public School with a student population of 346 has an entrance directly opposite the proposed development on Boronia Road, which is used by many students. Parking is already limited with 200m on either side of the road a 'No Stopping' zone between 8.30 and 9.30am and 2.30 and 3.30pm on school days.</p> <p>There will be reduced parking available particularly during school drop off and pick up times.</p> <p>There are 3 bus stops within the area of the school block, 2 of which are on the side of the proposed development.</p>	<p>(Refer to comments above).</p>	<p>At present there are drop off/ pick up zones in vicinity of schools in the city.</p> <p>There are no parking restrictions between 8.30am and 9.0am and 2.30pm and 3.30pm on school days. This requires that a vehicle must not stop for more than 2 minutes and the driver is to remain in or within 3 metres of the vehicle.</p> <p>It is expected that the proposed development will negatively affect the availability of parking in Boronia Road due to limited on site parking, particularly for visitors.</p> <p>However peak traffic movements associated with the proposed development, and associated parking impacts, on weekday mornings and evenings would generally be before 8.30 and after 3.30pm. This would not therefore generally coincide with peak drop off and pick up times for the school.</p> <p>While the adjacent and nearby bus stops provide access to a public bus service they also limit the availability of kerbside parking.</p>

<p>The Traffic and Parking Impact report submitted with the application was completed in January 2011. The survey period was during school vacation and is not indicative of average traffic flow or of traffic volumes during school terms/days, particularly 8.30-9.30am and 2.30- 3.30pm.</p>	<p>Although the Traffic and Parking Impact Report was completed in January 2011, the traffic assessment used in the report was undertaken outside of the end-of-year school holiday period.</p>	<p>While it is indicated that traffic and parking surveys has been carried out during school time but the time/s of traffic surveys is not indicated in the report. The applicant should provide the details and data of the traffic survey/s that were undertaken.</p>
<p>This development will dramatically increase the volume of traffic and therefore impact on parking and the safety of students.</p> <p>There are no proposed traffic signals, roundabouts or other traffic control measures to govern entry and exit from the proposed development.</p> <p>Boronia Road can not handle the additional population/traffic, and it is already hard to exit and enter driveways.</p> <p>The Coles supermarket currently under construction in Boronia Road will also contribute to the heavy flow of traffic on this street.</p>	<p><i>(Refer to comments above regarding conclusions of the traffic report submitted with the application).</i></p> <p>The internal road to be constructed as part of the proposed development will serve to take vehicles associated with the proposed development off Boronia Road and direct vehicles into basement and grade level parking spaces. Additionally, vehicles will have the ability to enter and exit the proposed development from Boronia Road in a forward direction via the internal road. This will effectively assist in the vehicle movement and pedestrian safety at the Boronia Road junctions as currently vehicles need to reverse on to Boronia Road. The proposed development will also significantly reduce the amount of kerb crossings across the property boundary. This will provide a safer outcome for pedestrians and also assist pedestrian movement.</p>	<p>A traffic impact study has been carried out by the applicant indicating a minimal impact on Level of Service in Boronia Road. However, it is it is necessary to assess the traffic impacts of the proposed development on the intersections of Boronia Road with Noble Avenue and Hillcrest Avenue given the Coles supermarket currently under construction at 13-19 Boronia Road.</p> <p>Based on Australian standards and grounds of traffic efficiency, installation of the traffic signals or roundabouts at the access of the proposed development in Boronia Road is not warranted. The median island required by the RTA will address access issues.</p>
<p>There is a need to assess safety and traffic flows at the intersection of Boronia Road and Noble Ave. The increase in residents from the new development will put extra strain on this intersection which increases the chance of accidents for parents and children.</p>	<p>The Traffic and Parking Impact report submitted with the application concluded that expected trips to be generated by the residential development can be accommodated by the nearby intersections.</p>	<p>In the traffic and parking impact report an assessment of the most critical intersections at Hume Highway and Roberts Road has been carried out, with no specific assessment for the adjacent intersections.</p> <p>While the impact of the proposed development on the intersection of Boronia Road with Noble Ave and Hillcrest Ave would be limited, it is necessary to assess the traffic impacts on these intersections due to the</p>

		proposed development and the Coles supermarket at 13-19 Boronia Road, currently under construction.
As parking becomes limited and congestion increases around the Boronia Rd entrance to the school, parents and members of the community will choose to use Banksia Road as an alternative, which will create extra congestion and consequently in that street where there is also a pre school and increase the chances of accidents for both vehicles and pedestrians.	It is understood from recent media publications that Bankstown Council intend to review the outcomes of an independent traffic review committee's investigation into the impacts of traffic on Greenacre's school precinct. In particular, the traffic management review will include Banksia, Mimosa, Greenacre, Old Kent, Wangee and Waterloo Road. Accordingly, as Boronia Road is not identified as part of the review, it is considered the proposed development will not negatively impact on traffic congestion in the Greenacre school precinct.	As there are existing no parking restrictions during school days between 8.30am -9.30am and 2.30pm and 3.30pm and as school drop off and pick up times would generally be outside peak traffic movements associated with the proposed development, minimal traffic impacts are expected. However as previously noted, increased development along and within Boronia Road, and more generally within the Bankstown City Council area, may add to pressures to provide full time "No Stopping" zones along Boronia Road sooner or later so as to maintain the existing Level of Service. This could force parents' to use Banksia Road for drop off and pick of their children.
Construction Impacts	Applicant's response to submissions	Council Officers comments
There will be impacts for the school during construction which will require resolution and mitigation prior to any excavation works, including increased noise, vibration and dust. Increase in heavy vehicles and machinery during demolition and construction will disrupt traffic flows. Traffic management is required during school drop off and pick up times.	It is understood construction impacts would be temporary and will be managed by imposition of appropriate conditions of consent to minimise impact on neighbours.	Any development consent would be subject to standard conditions to address the concerns raised in the submissions. This will relate to provision of a construction traffic management plan, sediment and erosion control measures, and fencing of the development site.
Removal of asbestos during demolition will require safety measures and precautions to be put in place. The school requests: - A copy of the construction plan or a time line of the construction	Refer to above comments.	Prior to demolition being undertaken written notification will be required to be placed in the letterbox of every premises either side, immediately at the rear of, and directly opposite the demolition site. A sign will be required to be provided at the front of the property with the

<p>process.</p> <ul style="list-style-type: none"> - Monthly meetings with the developer representative/project manager to manage any issues. - A designated contact person on site and access to a mobile phone number. - Prior notice of works that will be particularly noisy. - No truck movements on Boronia Road between school drop off /pick up times when the 40 kph speed limit applies on <i>school days</i>. 		<p>demolisher's name, license number, contact phone number and site address.</p> <p>Where materials containing asbestos are to be removed, demolition is to be carried out by licensed contractors who have current WorkCover Authority accreditation in asbestos removal.</p> <p>Hazardous or intractable wastes arising from the demolition processes are required to be removed and disposed of in accordance with the requirements of WorkCover Authority and the Office of Environment and Heritage</p>
Other matters raised in submissions	Applicant's response to submissions	Council Officer's Comments
<p>The value and ethos of the community will change.</p> <p>Units will decrease value of homes and create high crime.</p> <p>Town house and dual occupancies are more suited and would reflect development that already exists in the community.</p> <p>There will be an impact on GP services as residents in Greenacre who visit the local GP already wait 3 to 4 hours to see the doctor.</p>	<p>No specific comments.</p>	<p>There is no evidence that the proposed development would lead to a decrease of property values or an increase in crime.</p> <p>It is agreed that town house and dual occupancy development is more suitable and would be consistent with the existing and expected character of the area and the zoning of land under Bankstown LEP 2001.</p> <p>The impact on GP services is beyond the scope of this report and assessment.</p>

Department of Education

A submission was received from the NSW Department of Education and Training which advises that additional student demand for government education services are anticipated to be able to be catered for at local schools, being Banksia Road Public school for primary school students and Bankstown Girls High School or Punchbowl Boys High School for secondary students.

3.10 - The public interest - section 79C(1)(e)

The proposed development is not in the public interest, due to the issues raised above and in particular as it is prohibited within the Residential 2(a) zoning applying to the land and is incompatible with the character of the area, resulting in amenity issues for future residents of the development and residents of the neighbouring properties. The proposed development will be inconsistent with the objects of the Act, under section 5(a), related to encouraging development for the purposes of promoting a better environment.

3.11 - Section 91 Integrated Development - Water Management Act

The application has been reviewed by the NSW State Office of Water and their advice provided on 20 April 2011 indicates that for the purposes of the *Water Management Act 2000* a controlled activity approval is not required.

3.12 - Objects of the *Environmental Planning and Assessment Act 1979* - section 5

The proposed development will be consistent with be objects of the Act related to the provision of affordable housing with 50% of the development to be managed for a minimum 10 years by a community housing provider. The proposed development will however be inconsistent with the objects of the Act related to the encouraging development for the purposes of promoting a better environment, and the promotion and co-ordination of the orderly development of land. This is due to the outstanding issues raised in this assessment report and particularly in regard to the design, bulk and scale of the development which will not lead to satisfactory amenity for future residents of the development and for neighbouring properties.

4. CONCLUSION

The development 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 heads of consideration under Section 79C (1). The assessment has identified numerous deficiencies and outstanding matters.

The development application has been made under the provisions of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP). The assessment contained within this report concludes that the ARH SEPP does not apply to this development, regardless of whether the application is assessed under the amended or unamended version of the ARH SEPP, although this ultimately remains a decision for the JRPP as the determining authority.

Should the JRPP conclude that the ARH SEPP does not apply to this proposal, the development application is required to be assessed under the provisions of Bankstown Local Environmental Plan 2001 and Development Control Plan 2005, and the proposal has been found to fail a significant number of the standards which apply under these controls, not the least of which is permissibility of the development. Accordingly, it is recommended that this development application be refused.

5. RECOMMENDATION

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

1. The *State Environmental Planning Policy (Affordable Rental Housing) 2009*, as in force when the application was made is not applicable to the proposed development. The proposed development is defined under the Bankstown Local Environmental Plan 2001 as a '*residential flat building*' and is prohibited in

the 2(a) - Residential A zone, (Pursuant to Section 79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).

2. The proposed development is inconsistent with the objectives of the Bankstown Local Environmental Plan 2001 clause 2(a)(v) as it would not be compatible with the prevailing suburban character and amenity of the locality of the development site, (Pursuant to Section 79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).
3. The proposed development is inconsistent with the objectives of the 2(a) - Residential A zone clause 44(1) of the Bankstown Local Environmental Plan 2001 as it would not complement the single dwelling suburban character of the residential areas of Bankstown City, (Pursuant to Section 79C(1)(a)(i) *Environmental Planning and Assessment Act 1979*).
4. The application lacks adequate information as required by schedule 1 of the *Environmental Planning and Assessment Regulation 2000*, and in particular in regard to *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development*, and plan details, (Pursuant to Section 79C(1)(a)(iv) *Environmental Planning and Assessment Act 1979*).
5. The application lacks adequate information regarding stormwater drainage including easements for drainage over down stream properties, and has not therefore established that the proposed development can be suitably drained, (Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
6. The application lacks adequate information in regard to the impact of a median island required by the RTA in Boronia Road, including any requirements for amendments to the proposed development, (Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
7. The proposed development will not provide sufficient on site visitor parking and lacks suitable loading and unloading facilities, having regard to the scale of the proposed development, its location on an arterial road, 'no stopping' restrictions required by the RTA and a bus stop along the site frontage, Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
8. The bulk, scale and design of the proposed development will result in adverse amenity impacts for neighbouring residential properties, including privacy and overlooking impacts, and an inadequate living environment and amenity for future residents of the development, (Pursuant to Section 79C(1)(b) *Environmental Planning and Assessment Act 1979*).
9. For the reasons stated above the proposed development is unsuitable for the site, will be inconsistent with the objects under section 5(a) of the *Environmental Planning and Assessment Act 1979* related to encouraging development for the purposes of promoting a better environment and the promotion and co-ordination of the orderly development of land, and therefore

is not in the public interest, (Pursuant to Section 79C(1)(c)&(e) *Environmental Planning and Assessment Act 1979*).

Ray Lawlor
Development Assessment Officer

ATTACHMENT B -Assessment of the application against provision of State Environmental Planning Policy (Affordable Rental Housing) 2009, and against the provisions of Bankstown Development Control plan 2005.

ATTACHMENT C - Application plans - site/floor plans

ATTACHMENT D - Application Plans - sections & elevations

ATTACHMENT E - Schedule of dwellings and dwelling sizes & three dimensional solar access diagrams