

**JOINT REGIONAL PLANNING PANEL  
(West Region)**

<b>JRPP No</b>	<b>JRPP Reference Number 2012SYW103</b>
<b>DA Number</b>	<b>DA821/2012</b>
<b>Local Government Area</b>	<b>Bankstown City Council</b>
<b>Proposed Development</b>	<b>Demolition of existing structures, construction of five (5) detached residential flat buildings varying in height between three (3) and five (5) storeys containing one hundred (100) residential apartments with associated landscaping, underground and at grade parking</b>
<b>Street Address</b>	<b>351 Hume Highway, Bankstown</b>
<b>Applicant/Owner</b>	<b>Applicant – Statewide Planning Owner – Bankstown Development Pty Ltd</b>
<b>Number of Submissions</b>	<b>Two (2)</b>
<b>Recommendation</b>	<b>Deferred</b>
<b>Report by</b>	<b>Adam Sampson – Senior Development Assessment Officer</b>

## **ASSESSMENT REPORT AND RECOMMENDATION**

This matter is reported to Sydney West Joint Regional Planning Panel in accordance with the provisions of *State Environmental Planning Policy ( State and Regional Development ) 2011*. The proposed development has an estimated value of \$21,563,103 million, which exceeds the capital investment threshold for ‘ *general development*. ‘

Development Application No. DA-821/2012 proposes the demolition of existing structures, construction of five (5) detached residential flat buildings varying in height between three (3) and five (5) storeys containing one hundred (100) residential apartments with associated landscaping, underground and at grade carparking.

DA-851/2012 has been assessed against:

- State Environmental Planning Policy No. 1 – Development Standards
- State Environmental Planning Policy No. 65 – Design quality of residential flat development
- State Environmental Planning Policy – Building Sustainability Index : BASIX 2004
- State Environmental Planning Policy ( State and Regional Development ) 2011
- State Environmental Planning Policy ( Infrastructure ) 2007
- Sydney Metropolitan Regional Plan – No.2 Georges River Catchment ( deemed ) SEPP
- Bankstown Local Environmental Plan 2001
- Bankstown Development Control Plan 2005 Part D2 Residential Zones
- Bankstown Development Control Plan 2005 Part D3 Key development sites in residential sites
- Bankstown Development Control Plan 2005 Part D8 Parking

The application fails to comply in regards to site density, height and private open space. Specifically, the development seeks approval for an alternative design and layout in lieu of the block plan layout as detailed within BDCP 2005 Part D3 Key development sites in residential zones.

The application was advertised and notified for a period of twenty one (21) days. Two (2) letters of objection were received during this period, which raised concerns relating to the cumulative effect of introducing a large number of new residents in close proximity to the Three Swallows Hotel, and the economic impact of a new residential flat building competing in relation to occupancy rates against other nearby rental units.

## **POLICY IMPACT**

This matter has limited policy implications. The proposed variation to site density is a consequence of BDCP 2005 Part D3 Key development sites in residential zones providing alternative site density controls, which conflict with those stated within BLEP 2001. Whilst the development exceeds the site density development standard, the development has been designed with a site density that is consistent with the controls within Part D3.

Whilst the development fails to comply in respect to height requirements, the additional height does not result in adverse amenity impacts being generated in respect to overshadowing, visual impact of tall buildings and privacy loss.

### **FINANCIAL IMPACT**

This matter has no direct financial implications.

### **RECOMMENDATION**

It is recommended that:

- A – The objection lodged pursuant to *State Environmental Planning Policy No. 1 – Development Standards* to site density as prescribed by Clause 46(7) of *Bankstown Local Environmental Plan* be supported; and
- B - The application be approved on a deferred commencement basis, subject to the attached conditions, and the following specific deferred commencement requirements:
  - 1. Documentary evidence of Bankstown Airport Limited's approval of the proposed development is to be submitted to Council.

## **SITE & LOCALITY DESCRIPTION**

The subject site is known as 351 Hume Highway, Bankstown. The site is a regular shaped allotment that is currently zoned 2(b) – Residential B. It has an area of 8589m<sup>2</sup> and a frontage of 69.61 metres along the Hume Highway.

The site currently contains an existing three storey school building and associated structures from its past use as St Joseph Convent, which are proposed to be demolished. The site benefits from dual vehicular access from Hume Highway, with a driveway located centrally along the sites frontage and another driveway adjacent to the western boundary. A row of Phoenix Palms line either side of the central driveway at the front of the site, with several trees scattered throughout the property.

To the east and south of the site, is St Felix de Valois Catholic School, which forms an L shape around the site. Two of the School buildings being St Felix Church and a three (3) storey classroom upon the eastern boundary of the site encroach over the boundary of the subject development site. Adjacent to the site to the west is Bankstown Fire Station and two residential flat buildings, which are three (3) storeys in height. Further to the west of the site is a cluster of detached dwellings. Opposite the site to the north is a warehouse/showroom building containing Rebel Sports and Barbeques Galore and another warehouse / showroom building that is currently occupied by a building supply business, but which has recently been determined by the Joint Regional Planning Panel ( JRPP Ref. 2012SYW066 ), granting consent for the consolidation of lots, demolition of existing site structures and the construction of 182 residential units, including commercial floor space. Further to the north east of the site on the opposing side of the Hume Highway is The Three Swallows Hotel. There are a number of heritage buildings in the vicinity of the site, including two former corner stores located at the Hume Highway and Meredith Street / The Boulevard intersection.

The surrounding area is characterised by commercial development to the north, with low density detached housing to the north east. Special uses ( Educational establishments ) are located within Chapel Road to the east, and medium / high density residential development in the form of residential flat buildings within Meredith Street to the west and south west are evident.



## **PROPOSED DEVELOPMENT**

The Development Application proposes the demolition of existing structures, construction of five (5) detached residential flat buildings varying in height between three (3) and five (5) storeys containing one hundred (100) residential apartments with associated landscaping, underground and at grade carparking and will involve the following works:

- Site excavation to provide two levels of basement parking and at grade carparking for a total of one hundred and forty nine (149) spaces.
- Construction of five (5) residential flat buildings from three (3) to five (5) storeys, containing one hundred (100) apartments. The development will consist of thirty eight (38) three bedroom units, forty eight (48) two bedroom units and fourteen (14) one bedroom units.
- Landscaping and paving at ground level.
- An emergency vehicle access point from the Hume Highway at the north east corner of the site.

Vehicular access to the site is via a combined driveway located at the north west corner of the site, with a separate basement ramp leading a basement underneath building blocks B, C, D and E and another separate basement ramp underneath building blocks A and B.

## **SECTION 79C ASSESSMENT**

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

### **Environmental planning instruments [Section 79C(1)(a)(i)]**

#### **State Environmental Planning Policy (State and Regional Development) 2011**

SEPP ( State and Regional Development ) states that a regional panel may exercise the consent authority functions of the Council, for the determination of applications for development of a class or description included in Schedule 4A of the EP&A Act. Schedule 4A of the Act includes ‘ *general development that has a capital investment value of more than \$20 million.* ‘ The development has a value of \$21,563,103 and accordingly, the development application is reported to the Sydney West JRPP for determination.

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

Schedule 3 of SEPP ( Infrastructure ) lists types of developments that are to be referred to Roads and Maritime Services (RMS) due to their size or capacity and the potential for impacts on the local road network ( including classified roads ). The proposed development exceeds the thresholds listed within Schedule 3 of the SEPP and has direct access to Hume Highway which is a classified road. The proposal was accordingly referred to the RMS on the 8<sup>th</sup> November 2012 for comment.

RMS have reviewed the proposed development and raised no objection, subject to specific conditions of consent addressing matters including road noise mitigation, access from Hume Highway, stormwater and civil works and potential impacts on RMS assets and impacts during construction. These requirements have been included in Attachment B to this report as recommended conditions of consent.

In addition to Schedule 3 traffic generating requirements, Clause 102 of the SEPP ( Impact of road noise or vibration on non-road development ) applies to:

- (1) Development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration:
  - (a) A building for residential use.

- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following Laeq levels are not exceeded:*
- (a) In any bedroom in the building – 35dB(A) at any time between 10pm and 7 am,*
  - (b) anywhere else in the building ( other than a garage, kitchen, bathroom or hallway ) – 40dB(A) at any time.*

The subject site is located adjacent to the Hume Highway, where the annual average daily traffic volume is greater than 40,000 vehicles. Accordingly, the application has been supported by an acoustic report to assess the impact of road noise in accordance with the industrial noise policy, AS2107:2000, Department of Planning – development near rail corridors and busy roads interim guidelines and SEPP (Infrastructure) 2007.

Road traffic noise measurement results revealed that noise levels of up to 69.5dBA within the day and up to 67dBA were recorded adjacent to the front boundary of the site. To mitigate noise from the Highway, a series of construction elements have been recommended, which include outer walls to be constructed of brick with cavity insulation and internal pb lining, minimum glazing requirements and Q-LON acoustic seals to be provided around all windows and doors upon the top and bottom sliders to ensure air tight seals. Provided the recommendations of the acoustic report are adopted during the construction of the development, the building will satisfy the noise criterion set within the SEPP. Conditions of consent address this issue.

### **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

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

The SEPP requires the assessment of any Development Application for residential flat development against the ten (10) design quality principles and the matters contained in the publication “ Residential Flat Design Code “. As such, the following consideration has been given to the requirements of the SEPP.

#### **1. Context**

The site is located as a key residential development site along the Hume Highway Corridor as identified in Part D3 of the Bankstown Development Control Plan 2005. The objectives of the DCP are:

- a) To identify the major constraints to the development of a key development site;
- b) To establish the development character of a key development site; and
- c) To provide specific objectives and guidelines for the development of a key development site.

The site is not burdened with any environmental constraint, but has been designed to overcome noise constraints from the Hume Highway. Revised plans have been provided and incorporate vertical louvers to address privacy issues to the adjacent school and widened internal driveways and improved manoeuvrability to allow a Council waste truck to service waste and recycling from the property. The development largely satisfies the development controls desired within Part D3 of BDCP 2005 and is located in near proximity to several other residential flat developments within Meredith Street to the south west and will be directly opposite a recently determined mixed use building to the north. The proposed residential flat building is considered to be consistent with the objectives of Part D3 BDCP 2005 and will contribute to the quality and identity of the area.

## 2. Scale

The development currently adjoins existing development between (1) and three (3) storeys in height, which is lower in height than the proposed development, however construction of a part three (3), part four (4) and part five (5) residential flat development is considered to be consistent with the emerging scale of the area as desired within Part D3 of BDCP 2005 and nearby residential flat developments within Meredith Street to the south west.

## 3. Built form

The proposed development is considered to have an acceptable built form, bulk, scale and height for the site context.

## 4. Density

The site is identified as a key residential development site within BDCP 2005 Part D3, with site density and maximum yield development controls set in addition to floor space ratio development standards.

Within BDCP 2005 Part D3, the maximum yield of the site is dependent upon the size of the dwellings, which could allow up to a maximum of one hundred and forty three (143) small dwellings ( one per 60m<sup>2</sup> of site area ) based on a floor area less than 55m<sup>2</sup> or seventy one (71) dwellings ( 1 per 120m<sup>2</sup> of site area ). A degree of flexibility exists within the development control contained in BDCP 2005 Part D3, with a combination of dwelling sizes varying the maximum potential yield of the site.

The proposed development seeks a total of one hundred (100) units with a unit mix of thirty eight (38) three bedroom units, forty eight (48) two bedroom units and fourteen (14) one bedroom units, to achieve a site density of 1 per 86m<sup>2</sup> of site area. The site density proposed is considered a sustainable design response to the site and is consistent with the desired site densities within Part D3 of BDCP 2005.



## 5. Resources

The development is subject to State Environmental Planning Policy ( *Building Sustainability Index : BASIX* ) 2004 and requires a BASIX Certificate to be obtained. The development achieves satisfactory performance in respect to BASIX measures of energy efficiency, water conservation and thermal comfort.

The development satisfies open space, natural ventilation and solar access requirements and provides a mix of bedroom sizes consisting of one (1), two (2) and three (3) bedroom units, including two (2) adaptable units, providing a range of choice and housing affordability.

## 6. Landscape

The development provides approximately 2705m<sup>2</sup> of communal open space at ground level through five (5) separate courtyards within the development. Areas of deep soil planting exist adjacent to each building block, with the area of greatest width and depth located at the southern end of the site, which is in excess of 544m<sup>2</sup>. Perimeter planting is proposed along the eastern and western boundaries with areas of landscaping proposed along the sites frontage to the Hume Highway.

## 7. Amenity

The development satisfies natural ventilation and solar access requirements and provides a mix of bedroom sizes consisting of one (1), two (2) and three (3) bedroom units, including two (2) adaptable units, providing a range of choice and housing affordability.

Five (5) separate communal open space areas are proposed within the development; one centrally between building blocks C and D, one south of building block D, one south of building block E, one west of building block B and the largest communal open space area to the south behind building block A.

## 8. Safety and security

A Safer by Design Crime Risk Evaluation of the proposal was conducted by Bankstown Local Area Command who identified an overall crime risk of *medium*, based on a sliding scale of low, medium and high crime risk. The Police have recommended conditions that cover the following Technical/Mechanical (CEPTED) treatment options for the development in order to reduce opportunities for crime.

- Lighting
- CCTV ( Closed Circuit Television )
- Access Control
- Signage
- Sightlines

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

9. Social dimensions

The development proposes one hundred (100) units with a mix of one (1), two (2) and three (3) bedroom units, including two (2) adaptable units, providing a range of choice and housing affordability.

10. Aesthetics

Building materials proposed include face brick walls of various colours, glass balustrades, aluminium framed glazing and sliding doors and aluminium framed metal louvers.

**Design Review Panel**

Prior to lodgement of the application, the proposal was presented to Council's internal Design Review Panel for review on the 2<sup>nd</sup> August 2012. The Panel raised eight (8) issues with the design, advising that:

- *The proposed level difference between the adjoining property on the west and the level of the driveway is not supported. The panel suggests the driveway to be on natural ground eliminating the need for tall retaining walls, as per Council's development controls.*

*If there is an existing retaining wall in between the two properties, the applicant will need to seek variations to the retaining wall cross sections. The applicant will need to provide a 1m wide landscaping buffer, which is free of structural elements along the western boundary, and provide retaining walls, as per Council's development controls.*

*By maintaining the natural ground level along the driveway, the Panel suggests retaining the basement carpark level for Block C, D and E at approximately RL 58m and the basement car park level of Block A and B at approximately RL 54m. This will result in two consolidated basement carparks and two pedestrian platforms above them. Further work is required to use the topography to reorganize and distribute pedestrian movements and building entries on these two consecutive natural ground levels, i.e. entry to Block A from RL 57m and entries to Blocks B and C from RL 60m.*

- *The Panel suggested that the proposed courtyard adjacent to Block B be consistent with the natural level adjacent to the driveway and retaining as much of the existing vegetation as possible.*
- *Block C link to the central courtyard has not been resolved. The Panel suggested that the main entrance to Block C address the central courtyard rather than from the driveway.*
- *The revised plan does not provide a visual connection between the central courtyard and Block A. The Panel suggests seeking opportunities to create a visual link to address the negative impacts of the level difference between Block A and B.*

- *The Panel suggests implementing safety mechanisms to avoid conflict with vehicles and pedestrians wherever the universally accessible pathway crosses a vehicle ramp and driveway.*
- *A drafting error was identified between the floor levels of the central waste collection area and the basement car park of Block E. The Panel identified the opportunity to locate the central waste collection area within the proposed basement level and a retaining a unit above in Block E.*
- *The Panel raised the issue of the status of the eastern boundary adjustment. The Panel advised the applicant to provide owner's consent for the boundary adjustment at the time of lodgment of the development application.*
- *The Panel raised the need for access to a drainage easement at the rear of the site to allow stormwater egress. The Panel advised the applicant to provide evidence of consent of the owner of the affected property for the provision of the required drainage easement at the time of lodgment of the development application.*

The Panel advised that the applicant should address the issues as part of the Development Application to Council.

On 14 December 2012, the Design Panel members met to discuss the plans with the Development Application as part of an internal review. The Panel reviewed the amended proposal, which is the subject of this report advising:

- *Ensure the headroom of the driveway into Block C car park is sufficient/or meets the relevant standards.*
- *Ensure the previous minutes regarding the driveway levels are considered.*

The applicant has addressed the majority of the original and revised issues raised by the Panel, with the exception of the eastern boundary adjustment issue. The applicant has not pursued the eastern adjoining owner to rectify a building encroachment over their land and as such, it did not form part of the development application lodged with Council.

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

It is considered that the proposed development will not significantly impact on the environment of the Georges River either in a local or regional context and that the development is not inconsistent with the general and specific aims, planning principles, planning considerations and policies and recommended strategies.

The proposal is consistent with the aims and objectives of the Georges River Catchment ( SEPP ).

### **Bankstown Local Environmental Plan 2001**

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

Clause 2 – Objectives of this plan  
Clause 11 – Development which is allowed or prohibited within a zone  
Clause 13 – Other development which requires consent  
Clause 16 – General objectives of these special provisions  
Clause 19 – Ecologically sustainable development  
Clause 20 - Trees  
Clause 24 - Airports  
Clause 30 – Floor space ratios  
Clause 36C – Development along arterial roads  
Clause 38 – Development in the vicinity of heritage items  
Clause 44 – Objectives of the residential zones  
Clause 45 – General restrictions on development  
Clause 46 – Core residential development standards  
Clause 47 – Isolation of allotments

An assessment of the Development Application revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2001, with the exception to clause 24 airports and clause 46 in respect to site density.

#### *Clause 24 – Airports*

The development site is subject to Bankstown Airport Limited's (BAL) obstacle limitation surface plan, which prescribes a maximum building height of 15.24m. The proposed development exceeds this height and was referred to BAL for concurrence.

BAL advises that because the buildings on site exceed 51m AHD ( the lift over run upon building block D reaches a proposed height of 74.50m AHD), their assessment must be supplied to the Civil Aviation Safety Authority (CASA) for review, and then to the Minister for Infrastructure and Transport (or their delegate) for final approval. When the referral to BAL was made in February 2013, it was expected that this assessment, review and approval process might take 3 months to complete. However a response is still to be received. To enable the development assessment to proceed, and to provide some degree of certainty around the balance of the matters under assessment, it would be appropriate to require resolution of this matter as a deferred commencement condition.

#### *Clause 46(7) – Core residential development standards*

An assessment of the development application revealed that the proposal fails to comply with the provisions of *Bankstown Local Environmental Plan 2001* relating to site density under clause 46(7).

The allotment is located within the area bounded by railway land, the Hume Highway and Stacey Street and as such, the site area per dwelling shall not be less than 90m<sup>2</sup>. The proposed development has a site density of 85.89m<sup>2</sup> and does not comply with Clause 46(7) of the Bankstown Local Environmental Plan 2001.

Applicant's objection under State Environmental Planning Policy No. 1 seeking variation to site density.

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

In particular, the following arguments have been provided by the applicant in support of the variation:

- *Full compliance with Clause 46(7)(b)(i) of BLEP 2001, the subject of this objection would require a reduction in either the number of units proposed to meet the site area requirements of 9000m<sup>2</sup> or a number of units would be reduced in size to meet the minimum requirements contained within SEPP 65. This in itself would hinder the attainment of the EP&A Act's object, which seeks to promote the orderly and economic use and development of land as it would either:*
  - *Reduce the number of units to say 95, which is inconsistent with urban consolidation objectives, which is to increase housing densities close to quality public amenities and services;*
  - *Change the mix of 1,2 and 3 bedroom units;*
  - *Reduce housing choice, with many of the 3 bedroom units being made smaller to meet the minimum size requirements prescribed by SEPP 65.*
- *Compliance with the development standard is deemed to be both unreasonable and unnecessary under the circumstances because the departure sought does not create any unreasonable impacts upon the built and natural environments.*

*The application before Council clearly demonstrates that the land can still be developed in a quality manner without the need for a rigid development standard to dictate housing density.*

*The five (5) residential flat buildings are well spaced apart and setback from adjoining properties. This ensures no overlooking, overshadowing or general loss of amenity occurs.*

*Good landscaping and open space is available to create a pleasant outdoor living and recreation environment.*

*The standard reduces housing density whereas it has been clearly demonstrated that the density proposed can readily fit onto the site, meeting best practice standards ( SEPP 65 and Council's DCP 2005 – Part D3 ) for this form of housing.*

*The DCP density standards are set out as follows:*

- *Small dwellings = 1/60m<sup>2</sup> of site area*
- *Medium dwellings = 1/90m<sup>2</sup> of site area*
- *Large dwellings = 1/120m<sup>2</sup> of site area*

*Small dwelling means – a dwelling the GFA of which is less than 55m<sup>2</sup>.*

*Medium dwelling means – a dwelling the GFA of which is not less than 55m<sup>2</sup> and not more than 95m<sup>2</sup>;*

*Large dwelling means – a dwelling the GFA of which is more than 95m<sup>2</sup>.*

*The proposal offers a mix of housing stock, affording prospective residents with housing choice, size and affordability in close proximity to public transport and other services and amenities, such as schools, shops, employment and open space.*

*The development standard is inconsistent with the density provisions contained within Bankstown DCP 2005 Part D3 ( Key Development Sites in Residential Zones ). While the DCP is a policy document, it brings with it updated and site specific planning controls to develop this site. In this respect, the site because of its location, size, width and length is identified as being a key development site, which includes its own site density and maximum yield control, which allows flexibility in the yield of units, their size and to promote a high level of internal amenity and affordability.*

*The 90m<sup>2</sup> per dwelling standard density standard for residential units is outdated by the more recent controls, which seek to promote quality infill housing that responds to its surrounding environment and demand for medium to high density housing in close proximity to major centres, such as Bankstown.*

## Comments

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

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

The objects of the Act are:

- 5(a) (i) *to encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) *to encourage the promotion and coordination of the orderly and economic use and development of land.*

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

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

Site density is a numerical control contained within an environmental planning instrument and is therefore a development standard.

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

As a matter of general principle, the site density standard is imposed to control density and intensity of the land use impacts on utility services and infrastructures.

The relevant objectives of the site density clause in the Bankstown LEP are:

- (a) *Where an existing allotment is inadequate in terms of its area or width, to require the consolidation of 2 or more single residential allotments for villa development or residential flat buildings, to achieve the other objectives in this subclause, and*
- (b) *to ensure that allotments are of sufficient size to accommodate proposed dwellings, setbacks to adjoining residential land, private open space and courtyards, driveways, vehicle manoeuvring areas and the like*

Despite the higher density sought over and above BLEP 2001's requirements, the proposed development is considered to have a built form of acceptable height, bulk and scale, and a site density consistent with the development controls for key residential development sites within Part D3 of BDCP 2005.

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

Compliance with the site density standard is one of the ways to ensure the orderly development of the land. The proposed development is considered to have an acceptable bulk, scale and height for the site context. In the circumstances of the case, the applicants have demonstrated that despite the increased density, the departure from the development standard has not

resulted in any unreasonable impacts upon the built and natural environments and the development achieves a compliant floor space ratio.

Strict compliance in requesting that a site density of no less than one dwelling per 90m<sup>2</sup> be enforced is considered unreasonable in the circumstances, especially with consideration that BDCP 2005 Part D3 has a degree of flexibility for site density of the site from 1 per 120m<sup>2</sup> to 1 per 60m<sup>2</sup> of the site area, with the proposed development located between the two densities desired, at 1 per 86m<sup>2</sup>. As the applicant has identified within their SEPP 1 Objection, the unit mix could be altered purely for the sake of numerical compliance, but it would not change the bulk or scale of the development.

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

Under the circumstances, strict numerical compliance with the site density development standard is considered unreasonable in this instance and is unlikely to result in a better environmental outcome.

- ❑ *Is the objection well founded?*

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

- The departure does not create any unreasonable impacts upon the built and natural environments.
- The development standard is inconsistent with the density provisions contained within BDCP 2005 Part D3.
- The reduction in the number of units to satisfy the LEP density control, would hinder the attainment of the EP&A Act's objects.
- The proposed density can fit on the site.

The impact of the proposal is assessed in the following sections of this report and the proposal is unlikely to contribute to a significant adverse impact on the adjoining properties. In conclusion, it is considered that the SEPP 1 Objection is well founded.

#### **Draft environmental planning instruments [Section 79C(1)(a)(ii)]**

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

#### **Development control plans [Section 79C(1)(a)(iii)]**

The development has been assessed against the following provisions of Bankstown Control Plan 2005 ( BDCP 2005 ).

- Part D2 – Residential Zones
- Part D3 – Key development sites in residential zones
- Part D8 – Parking
- Part E1 – Demolition and Construction



- Development Engineering Standards

Part D2 of the DCP provides detailed guidelines for residential flat development generally in the residential 2(b) – Residential B zones, with Part D3 specifically upon this site. The following table provides a summary of the development application against the controls contained in Part D2, D3 and D8 of Bankstown Development Control Plan 2005.

STANDARD	PROPOSED	BDCP 2005 PART D2, D3 & D8		LEP 2001 COMPLIANCE
		REQUIRED	COMPLIANCE	
Floor Space Ratio	1:1	1:1	Yes	Yes
Site area	8589m <sup>2</sup>	Minimum 1500m <sup>2</sup>	Yes	Yes
Frontage	Approximately 70 metres	Minimum 30m	Yes	Yes
Site density	1 per 86m <sup>2</sup>	Maximum 1 per 60m <sup>2</sup> , minimum 1 per 120m <sup>2</sup>	Yes	NO ( Minimum 1 per 90m <sup>2</sup> )
Carparking	149 spaces	Total 149 spaces Twenty (20) spaces to be provided for visitors	Yes	NA
Setbacks				
Hume ( Front )	9 metres	9 metres	Yes	NA
East ( side )	4.7 metres from Block D	4.5 metres provided the average is at least 0.6 x the height	Yes	NA
West ( side )	7.6 metres from Block C	4.5 metres provided the average is at least 0.6 x the height	Yes	NA
South ( rear )	11.77 metres	4.5 metres provided that average is at least 0.6 x the height	Yes	NA
Basement ( side / rear )	2.2 metres	Minimum 2 metres	Yes	NA
Internal	All greater than 4 metres	Minimum 4 metres	Yes	NA
Height	Block A – 5 storeys ( 15.5m Western elevation ) Block B – 5 storeys ( 15.8m Western elevation ) Block C – 4 storeys ( 14.8m Western elevation ) Block D – 4 storeys ( 12.8m eastern elevation ) Block E – 3 storeys ( 10m Western elevation )  Heights measured at highest point	Maximum 9.2 metres and three storeys	NO  NO  NO  NO  NO	NA  NA  NA  NA  NA
Solar Access	70% (70 of 100 units)	70% of units to receive 3 hours to a living room window	Yes	NA
Private Open Space	23 of 100 units achieve a minimum area of 15m <sup>2</sup> and a depth of 3 metres. 30 of 100 achieve > 15m <sup>2</sup> but < 3m depth	Minimum balcony area of 15m <sup>2</sup> and minimum depth of 3 metres. ( RFDC has no specific requirement for upper level balconies but recommends that they be	NO	NA

STANDARD	PROPOSED	BDGP 2005 PART D2, D3 & D8		LEP 2001 COMPLIANCE
		REQUIRED	COMPLIANCE	
	26 of 100 achieve < 15m <sup>2</sup> but > 3m depth 21 of 100 achieve < 15m <sup>2</sup> and < 3m depth	at least 2 metres wide )		
Adaptable units	2	Minimum 2	Yes	NA

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

### Part D3 Key Development sites in residential zones

Clause 10.28 of the DCP requires future development of the subject site to be generally in accordance with the indicative design prepared by Flower and Samios Architects as per figure 10.2. In addition to the block plan layout represented in Figure 10.2, future development is subject to urban design principles controlling the number of building blocks; courtyard design locations and prominence; location of carparking; perimeter planting; fencing; vertical building design elements; consolidated landscaped area and a rear building setback of 30 metres.

However, Council may consider an alternative development, subject to any development application addressing the remaining sections of Part D3 with the exception to clause 10.28. In this instance, the applicant seeks an alternative design layout to that envisaged within figure 10.2. The applicant has provided the following response:

*The general concept of the design of Flower and Samios Architects has been considered in the building design. The reduction in the number of buildings from 6 to 5 and increasing building heights has allowed for the development to provide for greater soft soil and landscaping opportunities, which is reflected in the landscape design. Further, the design comfortably fits within its context without visually impacting upon neighbouring properties. This design scheme provides for a number of communal courtyards that receive excellent passive surveillance from the units surrounding or backing onto the open space.*

*The proposed design provides for:*

- *Good building separation*
- *Large areas of soft soil and dense landscaping*
- *Internal pathways provide clear and direct access for residents to their buildings*
- *The majority of carparking is provided below the buildings.*
- *Vehicular ingress/egress off the Hume Highway complies with the requirements of RMS*
- *Overlooking and overshadowing have been ameliorated by the dense landscaping and siting of buildings well away from side and rear boundaries.*

In respect to satisfying the requirements of the remaining sections of Part D3, the development is largely compliant with the development controls with the exception to height and storeys. Clause 10.13 requires a maximum building height to the pitching point of the roof of 9.2 metres above the Hume Highway must apply except where otherwise dictated by urban design principles. Clause 10.14 requires that the maximum height of the buildings erected on the site is not to exceed 9.2 metres and the maximum number of residential storeys must be restricted to 3 plus a loft. The development breaches both the maximum height for the building fronting the Hume Highway and other buildings blocks the site, as well as breaching the storey limit.

Subject to clause 10.15, Council may give consideration to a variation in the height of buildings and the number of storeys permitted for buildings that are located on the rear portion of the site where it can be demonstrated that the exceedence in the maximum height and number of storeys does not result in any adverse solar access impacts to adjoining properties and does not result in any adverse visual impacts as a result of the height and bulk of the buildings when viewed from adjoining properties and internally within the site.

The applicant has prepared a planning justification to the variation to the height requirements, arguing on the following grounds:

*Clause 10.15 of the DCP provides a mechanism to vary such controls. Given the detached buildings sited behind Building E that faces the Hume Highway are above 9.2m and 3 storey's in building height, while exceeding the maximum height and storey limits do not result in adverse overshadowing impacts within or outside of the property. This outcome is a direct result of the quality architectural design and orientation of the buildings to ensure there is no impact upon the visual amenity of this neighbourhood.*

*In addressing this issue, it is noted the site is orientated in a north – south direction and buildings in the surrounding context of diverse and consist of the:*

- *St Felix de Valois Catholic School buildings and school grounds – eastern side boundary;*
- *St Felix de Valois Catholic School buildings at rear – southern boundary;*
- *Bankstown fire station building facing the Hume Highway for part of the western side boundary and a three (3) storey residential flat building/s along the rear western side boundary.*

*Further, the land falls steadily away to the south and the buildings are excavated into the site, lowering the buildings height.*

*In considering the above, it is clear that the majority of the sites boundaries do not have a direct interface with residential properties. In view of such any amenity impacts will mostly be restricted to the south-western end of the subject site where there is medium density residential development.*

*It is also clear from the accompanying shadow diagrams that the sitting and design of the proposed buildings will not cause any unreasonable overshadowing impacts upon adjoining residential properties to the west and within the site the subject site, particularly given the rear portion of a 3 storey residential flat building is setback approximately 20m from the side boundary with proposed building Block B and there is landscaping in between.*

*In view of the generous setbacks from adjoining residential flat buildings, the separation distances between proposed buildings within the site and the excavation of the land all lend themselves to reducing impacts upon neighbouring properties in terms of overshadowing and visual amenity. Accordingly, the variations sought respond to the building context and will have no unreasonable impacts upon the amenity of the surrounding neighbourhood.*

The greatest extent of the proposed height non-compliances occur from building blocks A, B, C and D, which are located at the rear and mid sections of the site. The taller buildings are located at the lowest point of the site and will not be visible from the Hume Highway and with the least potential to impact on the locality by way of overshadowing, privacy and bulk and scale, considering the location of adjoining structures.

Whilst the development fails to comply in respect to height requirements, the additional height does not result in adverse amenity impacts being generated in respect to overshadowing, visual impact of tall buildings and privacy loss. The application demonstrates that adequate solar access can be obtained to neighbouring residential flat buildings located to the south west of the site, with significant separation distances. Visual privacy measures have been considered by the applicant and include the provision of louvred vertical screening upon windows and balconies upon Blocks D and E upon the eastern elevation to mitigate privacy concerns over the largest play ground area of the adjoining Catholic School to the east. In addition, balconies from Blocks D and E are largely north and south orientated.

#### Site density

The non-compliance with the site density development standard has been discussed previously in this report.

#### Private Open Space / Balconies

Clause 10.13 of Part D2 Residential Zones requires that each unit be provided with a balcony that is at least 15m<sup>2</sup> and has a minimum width of 3 metres. 23 of 100 units will achieve a balcony area of greater than 15m<sup>2</sup> and a minimum width of 3 metres as per BDCP 2005 requirements. All units will however have balconies with depths equaling or greater than the minimum 2 metres recommended by the Residential Flat Design Code ( SEPP 65 ). Although the balconies fail the technical controls of BDCP 2005, they satisfy the requirements of the Residential Flat Design Code. On balance, the development provides for appropriate private open space.

#### **Planning agreements [Section 79C(1)(a)(iia)]**

There are no planning agreements applicable to the proposed development.

**The regulations [Section 79C(1)(a)(iv)]**

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

**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.

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

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

**Waste**

In response to Council's concerns that the site could not be serviced by regular waste collection along the sites frontage to the Hume Highway due to safety issues of heavy traffic from the highway, the applicant proposed that a private contractor would collect recycling and waste from the site in lieu of providing a slip lane.

However, the size of a private contractor's vehicle and the timing of such a service was considered to have negative implications within the site and the locality, in respect to internal conflict with other vehicles within the site, queuing adjacent to the entry driveway and noise being generated during school hours as a private collection service cannot collect waste / recycling as early as Local Government. In addition, negative visual impacts were considered to result due to significant widening of the driveway to cater for a commercial medium rigid vehicle being able to enter and exit the site safely, without entering / exiting the site from/into the 2<sup>nd</sup> lane of the highway.

To resolve the above issues, an agreement has been reached with the applicant for Council to service the site with a small rear loader waste truck on a twice weekly cycle to collect 12 X 660 litre bins from the rear of the site. Council traffic engineers have reviewed the swept paths of the truck and advise that the waste truck can manoeuvre from the entry / exit driveway of the site, including within the site to the collection point at the rear. As Council can service the site at a much earlier morning period compared to a private contractor, internal traffic conflicts are not expected to eventuate and with no modification to the proposed entry / exit driveway of the site. Whilst the garbage bin collection area is located at the rear of the site, unless a considerable slip lane were to be constructed, it is considered the best location in terms of reducing its impacts on the locality and ensuring the safe collection of waste from the site.

The previous assessment contained in this report has identified impacts associated with the proposed variations to height and density. Despite these non-compliances, the development is considered to not result in adverse amenity impacts being generated in respect to overshadowing, visual impact of tall buildings and privacy loss.

### **Suitability of the site [Section 79C(1)(c)]**

The site is considered suitable for the development proposed, with the traffic implications of the development, on site carparking, access arrangements, internal circulation and parking layout and the ability of the road network to be able to support the traffic generated by the development considered to be satisfactory.

The site has the ability to be redeveloped with the site density proposed, with the design considered a sustainable response to the site and which is consistent with the desired site densities within Part D3 of BDCP 2005.

### **Submissions [Section 79C(1)(d)]**

The application was advertised and notified for a period of twenty one (21) days. Two (2) letters of objection were received during this period, which raised concerns relating to the cumulative effect of introducing a large number of new residents in close proximity to the Three Swallows Hotel, and the economic impact of a new residential flat building competing in relation to occupancy rates against other nearby rental units. The specific issues raised are addressed as follows:

*Objection: The owners of the Three Swallows Hotel do not object to the principle of new high rise residential apartments being built in the area. However, they do raise serious concerns that the proposal does not adequately address the existence of a 24 hour operated hotel immediately opposite the proposed site. Our client requests consideration of DA821/2012 be deferred until an amended acoustic report has been submitted which acknowledges the hotel's existence together with the potential issue of noise emanating from the hotel as it may affect the development site.*

*It is also requested that the applicant prepare a notification disclosure to all future owners and residents of the proposed development acknowledging that the Three Swallows operates under a 24 hour licence and that all future objections to hotel activities which comply with approved consents will be deemed null and void.*

**Comment:** An existing licensed premises ( 'The Three Swallows' ) is located approximately 115m north east of the development site from the boundary of the site to the Hotel building. Recent development consents granted for these licensed premises include conditions to limit noise generated, such that it not constitute 'offensive noise' under the *Protection of the Environment Operations Act*. These conditions would remain in place regardless of whether or not the proposed development were to proceed, and the operator of these premises bound to comply. Properties in the vicinity of the licensed premises to the south east include existing residential dwellings. A number of these dwellings are a comparable distance from the licensed premises, and in some cases are nearer than the proposed development. The construction of a residential flat development at the subject development site would therefore not introduce any new source of potential amenity impacts that does not already exist in the locality.

*Objection: I wish to strongly object to this development, primarily because of the large number of units being proposed, that number being 100 units. I believe that such a large number of apartment units becoming available for purchase/renting, will have a negative affect on apartment units in the surrounding area, specifically for rental units such as mine, where occupancy rates will be negative affected, and also for both rental and owner / occupier units where the property values will be adversely affected.*

Comment: The land is zoned 2(b) Residential B, which permits this form of development. In addition, a site specific DCP for the redevelopment of this site applies, with flexible development controls applying to site density. The application demonstrates a sustainable yield in terms of site density and is considered an appropriate built form for the development site.

**The public interest [Section 79C(1)(e)]**

Having regard to the relevant planning considerations, it is concluded that it would not be against the public interest to approve the proposed development.

**CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979*, which requires amongst other things an assessment against the provisions contained in *State Environmental Planning Policy No. 1 – Development Standards*, *State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development*, *State Environmental Planning Policy ( Building Sustainability Index : BASIX ) 2004*, *State Environmental Planning Policy ( Infrastructure ) 2007*, *State Metropolitan Regional Environmental Plan – No. 2 Georges River Catchment ( deemed ) SEPP*, *Bankstown Local Environmental Plan 2001* and *Bankstown Development Control Plan 2005*.

The site density exceeds the maximum one dwelling per 90m<sup>2</sup> of site area applicable to the development site under clause 46(7) of *Bankstown Local Environmental Plan 2001*. The applicant has submitted an objection under *State Environmental Planning Policy No.1* seeking support for a variation to site density.

It is considered that the application has sufficient merit and strict compliance with site density would be unreasonable in this case. It is therefore recommended that the JRPP support the SEPP 1 objection and approve the development on a deferred commencement basis.

Approval of this application would facilitate the development of a key site upon the Hume Highway corridor without having any unacceptable or unreasonable impacts on the surrounding locality.