

ITEM	196 Stacey Street, Bankstown
	Demolition of existing structures and site works to facilitate construction of a new 14-storey mixed use building consisting of 146 residential units, 196m² of commercial floor area, basement car park, landscaping, drainage works and new vehicular access from Cross Street
FILE	DA-1119/2013 - East Ward
JRPP REFERENCE:	2014SYW003
ZONING	3(a) - Business - CBD
DATE OF LODGEMENT	20 December 2013
APPLICANT	Merhis P/L
OWNERS	Kalbek Investment Pty Limited
ESTIMATED VALUE	\$31,487,475
SITE AREA	4907m²
AUTHOR	Development Services

SUMMARY REPORT

This matter is reported to the 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 \$31,487,475, which exceeds the capital investment threshold of \$20million for 'general development'.

Development Application No. DA-1119/2013 proposes the demolition of existing structures and site works to facilitate construction of a new 14-storey mixed use building consisting of 146 residential units, 196m² of commercial floor area, basement car park, landscaping, drainage works and new vehicular access from Cross Street.

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act, 1979* and the relevant specific environmental planning instruments, including State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Developments and the Bankstown Local Environmental Plan 2001, as well as Part D4 of the Bankstown Development Control Plan 2005. The application fails to comply in regards to floor space ratio, building height and building separation. However, the assessment of the development application has found that these variations are justified in the

circumstances of this case, in the context of both the overall development and the surrounding locality.

The application was advertised and notified for a period of twenty-one (21) days, from 15 January to 4 February 2014. Following the submission amended plans and details, the application was re-advertised and notified for a further period of twenty-one (21) days, from 13 August to 2 September 2014. Following these advertising and notification periods a total of six (6) objections were received (6 following the first period, and 4 more following the second period, all from groups that had provided submissions in the first round of notification), raising concerns relating to traffic impacts and car parking, building separation, building height, floor space ratio, privacy and acoustic impacts, stormwater, communal open space and construction impacts.

POLICY IMPACT

This matter has no direct policy implications. The proposed variations to floor space ratio, building height, setbacks and building separation are appropriate in the context of the site, and would not set a precedent for development elsewhere in the LGA.

FINANCIAL IMPACT

The proposed matter being reported has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the attached conditions.

DA-1119/2013 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 196 Stacey Street, Bankstown.

The site is an irregular-shaped allotment that is currently zoned 3(a) - Business CBD.

The site runs from Stacey Street to the east through to Cross Street to the west, and has a frontage of 37.795m to Stacey Street and a frontage of 11.81m to Cross Street. The total area of the site is 4907m². The site contains two 2-storey commercial buildings on the part of the site fronting Stacey St.

The surrounding development consists of a school and church to the north, a child care centre to the west, and a similar commercial development to the south. On the opposite, eastern, side of Stacey Street, are residential properties zoned 2(a) Residential.



PROPOSED DEVELOPMENT

The Development Application proposes the demolition of all existing structures on site and construction of a new 12-14 storey mixed commercial-residential building consisting of 146 residential units, 196m² of commercial floor area, a car park for 190 vehicles including 2 basement levels, as well as landscaping, drainage works and new vehicular access from Cross Street. A perspective view from Stacey Street of the proposed development is shown below:



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 (SRD SEPP)

In accordance with Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act, 1979*, development with a capital investment value in excess of \$20million is classified as regional development under Clause 20 of the SRD SEPP. In accordance with Clause 21(1)(a) of the SRD SEPP the consent authority function is to be exercised by the Joint Regional Planning Panel. The subject application has a capital investment value of \$31,487,475 and, as such, the subject application is to be determined by the Sydney West Joint Regional Planning Panel.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 requires Council to consider whether the development site is contaminated and, if it is, whether it is suitable for the proposed development either in its contaminated state or following remediation works.

The applicant has submitted a Stage 2 Environmental Site Assessment Report prepared by Environmental Investigation Services (EIS). The Stage 2 ESA has determined that no soil or groundwater contamination was identified that would trigger the need for site remediation.

As such, a remedial action plan is not required for the site, and it is therefore considered that the consent authority can be satisfied that the development site is suitable for the proposed development, in accordance with Clause 7 of SEPP 55.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65), and the Residential Flat Design Code (RFDC)

SEPP No. 65 applies to residential flat buildings having 4 or more units and 3 or more storeys. Accordingly the SEPP applies, and an assessment against the Design Quality Principles and Residential Flat Design Code (RFDC) has been carried out.

The proposed development is consistent with the Design Quality Principles and responds appropriately to the site's context. Moreover, the application generally conforms with the key 'rules of thumb' contained in the Residential Flat Design Code, as illustrated in the table below.

'RULE OF THUMB'	PROPOSED	COMPLIES?
Building depth 10m – 18m is appropriate. If greater than 18m then good solar access and ventilation must be achieved.	Building depth ranges from 15m-26m. Deepest apartments are 15m, whilst single aspect and corner apartments range	Yes. Building is designed off central east-west core, with single-aspect and corner apartments off either side (N

	from 11-13m.	and S). Larger units in the centre have compliant depth. Solar Access and natural ventilation have been achieved. The buildings have a northern aspect and the buildings are articulated, with recessed elements of the building having a depth of less than 18m.
Building separation 12m separation between buildings over 3 storeys and up to 4 storeys. 18m separation between buildings over 4 storeys and up to 8 storeys. 24m separation between buildings over 8 storeys.	A 6m setback is provided for all storeys to the northern and western boundaries. Setbacks to the southern boundary range from 6m for Levels 1-7, 9m for Levels 8-10, and 12m for Levels 11-14.	See discussion below
Communal open space 25% – 30% of the site area is to be communal open space.	36% of the site area is provided as communal open space	Yes.
Apartment layout Single aspect apartments should be no more than 8m from a window. Back of kitchen no more than 8m from a window.	The depths of single aspect apartments range from 8m to 11m at worst. The back of 86.3% of kitchens are within 8m of a window.	Yes. Non-conforming ('deepest') parts of the affected apartments contain dwelling entries and bathrooms, therefore no amenity loss. The back of non-conforming kitchens are within 9m of a window and still achieve the amenity intent of the code (see discussion below).
Apartment size 1 bed – min. 50m ² 2 bed – min. 70m ² 3 bed – min. 95m ²	1 bed – min. 52m ² 2 bed – min. 74m ² 3 bed – min. 103m ²	Yes.
Balcony depth Min. 2m depth to primary balconies.	All primary balconies have minimum 2m depth.	Yes.
Floor to ceiling heights Min. 3.3m ground floor and 2.7m for other floors. If variation is sought then satisfactory daylight access must be demonstrated.	Floor-to-ceiling heights are 3.3m to commercial floors, and 2.7m to all residential floors.	Yes. Majority of units are oriented north and have satisfactory daylight access.
Internal circulation Max. 8 units accessed from a single corridor.	Minimum 4 to maximum 7 apartments accessed from a single corridor.	Yes
Solar access 70% of units should receive 3hrs solar access between 9am – 3pm midwinter. Limit the number of single aspect apartments with a southerly aspect to a maximum of 10%.	70.5% of units receive 3hrs direct solar access between 9am – 3pm midwinter. 15 of the 146 units (10.3%) are single aspect apartments oriented to the south	Solar access complies. The 10.3% of units being single aspect apartments is a minor variation to the maximum 10% rule of thumb, and in a development of this size equates to 1 additional unit. Not considered to be unreasonable

		in a development of this size, especially considering compliance with solar access.
Natural ventilation 60% of units to be naturally ventilated. 25% of kitchens to have access to natural ventilation.	61% of units are naturally cross-ventilated. 20.5% of kitchens have a window.	See discussion below

Building Separation

The application was originally lodged with setbacks to side and rear boundaries of 6m to all levels of the building. Council raised concerns that the side setbacks of the proposal needed to have greater consideration for future development on adjoining properties and the numerical 'Rule of Thumb' guidelines within SEPP 65 for building separation. Despite the fact that no significant buildings exist on surrounding sites, it is considered appropriate for the proposed development to 'share' the building separation requirements stipulated in the rule of thumb in the RFDC (i.e. provide half of the building separation distances), in order to ensure the development potential of adjoining sites is not sterilised, and to minimise amenity impacts on adjoining sites and their future development potential.

The application has been modified to adopt the following setbacks to property boundaries:

Boundary	Proposed	Required
North	6m for Levels 1-14	"Shared" component of RFDC numerical requirement: 6m for Levels 1-4 9m for Levels 5-8 12m for Levels 9 and above
South	6m for Levels 1-7 9m for Levels 8-10 12m for Levels 11-14	
West	6m for Levels 1-12 46m for Levels 13-14	

A discussion of the impacts of building separation to each boundary follows:

North Boundary

The 6m setback to all floors of the proposed development on the northern elevation is considered to be appropriate in this instance. The emphasis on the northern orientation of the building is considered to be a critical element, and is demonstrated by the ability of the development to achieve the solar access requirements in the RFDC. It is also considered, given the size of the site to the north, that if any high-density redevelopment was proposed, the building separation requirements could be incorporated into any such redevelopment proposal, without unduly impacting on the potential development yield, or in terms of built form and/or amenity impacts.

In terms of visual privacy, fixed horizontal louvers have been provided on the balconies from level 6 upward to minimise overlooking of the adjoining school located to the north from the primary internal and external living areas of the proposal, and this is considered to satisfactorily address the potential for overlooking impacts into the school site.

South Boundary

With respect to overshadowing, the applicant has prepared a series of solar access studies that provides a comparison of the proposal with a future, complying development on 190 Stacey Street in terms of height and the 'Rule of Thumb' side setbacks in SEPP 65. These studies illustrate the impacts on a potential future development on 190 Stacey Street that is compliant with both building height and shared side setbacks. The studies indicate that for the winter solstice, the level of impact on 190 Stacey Street of the current proposal does not differ significantly from a conforming development on the site, nor does the impact unduly hinder a future, compliant development on 190 Stacey St from achieving the required solar access under the RFDC.

As such, the amended setbacks are considered to provide ample spatial separation between the proposal and any future development on 190 Stacey Street. Despite some non-compliances, the setbacks are generally consistent with the spatial separation rule of thumb in the RFDC and, as demonstrated above, are considered to meet the intent of the building separation controls.

West Boundary

Adjoining development to the west is not considered likely to be significantly impacted by the proposed development. The building on the lot immediately to the west of the subject site is a child care centre, and not unduly impacted in terms of overshadowing, as the adjoining site has a strong northern orientation that is not affected by the proposed development, or in terms of bulk and scale given the high density nature of the precinct.

Given the above, it is considered that the proposal is now satisfactory in terms of building separation.

Apartment Layout

20 of 146 units (13.7%) have a distance of over 8m to the rear wall of the kitchen. In each case, these are the 3-bed units which are at least 4m in width through the living areas, and close to 7m in width throughout the entire apartment. The depth to the rear wall of the 3-bed kitchens is 8.8m, and is not considered to be unsatisfactory, given the width of the apartments, in particular the living areas. As such, it is considered that these units still achieve the amenity intent of the code.

Natural Ventilation

Opportunity exists to convert units 25B-75B to relocate the study and the kitchens, which would ensure compliance with the 25% requirement. However, the size of the study in these units is flexible enough to allow for a conversion to a small 2nd bedroom, and it is considered that the flexibility is a better outcome than achieving numerical compliance. Changes to other unit layouts may be possible, but would require entire compartments to be relocated (living areas, sleeping areas) and may result in an unacceptable outcome in terms of solar access or linkages between living areas and balconies. Overall, the development is considered to be of a high standard, generally achieves compliance with the rules of thumb in the RFDC, and in this instance, it is not considered sufficient grounds to refuse the application due to

the percentage of kitchens with direct access to ventilation failing to achieve the minimum 25%.

Given the above, it is considered that the proposed development is consistent with the Design Quality Principles contained in SEPP 65, responds appropriately to the site's context, and is considered to generally conform with the key 'rules of thumb' contained in the Residential Flat Design Code.

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

Schedule 3 of the Infrastructure SEPP 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 in Schedule 3 of the SEPP and has direct access to Stacey Street which is a classified road. The proposal was accordingly referred to RMS for comment.

The RMS has reviewed the proposed development and raised no objection, subject to certain conditions of consent addressing matters including road noise mitigation, car parking layout, vehicle manoeuvring, stormwater and civil works and potential impacts on RMS assets, and impacts during construction. These requirements have been included in the attachment to this report as recommended conditions of consent.

Clause 102 of the Infrastructure SEPP also requires consideration to be given to acoustic impacts on proposed residential units where development is to occur adjacent to roads where the average number of vehicle movements per day exceeds 40,000. Stacey Street is an arterial road where the vehicle movements per day exceed 40,000. As such, an acoustic report has been submitted with the application, and a condition is to be imposed requiring compliance with the findings of the acoustic report, and the requirements of the Infrastructure SEPP.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (Deemed SEPP)

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that it is generally consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of the GMREP 2.

Bankstown Local Environmental Plan 2001 (BLEP 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 17	General environmental considerations
Clause 19	Ecologically Sustainable Development
Clause 20	Trees
Clause 24	Airports
Clause 30	Floor Space Ratios
Clause 48	Objectives of the business zones

An assessment of the Development Application revealed that the proposal fails to comply with the provisions of the Bankstown Local Environmental Plan 2001 relating to floor space ratio (Clause 30) and airports (Clause 24).

Floor Space Ratio

Clause 30(2) of the BLEP 2001 stipulates that the floor space ratio (FSR) for this site is 3:1, or 2:1 where the site has a frontage of less than 30m. The subject site has frontage of 37.795m to Stacey St, but also has a frontage of only 11.7m to Cross St. In accordance with the definition of primary frontage in the BLEP 2001, both frontages are considered to be primary frontage. As such, the site is considered to have a frontage of less than 30m, and therefore the maximum FSR of 2:1 would apply. The subject application demonstrates a floor space ratio of 2.92:1

The applicant has submitted an objection pursuant to State Environmental Planning Policy No. 1 (SEPP 1), seeking to vary the Floor Space Ratio Standard in Clause 30(2) of the BLEP 2001. The Objection is reproduced as follows:

2.1 Is the Planning Control in question a Development Standard?

The planning control in question is a development standard for maximum FSR. Clause 30(2) requires Council to ensure the development of land upon does not exceed a FSR of 3:1 on this site if it has a minimum frontage of 30m or no greater than 2:1 if the frontage is less than 30m. This control is a numerical development standard and therefore is capable of being varied under the provisions of SEPP 1.

2.2 What is the underlying purpose of the standard?

The specific objectives of the FSR development standard in Clause 30(1) of BLEP are:

- (a) to generally regulate the scale and bulk of development consistently with the capacity and character of the area of the development site,
- (b) to ensure non-residential development in residential zones is of a similar scale to that of permitted residential development,
- (c) to regulate the intensity of development in business zones consistently with the role and function of the particular business centre, the capacity of the road network to accommodate business-related traffic, and the availability of public transport,
- (d) to provide an incentive for redevelopment of key sites in the Bankstown CBD,
- (e) to ensure that business and retail development in industrial zones is of a scale comparable to mainstream industrial zone activity and does not attract development more appropriately located in business zones.

The proposal would be consistent with the objectives of the FSR control for the following reasons:

- Although the built form is one building, it has been designed to present as two separate towers when viewed in the streetscape. The two tower elements provide a significant

height transition between each to create the illusion of two separate built forms. This feature of the building design in conjunction with significant levels of articulation in the elevations adequately regulates building bulk despite the non-compliance with the FSR standard.

- The rear section of the site is significantly constrained by its irregular shape and a large, open stormwater drain. Development on this site is, therefore, generally limited to the regular shaped front portion adjacent to Stacey Street. The proposed built form on the developable part of the site complies with the side and front setback controls. Compliance with these built form controls, in conjunction with those design features mentioned in the previous point including the transition in building height and façade treatments would ensure the built form does not present as an overdevelopment of the site.
- The quality of the overall design of the development, in particular, the presentation of a strong façade to Stacey Street would provide a positive visual impact on the locality and provide an excellent benchmark for future development within the South Terrace Precinct.
- The non-compliance with the FSR does not compromise any on or off-site future residential amenity. The proposal achieves the requirements of State Environmental Planning Policy No.65 – Quality design of residential flat development (SEPP 65) and the associated Residential Flat Design Code in terms of access to sunlight, natural ventilation, private open space and unit depths.

2.3 Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP& A Act 1979?

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are as follows:

“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 necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”

The objects set down in Section 5(a)(i) and (ii) are as follows:

- “(a) to encourage*
- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land...”*

Compliance with the Policy would not hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and co-ordinate orderly and economic use and development of land.

Despite the departure from the FSR development standard the proposal would co-ordinate orderly and economic use and development the land. If Council were to take the larger of the frontages in determining the relevant FSR for the site, which is 37.795m to Stacey Street then the development would comply with the standard.

It is not clear where it states in any of Council’s planning instruments that the smaller frontage is taken as being the determining factor for FSR on sites with two frontages. The only reference made is with respect to the definition of front building line in the BLEP 2001, which states:

Front building line means the line determined by the Council establishing the minimum setback of a building from the street alignment. In the case of an allotment with frontage to more than one street, the front building line applies to the shortest frontage.

In our opinion, this definition does not relate to determining the level of FSR attainable on a site and reference to this effect is not located within any of Council's planning instruments.

Notwithstanding the above, the objects of 5(i) and (ii) of the Act are upheld by the proposal for the following reasons:

- The additional FSR on the site above that permitted under the BLEP 2001 does not compromise future occupant amenity. The amended proposal satisfactorily meets the amenity requirements in SEPP 65 and the Residential Flat Design Code.
- The additional FSR proposed would not result in any adverse visual or amenity impacts on future development on adjoining properties given the bulk of the building has been positioned at the front of the site to enable a greater exposure of northern aspect particularly to the land to the south.
- The amended proposal has significantly improved the spatial separation of the proposal on the site in respect of future development on the adjoining site to the south by increasing the setbacks as the building gets higher.
- The increase in setbacks to the southern boundary has also facilitated achieving the Residential Flat Design Code guidelines in terms of the minimum percentage of units achieving natural ventilation and the maximum number of south facing units
- The amended proposal has reduced the level of FSR by 0.07:1
- Any perceived building bulk and scale as a result of the additional FSR is mitigated through the design via high levels of articulation, significant height transitions used to make the building appear as two separate towers and compliance with the side and front building setback controls in Council's Development Control Plan (DCP).
- The proposal would introduce a high quality design that would provide a positive visual element to the current streetscape and general locality
- The proposal provides a varied mix of apartment sizes that ensures the development would appeal to a broad spectrum of single person or family units
- The proposal provides alternative, quality affordable housing to the Bankstown area within a central location that is accessible to essential services

Given the above reasons, the departure from and strict compliance with the development standard for FSR would not result in any discernible benefits to the community. Further, the proposal satisfies the zone, site specific and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the proposal. Consequently, the proposal would be consistent with the provisions of orderly and economic development.

2.4 Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

In the decision of Justice Preston in *Wehbe V Pittwater* [2007] NSW LEC 827, five ways of establishing that compliance with a development standard is unreasonable or unnecessary. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the standard are achieved notwithstanding non-compliance with the standard. This method of demonstrating that compliance is unreasonable and unnecessary has been determined as the most appropriate way in the circumstances of this case.

It is submitted strict numerical compliance would be unnecessary and unreasonable on the basis of that:

- The additional FSR would not compromise the amenity of the proposed units or their future occupants given the development achieves the requirements of SEPP 65 and the Residential Flat Design code with respect to access to sunlight, natural ventilation and private open space
- The additional FSR proposed above the standard and the non-compliance would not result in any adverse impacts in terms of overshadowing or loss of privacy to existing or future adjoining development. This has been satisfactorily demonstrated with solar access and privacy studies submitted with the amended design to Council.
- The development of land is consistent with the general aims and objectives of the Bankstown Local Environmental Plan 2001.

Given the circumstances of the case, the provision of a strict numerical compliance would be unnecessary and unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard.

2.5 Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case?

In our opinion, the conservative and technical approach of taking the shorter of the street frontages for a site with two for the purposes of assigning the appropriate FSR standard does not promote a feasible development or encourage the provision of adequate levels of high quality, alternative and affordable housing options in a centre location that is tailor made for this form of development. Given these reasons, compliance with FSR standard of 2:1 is unreasonable in the circumstances of this case.

If the larger of the two street frontages were applied the development would comply with the standard. Given the proposal has demonstrated it can comply with side and front setback controls and the key residential amenity principles in SEPP 65 and the Residential Flat Design Code this clearly demonstrates that a FSR of 3:1 is appropriate for this site and hence, compliance with the technical application of the FSR standard is unnecessary.

2.6 Is the objection well founded?

The objection is well founded as compliance with the standard is both unnecessary and unreasonable.

Notwithstanding strict numerical compliance, the development is well founded for those reasons set out in sections 2.4 and 2.5 above.

2.7 Would non-compliance raise any matter of significance for state or regional planning?

The non-compliance would not raise any matter of State or Regional Significance. The variation purely relates to FSR and support of the variation would not impact upon State or Regional Planning considerations.

3.0 Conclusions

Whilst the amended proposal is non-compliant with the FSR development Standard in Clause 30 of BLEP 2001, it nevertheless continues to meet the objectives of the control and the site's Business zoning.

In addition, it is submitted compliance with the standard is both unnecessary and unreasonable for the following reasons:

- The technical application of the FSR control based on the site's shorter street frontage in the case where it has two, does not lead to either an efficient or feasible development of the land.
- It is clearly demonstrated that the proposal with an FSR of 2.92:1, can through quality design, achieve an exceptional visual and residential amenity outcome on this site
- The non-compliance would not result in any adverse impacts in terms of overshadowing or loss of privacy to existing or future adjoining development

- Any perceived building bulk and scale is nullified by the quality of the design a features including high levels of articulation and a significant height transition, which cleverly gives the appearance of two separate two elements when viewed within the surrounding locality. The bulk and scale has been further improved in the design by the increased setbacks of the building to the southern boundary of the site.
- The development of land is consistent with the general aims and objectives of the Bankstown Local Environmental Plan 2001

Given the above reasons, it is concluded that the objection is well founded and refusal of the DA on these grounds is not warranted.”

Given the assessment of the application, and consideration of the SEPP 1 Objection submitted, it is considered that the Objection pursuant to SEPP 1 is well founded, and that requiring compliance with the 2:1 FSR development standard would be unreasonable and/or unnecessary in this instance. The main frontage of the site is Stacey St, which achieves the minimum frontage requirement of 30m in order to allow for an increased FSR of 3:1 on the site. The non-compliant frontage is to Cross St, and no building component has been proposed at this frontage. Rather, this area has been set aside for vehicle access, garbage collection and communal open space. As such, the impact of the floor space provided to the development is predominantly limited to the part of the site fronting Stacey Street, and it is therefore considered appropriate to apply the Stacey Street frontage when considering the FSR permitted under Clause 30(2) of the BLEP 2001. In this instance, the FSR of 2.92:1 does not exceed the maximum of 3:1, and is therefore considered worthy of support in this instance.

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 45.72m. The proposed development incorporates a roof feature that terminates at a height of 46.2m and breaches the 45.72m height limit (measured from natural ground level), and was referred to BAL for concurrence.

BAL advise that 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 late January 2014, it was expected that this assessment, review and approval process might take several months to complete. However a response is still yet to be received, apart from advice that the plans and BALs assessment have been referred to the Civil Aviation Safety Authority (CASA) for consideration.

The projection above the maximum building height is consider to be minor. To enable the development assessment to proceed, and to provide some degree of certainty around the balance of the matters under assessment, it is recommended that a condition be imposed requiring concurrence to be obtained from BAL prior to the issue of a construction certificate, and that any additional requirements of BAL must also be satisfied prior to issue of a construction certificate.

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

The draft Bankstown Local Environmental Plan 2014 (Draft BLEP 2014) has been publicly exhibited and applies to the subject site, hence the draft instrument is a matter for consideration under Section 79C(1)(a)(ii) of the EP&A Act 1979. While the draft instrument proposes the introduction of some additional provisions, in the most part, the draft BLEP 2014 provides for an administrative conversion of BLEP 2001 to the standard instrument LEP template.

With respect to the proposed development, it is considered that the proposal remains consistent with the aims and objectives of the draft instrument. The draft instrument will alter the definition of gross floor area, with the area to be calculated from the internal face of external walls, whereas the current LEP measures gross floor area from the outer face of the external walls, meaning overall FSR will be reduced. The draft LEP will also introduce a height limit of 35m, which the application will fail. Given the stage at which the draft instrument is at, it would be premature to give determinative weight to the specific provisions contained within the draft instrument. Regardless, the height limit control of 30m relevant to this application is contained within the BDCP 2005, and is discussed in detail elsewhere in this report.

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

Part D4 of the BDCP 2005 – Commercial Centres

The application was lodged on 20 December 2013. An assessment of the application was completed against Part D4 of the BDCP 2005 as in force at the time of lodgement. It is noted that an amended version of Part D4 of the BDCP 2005 came into force on 24 March 2014.

The following table provides a summary of the development application against the relevant controls contained in both versions of Part D4 of the Bankstown Development Control Plan 2005, where the controls apply are not superseded by any controls within SEPP 65 and the RFDC:

STANDARD	PROPOSED	BDCP 2005 PART D4 – DEC 13		BDCP 2005 PART D4 – MAR 14	
		REQUIRED	COMPLIANCE	REQUIRED	COMPLIANCE
Height	43.2m (46.2m when roof element included)	30m	N – see below	N/A	N/A
FSR	2.92:1	2:1	N – see above	N/A	N/A
Setbacks Stacey St Cross St	9m 60m	9m 5m	Y Y	5m 0m	Y Y
Awning	Proposed along Stacey St	Must be provided	Y	Must be provided	Y
Car Parking (Part D8 of BDCP 2005)	190 spaces - 156 residential - 29 visitor - 5 commercial	Min 1 - Max 3 spaces per dwelling (146- 438 spaces); 1 visitor space per 5 dwgs (29 spaces); and 1 space per 40m ² of commercial (5 spaces)	Y	Min 1 - Max 3 spaces per dwelling (146- 438 spaces); 1 visitor space per 5 dwgs (29 spaces); and 1 space per 40m ² of commercial (5 spaces)	Y

Building Height

The proposed development incorporates an overall building height of 46.2m above natural ground level. This comprises a height of 43.2m to the top of the slab of Level 14 (i.e. the roof slab), and an additional 3m high roof element that sits above part of the roof, including the lift overrun of the front part of the building (Tower A).

Under the version of Part D4 of the BDCP 2005 in force at the time of lodgement of the DA, the maximum building height for this site was 30m. On 24 March 2014, an amendment to the BLEP 2001 was gazetted, incorporating changes to the provisions affecting the Bankstown CBD. One of these changes was to introduce a building height control within the Bankstown CBD, under Clause 30B. The height limit under Clause 30B increases to 35m. However, the clause does not apply to the subject application, as the application was lodged prior to its gazettal. Regardless, it is apparent that the proposed development, at a maximum height of 46.2m, does not comply with either the previous building height requirement of 30m in the BDCP 2005 (as applicable to the development), or the current requirement of 35m now in the BLEP 2001.

The applicant has submitted the following justification for the proposed breach of the maximum building height:

Building height

The maximum building height control in the BDCP 2005 for the site is 30m and/or 10 storeys. The application proposed a maximum height of 45.6m and 14 storeys and therefore does not comply with the control.

The departure from the control is acceptable in the circumstances of this case for the following reasons:

Site Constraints

The site has a very irregular shape and, in fact, it could almost be considered as two separate allotments given the narrow neck created in the middle of the site by the side boundaries converging. The rear section of the site has the most irregularity in shape and has a large open drain passing through it. These constraints at the rear of the site make it difficult to properly develop and, hence, the focus for the location of the built form has been placed on the front, more regular part of the land. The rear portion of the site has subsequently been dedicated to a large communal open space area and vehicular access.

Given the difficulty to develop the rear section of the site, some of the lost development potential, in order for it the proposal to be feasible has been transferred to the front portion. This subsequently reads as additional building height.

Building Height, Transition and Articulation

To accommodate the development proposal primarily on the front portion of the site and in order to reduce building bulk and scale derived from height, the design has accentuated the difference in height to create a two tower effect over a podium within in one building. The larger non-complying component of the proposal with respect to building height is located at the Stacey street frontage. By positioning the highest part of the building at the front of the site would:

- o Ensure the building has strong presence within the streetscape that, in conjunction, with a contemporary building façade would improve the visual amenity of the streetscape
- o Ensure that overshadowing of future adjoining development to the south is limited by not positioning significant height in the centre of the property

- o Ensure that a greater number of apartments can take advantage of the site's north eastern aspect for natural light penetration and ventilation

An assessment of the building height has been undertaken, and consideration given to the justification provided by the applicant. The site does present as almost two separate sites, given the narrow nature of the centre of the site. It is acknowledged that the inability to develop the rear portion of the site would result in a significant reduction in the overall development yield, and it is considered appropriate to relocate the gross floor area permitted on this portion of the site to the Stacey Street portion of the allotment. It is further acknowledged that this will result in a breach of maximum building height at the front portion of the site. However, it is considered that concentrating the building form at the front/Stacey St portion of the site is a better outcome than spreading the building form along the full east-west orientation of the site. The additional building height will result in some additional overshadowing, but the concentration of building bulk to the eastern end of the site will ensure reduced overshadowing at the western end of the site, which is advantageous for development on adjoining sites to the south.

Stacey Street marks the eastern edge of the Bankstown CBD and is a visible point of transition from land that is zoned residential to land that is zoned primarily for commercial and high-density purposes. The proposed building is considered to be of appropriate architectural character and will contribute positively to the streetscape, particularly in the context of the precinct being one in a state of transition from low-rise commercial to high-density/high-rise mixed commercial-residential development. The additional building height is considered to have been appropriately incorporated into the architecture of the overall development, and is not considered to result in a significant loss of amenity to surrounding sites, particularly when compared to a compliant scheme.

As such, it is considered that the variation to the maximum building height is worthy of support in this instance.

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

Not applicable in this instance.

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

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

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

The proposed development is not considered likely to result in any significant detrimental environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development controls and/or the 'rules of thumb' in the RFDC occur, the impact is not considered to be unreasonable or likely to be significantly detrimental. As such, it is considered that the impact of the proposed development on the locality will be acceptable.

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

The site considered suitable for the proposed development.

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

The application was advertised and notified for a period of twenty-one (21) days, from 15 January to 4 February 2014. Following the submission amended plans and details, the application was re-advertised and notified for a further period of twenty-one (21) days, from 13 August to 2 September 2014. Following these advertising and notification periods a total of six (6) objections were received (6 following the first period, and 4 more following the second period, all from groups that had provided submissions in the first round of notification), raising concerns relating to traffic impacts and car parking, building separation, building height, floor space ratio, privacy and acoustic impacts, stormwater, communal open space and construction impacts.

1. Traffic Impacts and Car Parking

The development proposes to have all vehicles access the site from Cross St, which will exacerbate an already dire situation in terms of traffic congestion in this precinct. Insufficient parking spaces have been provided, and visitor parking spaces have been provided within the secured parking area.

Comment: The application has been assessed by Council's Traffic Engineers, and has been referred to Roads and Maritime Services (RMS) for consideration of the impact of the development on the road network.

RMS has advised that where access is available to a site from a road other than an arterial road (Stacey St being an arterial road), then the RMS's preference is for vehicle access to not be provided from the arterial road. The RMS have reviewed the proposed development and provided concurrence and conditions to be imposed on any development consent.

Council's Traffic Engineers have reviewed the application, and advised that the development is considered to be worthy of support on the grounds of impact on traffic and the nearby road network, subject to conditions. The provision of 190 parking spaces for 146 units and 2 commercial tenancies complies with the requirement of Council's DCP. Council has accepted the provision of visitor parking spaces inside the secure car parking area, subject to a condition being imposed for an intercom system to be installed to allow visitors to contact residents and obtain access to these spaces.

As such, it is considered that the proposed development satisfactorily addresses the issues of car parking and traffic impacts.

2. Floor Space Ratio

The SEPP 1 Objection states that the FSR variation should be supported as the

development will have no adverse impacts, particularly in terms of overshadowing or loss of privacy. This is disputed as a misstatement of fact, and the SEPP 1 Objection therefore cannot be well founded.

Comment: This matter has been dealt with in detail elsewhere in this report (See assessment of Floor Space Ratio under Bankstown LEP 2001 discussion above).

3. Building Height

The proposed development significantly breaches the maximum building height permitted in the BDCP 2005. The applicant states that the constraints of the subject site make it difficult to comply and it is not believed that this is a compelling argument for variation. The building will be out of scale and character with surrounding development, and will result in significant overshadowing of properties to the south, possibly reducing development potential of these sites.

Comment: This matter has been dealt with in detail elsewhere in this report (See assessment of Building Height under Bankstown DCP 2005 discussion above).

4. Building Separation

The application fails to meet the building separation requirements of the RFDC, and this will have an impact on the development potential of adjoining sites should they ever look to develop.

Comment: This matter has been dealt with in detail elsewhere in this report (See assessment of Building Separation under SEPP 65/RFDC discussion above).

5. Privacy and Acoustic Impacts

There will be significant privacy impacts on the adjoining properties to the north (school) and west (child care centre) from a 14-storey building setback 6m from the common boundaries. Fixed-louvred screens should be provided to balconies to limit potential overlooking and throwing of projectiles into adjoining properties. Acoustic impacts from existing uses should be considered and the units with aspect to these existing commercial uses should be redesigned so as not to impose future constraints on the operation of existing uses due to the increased residential density on the vicinity.

Comment: The applicant has amended the plans to provide louvred screens to the balconies of all north-facing units from Level 6 upwards, in order address the potential for impact on privacy/overlooking of the adjoining site to the north. The provision of balconies and living area windows facing west is limited to one unit per floor (i.e. 12 units) in the western elevation, and it is considered that privacy impacts on sites to the west of the subject site and therefore limited and are considered to be within acceptable limits.

The orientation of units in the development is considered to be appropriate, particularly given compliance with the RFDC requirements for solar access and cross ventilation. It is not considered that additional modifications are warranted in order to protect units from any acoustic impacts associated with nearby existing commercial uses. The most significant acoustic impact is considered to come from Stacey St (being an arterial road carrying in excess of 40,000 vehicles per day), and the development is considered to have appropriately addressed this acoustic impact in terms of unit layout.

6. Stormwater

Modifications to the existing easement must ensure that there are no changes in the level of impact experienced by properties affected by/benefitting from the easement, involve no cost to properties affected by/benefitting from the easement, and not affect development potential of nearby sites.

Comment: Council's Engineers have advised that the proposed stormwater drainage system is satisfactory, and conditions can be imposed on any development consent regarding the relocation of the stormwater drainage easement on site, and the need for agreement on the relocation with those sites that benefit from the easement.

7. Communal Open Space

The proposed development fails to comply with the BDCP 2005 requirement for communal open space to be provided at a rate of 25m² per dwelling, which would result in 3650m² needing to be provided.

Comment: The requirement in Part D4 of the BDCP 2005 for communal open space is superseded by the requirement for communal open space in the RFDC under SEPP 65, which requires 25-30% of the site area to be provided as communal open space. In this instance, a minimum of 33% of the site area has been provided as communal open space, which meets the RFDC requirement, and is considered appropriate. It is noted that under the amended current version of Part D4 of the BDCP 2005, there is no requirement for Communal Open space, given that this is dealt with in the RFDC.

8. Construction Impacts

Construction vehicles will impact on the movement of traffic in the surrounding streets, especially during peak periods. Dust, vibration and other construction impacts will be unsatisfactory on adjoining properties during demolition and construction.

Comment: Conditions will be imposed on any development consent requiring appropriate measures to be incorporated during demolition and construction periods to ensure impacts on adjoining properties from construction related matters are minimised. A Site Pedestrian and Traffic Management Plan will need to be prepared and approved by Council for the management of construction vehicles and access to the site during demolition/construction periods, and will be covered through a condition of consent.

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

Based on the assessment of the development application, above, the proposed development is not considered to contravene the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act, 1979* and the specific environmental planning instruments, including State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Developments and the Bankstown Local Environmental Plan 2001, as well as Part D4 of the Bankstown Development Control Plan 2005. The application fails to comply in regards to floor space ratio, building height and building separation. However, the assessment of the development application has found that these variations are justified in the circumstances of this case, in the context of both the overall development and the surrounding locality.

RECOMMENDATION

It is recommended that the application be approved subject to the attached conditions.

Attachments:

- A – Conditions of Consent
- B – Notification Plan
- C – Site Plan
- D – Level 1 Overview
- E – Basement Level 1
- F – Basement Level 2
- G – Level 1 Ground Floor Plan
- H – Level 2 Podium Floor Plan
- I – Levels 3-7 Floor Plan
- J – Level 8 Floor Plan
- K – Levels 9-10 Floor Plan
- L – Level 11 Floor Plan
- M – Level 12 Floor Plan
- N – Level 13 Floor Plan
- O – Level 14 Floor Plan

P – Roof Plan
Q – North and East Elevations
R – South and West Elevations
S – Sections
T – Detail Section - Privacy Screening
U – Shadow Diagrams
V – Shadow Studies
W – Communal Open Space Area - Perspective