

**ITEM**                      **Section 96(2) Modification Application reported to the Sydney West Joint Regional Planning Panel (JRPP) for determination in accordance with Part 4 (Regional Development) of State Environmental Planning Policy (State and Regional Development) 2011**

**FILE**                      **DA-821/2012/1 - East Ward**

**JRPP Reference: 2014SYW013**

**AUTHOR**                **City Planning and Environment**

## **REPORT**

Under the provisions of the Environmental Planning and Assessment Act, 1979 (the Act), and State Environmental Planning Policy (State and Regional Development) 2011, certain development applications are to be determined by Joint Regional Planning Panels (JRPP), which are established under the Act.

The attachment to this report contains a Section 96(2) application to a development application for which the Sydney West Joint Regional Planning Panel (JRPP), rather than Council, is the consent authority. This item is:

### **DA-821/2012/1 for 351 Hume Highway, Bankstown**

Demolition of existing site structures, construction of five (5) residential flat buildings varying in height between 3 and 5 storeys containing 100 residential apartments with associated landscaping, underground and at grade carparking.

Section 96(2) involving modifications to setbacks and building footprints, additional basement levels, internal layout changes and an increase in the number of residential apartments from 100 to 110.

In accordance with the legislation, an assessment report has been prepared for the modification application and the report has been provided to the Panel Secretariat for consideration at the following scheduled JRPP meeting of 6 November 2014.

The legislation which governs the assessment and determination of JRPP matters provides that the elected Council cannot have a role in approving, authorising or endorsing the assessment report.

However, Council has the opportunity to provide a submission to the JRPP on the modification application. Those Councillors which have not been appointed to the JRPP, can determine to provide a submission to the JRPP about the modification application. The Council is able to be represented at the JRPP meeting to address the meeting about its submission.

Accordingly, the assessment report on the modification application is provided to Councillors as part of this Ordinary Meeting agenda to assist elected Council in its deliberations about any potential submission to the Joint Regional Planning Panel.

## **RECOMMENDATION**

That the contents of the attached report be noted.

<b>ITEM</b>	<p>351 Hume Highway, BANKSTOWN NSW 2200</p> <p>Demolition of Existing Site Structures, Construction of Five (5) Detached Residential Flat Buildings Varying in Height Between 3 and 5 Storeys Containing 100 Residential Apartments with Associated Landscaping, Underground and at Grade Carparking</p> <p>S96(2) Amendment:</p> <ul style="list-style-type: none"> <li>• <u>Blocks A &amp; B</u> North elevation setback a further 900mm - 1000mm from the front property boundary and an additional basement level.</li> <li>• <u>Block C</u> Basement modification, internal layout changes, including increase of units from 18 to 20.</li> <li>• <u>Block D</u> Basement modification, internal layout changes. Northern façade changed from an angled façade to a stepped façade.</li> <li>• <u>Block E</u> Additional basement level. Internal layout changes, including increase of units from 26 to 28.</li> <li>• <u>Block F</u> Internal layout changes, including increase of units from 22 to 28.</li> </ul>
<b>FILE</b>	DA-821/2012/1 - East Ward
<b>ZONING</b>	2(b) - Residential B
<b>DATE OF LODGEMENT</b>	16 December 2013
<b>APPLICANT</b>	Statewide Planning Pty Ltd
<b>OWNERS</b>	Bankstown Development Pty Ltd
<b>SITE AREA</b>	8589m <sup>2</sup>
<b>AUTHOR</b>	Development Services (Kristy Bova)

## **SUMMARY REPORT**

On 18 July 2013, the Sydney West Joint Regional Planning Panel approved Development Application No. DA-821/2012, which proposed the demolition of existing site structures, construction of five (5) detached residential flat buildings varying in height between 3 and 5 storeys containing 100 residential apartments with associated landscaping, underground and at grade carparking at 351 Hume Highway, Bankstown. The Capital Investment Value of the works was \$21.56 million.

This current application (DA-821/2012/1) proposes the following modifications to the application previously approved by the Panel:

- **Blocks A & B**  
North elevation setback a further 900mm - 1000mm from the front property boundary and an additional basement level.
- **Block C**  
Basement modification, internal layout changes, including increase of units from 18 to 20.
- **Block D**  
Basement modification, internal layout changes and change of unit mix. Northern façade changed from an angled façade to a stepped façade.
- **Block E**  
Additional basement level. Internal layout changes, including increase of units from 26 to 28.
- **Block F**  
Internal layout changes, including increase of units from 22 to 28.

The proposed modifications are sought under section 96(2) of the *Environmental Planning and Assessment Act, 1979*. In accordance with the relevant provisions of the Major Developments SEPP, the Section 96(2) modification is reported to the Joint Regional Planning Panel for determination.

DA-821/2012/1 has been assessed against *Bankstown Local Environmental Plan 2001*, *Bankstown Development Control Plan 2005*, *Georges River Regional Environmental Plan No. 2* and *Draft Bankstown Local Environmental Plan 2014*, and the application is considered to satisfy all relevant development standards, with the exception of a proposed variation to floor space, density and landscape area.

The application was advertised and notified for a period of twenty-one (21) days, from 29 January until 19 February 2014. One (1) submission was received during this period, which raised the following concerns:

- *The merits of 100 units being constructed adjacent to a primary school and a high school.*
- *Potential traffic implications for the Hume Highway.*
- *Whether the schools have been approached to seek their thoughts on the proposed development.*

- *Whether there is a safety impact on the school children or an amenity impact on the church.*
- *Concerns whether the planning controls permit the nature and scale of this development.*

## **POLICY IMPACT**

The matter being reported has no direct policy implications.

## **FINANCIAL IMPACT**

The matter being reported has no direct financial implications.

## **RECOMMENDATION**

It is recommended that the application be approved subject to the attached modified conditions (see Attachment C), including the following specific amendments to Conditions 2, 3, 14, 17, 64 & 74 as detailed below:

- Condition 2 has been amended to refer to the amended plans.
  - Condition 3 has been amended to refer to the amended acoustic report.
  - Condition 14 has been amended to adjust the Section 94A Contribution figure, as the cost of works has increased as a result of the proposed changes.
  - Condition number 17 has been amended to refer to Blocks B D, E & F due to the relabeling of Blocks.
  - Condition 64 has been amended to reflect the increase in number of car parking spaces.
  - Condition number 74 has been amended to reflect changes to the waste collection and storage areas.
- 2) Development shall take place in accordance with Development Application No.DA-821/2012, submitted by Statewide Planning, accompanied by Drawing No. A108 to A114 Rev, dated 24/4/2013, A300 Rev, dated 7/9/2012, A301 – street, west and block A south elevations Rev B, dated 24/4/2013, A301 – street, west and south elevation Rev B, dated 24/4/2013, A302 Rev B, dated 24/4/2013 & A303 Rev B, dated 17/1/2013, prepared by Tony Owen Partners, *unless altered, amended or superseded by the Section 96(2) Amendment Application No. DA-821/2012/1, by Drawing No. A108, A109, A110, A111, A112, A113 & A114 Rev H, dated 17/10/2014, and Drawing No. A300, A301, A302 and A303, Rev C, dated 15/04/2014, prepared by Tony Owen Partners, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.*

The development plans shall be amended as follows:

- a) Letterboxes within central lift lobby. All Construction Certificate plans shall be consistent with this requirement.
  - b) A wall shall be constructed adjacent to the temporary bin storage/collection point (for Blocks A, B, C & D) and an associated roller shutter, as marked in red on the approved plans.
- 3) *The recommendations of the Acoustic Report by Vipac 10 April 2014 are to be fully implemented.*
- 14) *Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$249,447.05 shall be paid to Council.*

*The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.*

**Note:** *The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.*

- 17) *The louvres/privacy screens shown on the eastern elevation of Block B, D, E and F, including to the balconies, shall be constructed in a manner that will prevent views into the adjoining St Felix de Valious Catholic School property at 347A Hume Highway, Bankstown.*

*Details are to be shown on the plans which accompany the Construction Certificate and shall be certified as compliant prior to the issue of the Occupation Certificate.*

- 64) *A minimum of one hundred and sixty (160) off street car spaces being provided in accordance with the submitted plans. This shall comprise:*

*One hundred and twenty nine (136) residential spaces*

*Twenty (22) residential visitor spaces*

*Two (2) of the above car parking spaces are to be provided for people with mobility impairment in accordance with AS 2890.1. All car parking spaces shall be allocated and marked according to these requirements.*

- 74) *Waste and recycling generated by the occupants of the development following the issue of the Final Occupation Certificate shall be collected by Bankstown City Council.*

*A waste collection area for the temporary storage of bins awaiting collection shall be provided for Blocks A, B, C & D in the area marked in red on the approved plans. The bins for Blocks A, B, C & D shall be stored in the basement and transferred up to the collection point a maximum of 24 hours prior to the scheduled Council collection times (and transferred back to the basement within 24 hours of the waste being collected). Site management shall be responsible for the transfer of bins and is not the responsibility of Council.*

## **ATTACHMENTS**

- A - Assessment Report
- B - Locality Plan
- C - Amended Conditions of Consent
- D – Lower Basement Plan (as amended)
- E – Lower Ground Floor Plan (as amended)
- F – Ground Floor Plan (as amended)
- G – Level 1 Floor Plan (as amended)
- H – Level 2 Floor Plan (as amended)
- I – Level 3 Floor Plan (as amended)
- J – Roof Plan (as amended)
- K – Section A & B East Elevations
- L – Street West & Block F South Elevations
- M – Block F & E North Elevations & Block C East Elevations
- N – Block D West West Elevation & Block A & B South Elevation

## **DA-821/2012/1 ASSESSMENT REPORT**

### **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 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. Adjacent to the site to the west is Bankstown Fire Station and two residential flat buildings and further to the west of the site is a cluster of detached dwellings. To the north (opposite the site) are warehouse/showroom buildings, one of which has recently been approved for demolition, together with the consolidation of lots and the construction of 182 residential units, including commercial floor space (determined by the JRPP on 9 May 2013). 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 Boulevarde 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 Street to the east, and some medium/high density residential development in the form of residential flat buildings within Meredith Street to the west and south west.



## PROPOSED DEVELOPMENT

This application is submitted under the provisions of section 96(2) of the *Environmental Planning and Assessment Act, 1979*. The application seeks to amend Determination Notice No. DA-821/2012, and involves the following modifications:

- **Blocks A & B**  
North elevation setback a further 900mm - 1000mm from the front property boundary and an additional basement level.
- **Block C**  
Basement modification, internal layout changes, including increase of units from 18 to 20.
- **Block D**  
Basement modification, internal layout changes and change of unit mix. Northern façade changed from an angled façade to a stepped façade.
- **Block E**  
Additional basement level. Internal layout changes, including increase of units from 26 to 28.
- **Block F**  
Internal layout changes, including increase of units from 22 to 28 and change of unit mix

## SECTION 96(2) ASSESSMENT

The proposed modifications have been assessed pursuant to section 96(2) of the *Environmental Planning and Assessment Act, 1979*.

- (a) ***it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and***

The proposed modifications will result in a development that remains substantially the same as that which was originally approved in so far as the built form of the development remaining as five (5) detached residential flat buildings. The extent of the modifications are minor and are mostly internal and not visibly apparent externally of the site.

- (b) ***it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and***

There was no requirement to consult with the Minister, a public authority or an approval body.

- (c) ***it has notified the application in accordance with:***
- (i) ***the regulations, if the regulations so require, or***
  - (ii) ***a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***

The modification was advertised for a period of 21 days consistent with the period of advertising undertaken with the original proposal.

- (d) ***it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.***

During the advertising period one (1) submission was received, which raised concerns relating to the following:

- *The merits of 100 units being constructed adjacent to a primary school and a high school.*

The original application was approved by the JRPP on the 18th July 2013. This application to modify the development consent is now being referred to the Joint Regional Planning Panel (JRPP) for consideration. The site is zoned 2(b) Residential B, in which residential flat buildings are a permissible form of development.

- *Potential traffic implications for the Hume Highway.*

The original application was referred to the Roads and Maritime Services (RMS) and concurrence was granted. The application to modify the development consent does not involve any changes to access provisions/driveway locations and was not required to be sent back to the RMS for consideration.

- *Whether the schools have been approached to seek their thoughts on the proposed development.*

The application was advertised/neighbour notified as part of the application process. During the advertising/notification process, the adjoining properties (including the schools) were advised of the proposed changes to the original development approval and invited to provide comment. Only one submission was received in respect to this advertising/notification process.

- *Whether there is a safety impact on the school children or an amenity impact on the church.*

The original proposal for 100 residential units was assessed as being appropriate in the context of the existing adjoining land uses. The changes proposed as part of this modification application, mainly being the additional 10

residential units, will not result in the development being incompatible or unsuitable having regard to the occupants of the adjoining sites.

- *Concerns whether the planning controls permit the nature and scale of this development.*

The land is zoned 2(b) Residential B, in which residential flat buildings are permissible. The development as modified, remains compliant with all other relevant development standards and is consistent with the original assessment of the original development application in terms of the developments impact on the locality.

## **SECTION 79C ASSESSMENT**

The proposed modifications have 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) 2011 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 originally had a capital investment value of \$21,563,103 and accordingly, the development application was reported to the Sydney West JRPP for determination. As a result of the changes proposed under this application, the cost of works has increased to \$24,944,705.

Clause 21 of the SEPP requires that applications to modify development consents under Section 96(2) of the Act, require the application to be reported back to the JRPP for determination.

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

The original application exceeded the thresholds listed within Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) and has direct access to Hume Highway which is a classified road. The original proposal was accordingly referred to the Roads and Maritime Services (RMS) for comment. Clause 104 of the Infrastructure SEPP does not require referral of the proposed modification to the RMS for consideration. Regardless, the increase in floor area (resulting in an increase in FSR from 1:1 to 1.05:1) and an increase in car parking spaces (up from 149 to 165 spaces) are not considered to be of significant impact, and these modifications are considered to be acceptable.

An amended acoustic report has been submitted with the subject Section 96(2) application, which states that the proposed modifications to the approved development are considered to be satisfactory. Provided that the recommendations

of the report are implemented, the building will satisfy the noise criterion as established within the SEPP. The application will be conditioned to be constructed in accordance with the amended acoustic report.

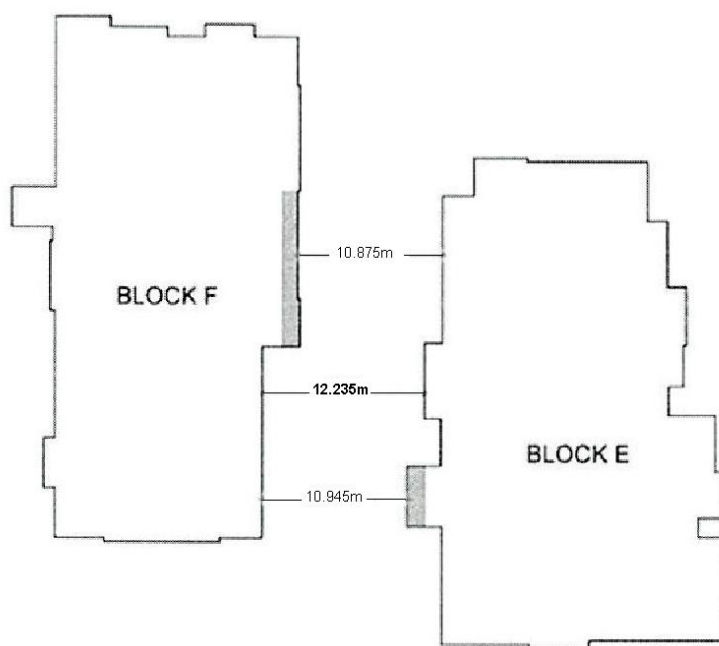
### State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

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 application as modified has been assessed in accordance with the SEPP, which 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"(RFDC). The development as modified is considered to remain consistent and satisfactory with the design principles of the RFDC. However, it is noted that there is a now minor departure of the RFDC's recommended 12m building separation between two buildings within the development proposed under this Section 96(2) Application.

- *Building separation*

Generally, the subject application as modified provides sufficient separation between buildings. The Residential Flat Design Code recommends a minimum dimension or distance of 12m between habitable room/balconies for buildings up to 4 storeys. However, the development as modified does not provide the minimum 12m between Blocks E and F as shown in the figure below.



The internal encroachments mentioned above are considered minor as they represent a shortfall of around 9% of the recommended 12m. As the development otherwise provides 12m, overall the development is considered to provide adequate spatial relief between the buildings to allow for sufficient visual and acoustic privacy.

#### Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

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

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 Modification 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 of Clause 30 – Floor Space Ratios.

Clause 30 of the BLEP sets the maximum floor space ratio for this site at 1:1. The original application was approved with a FSR of 1:1. The proposed modification seeks approval for an increase in floor space (generally resulting from internal reconfigurations and the minor realignment of Block E and F as previously mentioned in this report) to result in a floor space that has been calculated at 1.05:1. This represents an increase in the maximum allowable FSR of 5% or 429.45m<sup>2</sup> above the maximum permitted GFA of 8589m<sup>2</sup>.

While the proposal provides for a breach to the maximum permitted floor space ratio for this site, in the event that the application is for a modification to a development consent, a SEPP 1 Objection is not required. In the Court case *Gann v Sutherland Shire Council (2008)* it was determined that a SEPP 1 objection relates to a “development application” and not to a modification of development consent. Notwithstanding the findings of the Court, the consent authority are still able to consider the increase in FSR on its merit having regards to the matters provided under Section 79C of the *Environmental Planning and Assessment Act, 1979*.

A merit assessment concludes that the proposed increase in FSR is considered worthy of approval in this case for the following reasons:

- The development as modified remains largely consistent in terms of it’s bulk, scale, building height, building envelope, site coverage, setbacks, access and appearance to what was originally approved.
- The realignment or minor increase in the internal elevation of Blocks E & F reduce the distance between these buildings (as previously mentioned in this report). As the walls are not facing an adjoining boundary and are internal of the development, the amendment is not visibly apparent, still providing adequate spatial relief between the buildings to allow for sufficient visual and acoustic privacy.
- Although an increase in FSR is proposed under this modification, the objectives of Floor Space Ratios have been met. The objectives of Council’s floor space ratio control is specified in Clause 30(1) of BLEP 2001, which provides as follows:

*30 Floor space ratios*

*(1) The objectives of the floor space ratios adopted by this plan are as follows:*

- (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 following arguments have been provided by the applicant in support of the variation:

*Most of these changes are minor changes which are internal within the site and will not cause significant additional impact which has not already been considered. Importantly, it is also considered that the relevant objectives outlined Clause 30(1) of the BLEP 2001 are not diminished or compromised by this modification:*

*(1) The objectives of the floor space ratios adopted by this plan are as follows:*

- (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.*

*It is contended there is no substantial increase in the overall intensity of the development that would render it inappropriate within the character of the area or inappropriate having regard for the area's capacity to accommodate this development.*

*Floor space ratio has been a popular planning tool for many years in controlling the overall 'intensity' of development. It is however becoming more recognised as a 'blunt tool' which has limited use at the detailed design stage of a building. For instance, the achievable floor space that results in any development will vary from site to site depending on topography, shape, width, location and size of other nearby buildings, community perceptions as well as the context and overall vision for the area. Some sites are suited to higher FSR than others; that is just how it is.*

*It is rare to ever hear anyone comment on a building by saying: "that building has an FSR that is too high". Conversely it is quite common to hear people say a building is: "too tall" or "too close to the street" or "plain ugly".*

*So to satisfactorily examine whether the floor space ratio is too high it is really appropriate to look at the impacts of that building. I contend that if the impact is acceptable and the development outcomes are desirable, then the building should be approved whatever the floor space ratio.*

*In this case the impacts of the buildings have been well examined previously and the development has been approved. With no change in site constraints, it is appropriate to examine the potential impacts of any changes to the design. Cleverly, the additional floor area is essentially created through more efficient internal designs and minor 'massaging' of the building footprints. Proposed protrusions from the approved buildings are very minor (within 500mm) and face internally to the site rather than towards neighbouring properties. No wholesale changes are proposed to building heights although there are a couple of isolated areas where height is increased. Given the same building forms are being used there will be no significant new impacts arising from overshadowing or privacy. There is also no loss of views that would result. These remain the primary indicators of whether a building mass is too large in its context. It is considered that the proposed floor space is acceptable in this instance and that the variation to the LEP standard is able to be supported by Council on this basis.*

*As the development as modified remains largely consistent in terms of its bulk, scale, building height, building envelope, site coverage, setbacks, access and appearance to what was originally approved, it is considered that there will be no significant appreciable visual impact as a result of the proposed increase in floor space ratio.*

Further, the application to modify the development consent remains consistent with the objectives of floor space under BLEP 2001 and the impact of the proposal is assessed in the subsequent sections of this report, which finds that the proposal is unlikely to contribute to a significant adverse impact on the adjoining properties.

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

The draft Bankstown Local Environmental Plan 2014 (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 application to modify the development consent, it is considered that the proposal remains consistent with the aims and objectives of the draft instrument. To give determinative weight to the specific provisions contained within the draft instrument would be premature given the stage at which the draft instrument is at. Nevertheless, approval of the development would not be inconsistent with the intent and purpose of these provisions.

Notwithstanding the comments provided above, it is relevant to note that under the Draft Bankstown Local Environmental Plan 2014 'gross floor area' is defined as ...

*"the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:*

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) Any shop, auditorium, cinema, and the like, in a basement or attic"*

In light of the fact that Council's current LEP definition of 'gross floor area' is measured including the external walls, the overall gross floor area of this development (if measured under the definition proposed in the draft LEP) would be considerably less. That is, in regards to calculating the floor space ratio under the draft LEP (thereby measuring the gross floor area from the internal face of the external walls) the FSR would be lower than the current calculation of 1.05:1.

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

The development has been assessed against the following provisions of Bankstown Control Plan 2005 (BDGP 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 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
		Approved	Required	Compliance	
Floor Space Ratio	1.05:1	1:1	1:1	No	No
Carparking	165 spaces	149 spaces	160 spaces	Yes	NA
Setbacks	Maintains the approved building setbacks except Block A & B which provides an additional 1m setback from the street.	<ul style="list-style-type: none"> <li>• 9 metres</li> <li>• 4.795m (to Block D)</li> <li>• 8.9m (to Block C)</li> <li>• 11.77m</li> <li>• 2m</li> <li>• Greater than 4 metres</li> </ul>	<ul style="list-style-type: none"> <li>• Hume (Front) 9 metres</li> <li>• East (side) 4.5 metres provided the average is at least 0.6 x the height</li> <li>• West (side) 4.5 metres provided the average is at least 0.6 x the height</li> <li>• South (rear) 4.5 metres provided that average is at least 0.6 x the height</li> <li>• Basement (side / rear) Minimum 2 metres</li> <li>• Internal Minimum 4 metres</li> </ul>	Yes	N/A
Height	The S.96 Modification does not propose any changes to the original approved building height				
Solar Access	70%	70%	70% of units to receive 3 hours to a living room window	Yes	NA
Site Density	Shortfall of 1131m <sup>2</sup>  Total site area required for 110 Units = 9720m <sup>2</sup> (6 small and 104 medium dwellings)	Complied  Total site area required for 100 Units = 8520m <sup>2</sup> (16 small and 84 medium dwellings)	<ul style="list-style-type: none"> <li>• Small dwellings = 1/60m<sup>2</sup> of site area</li> <li>• Medium dwellings = 1/90m<sup>2</sup> of site area</li> <li>• Large dwellings = 1/120m<sup>2</sup> of site area</li> </ul>	No	N/A
Landscaping	Shortfall of 694m <sup>2</sup>  Provided = 3616m <sup>2</sup>  Required = 4310m <sup>2</sup> (6 small units X 25m <sup>2</sup> and 104 Medium units X 25m <sup>2</sup> )	Complied  Provided = 3774.3m <sup>2</sup>  Required = 3760m <sup>2</sup> (16 small units X 25m <sup>2</sup> and 84 medium units X 40m <sup>2</sup> )	<ul style="list-style-type: none"> <li>• 25m<sup>2</sup> per small dwelling</li> <li>• 40m<sup>2</sup> per medium dwelling</li> <li>• 55m<sup>2</sup> per large dwelling</li> </ul>	No	N/A
Adaptable units	4	2	3	Yes	NA

As the table demonstrates, the application is seeking variation to the following requirements namely landscaping, FSR and site density:

### Floor Space Ratio

As previously mentioned in this report, the original application was approved with a FSR of 1:1 and the proposed modification seeks approval for an increase in FSR to 1.05:1. This represents an increase in the maximum allowable FSR of 5% or 429.45m<sup>2</sup> above the maximum permitted GFA of 8589m<sup>2</sup>. Generally, the additional floor space results from internal reconfigurations and the minor realignment of Block E and F.

As the development as modified remains largely consistent in terms of its bulk, scale, building height, building envelope, site coverage, setbacks, access and appearance to what was originally approved, it is considered that there will be no significant appreciable visual impact as a result of the proposed increase in floor area.

Further, the application to modify the development consent remains consistent with the objectives of floor space under BLEP 2001 and the impact of the proposal is assessed in the subsequent sections of this report, which finds that the proposal is unlikely to contribute to a significant adverse impact on the adjoining properties.

## Density

Section 10.1 of Bankstown Development Control Plan 2005 – Part D3 provides the following density control:

**10.1** *The maximum yield of the land to which this section applies must be calculated as follows:*

<i>small dwellings *</i>	=	<i>1/60m<sup>2</sup> of site area;</i>
<i>medium dwellings **</i>	=	<i>1/90m<sup>2</sup> of site area;</i>
<i>large dwellings ***</i>	=	<i>1/120m<sup>2</sup> of site area.</i>

*\* “small dwelling” means a dwelling, the gross floor area of which is less than 55 square metres.*

*\*\* “medium dwelling” means a dwelling, the gross floor area of which is not less than 55 square metres and not more than 95 square metres.*

*\*\*\* “large dwelling” means a dwelling, the gross floor area of which is more than 95 square metres.*

*Application of those maximum yields to the total site area of the land to which this section applies (8,599m<sup>2</sup>) generates the following development potential:*

*143 small dwellings; or  
95 medium dwellings; or  
71 large dwellings.*

*A combination of dwelling sizes will vary the maximum potential yield, and a mix of dwelling sizes is required. Achievement of the above yields will be subject to providing a high level of internal amenity, with particular consideration given to the potential impacts arising from traffic noise along the Hume Highway, and the remaining opportunities and constraints identified in the site analysis.*

*The development should also be designed to minimise the potential impacts on surrounding land and in particular acoustic and visual privacy, and overshadowing. The design must also introduce principles of ecologically sustainable development*

The original approved plans complied with the density control stipulated in the BDCP 2005 as the total site area required for 100 units was 8520m<sup>2</sup> (the site area is 8589m<sup>2</sup>) as the unit mix was 16 small and 84 medium dwellings. Now that the dwelling mix has changed to 6 small and 104 medium dwellings (and increasing the number of units from 100 to 110 dwellings) the total site area now required is 9720m<sup>2</sup>. Although this represents a shortfall of 1131m<sup>2</sup>, the overall density now proposed is one dwelling per 78m<sup>2</sup> (8589m<sup>2</sup>/110 dwellings) which is comfortably within the overall density range of one dwelling per 60m<sup>2</sup> to 120m<sup>2</sup> as recommended by and established by the provisions contained in Clause 10.1.

Further, the amended application (with the increase in the number of dwellings and change of dwelling mix) has maintained an efficient internal layout and satisfactory visual and acoustic privacy. Potential impacts on the adjoining property remain consistent with the original application as the building envelope and height is consistent with the original approved plans.

While this represents a departure to the density provisions contained in Part D3 of the DCP, the following comments are offered:

- Clause 10.2 envisages a dwelling density of between 71 and 143 dwellings on this site. The amended proposal provides for a density of 110 dwellings which is not inconsistent with the dwelling density as provided by the DCP controls.
- The original proposal provided for a dwelling density of one dwelling per 85.9sqm – the amended proposal provides for a comparable dwelling density of one dwelling per 78sqm.
- The manner in which the additional units have been accommodated on site has resulted in a negligible impact on the amenity of the adjoining land owners. The increased dwelling density has been achieved through more efficient internal designs and minor massaging of the building footprints (changes confined to those walls / elevations that face internal to the site rather than towards neighbouring properties).
- The report has demonstrated that the increased dwelling density will not cause or contribute to a reduction in the amenity afforded to the future occupants of the development.

## Landscaping

Section 10.2 of Bankstown Development Control Plan 2005 – Part D3 provides the following landscape control:

**10.2** *The minimum landscaped area for development of the land to which Part D3 of this DCP applies shall be calculated in accordance with the following:*

*25m<sup>2</sup> / per small dwelling  
40m<sup>2</sup> / per medium dwelling  
55m<sup>2</sup> / per large dwelling*

*Application of those minimum requirements to the maximum yield of the land to which this section applies, generates the following areas:*

*143 small dwellings = 3,575m<sup>2</sup> landscaped area; or  
95 medium dwellings = 3,800m<sup>2</sup> landscaping area; or*

*71 large dwellings = 3,905m<sup>2</sup> landscaping area.*

*A combination of dwelling sizes will vary the minimum landscaped area requirements.*

The overall landscaping area proposed is not that dissimilar to the original approved plans. However, given the original dwelling mix, 3760m<sup>2</sup> landscaped area was required, now the amended dwelling mix now requires 4310m<sup>2</sup>. Although only 3610m<sup>2</sup> landscape area has been provided under the modified application (representing a shortfall of 694m<sup>2</sup>) the proposed landscape area is still within the range of 3575m<sup>2</sup> to 3905m<sup>2</sup> stipulated by Clause 10.2 of BDCP 2005 – Part D3.

Overall, landscaping on the site is considered satisfactory to provide sufficient open space to satisfy the requirements of future occupants. The landscaping areas proposed create usable outdoor spaces for residents to enjoy outdoor activities with privacy generated by building design and mature deep soil planting - which results in an overall high standard of environmental design.

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

There are no planning agreements applicable to the proposed development.

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

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

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

As demonstrated in this report there are unlikely to be any adverse environmental, social or economic impacts arising from this development.

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

#### **Letter/submission regarding easements**

A letter was submitted to Council on behalf of the Catholic Education Office in relation to La Salle College, which is situated on the adjoining property at 544 Chapel Road Bankstown. The letter states that the Catholic Education Office has attempted to negotiate with the developer of the subject property in relation to easements that benefit 544 Chapel Road for right of footway and easements for existing encroaching structures.

As the changes proposed under this application to modify the original consent does not specifically relate to the areas associated within the easements, it is recommended that the application be determined and that the matter is resolved separately between the two parties. It is noted that the resolution of this matter may result in a subsequent Section 96(1A) application.

## Waste

The bins for Blocks A, B, C and D are proposed to be stored within the basement. However, Council practice is not to enter the basement area to collect bins to bring them up to a suitable collection point at ground level.

As the amended plans shows a loading area/truck turning area at ground level, near the entry of the basement (between Blocks A and C) it is recommended that this loading area/truck turning area be used as a temporary bin holding area and that the Council truck can temporarily park in the driveway. Site management will bring the bins up from the basement prior to collection. This matter is reflected in amended condition number 74, which reads as follows:

- 74) *Waste and recycling generated by the occupants of the development following the issue of the Final Occupation Certificate shall be collected by Bankstown City Council.*

*A waste collection area for the temporary storage of bins awaiting collection shall be provided for Blocks A, B, C & D in the area marked in red on the approved plans. The bins for Blocks A, B, C & D shall be stored in the basement and transferred up to the collection point a maximum of 24 hours prior to the scheduled Council collection times (and transferred back to the basement within 24 hours of the waste being collected). Site management shall be responsible for the transfer of bins and is not the responsibility of Council.*

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

Despite the proposed modifications, the site is considered to remain suitable for the development.

## **Submissions [section 79C(1)(a)(d)]**

The application was advertised and notified for a period of twenty-one (21) days, from 29 January until 19 February 2014. One (1) submission was received during this period. Each of the issues raised in the submission have been addressed earlier in this report.

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

The proposed modifications are not considered to contravene the public interest.

## **CONCLUSION**

DA-821/2012/1 has been assessed against *Bankstown Local Environmental Plan 2001*, *Bankstown Development Control Plan 2005*, *Georges River Regional Environmental Plan No. 2* and *Draft Bankstown Local Environmental Plan 2014*, the application is considered to satisfy all relevant development standards, with the exception of a proposed variation to floor space, density and landscape area.

As the development as modified remains largely consistent in terms of its bulk, scale, building height, building envelope, site coverage, setbacks, access and appearance to what was originally approved, it is considered that there will be no significant appreciable visual impact or impact on the adjoining properties as a result of the proposed increase in floor space ratio.

The 10% increase in density from one dwelling per 85.9m<sup>2</sup> to one dwelling per 78m<sup>2</sup> is still within the density of between 71 and 143 dwellings stipulated for this site by Clause 10.2. The manner in which the additional units have been accommodated on site has resulted in a negligible impact on the amenity of the adjoining land owners.

Although proposed landscape area does not strictly comply, the area provided is still within the range of 3575m<sup>2</sup> to 3905m<sup>2</sup> stipulated by Clause 10.2 of BDCP 2005 – Part D3. Overall, landscaping on the site is considered satisfactory to provide sufficient usable outdoor spaces for residents to enjoy outdoor activities, resulting in an overall high standard of environmental design.

The development as modified, remains compliant with all other relevant development standards and is consistent with the original assessment of the original development application in terms of the developments impact on the locality.

It is therefore considered that the application has sufficient merit and that strict compliance with site density, floor space ratio and landscaping would be unreasonable in this case. It is therefore recommended that the JRPP approve the development.