

ITEM	<p>2 Bullecourt Avenue, Milperra</p> <p>Demolition of Existing Childcare Centre Within the University Campus (Lot 103); Construction of Student Accommodation Facilities Containing 80 Units Across 6 Blocks to Provide 394 Student Beds; Car Parking Areas; Common Facilities; Bicycle Storage; and Associated Landscaping</p> <p>S96(2) Amendment: Modify Ashford Avenue access arrangements</p>
FILE	DA-1285/2010/3 (JRPP Ref. 2014SYW048)
ZONING	Special Uses : Educational Purposes
DATE OF LODGEMENT	28 March 2014
APPLICANT	Mr Oscar Guzman
OWNERS	Department Of Education
AUTHOR	Development Services (Daniel Bushby)

SUMMARY REPORT

Section 96(2) Application No. DA-1285/2010/3 is lodged on behalf of the University of Western Sydney and is Crown development. It seeks to modify a determination made by the Sydney West Joint Regional Planning Panel and, according to Clause 21(1)(b) of *State Environmental Planning Policy (State and Regional Development) 2011*, is reported to the Panel for determination.

The application proposes to alter the previously approved Ashford Avenue access arrangements via the following modifications:

- Provision of a pedestrian access gate next to the existing sliding vehicular access gate;
- An additional vehicular access gate adjacent to the existing sporting fields to allow community access to the sporting fields for community events; and
- An automated security controlled boom gate inside the boundary gate at the beginning of the internal access road to the student accommodation;

It is also proposed to retain the approved sliding security gate on the Ashford Avenue boundary, for use by emergency vehicles via a pressure pad system, and by contractor vehicles.

The application has been assessed against sections 79C and 96(2) of the *Environmental Planning and Assessment Act, 1979*. While some elements of the proposal are consistent with the relevant provisions, the proposed pedestrian gate is contrary to the LEP and zone objectives.

The application was advertised and notified for twenty-one (21) days. Submissions from eleven (11) households were received, raising concerns relating to parking impacts on local streets, non-compliance with DA conditions, security, littering, and the use of the student accommodation as a motel.

BACKGROUND / HISTORY:

In December 2001, Council approved a development application for the construction of an 86-bed student accommodation facility at the subject site. This facility is located in the north-western corner of the university campus. It was originally proposed to access this student accommodation via a new driveway to Ashford Avenue. However this proposal was the subject of mediation between local residents and the university, and it was resolved that this access point be removed. It was agreed that access to the student accommodation be via the main university driveway to Bullecourt Avenue, and access to Ashford Avenue be restricted to vehicles associated with the existing child care centre at the site, with additional, controlled access for service vehicles.

In June 2011, the Sydney West Joint Regional Planning Panel resolved to approve DA-1285/2010 for the removal of the existing child care centre and the construction of an additional 394-bed student accommodation facility across 6 buildings along the western edge of the university campus. A vehicular access point off Ashford Avenue was also approved. In response to concerns raised by local residents that the Ashford Avenue access would contravene the previous mediation agreement with the university, means of controlling access at Ashford Avenue were explored. It was determined that the most appropriate outcome involved restricted access for student residents only, via a sliding security gate with a swipe card. This was to be the only access point to Ashford Avenue.

The current section 96 application proposes further modifications to the approved access arrangements to Ashford Avenue. While certain elements of the proposal warrant consideration given they can be 'controlled', the proposal to provide a pedestrian access gate would contravene the agreements reached during the assessment of the previous applications noted above, and would encourage intensification of impacts on the residential community to the west of the subject site.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved in part (for the boom gate, emergency vehicle, contractor, and sporting field access) and refused in part (for the pedestrian gate access), subject to the attached conditions.

DA-1285/2010/3 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 2 Bullecourt Avenue, Milperra. The site is zoned 5 - Special Uses - Educational Purposes, and comprises the University of Western Sydney Bankstown Campus. The overall site has an area of approximately 23.34 hectares, and has frontages to Bullecourt Avenue to the north, Ashford Avenue to the west, and Horsley Road to the east. The M5 Motorway is located to the south.

The proposed modifications are isolated to the Ashford Avenue (western) frontage of the site, which extends for over 450m. An existing residential precinct is located opposite the site to the west and north-west, which contains a mix of single-storey and two-storey dwellings. There are parking restrictions in place in the surrounding residential streets, with time-limited parking along the western side of Ashford Avenue and the southern side of Sinai Avenue, and road markings to manage parking near intersections.

The context of the site is illustrated in the following aerial photo.



PROPOSED DEVELOPMENT

The section 96 application seeks the following modifications to the Ashford Avenue access arrangements approved under DA-1285/2010:

- Provision of a pedestrian access gate next to the existing sliding vehicular access gate;
- An additional vehicular access gate adjacent to the existing sporting fields to allow community access to the sporting fields for community events;
- An automated security controlled boom gate inside the boundary gate at the beginning of the internal access road to the student accommodation;

It is also proposed to retain the approved sliding security gate on the Ashford Avenue boundary, for use by emergency vehicles via a pressure pad system, and by contractor vehicles.

SECTION 96(2) ASSESSMENT

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

(a) the development as modified is substantially the same development as the development for which the consent was originally granted

The proposal relates to vehicle and pedestrian access arrangements to the Ashford Avenue frontage of the university campus. No changes are proposed to the siting or design of the approved student accommodation building envelopes, and accordingly the modified proposal would maintain a development substantially the same as that approved under DA-1285/2010.

(b) the application has been notified in accordance with the regulations or a development control plan

The application was advertised and notified for twenty-one (21) days according to the notification requirements of the Bankstown DCP 2005.

(c) Council has consulted with the relevant Minister, public authority or approval body

Consultation with the minister, public authority or approval body was not required for this application.

(d) any submissions made concerning the proposed modification

Submissions from eleven (11) households were received in relation to the proposed modifications, raising concerns relating to parking impacts on local streets, non-compliance with DA conditions, security, littering, and the use of the student accommodation as a motel. The submissions are discussed in detail later in this report.

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)]

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

- Clause 2 Objectives of this plan
- Clause 11 Development that is allowed or prohibited within a zone
- Clause 55 Objectives of the Special Uses zone

While some elements of the proposed modifications can comply with these clauses, the proposed pedestrian gate does not satisfy the overall objectives of the LEP, nor the objectives of the Special Uses zone.

The objectives of the LEP require that '*development in or affecting residential areas should be compatible with the prevailing suburban character and amenity of the locality of the development site*'. Moreover, the objectives of the Special Uses zone seek to '*permit a range of uses which are compatible with the locality*'.

The applicant submits that the pedestrian gate is required '*for the convenience of both students and residents wishing to access the university campus*'. However the main university access from Bullecourt Avenue is not significantly less 'convenient' than the proposed Ashford Avenue access point, and convenience alone is not sufficient justification for the retention of an uncontrolled access point adjacent a low-density residential precinct. Having regard to the impacts associated with this uncontrolled access point, it is considered that the proposed pedestrian gate does not promote a development that is compatible with the locality and, in turn, fails the relevant objectives of the LEP.

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

The draft *Bankstown Local Environmental Plan 2014* has been publicly exhibited and applies to the subject site, hence is a matter for consideration. While the draft instrument proposes the introduction of some additional provisions, in the most part, the draft LEP provides for an administrative conversion of BLEP 2001 to the standard instrument LEP template. 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, the elements of the proposed modifications for which this report recommends approval would not be inconsistent with the intent and purpose of these provisions. It is noted that the draft LEP maintains an aim to '*provide development opportunities which are compatible with the prevailing suburban character and amenity of residential areas*' which, as noted above, the proposed pedestrian gate fails.

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

The *Bankstown Development Control Plan 2005* supports the *Bankstown Local Environmental Plan 2001* by providing additional objectives and development controls. These objectives and controls are divided into separate 'Parts' according to the type of proposed development.

Part D11 of the DCP applies to the design and function of schools. However it does not apply to facilities within a university campus, and therefore cannot be reasonably applied in this case.

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

There are no planning agreements applicable to the proposed modifications.

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

The proposed modifications are not 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 modifications relating to the boom gate, emergency vehicle, contractor, and sporting field access are able to be controlled as follows:

- Despite its relocation further within the site, users of the boom gate still require a swipe card and the security of this access point is therefore not compromised;
- Use of the sliding security gate on the Ashford Avenue boundary by emergency vehicles and contractor vehicles can be similarly controlled, as emergency vehicles would enter via a pressure pad system and contractor vehicles would presumably visit the site under the supervision of campus security; and
- Prior arrangements can be made with community groups that access the sporting fields, with the gates to be locked at all other times.

These arrangements can be enforced via conditions of consent, and would ensure that there would be no adverse safety or amenity impacts on the neighbouring residential precinct.

The proposed pedestrian gate, however, would provide a permanent breach of an otherwise secure boundary. With the gate open at all times it would not be possible to control who uses this access point and for what purpose. The resulting impacts are unreasonable and the gate is not supported.

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

Despite the issues identified in relation to the pedestrian gate, the site remains suitable for the development approved under DA-1285/2010.

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

The application was advertised and notified for twenty-one (21) days. Submissions from eleven (11) households were received, raising concerns relating to parking impacts on local streets, non-compliance with DA conditions, security, littering, and the use of the student accommodation as a motel. The issues raised in the submissions are summarised and discussed below.

Parking impacts on local streets

- *There is plenty of pedestrian access now to Bullecourt Avenue. Why is pedestrian access so important to Ashford Avenue?*
- *While the gate was unlocked it encouraged more students and others to park in the closer streets to it. Now it is locked the amount of cars parked in close streets during the day is reduced.*
- *Local streets are not a UWS carpark, even if students / teachers / motel guests think they are.*
- *UWS parking policy should not override Council requiring a certain number of free parking spaces on site. Local streets have UWS residents parking overnight now, imagine how many more if easy access is allowed.*
- *If this gate is reopened the parking problem that we have to put up with Monday to Friday will just become more widespread with more cars on more streets.*
- *Having this gate opened will cause chaos for local residents as students will use this gate to access University grounds to avoid paying fees.*
- *Students park over driveways and corners, in some cases making it nearly impossible to safely enter and exit our own driveways.*
- *When the gate is allowed open our street is bumper to bumper in traffic and having all the cars parked in the street we have difficulty getting in and out of our driveway. The buses go up and down this street and there is barely room for them. We also have children in the street and it is dangerous for them.*
- *If approval for the gate in Ashford Avenue to be open to all students wishing to access the campus is granted the number of students parking in our streets will rise.*
- *Opening up access to Ashford Avenue will again increase parking problems in local streets namely Zonnebekke Crescent, Somme Crescent, Sinai Avenue, Dernancourt Avenue and Bullecourt Avenue.*

Comment:

In October 2013, Council undertook parking surveys in the neighbouring residential precinct, as well as surveys of the parking facilities within the University campus. While not conclusive, the results of these surveys suggest that the claims of increased parking in local streets when the pedestrian gate is open are legitimate. The time of the surveys pre-dates Council's direction for the pedestrian gate to be closed, and a subsequent review of parking in the neighbouring streets indicates a general reduction in the number of cars parked. Council's surveys also confirm that the on-campus parking facilities are underutilised, with the average occupancy of the P4 carpark, which provides over 700 spaces, being approximately 10% (average occupancy of the P1, P2 and P3 carparks is approximately 70%).

With the on-campus parking facilities underutilised, it is unreasonable that there be any overflow university parking in the neighbouring residential streets. While a legally parked vehicle may well be entitled to occupy an on-street space, it is reasonable to expect that the parking demands of the university be met within their own site, and it has been demonstrated in previous DA assessments that there is sufficient parking within the university grounds to accommodate this.

As discussed earlier in this report, the proposed boom gate, emergency vehicle, contractor, and sports ground access is able to be managed so that it maintains 'controlled' access points. However the proposed pedestrian gate would promote off-campus parking with potential safety and amenity impacts to the neighbouring residential streets, and is not supported.

Non-compliance with DA conditions

- *In the original DA the University agreed to a swipe gate for the students choosing to live on campus. Instead they put in a public access gate contrary to Council instructions.*
- *JRPP meeting which Council and UWS attended an agreement was made by all parties that no pedestrian access be allowed to Ashford Avenue. Vehicle access only and must be via a swipe card for residents only. This has not been adhered to.*

Comment:

Works associated with the proposed access 'modifications' have in fact already been undertaken. Accordingly, Council issued a Notice of Proposed Order, in response to which the subject section 96 application has been lodged. Pending the outcome of this application, Council may elect to commence further enforcement action in relation to works undertaken without consent, or works undertaken contrary to the conditions contained in DA-1285/2010 (as modified).

Security

- *With a public access gate the units on the campus are no longer secure with anyone from the street day or night having full access to them.*
- *UWS residents are entitled to have access to their own property, but like any owner it should be a key for them and them alone. Not the entire UWS student population.*

Comment:

It is in the public interest to ensure that the Ashford Avenue end of the university campus be maintained as a secure environment, for the safety and security of residents both within the university campus as well as the neighbouring residential streets.

In this regard it is appropriate to maintain a secure, controlled boundary to Ashford Avenue. The proposed modifications relating to the boom gate, emergency vehicle, contractor, and sporting field access can achieve this, however it would be compromised by the proposed pedestrian gate.

Littering

- *We are sick of the streets being littered.*
- *The students of UWS empty their rubbish all over our streets.*

Comment:

Refusal of the proposed pedestrian gate access to Ashford Avenue would not encourage increased use of the residential streets for parking. Accordingly, this is not a matter directly related to the subject of this application.

Use of student accommodation as a motel

- *On accommodation websites (Wotif, Gumtree, Agoda, etc.) UWS provides short and long term accommodation to anyone.*
- *Has there been extra parking allowed for the motel?*
- *This student accommodation is now open to the public being advertised on Gumtree, Hotels, etc.*

Comment:

Though not directly related to this application, it has been confirmed that the approved student accommodation units are being advertised on accommodation websites for occupation by non-students. This constitutes a 'motel' according to the definitions contained in the Bankstown LEP, which is a prohibited land use at the subject site. Council's Compliance Unit has issued a Notice of Proposed Order in relation to this matter.

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

The applicant submits that the proposed modifications '*will allow the university to address operational and safety concerns at the Ashford Avenue entrance and to formalise access to the university's public sporting facilities to meet community needs*'. While it is agreed that some degree of controlled access from Ashford Avenue might be appropriate, the provision of a pedestrian access gate would perpetuate the impacts related to overflow university parking in the surrounding residential streets.

CONCLUSION

The application has been assessed in accordance with the provisions of sections 79C and 96(2) of the *Environmental Planning and Assessment Act 1979* and *Bankstown Local Environmental Plan 2001*.

The proposal to modify the approved access arrangements to Ashford Avenue raises concerns of potential impacts to the neighbouring residential precinct. These concerns are echoed in the public submissions, and can be isolated to one element of the proposal, being the proposed pedestrian access gate. This element of the proposal is contrary to the objectives of the LEP and the Special Uses zone, and would encourage an on-street parking situation that is both unnecessary and unreasonable.

The remaining elements of the proposal are less likely to cause any adverse safety or amenity impacts as they are capable of being effectively managed. These elements are deemed worthy of support, and would ensure that the access requirements of the University and the amenity expectations of the neighbouring residents are appropriately balanced.