

ITEM	190 Stacey Street, BANKSTOWN
	Demolition of existing structures and construction of a mixed commercial and residential development across two towers, one 14-storeys facing Stacey St and the other 7-storeys at the rear of the site, comprising of 106 residential units, two commercial tenancies, basement car parking and strata subdivision.
FILE	DA-741/2014 - East Ward
JRPP REFERENCE:	2014SYW127
ZONING	3(a) Business - CBD
DATE OF LODGEMENT	25 July 2014
APPLICANT	CD Architects
OWNERS	Geralex Pty Limited
CAPITAL INVESTMENT VALUE	\$27.27million
SITE AREA	2652.7m²
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 \$30million, which exceeds the capital investment threshold of \$20million for '*general development*'.

Development Application No. DA-741/2014 proposes the demolition of existing structures on the site, and the construction of a mixed commercial and residential development across two towers, one 14-storeys facing Stacey St and the other 7-storeys at the rear of the site, comprising of 106 residential units (28 x 1-bed and 78 x 2-bed units), two commercial tenancies, basement car parking and strata subdivision.

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 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 13 August to 2 September 2014. Following the submission of amended plans and details, the application was re-advertised and notified for a further period of twenty-one (21) days, from 12 August to 1 September 2015. No submissions have been received following these advertising and notification periods.

POLICY IMPACT

This matter has no direct policy implications. The proposed variations to building height and building separation are appropriate in the context of the site, and are not considered to set an undesirable 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-741/2014 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 190 Stacey Street, Bankstown.

The site is a regular-shaped allotment that was zoned 3(a) - Business CBD under the Bankstown LEP 2001 at the time of lodgement of the Development Application.

The site has a frontage of 32.755m to Stacey Street, an average depth of 81.1475m, and the total area of the site is 2652m². The site contains two 2-storey commercial buildings on the part of the site fronting Stacey St.

The surrounding development consists of an irregular-shaped allotment to the north and west, currently being development as a mixed commercial-residential building of 12 and 14 storeys (DA-1119/2013 approved by the JRPP on 19 December 2014), and a commercial development to the south, currently the subject of an undetermined DA for mixed commercial-residential development being assessed by Council (DA-220/2015). On the opposite, eastern, side of Stacey Street, are residential properties, which were zoned 2(a) Residential under the BLEP 2001 at the time of lodgement of the subject application.



PROPOSED DEVELOPMENT

The Development Application proposes the demolition of existing structures on the site, and the construction of a mixed commercial and residential development across two towers, one 14-storeys facing Stacey St and the other 7-storeys at the rear of the site, comprising of 106 residential units (28 x 1-bed and 78 x 2-bed units), two commercial tenancies, basement car parking and strata subdivision.



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 \$27.27million and, as such, the subject application is to be determined by the Sydney West Joint Regional Planning Panel.

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 12m-25m. Deepest apartments are 13m, whilst single aspect apartments are 11m at point of worst case.	Yes. Buildings are designed off a central north-south core, with single-aspect and corner apartments off either side (E and W). Solar Access and natural ventilation have been achieved. The buildings have an east-west 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 5m setback is provided for all storeys to the eastern (Stacey St) boundary. An internal building separation of 16m is provided at the closest point between Towers A and B. A 0m setback is provided to Southern Boundary. Setbacks to the northern boundary range from	See discussion below

	6m for Levels 1-7, and 9m for Levels 8-13.	
Communal open space 25% – 30% of the site area is to be communal open space.	30% 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 78% of kitchens are within 8m of a window.	Yes. Non-conforming ('deepest') parts of the affected apartments contain dwelling entries and bathrooms, and these units are at least 4m in width through the living areas, therefore no amenity loss. The back of non-conforming kitchens are within 8.5m of a window and still achieve the amenity intent of the code.
Apartment size 1 bed – min. 50m ² 2 bed – min. 70m ² 3 bed – min. 95m ²	1 bed – min. 50m ² 2 bed – min. 70m ²	Yes.
Balcony depth Min. 2m depth to primary balconies.	All primary balconies have minimum 2m depth.	Yes.
Private Open Space Ground floor/Podium apartments to have 25m ² within min. dimension of 4m	3 of 8 Level 1 (podium) units have 25m ² but not within 4m min. dimension	Considered acceptable, especially given non-compliant POS directly adjoins COS.
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.
Internal circulation Max. 8 units accessed from a single corridor.	Minimum 3 to maximum 6 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%.	80.5% of units receive 3hrs direct solar access between 8am – 4pm midwinter, or 2 hours between 9am-3pm (considered appropriate given dense urban area). None of the 106 units are single aspect apartments oriented to the south	Solar access complies. Not considered to be unreasonable to apply the 2-hour requirement, especially considering orientation of site, context of dense urban character of the locality, and as the adjoining development to N is an east-west running, 12-14 storey building.
Natural ventilation 60% of units to be naturally ventilated. 25% of kitchens to have access to natural ventilation.	At least 74 units (69%) are naturally cross-ventilated. 32% of kitchens have a window.	Yes

Building Separation

Internal

The two towers in the proposed development are separated by a minimum distance of 16.06m close to the southern property boundary, which increases to 21m at the centre of the site, and further increases to more than 30m closer to the northern edge of the proposed towers. The separation is considered to be appropriate with regard to visual and acoustic privacy, and assists in ensuring solar access can be achieved to at least 70% of units, as required under the RFDC.

External (to site boundaries)

The application was originally lodged with zero setbacks to side and rear boundaries 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, construction on 196 Stacey St is underway, and a DA is currently under consideration for redevelopment of the site immediately to the south. 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 1-7 Tower A 3m for Levels 1-6 Tower B 9m for Levels 8-13	"Shared" component of RFDC numerical requirement: 6m for Levels 1-4 9m for Levels 5-8 12m for Levels 9 and above
South	0m for all levels	
West	5-7m for all levels	

Ground floor level is built to the north, south and west boundaries, or to the easement in the south-west corner. A discussion of the impacts of building separation to each boundary for the levels above the ground floor, follows:

North Boundary

The amended setbacks to the northern property boundary essentially replicate the setbacks approved for the development on the adjoining site to the north at 196 Stacey St. Levels 1-7 on both sites are setback 6m from the shared boundary, achieving a building separation of 12m (noting that Tower B is setback 3m from northern boundary for levels 1-6 – see below). Levels 8-10 are setback 9m from the shared boundary, achieving a building separation of 18m. Levels 11-14 of 196 Stacey are setback 12m from the shared boundary, while the proposed development

at 190 Stacey continues the 9m setback of Levels 8-10 below. This results in a building separation of 21m at the upper levels.

Whilst the building separation distances achieved do not exactly match those suggested in the RFDC rule of thumb, the level of spatial separation achieved is considered to be appropriate, particularly in terms of visual and acoustic privacy. The separation achieved on both the subject site and the adjoining site will be consistent between the levels on each site (see paragraph above), and is considered to be an appropriate outcome in terms of built form and urban design. There are only two differences in the setbacks/separation achieved, as follows:

- Levels 11-13 of Tower A on the subject site only achieve a setback of 9m, whereas levels 11-14 on 196 Stacey achieve the required 12m. Despite this, the northern elevation of the proposed development at Levels 11-13 has been designed with blank walls, with only one or two small (highlight) window openings proposed. As such, these walls essentially present as 'non-habitable'. Under the RFDC rule of thumb, a building separation of 18m should be achieved for habitable walls/balconies to non-habitable walls for storeys 9 and above. In this instance, Levels 11-13 of each building are separated by 21m, and this is considered to achieve the objectives of the building separation requirement of the RFDC.
- Levels 1-6 of Tower B on the subject site only achieve a setback of 3m, whereas these levels on 196 Stacey achieve the required 6m. Despite this, the length of the northern elevation where the 3m setback is proposed is limited to 13m, after which separation increases to 12m. Also, the northern elevation of the proposed development at Levels 1-6 of Tower B has been designed with few windows, being limited to a small hopper-style bedroom window and a recessed highlight window to a study on each of Levels 1-6. Again, as above, these walls essentially present as 'non-habitable'. Under the RFDC rule of thumb, a building separation of 9m should be achieved for habitable walls/balconies to non-habitable walls for storeys 1-4 and above. Such a setback would not be supported at higher levels if Tower B were to extend any higher. However, as the setback is proposed only for Levels 1-6, it is considered that the separation of 9m achieves the objectives of the building separation requirement of the RFDC.

In each of the above cases, the impacts in terms of acoustic and visual privacy are considered to be limited, the separation distances achieved at these points are considered to be appropriate and meet the objectives of the RFDC, especially in the context of the adjoining development.

As such, the amended setbacks are considered to provide ample spatial separation between the proposal and future development currently under construction at 196 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.

South Boundary

The 0m setback to all floors of the proposed development on the southern boundary is considered to be appropriate in this instance.

The adjoining site to the south (17 Cross St) is narrow, being only 20.155m wide fronting Stacey St. Council is currently assessing a DA for the redevelopment of 11-17 Cross St as a mixed use development. The combined width of the two sites fronting Cross St is in excess of 40m, however only 17 Cross St has a frontage to Stacey St. Being only 20m wide, it is likely that any approval for a development on this adjoining site would result in a multi-level building being built boundary-to-boundary on that part of the site facing Stacey St. The provision of building separation in this location would result in a building 8m wide or less, which is not considered to be a satisfactory outcome in terms of built form or urban design. As such, it is considered that a zero lot line is appropriate between the subject site and the adjoining site to the south.

The resultant 'Street Wall' presentation would be limited to this point in the street, particularly given the building separation achieved between the subject site and the adjoining site to the north (196 Stacey). In the context of the immediate locality, it is considered that the zero lot line at the southern boundary of the development is appropriate in this instance. It is also considered that the building separation requirements could be appropriately dealt with in any high-density redevelopment proposed on the adjoining site to the south, without unduly impacting on the potential development yield. When coupled with the building separation achieved between the two towers on the subject site, and in terms of built form and amenity impacts, the proposed development provides the best possible outcome in terms of development potential for the adjoining site to the south, especially in terms of solar access and overshadowing.

West Boundary

Adjoining development to the west is not considered likely to be significantly impacted by the proposed development. On the lot immediately to the west of the subject site will be the communal open space area of the adjoining development at 196 Stacey St, currently under construction. This space will not be 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, and 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 30B	Height of buildings
Clause 30C	Architectural roof features
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 Building Height (Clause 30B)

Building height

Clause 30B of the BLEP 2001 stipulates that the maximum building height must not exceed a height of 35m above natural ground level. The subject application proposes an overall building height of 42.5m above natural ground level for Tower A, which increases to 43.5m when a small roof feature is included.

The height of Tower A represents a breach of the maximum building height at the front portion of the site. The applicant has submitted an Objection pursuant to State Environmental Planning Policy No. 1 (SEPP 1), outlining the reasons why compliance with the development standard is unreasonable or unnecessary in this instance, as follows:

“The Land Use table in the LEP sets out the zone objectives and permissible uses. The objectives of the zone that are relevant to the current proposal and comments thereon are set out as follows:

- (b) to define the scale and type of development in Bankstown CBD, and.....*
- (d) to establish a clear structure of land uses within Bankstown CBD to help focus the desired future character of the different activity precincts in the centre, and*
- (e) to permit a diversity of uses to reinforce the multi-use character of Bankstown CBD, and*
- (f) to encourage mixed-use development within the zone to create a living centre with a 24-hour life, and*
- (g) to ensure the scale and density of development complements the desired future character of each precinct and its location in the centre, and*
- (h) to introduce floor space incentives to encourage the redevelopment of key sites, and.....*

The proposal satisfies these objectives in the following ways:

- The proposal is permissible and is within the allowable density.*
- The building provides modern commercial and residential accommodation in a variety of sizes and layouts that are both adaptable and accessible ensuring a diversity of land use.*
- The proposal seeks to provide a modern building that will invigorate the streetscape and sit well in the surrounding built form.*
- The residential component provides both a market for the services and retail offered in the CBD as well as additional population to stimulate the Centre’s “life”.*
- The design promotes solar access and cross ventilation, reducing resource consumption and increasing the building’s environmental sustainability.*

Clause 30B of the LEP deals with heights of buildings within the Council area and relevantly states in part as follows:

30B Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development is located,*
- (b) to maintain the prevailing suburban character and amenity in the low density residential environment by limiting the height of development to a maximum of 2 storeys in Zone 2 (a),*

- (c) to provide appropriate height transitions between development, particularly at zone boundaries,
 - (d) to define focal points by way of nominating greater building heights in certain locations.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.....

The LEP height limit for the subject site is 35m, while the amended proposal has a top height for Building A of 42.5m. This increased height has arisen as a result of transferring three floors from Building B to Building A. As originally lodged the proposal complied with the LEP height standard.

Clause 6 of SEPP No 1 allows for an objection to be made to this standard on the basis that compliance is either unreasonable or unnecessary.

The decision of the Land and Environment Court, in *Winton Property Group v North Sydney Council* [2001] NSWLEC46 identified five questions that need to be answered in assessing whether a SEPP No. 1 objection is well founded. These matters are addressed as follows;

Question 1: Is the planning control in question a development standard?

In this case the control is a development standard as it fixes a numerical requirement for the building height of a proposed development.

Question 2: What is the underlying objective or purpose of the standard?

Clause 30B has four objectives, not all relevant, but they are discussed in relation to the proposal on the following page.

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development is located,**

Comment: The subject site is zoned to permit mixed - use developments with tower structures within the Bankstown CBD. The height variation proposed results from the removal of height from Building B and its transfer on to Building A in response to the approval of a tower form building at the adjoining 196 Stacey Street.

The character of development in the area is subject to transition as new development occurs consistent with planning controls and planning decisions. The subject building and that approved at 196 Stacey Street together with other future buildings within the precinct will set the local context and character of the area. With similar heights and scale they will be compatible with the future character of development immediately adjacent the site and within the general locality.

- (b) to maintain the prevailing suburban character and amenity in the low density residential environment by limiting the height of development to a maximum of 2 storeys in Zone 2 (a),**

Comment: This objective is not relevant to the current proposal.

- (c) to provide appropriate height transitions between development, particularly at zone boundaries,**

Comment: The subject site is zoned to permit mixed - use developments with tower

structures within the Bankstown CBD. The land is within the applicable height zone and not located near to the zone boundaries. As indicated above it is adjacent to a recently approved building of similar height that involved a variation to the LEP height standard.

(d) to define focal points by way of nominating greater building heights in certain locations.

Comment: The area within which the site is located permits taller buildings, with similar sized structures recently approved. These buildings will provide focal points in the southern part of the Bankstown CBD.

These objectives appear to predominantly relate to outcomes concerning bulk and scale and the surrounding lands. The proposal has reduced its floor space ratio (FSR) from that originally proposed and is compliant with the relevant LEP control. In this context it may be a reasonable test to assess the impact the proposal may have on the environmental amenity and aesthetic character of the area.

In considering the environmental amenity one looks at impacts such as overshadowing, privacy/ overlooking, view loss, visual domination etc. These provide an indication of a proposal's suitability and reflect the matters for consideration under Section 79C of the Act.

The proposal will overshadow adjoining land to a certain degree. However, the level of shadow is commensurate with its orientation and similar to that likely to be projected from a compliant building height. As surrounding lands are developed, similar shadows will be cast throughout the precinct. The orientation of all of the buildings will allow satisfactory levels of solar penetration to all future development.

The potential for privacy loss and overlooking derive from a building's orientation and the internal layout. The building is separated from the northern boundary by 9m while the southern side with no south facing windows applies a zero lot line approach. This will facilitate future re development of both northern and southern neighbouring properties. The proposed unit layouts seek to maximise eastern and western outlooks and the main living spaces face those directions, with terraces screened from the sides. This design outcome will ensure minimal overlooking or privacy loss to neighbours.

For similar reasons there do not appear to be issues of view loss as a result of the proposal. The orientation of the building maximises its view opportunities, while respecting existing view corridors from the adjoining properties.

Visual domination is an issue more generally associated with perceptions from the public domain. In the case the proposal will sit well in terms of its neighbours. The locale when fully redeveloped will be characterised by taller buildings and in this context the proposal is unlikely to visually dominate its surroundings

In determining the aesthetic character of the area it is reasonable to review the type and form of development existing in the near vicinity of the site. As mentioned previously the area is zoned for mixed - use development with increased heights and FSR. This planning intent is continued within the new Bankstown LEP 2015, with bonuses available for environmentally sustainable buildings. The area is clearly in transition and zoned to provide additional higher built form in this part of the Bankstown CBD.

In light of this detailed assessment it would appear that neither the environmental amenity nor the aesthetic character of the area, are detrimentally impacted by the proposal. In this sense it is fair to say that the underlying purpose and objectives of the standard have been met.

Question 3: Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 ("the Act")?

The aims and objectives of SEPP 1 are to provide flexibility in the application of development standards. As a general principle such flexibility should only be exercised where there is no diminution of amenity as a result. This principle was addressed in response to question 1 above.

Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979 states that:

5 Objects

The objects of this Act are:

(a) to encourage:

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

A complying development under Clause 30B would result in a smaller building envelope for Building A and together with the reduction in height of Building B, would thwart the achievement of the available FSR by a substantial amount. As originally lodged the applicable FSR was 3.5:1, under the LEP bonus provisions for improved environmental sustainability. This bonus is only available while the height of developments remains at or below the 35m maximum building height.

Having increased the height of Building A above 35m, the FSR has had to be reduced to 3:1 impacting on the quantum of development on the site. If the variation now sought were not to be granted, noting that the height would be inconsistent with the height approved for the adjoining site, it would discourage the proper management of resources and the orderly and economic use and development of land as envisaged in Section 5 of the Act.

Question 4: Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The proposal is capable of compliance with the standard by reducing its height, resulting in a smaller structure than the recently approved building to the north. This would also lessen the on site FSR to a level well below that envisaged under the LEP. The overall reduction in development capacity from that originally proposed would be unreasonable and inconsistent with approvals on adjoining land with the same controls.

There is no suggestion that the Council has abandoned the standard in the past, but

it has clearly varied it on merit, particularly on the adjoining property to the north. The current proposal is considered to be similar in that it will not negatively impact on the adjoining site to the south. In fact, in providing a zero lot line to the common boundary with that property the development potential of that site is maintained, without unreasonable solar impact or loss of privacy and amenity

In these circumstances, compliance with the building height standard is considered to be unreasonable and unnecessary in the circumstances.

Question 5: Is the objection well founded?

Compliance with the standard could be achieved. However it would be for the sake of numerical accuracy and would be no more beneficial in terms of streetscape, or the amenity of residents on and off the site, than that proposed.

The proposal achieves the objectives stated in the LEP for the building height control. In the context of this submission any non compliance numerically is reasonable. Approval of the proposal would not be out of place with, nor detrimental to the amenity of its surroundings, whilst compliance would not achieve a better environmental outcome.

CONCLUSION

For the reasons detailed above it is considered that this SEPP No. 1 objection is well founded.

This report has demonstrated in a properly constructed manner, with reference to the specifics of the site and Council's previous consent approach, that in this instance, the strict adherence to the LEP Building Height control is neither necessary nor reasonable.

An assessment of the likely impacts of the proposal has confirmed that the underlying purpose of the FSR standard has been met. Secondly, the assessment indicates that in terms of the current and desired future character of the area, the proposal will not create any deleterious impact."

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 the adjoining site 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. It is noted that the JRPP has recently approved DA-1119/2013 (19 December 2014) for a mixed use development of a similar scale at 196 Stacey St, immediately adjoining to the north of the subject site. That development is currently under construction, and was approved at a similar height.

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 objection pursuant to SEPP 1 is well-founded and the variation to the maximum building height is worthy of support in this instance.

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

The Bankstown Local Environmental Plan 2015 (BLEP 2015) was gazetted on 5 March 2015. As the subject DA was lodged in July 2014, the Draft BLEP 2015 had 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 BLEP 2015 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.

In accordance with the savings and transitional provisions of the BLEP 2015, applications lodged prior to the gazettal of the instrument are to be assessed as if the new instrument had not commenced.

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

The following table provides a summary of the development application against the controls contained in Part D4 of the Bankstown Development Control Plan 2005.

STANDARD	PROPOSED	BDCP 2005 PART D4		BLEP 2001 COMPLIANCE
		REQUIRED	COMPLIANCE	
Height	42.5m (43.5m when roof element included)	N/A	N/A	No (35m max) – see above
FSR	3:1	N/A	N/A	Yes (3:1 max)
Setback to Stacey St	5m at ground floor and level 1 5-7.4m Levels 2-13	5m min	Y	N/A
Car Parking (Part D8 of BDCP 2005)	132 spaces - 106 residential - 22 visitor - 4 commercial	Min 1 - Max 3 spaces per dwelling (106-318 spaces); 1 visitor space per 5 dwgs (21 spaces); and 1 space per 40m ² of commercial (4 spaces) 131 spaces min.	Y	N/A

The proposed development is considered to satisfy the relevant provisions of the BDCP 2005, particularly Part D4 (Commercial Zones) and Part D8 (Car Parking).

Other general assessment matters

Access to rear tower:

Concern was raised initially that access to the rear tower (Tower B) was circuitous and residents of the rear tower appeared to have been forgotten. The amendments to the plans, particularly the introduction of an additional entry point adjacent to the northern boundary, means that residents of the rear tower now have access via two substantial staircases through Tower A and then through the expansive communal open space area between the towers. It is recommended that a condition be imposed requiring access be provided from the lobby on Level 1 of Tower A to the communal open space, to ensure appropriate provision is made for access for disabled persons. Access could then be considered to be direct and appropriate.

Rear Wall presentation:

Concern was initially raised that the rear wall of the development, which adjoins the approved communal open space of the development at 196 Stacey St, would become a graffiti target if not appropriately treated.

The applicant has modified the plans to incorporate a combination of materials and finishes, so as to form a pattern on the walls, in a bid to deter graffiti vandals. These walls are also likely to be screened by vegetation in the landscaping of the communal open space on the adjoining site.

Flooding Issues within the ground floor car park:

The potential for flooding generated by the Sydney Water stormwater easement that traverses the rear south-west corner of the subject site has been appropriately mitigated, by the use of walls adjacent to the easement, to avoid the flow of water into the ground floor car park.

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 13 August to 2 September 2014. Following the submission of amended plans and details, the application was re-advertised and notified for a further period of twenty-one (21) days, from 12 August to 1 September 2015. No submissions have been received following these advertising and notification periods.

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 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 – Lower Basement
- C – Upper Basement
- D – Ground Floor
- E – Level 1
- F – Level 2
- G – Level 3
- H – Level 4
- I – Level 5
- J – Level 6
- K – Level 7
- L – Level 8
- M – Level 9

N – Level 10
O – Level 11
P – Level 12
Q – Level 13
R – Roof Level
S – Photo Montage and Materials Schedule
T – East Elevation
U – North Elevation
V – West Elevation
W – South Elevation
X – East (internal) Elevation Block B
Y – West (internal) Elevation Block A
Z – Winter Shadow Diagrams