

ITEM	225-241A Hume Highway, 112 Northcote Road and 24 Hillcrest Avenue, Greenacre
	Demolition of existing structures and construction of a commercial and residential development comprising 177 residential apartments, 14 townhouses, basement and at-grade car parking, new driveway access off Hillcrest Avenue and Northcote Road and associated site landscaping
FILE	DA- 3/2015 (JRPP Reference: 2015SYW018)
ZONING	Part 3(c) – Business Enterprise and Part 2(a) - Residential A
DATE OF LODGEMENT	5 January 2015
APPLICANT	Platinum Design Architects
OWNERS	Bernies Auto Sales (Distribution) Pty Ltd
ESTIMATED VALUE	\$48,863,396
SITE AREA	18,756m²
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 a Capital Investment Value of \$48,863,396 which exceeds the capital investment threshold of \$20 million for '*general development*'.

Development Application No. DA-3/2015 proposes the demolition of existing structures at No. 225 – 241A Hume Highway and 112 Northcote Road and construction of a commercial and residential development comprising 177 residential apartments, 14 townhouses, basement and at-grade parking, new driveway access at Northcote Avenue and No. 24 Hillcrest Avenue and associated site landscaping.

The Development Application has been assessed in accordance with the provisions contained within Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* requiring, amongst other things, an assessment against relevant specific environmental planning instruments, including SEPP 55, SEPP 65, SEPP (Infrastructure) 2007, SEPP (BASIX) 2004, BLEP 2001, Draft BLEP 2015 and the controls provided in BDCP 2005. The application fails to comply in regards to the applicable floor space ratio, preferred site consolidation, the building height controls, setbacks and building depth. However, an assessment of the development application has found that these variations are justified in the circumstances of this case, in the context of both the overall development and the surrounding locality.

The application was advertised and notified for a period of twenty-one (21) days, from 15 January 2015 to 4 February 2015. A total of four (4) submissions, including a petition signed by 9 residents, were received during this period.

The application was subsequently amended and was re-advertised and re-notified for a further period of twenty-one (21) days, from 1 July 2015 to 21 July 2015. No submissions were received during this second notification period.

The main issues raised during the initial notification period were:

- Concerns regarding safety, privacy and noise from the driveway on Hillcrest Avenue; drive through road on 24 Hillcrest Road next to a fence is a safety concern as any loss of control by a vehicle could be fatal; the proposed fence is not solid brick and therefore offers no real protection.
- The eastern end of the land was previously raised by 2 ½ m of fill with a retaining wall; the level of the land may have been raised without approval.
- Water running from the land will cause flooding of adjoining properties.
- More traffic will be using Hillcrest Street causing danger to pedestrians and more noise; Traffic congestion will be increased.
- Will cause parking problems within the adjoining quiet streets.
- Privacy to backyards / swimming pools will be lost.
- Concerns regarding dust and debris during construction.
- The development will bring unnecessary noise.
- Overshadowing by the large block of units.

POLICY IMPACT

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

FINANCIAL IMPACT

The proposed matter being reported has no direct financial implications.

RECOMMENDATION

It is recommended that:

- A – The objection lodged pursuant to *State Environmental Planning Policy No. 1 – Development Standards* to the floor space ratio prescribed by Clause 30 of the *Bankstown Local Environmental Plan 2001* be supported; and
- B – The application be approved subject to the attached conditions.

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SECTION 79C ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site comprises eight (8) adjoining allotments encompassing a total area of 18,756m². The consolidated site is irregular in shape with frontages of 135.6 metres to the Hume Highway, 48.4 metres to Northcote Road and 12.19 metres to Hillcrest Avenue. Currently the site has a mixed zoning, with the majority of the site zoned B6 – Business Enterprise and a single residential lot fronting Hillcrest Avenue, zoned R2 – Low Density Residential under the Bankstown Local Environmental Plan 2015 (BLEP 2015).

The site was zoned part 3(c) – Business Enterprise and part 2(a) – Residential A under Bankstown LEP 2001, being the instrument applicable at the time of the lodgement of the application. The following table provides details relating to the above.

Street address	Area	Zoning	
		BLEP 2001	BLEP 2015
No. 225-241A Hume Highway & No. 112 Northcote Road	18012.9m ²	3(c) – Business Enterprise	B6 – Enterprise Corridor
No. 24 Hillcrest Avenue	743.1m ²	2(a) – Residential A	R2 – Low Density Residential

The main portion of the site fronting the Hume Highway accommodates a series of warehouse/showroom style buildings associated with the use of the site for the sale and servicing of boats, and landscaping materials and supplies. The smaller portions of the site, fronting Hillcrest Avenue and Northcote Road, accommodate single storey detached dwellings.

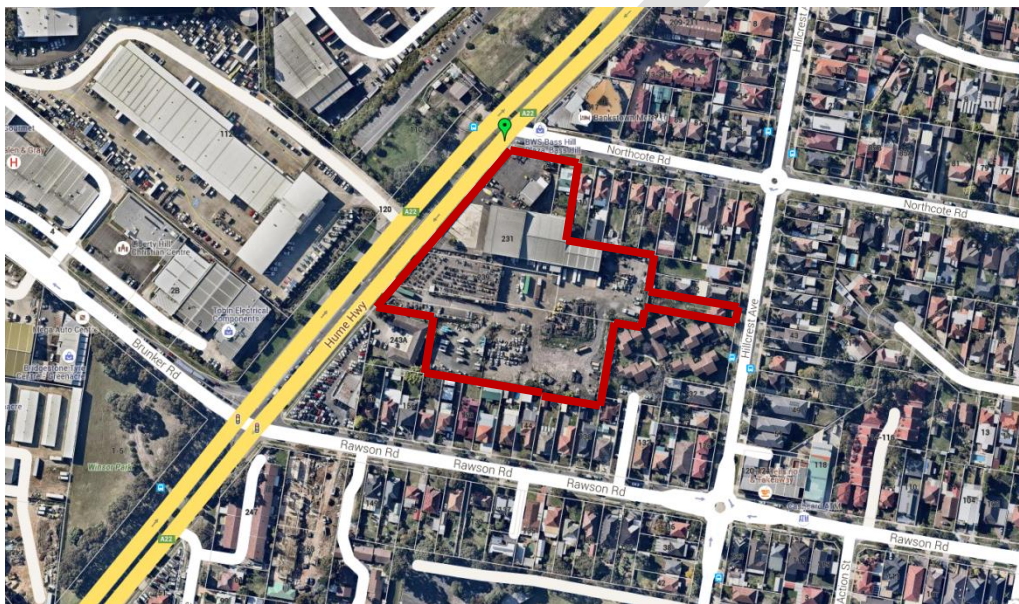
The topography of the site is that it falls away from the Hume Highway (from the north-west to the south-east), with a level change from boundary to boundary of approximately 6.3 metres. The site typically provides for extensive sealed / hardstand areas along the sites frontage to the Hume Highway. These hardstand areas are distinctly elevated from the rear portion of the site which is informally used as a storage yard.

The existing vegetation on the site is limited to a scattering of trees, shrubs and groundcovers. None of the existing site vegetation is considered worthy of preservation.

The adjoining development comprises the following:

- North:- Immediately adjoining the site are single storey detached dwellings with frontage to Northcote Road. On the opposite side of the road is a two storey motel located at the corner of the Hume Highway and Northcote Road.

- East:- Single and two storey detached dwellings towards the northern side of 24 Hillcrest Avenue (part of the development site) and two storey town houses towards the southern side of 24 Hillcrest Avenue. On the opposite side of Hillcrest Avenue are single and two storey dwellings.
- South:- Adjoining the subject site to the south are predominantly single and two storey dwellings with frontage to Rawson Road except for a two storey flat building with a frontage to Hume Highway towards the western end.
- West:- On the opposite side of Hume Highway are large warehouse and / or showroom related land uses including Volvo showroom / sales for commercial vehicles.



PROPOSED DEVELOPMENT

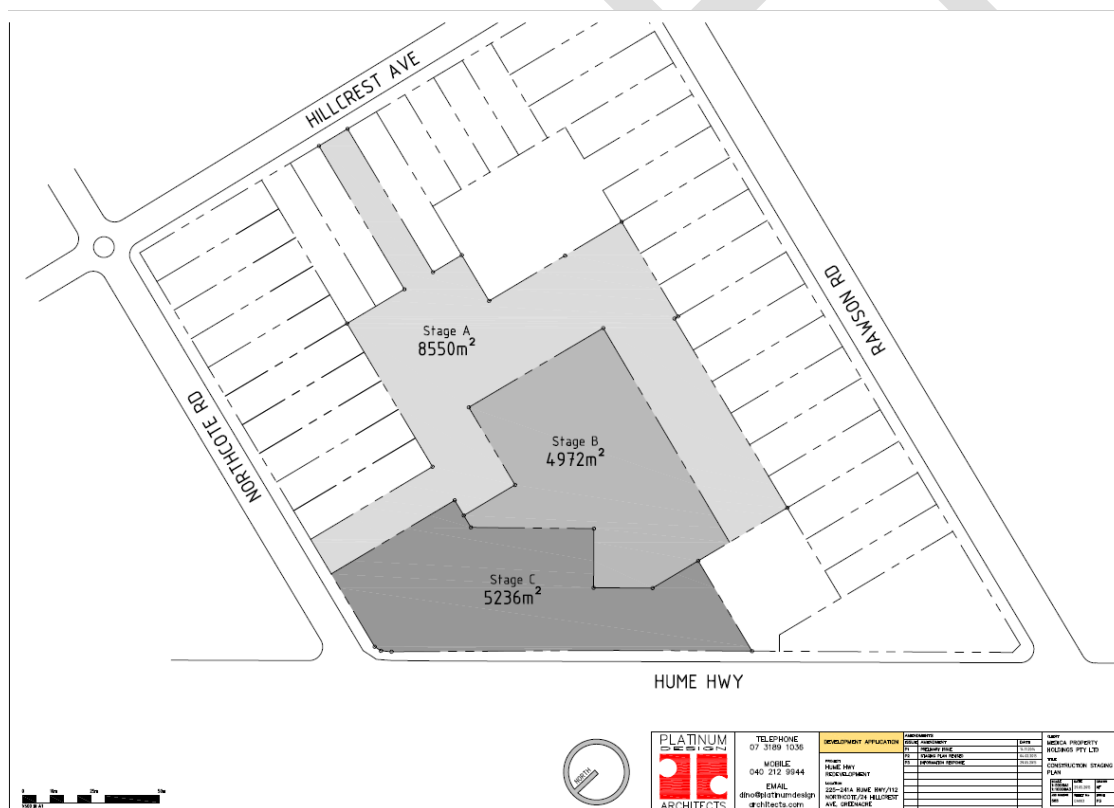
The proposed development comprises the demolition of the existing improvements, and the construction of a commercial and residential development accommodating 2053.6m² of commercial floor space, 177 residential apartments (65 x 1 bedroom, 82 x 2 bedroom and 30 x 3 bedroom apartments) and 14 townhouses (each containing 3 bedrooms).

Off-street car parking is proposed for a total of 355 vehicles at various at-grade and basement locations throughout the site. Vehicular access to the 14 townhouses is proposed via a new entry/exit driveway off Hillcrest Avenue. Vehicular access for the remainder of the development is proposed via a new entry/exit driveway along Northcote Road. The proposed development has generally been designed to provide five (5) separate buildings accommodating the retail floor space, commercial floor space and residential apartments. Buildings 1 and 2 address the Hume Highway frontage, and Buildings 3 - 5 generally occupy the central portion of the site. The 14 townhouses generally extend along the southern and eastern boundaries.

An overall site plan depicting the layout of the development is produced below:



The development is to be constructed in three (3) stages as shown in the following diagram:



Stage A

- Demolition of all existing structures
- Site remediation
- Construction of the access road from both Northcote Road and Hillcrest Avenue
- Basement Level 2 and Part Basement Level 1
- Building 5 and fourteen (14) townhouses

Stage B

- Level 1 basement except for the basement under Buildings 1 and 2
- Buildings 3 and 4

Stage C

- Complete the remainder of the development

Each stage of the proposed development is able to function independently and does not rely on future stages to satisfy required car parking, vehicular access, open space, garbage collection, etc.

AMENDMENTS TO THE DEVELOPMENT

The original development plans were amended as follows:

- Relocation of the access for garbage removal vehicles for the apartments, originally proposed off Hillcrest Avenue, to the Northcote Road entry.
- Reduction in the the number of apartments from 188 to 177.
- Reconfiguration of the layout and use of the retail components located at the ground floor of Buildings 1 and 2.

SECTION 79C ASSESSMENT

The proposed development has been assessed pursuant to section 79C(1) 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 \$20 million 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 \$48,863,396 and, as such, the subject application is referred to the Sydney West Joint Regional Planning Panel for determination.

State Environmental Planning Policy No. 55 – Remediation of Land

SEPP No. 55 requires Council to consider whether the development site is contaminated and, if it is, whether it is suitable for the proposed development either in its contaminated state or following remediation works.

Relevantly Clause 7(1) of SEPP 55 reads as follows:

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The site has been used for various commercial / industrial activities. The north-west corner of the site (at the corner of the Hume Highway and Northcote Road) was occupied by various service station companies between 1953 and 1994. The remainder of the site has been used mainly by 'Bernies Auto Parts' as a motor mechanic, motor trading and auto wrecking. Also of note is the fact the north-eastern and south-western portions of the site were filled during mid 1990's and show up to 2.5m level difference with the adjoining land.

A Stage 2 Environmental Site Assessment (ESA) prepared by Environmental Investigation Services (dated 25 April 2015) was submitted with the development application. The report concluded that "... the site can be made suitable for the proposed development provided that the following recommendations are implemented to address the data gaps and to minimise/manage risks:

- *Undertake an additional ESA to address the data gaps identified in Section 10.5. A copy of the Validation report for the removal of the USTs from the former service station section of the site should be obtained prior to undertaking the additional ESA;*
- *Prepare an Asbestos Management Plan (AMP) to manage asbestos during excavation works;*
- *Prepare a Remediation Action Plan (RAP) to outline remedial measures for the site;*
- *Prepare a Validation Assessment (VA) report on completion of remediation; and*
- *Undertake a Hazardous Materials Assessment (Hazmat) for the existing buildings prior to the commencement of demolition work.*

The data gaps, referred to in Section 10.5 of the ESA, included the following:

- Sampling was not undertaken beneath the buildings in the eastern section of the warehouse building, beneath the residential buildings and beneath the former service station shop building.
- At four (4) borehole sampling locations fill material could not be penetrated to reach natural material.
- Access to adequate sampling locations was not possible at the time of the investigation in the vicinity of the waste oil drum adjacent to the boat service workshop and in the vicinity of the oil/water separator.
- The presence of hazardous building materials in the existing buildings was not assessed.

Subsequent to the above, and in order to address the data gaps identified by the report, the applicant provided a Remedial Action Plan (RAP) prepared by Aargus Pty Ltd (dated 25 August 2015). The RAP discusses a number of remedial strategies including on-site and off-site treatment, excavation and off-site disposal and containment of contaminated soil.

The removal of fill material to a licensed landfill (off-site disposal) is the RAP's preferred remediation strategy.

The RAP concludes:

It is considered that the site will be suitable for the redevelopment into five medium density residential buildings with basement car parking, fourteen townhouses, roads and communal open spaces subject to the implementation of remediation and validation works in accordance with this RAP.

Conditions of consent, requiring remediation of the site to occur consistent with the recommendations contained within the RAP, have been incorporated into the determination notice.

Any additional investigation of the site (as required by the RAP) that identifies contaminated material, comprising material that exceeds relevant criteria, is to be classified, removed off site and transferred to an appropriate licensed offsite soil recycling facility.

In light of the above, it is considered that Clause 7(1)(c) of SEPP 55 has been satisfactorily addressed.

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 due to the number of parking spaces exceeding 200 spaces. The proposal was accordingly referred to RMS for comment.

The RMS has reviewed the proposed development and raised no objection to the development proceeding. While the RMS only provided 'comments' for Council's consideration, they have been provided as conditions of development consent.

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

SEPP No. 65 aims to improve the design quality of residential flat buildings and provides an assessment framework, the Residential Flat Design Code (RFDC) for assessing 'good design'.

The SEPP was recently amended and the RFDC replaced by Apartment Design Guidelines. However, the subject application was submitted before the notification of the amended SEPP on the government's web site and thus, is to be assessed as if the amendment was never made.

Clause 50(1A) of the EPA Regulation 2000 requires the submission of a design verification statement from the building designer at lodgement of the development application. This document has been submitted and is considered to satisfy the submission requirement.

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

1. Context

The site is located within an established urban environment, characterised by a diversity of residential and non-residential land uses, accommodated within a wide range of building forms. The residential land uses are typically setback to the rear of the non-residential uses fronting the Hume Highway. The immediate context of the site is diverse in both built form and scale. The proposed development results in an appropriate built form for the site which is consistent with the longer term desired future character for this section of Hume Highway corridor illustrated in Council's DCP, LEP and North East Area Plan.

2. Scale

The proposed development achieves a suitable scale in terms of visual appearance from the public domain. The proposed height and density of the proposed development is consistent with the scale identified as the desired future character of the area in Council's DCP, LEP and North East Area Plan.

3. Built form

The proposed development is considered to respond well to its context by providing an appropriate built form, bulk, scale and height.

4. Density

The proposed development has a density appropriate for its site and context in terms of the building bulk, height, setbacks and separation despite minor departures from the LEP and DCP controls. The development has a floor space ratio that is generally consistent with the future desired character that is envisaged for the Hume Highway Enterprise Corridor within the North East Area Plan.

5. Resources

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

The development generally satisfies open space, natural ventilation and solar access requirements and provides a mix of unit sizes consisting of one, two and three bedroom units, including several adaptable units, providing a range of choice and housing affordability.

6. Landscape

The proposed development has been designed to provide a built form within a landscaped setting, with provision made for canopy trees within common areas and around the perimeter of the site. The canopy trees will be supplemented by lower level trees, shrubs and ground covers. The proposed landscaping is intended to create a vegetated perimeter, with communal open space occupying the central portion of the site between Buildings 1 and 4. The proposed landscaping includes nineteen (19) Native Watergums (*Tristaniopsis luscious*), supplemented by shrubs and groundcovers along the Hume Highway and Northcote Road street frontages.

7. Amenity

The development satisfies natural ventilation, solar access and privacy requirements and provides a mix of unit sizes consisting of one, two and three bedroom units, including four adaptable units - providing a range of choice and housing affordability.

8. Safety and Security

Internal and external safety and security is optimised through casual surveillance of the public domain from the active retail and commercial floor space, and the residential apartments orientated towards the Hume Highway and Northcote Road. Further, the proposed development has been designed to provide natural surveillance of the communal open space and internal pedestrian network.

9. Social dimensions

The development offers good design by proposing a mix of housing types including adaptable units, providing a range of choice and housing affordability to cater for the community's lifestyle and housing needs.

10. Aesthetics

The proposal contains the appropriate composition of building and landscape elements, textures, materials and colours to reflect the positive elements of the existing and emerging neighbourhood, its use, internal design and structure. The development is considered to be of an acceptable architectural quality, which is designed to complement the character of the existing and emerging developments in the area.

As illustrated above, 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 11 to 28m.	No. However, the Code allows greater depths subject to solar access and ventilation objectives being met. The buildings are designed with a central corridor that is open at several points. Solar access and natural ventilation have been achieved. The floor to ceiling heights proposed meet the minimum requirement of 2.7m to allow for natural ventilation.
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.	Internal building separation between the proposed buildings ranges from 12m to 20m. A minimum setback of 9.2m is provided from adjoining residential boundaries. The existing building on No. 245A Hume Highway is a two storey flat building. A setback of 7.5m is provided to Building 3 from the boundary except for a 5m length of wall which is setback 4m from the boundary.	Yes
Communal open space 25% – 30% of the site area is to be communal open space.	25.3% of the site area is provided as communal open space.	Yes.

Deep soil planting 25% of the open space area of the site is to be provided as deep soil zones	30% of the open space area provided by the applicant is available as deep soil zones	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 7.5 to 11m at worst. All kitchens are within 8m of a window.	No. However the non-compliance is minor and the amenity intent of the code is still met.
Apartment size 1 bed – min. 50m ² 2 bed – min. 70m ² 3 bed – min. 95m ²	Minimum proposed 1 bed – min. 50.1m ² 2 bed – min. 70m ² 3 bed – min. 95.3m ²	Yes.
Balcony depth Min. 2m depth to primary balconies.	All primary balconies have minimum 2m depth.	Yes.
Solar access 70% of units should receive 3hrs solar access between 9am – 3pm midwinter. Limit the number of single aspect apartments with a southerly aspect to a maximum of 10%.	70% (124 of 177 apartments) receive 3hrs direct solar access. The number of single aspect apartments with a southerly aspect is 5.6% (10 of 177).	Yes
Natural ventilation 60% of units to be naturally ventilated. 25% of kitchens to have access to natural ventilation.	65.5% (116 of 177) of units are naturally cross-ventilated. 46.8% (83 of 177) of kitchens have natural ventilation.	Yes
Floor to ceiling heights Min. 3.3m ground floor and 2.7m for other floors. If variation is sought then satisfactory daylight access must be demonstrated.	Floor-to-ceiling heights are 3.6m (min.) to commercial floors and 2.7m to all residential floors.	Yes.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate accompanied the Development Application. The Certificate details the thermal, energy and water commitments of the proposal, which are also detailed on the submitted plans, and hence, satisfies the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Bankstown Local Environmental Plan 2015

Bankstown LEP 2015 was gazetted on 5 March 2015. Clause 1.8A of the BLEP 2015 states:

'If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.'

The application was submitted on 5 January 2015 and accordingly, the BLEP 2015 did not apply to the subject development application. The relevant planning instrument is the Bankstown LEP 2001 which is discussed below.

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 23	Development adjacent to residential zones
Clause 26	Flood liable land
Clause 30	Floor space ratios
Clause 30B	Height of buildings
Clause 32	Access for people with disabilities
Clause 36C	Development along arterial roads
Clause 44	Objectives of the residential zones
Clause 45	General restrictions on development
Clause 48	Objectives of the business zones
Clause 50A	Development in Zone 3(c)

Clause 11- Development which is allowed or prohibited within a zone

The table to Clause 11 sets out which development may be carried out in each zone. The site is zoned part 3(c) - Business Enterprise and part 2(a) – Residential A under the Bankstown Local Environmental Plan 2001. The following table provides the permissibility of various land uses proposed within the development site:

Street address	Zoning	Proposed uses	Compliance	
			BLEP 2001	Draft BLEP 2015
225-241A Hume Highway & 112 Northcote Road	3(c)	<ul style="list-style-type: none"> Offices Restaurants/café Medical Centre Recreation facility Convenience stores Residential flat buildings Villa homes 	Yes Yes Yes Yes Yes Yes Yes	(Zoning B6) Yes Yes Yes Yes Not defined, however may be permitted as neighborhood shops if the retail floor area does not exceed 90m ² Yes Yes, as multi-dwelling housing
24 Hillcrest Avenue	2(a)	Access road to town houses	Yes	(Zoning R2) Yes

An assessment of the Development Application revealed that the proposal complies with the relevant provisions of the Bankstown Local Environmental Plan 2001 except for the floor space ratio. A discussion is provided below of the extent of the departure.

Clause 30 - Floor space ratio

An assessment of the development application revealed that the proposal fails to comply with the provisions of *Bankstown Local Environmental Plan 2001* relating to maximum floor space ratios under clause 30 of Bankstown LEP 2001 and as indicated on the floor space ratio maps.

The site has mixed zoning and the following FSR applies to the site:

Street address	Site Area	BLEP 2001		Gross floor area	
		Zoning	Allowable FSR	Permissible	Proposed
225-241A Hume Highway & 112 Northcote Road	18012.9m ²	3(c)	1:1	18012.9m ²	19319.1m ²
24 Hillcrest Avenue	743.1m ²	2(a)	0.5:1	371.55m ²	Nil
Total	18756m ²		0.98:1 (for the whole site)	18384.45m ²	19319.1m ²

The proposed development has a total floor space ratio of 1.03:1 and does not comply with Clause 30 of the Bankstown LEP 2001.

Applicant's objection under *State Environmental Planning Policy No. 1* seeking variation to maximum FSR

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

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

- *the extent of non-compliance is very minor, with the “excess” gross floor area represented by less than 2.6% of the allowable gross floor space;*
- *the nature and scale of the proposed development are such that it would be virtually impossible to identify any material physical difference between the proposed development, and an alternate development that achieved strict compliance with the FSR control;*
- *the variation to the FSR control is so small as to ensure that the “excess” floor space does not contribute to any new or additional impacts on the amenity of any surrounding land;*
- *the “North East Local Area - Issues Paper” recommends increasing the FSR control on the subject site from 1:1 to 1.5:1, and the proposed development remains substantially below the recommended FSR control for the site;*
- *strict compliance with the FSR control is considered unnecessary and unreasonable given the physical characteristics of the site, the scale of the proposed development, and the very minor nature of the non-compliance;*
- *the proposed development will make efficient use of well serviced land in close proximity to existing infrastructure and services; and*
- *the objectives of the FSR control are generally satisfied despite the minor non-compliance.*

Comments

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

The aims and objectives of the policy, as set out in Clause 3 of SEPP 1, are to provide

“... flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act”.

The objects of the Act are:

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

- (ii) *to encourage the promotion and coordination of the orderly and economic use and development of land.*

Having particular regards to the following matters:

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

The floor space ratio is a numerical control contained within an Environmental Planning Instrument and is therefore a development standard.

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

As a matter of general principle, an FSR standard is imposed to control bulk, scale and built form of structures. Notwithstanding the general principle, in the absence of other controls it can be also regarded as a control on density.

The relevant objectives of the floor space ratio clause in the Bankstown LEP are:

- *to generally regulate the scale and bulk of development consistently with the capacity and character of the area of the development site.*
- *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.*

Despite the additional floor area, the proposed development is considered to have a built form of acceptable height, bulk and scale which is demonstrated by the proposal's ability to comply with the majority of the Residential Flat Design Code controls. The site is a large consolidated site and the proposed development is expected to provide a building form that responds to the expected future character of the area.

It is relevant to note here that Council has prepared a Local Area Plan which “... sets out the vision for the North East Local Area to strengthen its role as an important economic and transport connection to the Hume Highway Enterprise Corridor ...”.

Suggested planning control changes for the subject site under the North East Local Area Plan are as follows:

For the Business Enterprise Zone, increase the building envelope to 1.5:1 FSR to match the 4 storey limit provided:

- *The properties at Nos. 225–241 Hume Highway and No. 112 Northcote Road consolidate into a single site.*
Otherwise a 1:1 FSR will apply.

The current proposal consolidates Nos. 225-241 Hume Highway and 112 Northcote Road into a single site and would qualify for the 1.5:1 FSR.

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

The proposed development is considered to have an acceptable bulk, scale and height for the site context. The amenity of the surrounding residents has been considered and found to be acceptable. The development will replace an existing use by a development that is more consistent with the zoning of the land and surrounding residential zoning. In this regard, the proposal is seen as an economic and orderly development of the site.

Under the circumstances, strict numerical compliance with the FSR is considered unnecessary and is unlikely to result in a better outcome.

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

Strict compliance with the standard is considered unreasonable in the present context.

- *Is the objection well founded?*

A summary of the grounds of objections are as follows:

- Development being of acceptable scale, height and bulk
- Variation being minor, particularly in light of the new gross floor area definition in the amending LEP as all new development in the area will be assessed under the new definition
- Large consolidated site can accommodate more intensive development
- No adverse impacts arise
- Consistent with the objectives of Council Policies and the Act

The impact of the proposal is assessed in the following sections of this report and the proposal is unlikely to contribute to an adverse impact on the adjoining developments.

In conclusion, the SEPP 1 objection is considered well founded and it is a recommendation of this report that the objection be supported.

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

At the time of lodgment of this development application the Bankstown Local Environmental Plan 2001 (BLEP 2001) was in force while a draft local environmental planning instrument had been publicly exhibited. Pursuant to the matters for consideration contained in Section 79C(1) of the EP&A Act 1979, the provisions contained within each of the these EPIs are required to be considered in the assessment of the subject development application.

On 5th March 2015, the Bankstown Local Environmental Plan 2015 (BLEP 2015) was published on the NSW Legislation Website, hence came into effect on this date. The savings and transitional provisions contained in Clause 1.8A of BLEP 2015 has the effect of limiting consideration of the provisions contained within the LEP to only those development applications lodged on or after the 5th March 2015. As the subject development application was lodged with Council prior to this date, the application is required to be considered against the provisions contained within the BLEP 2001 and the exhibited draft.

BLEP 2015 essentially represents the published version of the draft LEP hence, in consideration of the draft instrument, consideration has been given to the provisions contained within BLEP 2015. While BLEP 2015 proposes the introduction of some additional provisions, in the most part, the new instrument provides for an administrative conversion of BLEP 2001 to the standard instrument LEP template.

Approval of the development would not be inconsistent with the intent and purpose of the instrument.

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

The application was lodged on 5 January 2015 and therefore is being assessed under the Bankstown Development Control Plan 2005 (BDCP 2005), being the DCP in force at the time of lodgment.

The development has been assessed against the following provisions of BDCP 2005:

- Part D2 – Residential Zones
- Part D4 – Commercial Centres
- Part D5 - Key Development Sites in Business Zones
- Part D7 - Sustainable Commercial and Industrial Development
- Part D8 – Parking
- Part E1 – Demolition and Construction
- Part E2 – Tree Preservation Order
- Part E3 – Flood Risk Management
- Development Engineering Standards

Part D2 applies to that part of the development located within residential zoned land i.e. 24 Hillcrest Avenue. The proposal uses this land to obtain vehicular access to the townhouses and has no building element. As a consequence there are no specific controls from Part D2 relevant to this development.

Part D7 specifies development controls for water conservation and energy efficiency for commercial and industrial developments and applies to commercial floor space in a mixed use development. The controls include specific use of water efficient fixtures and energy efficient hot water systems, air-conditioning and lighting. Conditions have been imposed to ensure that the building design incorporates the relevant specifications contained in Part D7 of the DCP.

Whilst Part D4 provides generic controls for development in commercial centres, Part D5 provides detailed guidelines for developments in key development sites in business zones, including the subject site.

The following table provides a summary of the development application against the controls contained in BLEP 2001 and Part D4, D5 and D8 of Bankstown Development Control Plan 2005, where the controls are not superseded by any controls within SEPP 65 and the RFDC.

STANDARD	PROPOSED	REQUIRED/ PERMITTED	COMPLIANCE	
			BDCP 2005 PART D4, D5 & D4	BLEP 2001
FSR	1.03:1	1:1 for land zoned 3(c) 0.5:1 for land zoned 2(a)	N/A	No
Site consolidation (required to use Section 12 - Part D5 of BDCP 2005)	225-241A Hume Hwy, 112 Northcote Rd & 24 Hillcrest Ave	225-243A Hume Hwy, 112 Northcote Rd & 24 Hillcrest Ave	No	N/A
Site area	18,756m ²	5000m ²	Yes	Yes
No of storeys: - within 20m of Hume Highway frontage - Remainder of the site	2	2	Yes	N/A
	Maximum 5	4	No	N/A
Setback: ** Street frontages: - Hume Highway:- o Commercial o Residential - Northcote Rd Side/rear - North - South - East	5m 20m 10m 9.2m to 12.8m 5m (min) 9m & 6.15m to 9m	5m 20m 10m 10m 5m 5m & 7m	Yes Yes Yes No Yes No	N/A Yes N/A N/A
Car Parking	Commercial floor space (includes offices, convenience stores, restaurants/café, medical centre & recreation facility): Total: 63 spaces Residential: 236 spaces Visitor: 38 spaces Total = 355 spaces	Office: 1 space @ 40m ² of GFA Convenience store: 1 space @ 20m ² of GFA Restaurant/café: @ 1 space per 15m ² of dining bar area in excess of 100m ² Medical centre: @ 1 space per 25m ² of GFA Recreation facility: Based on a parking study Residential: 236 sp. @ 1 space per 1 BR unit 1.2 space per 2 BR unit 1.5 space per 3 BR unit Visitors: 38 (@ 1 per 5 units)	Yes Yes Yes	N/A
Adaptable housing	5 units	5 units	Yes	N/A

** Refer to Fig12A of Part D5 of BDCP 2005 provided later in the report for an illustration of the setback controls

As the table demonstrates, the application satisfies the controls contained in the BLEP 2001 and BDCP 2005 except for FSR, site consolidation, number of storeys and setbacks.

Floor Space Ratio

The variation to the FSR has been discussed previously.

Site Consolidation

Clause 12.1 of Part D5 of BDCP 2005 states:

- 12.1 Council may apply Section 12 to the allotments at 225–243A Hume Highway, 112 Northcote Road, and 24 Hillcrest Avenue, Greenacre only if it is satisfied that a development:
- (a) will consolidate all the allotments into a single allotment; and
 - (b) will not have an adverse effect on other land in the vicinity.
- 12.2 If in Council's opinion a development does not satisfy clause 12.1, Part D4 of this DCP will continue to apply to each allotment. This includes the landscape buffer zone and a 2 storey limit.

The proposed development site includes the allotments stated above except for No. 243A Hume Highway. The applicant has advised that an offer was made to the owner of No. 243A Hume Highway on the basis identical with that applied to their acquisition of the adjoining properties at 225-241 & 241A Hume Highway, 112 Northcote Road and 24 Hillcrest Avenue. However, the figure asked by the adjoining owner was 3.5 times the offer and “... on this basis we formed the view that the figure sought ... was simply not commercial and did not reflect the development potential of the site at 243A Hume Highway ...”. Documents and email exchanges between the developer and the owner of 243A Hume Highway indicating the offer made and the expected figure have been lodged with Council.

Despite the inability to consolidate No. 243A Hume Highway the applicant submits “... Irrespective, the proposed development does not physically “isolate” the adjoining property, and unnecessarily restricting the development of the site would not promote the orderly and economic development of land”.

Despite the inability to consolidate all lots, the remaining land (i.e. 243A Hume Highway) is over 1500m² in area and of sufficient width/depth to accommodate a mixed-use development or residential flat building in itself. Under the circumstances it would be unsustainable to refuse the application on the ground of failing to consolidate all parcels as sought by the DCP.

It is to be noted that the site consolidation required to achieve a higher FSR (1.5:1) proposed for this site under the North East Local Area Plan does not include 243A Hume Highway.

Number of storeys

Clause 12.3 of Part D5 states:

- 12.3 A development must comply with the height limits shown in Figure 12A, and must ensure:
- (a) a development within 20 metres of the Hume Highway boundary of the allotment does not exceed 2 storeys; and
 - (b) a development in the remaining area of the allotment does not exceed 4 storeys.

Further, Clause 12.2 states that if the consolidation of all parcels is not achieved the controls in Part D4 are to be applied. Under Part D4 the number of storeys is limited to two storeys.

The inability by the developer to acquire No. 243A Hume Highway has been discussed above. While No 243A Hume Highway does not form part of this development site, its absence should not compromise the development of the majority of the land in this section of Hume Highway to its full potential. The remaining land, i.e. 243A Hume Highway, has sufficient area and width to achieve its full development potential.

Under the circumstances, it is considered reasonable to apply the height controls contained in Clause 12.3. Figure 12A provides the following specific setbacks and height controls for the site:

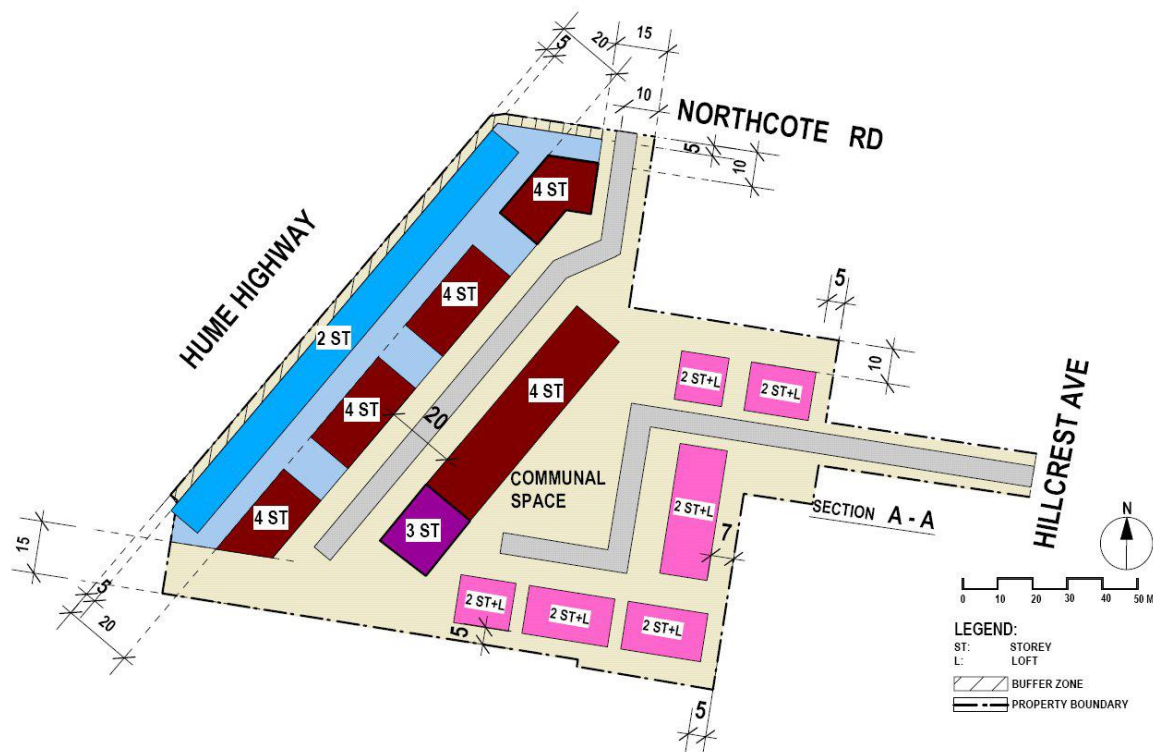


FIGURE 12A: Proposed height and setback standards for a development that consolidates the allotments at 225–243A Hume Highway, 112 Northcote Road, and 24 Hillcrest Avenue, Greenacre into a single allotment

Whilst the portion of the development located within 20m of the Hume Highway boundary is two storeys, the buildings within the rest of the site range from 2 to 3 storey townhouses to 3 to 5 storey residential flat buildings. In particular buildings 4, 5 and the townhouses breach the height control.

The applicant has presented following arguments in support of seeking a variation to the height controls:

Building 4 - The building is 4-5 storeys. The overshadowing impact of the proposed building is contained within the site between 10am and 2pm on 21 June and overshadowing of townhouses proposed and anticipated in the DCP. There is minor additional encroachment prior to 10am and after 3pm.

Building 5 – The BDCP 2005 proposes two storeys plus loft in the location of Building 5. The proposal is 3 storey residential flat building that provides a transition to properties on Hillcrest Ave with additional setback of the 3rd storey from the east. Overshadowing as a result of the proposed building is predominately contained within the site with an exception after 1pm as overshadowing begins to reach the buildings on 26 Hillcrest Avenue. It is considered that the additional storey has a minimal impact on adjoining property amenity...

Town Houses – Three townhouses exceed 2 storeys... The portions that exceed 2 storeys are set back 5m from the boundary with the Rawson Road properties and 7m from the boundary with 26 Hillcrest Avenue. A transition in building height from the west to the east to the existing unit complex at 26 Hillcrest Avenue is shown in Figure 5. The shadow impact of the third level ... is reasonable as:

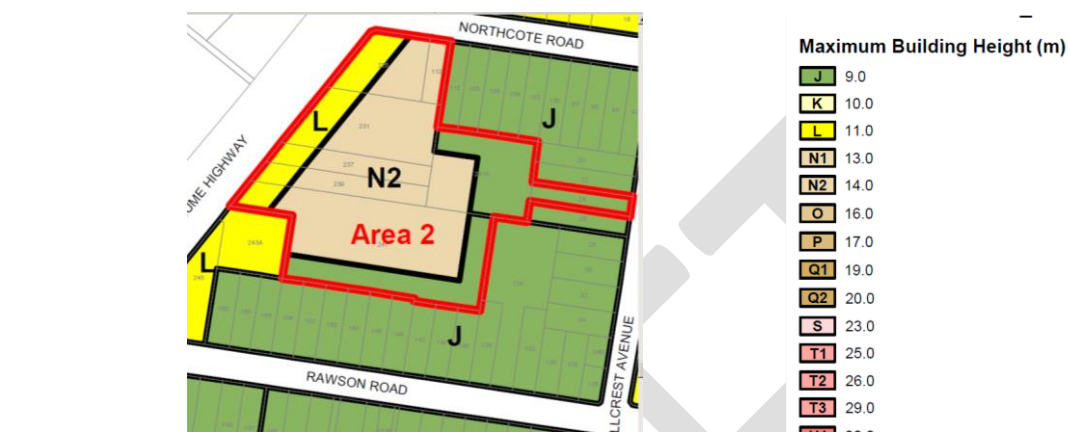
- The shadow impact of the townhouses do not impact the principle buildings on adjoining properties between 10am and 1pm (3hours) on winter solstice. All adjoining properties, individually received at least 4hours direct sunlight.*
- Shadows of the townhouses predominantly fall on sheds and garages located at the rear of backyards of Rawson Road properties.*
- The units at 26 Hillcrest Avenue are shaded by existing trees and have limited fenestration on the facades facing the site.*

Comment

The proposed development varies the building layout depicted in Figure 12A, however the building layout maintains the general concept of establishing a defined street edge to the Hume Highway, taller buildings through the central portion of the site, and lower scale buildings to the east and south. The building form reflects the general built form character envisaged for the site and provides for a form, massing and scale that provides for no appreciable loss of amenity for the adjoining residents.

Townhouses extend along the sites southern and a portion of the sites eastern boundaries. While the DCP identifies a preferred building form of 2 storeys plus loft, three of the fourteen townhouses are 3 storeys (townhouses 2, 9 and 12).

The townhouses that are three storey provide for ground floor car parking, first floor living areas and upper floor bedrooms. To ameliorate potential overlooking / privacy issues arising from the upper floor living rooms and top floor bedrooms, it is recommended that the windows / openings provided along the rear elevations of these townhouses to have a minimum sill height of 1.7 metres. Required solar access to the adjoining developments and their rear yards is achieved despite the breach to the storey limit.



Building Height for the site under BLEP 2015

In view that all future developments on land surrounding the site and in its vicinity will follow the building heights adopted under BLEP 2015, the development will be consistent with the intended built form character of the area. The impact from the height breach has been assessed and found not to significantly affect the amenity of the adjoining residents in terms of privacy, overlooking and visual amenity.

Setbacks

Figure 12A of Part D5 of the DCP (refer to earlier section of this report) provides the setbacks for building from the boundaries. The development breaches the control at 2 points viz. along the northern boundary and eastern boundary.

Along the northern boundary a small section of Building 4 is located at a minimum of 9m in lieu of 10m required by the DCP. However, this breach is limited to less than 4m of length of the building and has no detrimental impact on the adjoining property due to its northerly orientation.

Along the eastern boundary, one of the townhouses has a setback of 6.15m at the ground floor level in lieu of 7m required by the DCP. The first floor has been setback 7m as per the DCP. This variation to the ground floor setback does not create issues regarding loss of privacy and overshadowing and is considered acceptable.

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

There are no planning agreements applicable to the proposed development.

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.

Coastal zone management plan [section 79C(1)(a)(v)]

Not applicable in this instance.

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 proposed development is permitted with consent at the subject site. The variations to FSR, site consolidation, height and setbacks are acceptable in the context of the development. The proposal represents an appropriate built form for the site.

As discussed in this report, the proposed development is acceptable with regard to its likely environmental, social and economic impacts on the locality. The following aspects of the development require further assessment:

Safety, security & crime prevention

The application was referred to Council's Community and Development Unit and Bankstown Police. The Bankstown Local Area Command has reviewed the proposal and recommended following measures:

- *Implementation of 'swipe' cards or key FOB's, to increase resident and occupant security when entering the premises and underground parking;*
- *Letterboxes owned by residents and business occupants, to be key lockable;*
- *CCTV surveillance be installed at key entry/exit points of the premises, including driveways and coverage of letterboxes;*
- *Signage displayed at key entry/exit points and mailboxes, warning of surveillance measures.*

These matters are such that they can be dealt with during the building design/construction phase and conditions are to be imposed to this effect.

Waste Collection

Waste collection for the residential units and the commercial area is proposed off Northcote Road. Waste collection for the fourteen townhouses is proposed off the access road from Hillcrest Avenue. While the waste collection for the units and commercial will be at communal collection areas, the town houses will be allocated separate individual bins. The internal roads have been designed to accommodate the service vehicles likely to frequent the site for garbage pick-up. The design has been reviewed by Council's Waste Area Team and deemed acceptable. A condition will be imposed requiring the owner to indemnify Council or its contractors for any damages caused during the service.

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

The application was advertised and notified for a period of twenty-one (21) days, from 15 January to 4 February 2015. A total of four (4) submissions, including a petition signed by 9 residents, were received objecting to the proposal during this notification period. The application was subsequently amended and was re-advertised and notified for a further period of twenty-one (21) days, from 1 July 2015 to 21 July 2015. No submissions were received during the second notification period.

The main issues raised during the initial notification period were:

Objection: *Concerns regarding safety, privacy and noise from the driveway on Hillcrest Avenue; drive through road on 24 Hillcrest Road next to a fence is a safety concern due to as any loss of control by a vehicle could be fatal; the proposed fence is not solid brick and therefore, offers no real protection.*

Comment: No. 24 Hillcrest Avenue is to be used to provide vehicle access to the townhouses and only pedestrian access for the residential part of the development. It is to be noted that the original proposal against which this concern was raised, was modified to remove the access to garbage vehicles servicing the residential apartments.

Pedestrian safety will be provided with direct visibility between the entrance of Building 5 and Hillcrest Avenue. Units and common space within Building 5 will also have windows that will allow passive surveillance. Vehicular traffic movements will be limited to those accessing the 14 townhouses. It is unlikely that given the number of vehicle movements and the vehicles using this access driveway that it would warrant any preventative measures being imposed in respect to significantly upgrading boundary fencing.

Objection: *The eastern end of the land was raised by 2 ½ m with a retaining wall; Level of land may have been raised without approval.*

Comment: The eastern and southwestern end of the site was filled during 1990s. Whilst development consent was issued to carry out filling on part of the site, it has not been possible to accurately establish whether all fill was carried out according to the consent. Council's Compliance Unit has advised that there are no outstanding notices regarding the fill.

Objection: *Water running from the land will cause flooding of adjoining properties.*

Comment: All stormwater drainage from the development is to be captured and connected to Council's drainage system in Hillcrest Avenue through an on-site-detention system. The drainage design has been assessed and found to satisfy the requirements of Bankstown Development Engineering Standards. As a consequence nuisance flooding currently experienced by the downstream owners should be improved by the development.

Objection: *Lot more traffic will be using the street causing danger to pedestrians and more noise; Traffic congestion will be increased.*

Comment: The development application was accompanied by a traffic and parking assessment report prepared by Varga Traffic Planning. The findings of the report are summarised below:

The results of the SIDRA analysis of the proposed site access driveway in Northcote Road ... revealing that under the projected future traffic demands expected to be generated by the development proposal, the driveway is expected to operate at Level of Service "A", with average vehicle delays in the order of 3 seconds/vehicle.

The results of the SIDRA analysis of the proposed site access driveway in Hillcrest Avenue ... revealing that under the projected future traffic demands expected to be generated by the development proposal, the driveway is expected to operate at Level of Service "A", with average vehicle delays in the order of 1 second/vehicle.

In the circumstances, it is clear that the proposed development will not have any unacceptable traffic implications in terms of road network capacity, and that no road improvements or intersection upgrades will be required as a consequence of the development proposal.

In addition a separate pedestrian access is to be provided from Hillcrest Avenue to manage the conflict between vehicle and pedestrian traffic.

Objection: *Will cause parking problem for the quiet street*

Comment: Adequate on-site parking is provided in accordance with Council's parking provisions.

Objection: *All privacy to backyard and swimming pool will be lost from the 3 storey townhouses.*

Comment: Except for the 3 x three storey townhouses that are located along the southern and eastern boundaries, all other townhouses are two storey and will have bedrooms and bathrooms windows at first floor level overlooking the rear yards of properties fronting Rawson Road and Hillcrest Avenue.

To ameliorate potential overlooking / privacy issues arising from the upper floor living rooms and top floor bedrooms, it is recommended that the windows / openings provided along the rear elevations of these townhouses to have a minimum sill height of 1.7 metres.

Objection: Concerns regarding dust and debris during construction; the development will bring unnecessary noise.

Comment: Conditions have been imposed to manage and minimise the impact of the development during construction stage. These include limiting hours of demolition/construction and compliance with the EPA and WorkCover guidelines regarding dust and noise emission.

Objection: Overshadowing by large block of units

Comment: Whilst some overshadowing is unavoidable due to the site contours and the scale of the development, the shadow impacts of the proposed development are considered reasonable as the DCP anticipates 2 storey plus loft development in the southern and eastern portion of the site. The development in these locations have the greatest impact on adjoining property owners, the impact however is limited to the rear portion of the properties.

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

The proposed development would not contravene the public interest. The proposed development responds appropriately to the controls contained in the *Bankstown Local Environmental Plan 2001* and *Bankstown Development Control Plan 2005*. Matters raised in public submissions have been satisfactorily addressed, and there would be no unreasonable impacts on the locality.

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 *SEPP 55*, *SEPP 65*, *SEPP (Infrastructure) 2007*, *SEPP (BASIX)*, *BLEP 2001*, *Draft BLEP 2015* and the relevant parts of *BDCP 2005*. The application fails to comply in regards to FSR, site consolidation, height, setbacks and building depth. 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 proposed development represents an appropriate built form for the site. Relevant planning controls have been appropriately responded to and no significant or unresolved matters have been raised in public submissions.