

ITEM	1 Palomar Parade, YAGOONA NSW 2199, 3 Palomar Parade, YAGOONA NSW 2199
	Demolition of existing structures and construction of a six storey, twenty-nine (29) unit residential flat building, with three storey's of basement carparking Development proposed under State Environmental Planning Policy (Affordable Rental Housing) 2009
FILE	DA-983/2014 - North Ward
ZONING	3(b) Business – Other Centres
DATE OF LODGEMENT	17 September 2014
APPLICANT	Gus Srour
OWNERS	Saxico Pty Ltd
ESTIMATED VALUE	\$7.72 Million
AUTHOR	Development Services (Kristy Bova)

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 \$7.72, which exceeds the capital investment threshold of \$5 million for Affordable Housing under Schedule 4A(6)(b) of the *Environmental Planning and Assessment Act, 1979*.

Development Application No. DA-983/2014 proposes the demolition of existing structures and construction of a six storey, twenty-nine (29) unit residential flat building, with three storey's of basement carparking.

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, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy No 55—Remediation of Land, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment, Bankstown Local Environmental Plan 2001, Draft BLEP 2015, as well as Part D4 & D5 of the Bankstown Development Control Plan 2005.

The application is compliant and the requirements of BLEP 2001 and BDCP 2005, with variations limited to the RFDC in regards to building separation, communal open space and building depth. 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/notified on four (4) separate occasions, being:

- 1) 1 October 2014 to 20 October 2014,
- 2) 23 January 2015 to 2 February 2015,
- 3) 17 March 2015 to 30 March 2015, and
- 4) 5 August 2015 to 26 August 2015.

During these notification/advertising periods, forty-six (46) separate submissions were received from ten (10) separate households, which raised concerns relating to:

- The development does not comply with Council's Development Control Plan – Part D2.
- Solar Access to the adjoining dwellings
- Inconsistencies and inaccuracies in the plans and supplementary documents is deceptive
- Council has withdrawn its "Further Info Before Approval" letter from its list of documents available online
- Building depth
- Pedestrian safety – sight distances
- Reduction of communal open space and potential future development of Gazzard Park
- Errors in the geotechnical report submitted and potential impact on structural adequacy of existing homes
- SEPP 65 - building separation and setbacks
- Telecommunications disruption potential
- Traffic, parking and large trucks during construction
- Acoustic impacts
- Potential future development of No. 5 Palomar Paade and constraining the development potential and reducing value of adjoining sites
- Unreasonable offers to purchase the isolated allotment
- Single aspect southerly apartments – 10% max
- Demolition and construction disruptive to residents – safety asbestos, noise and air pollution during construction
- Potential for increase in rubbish and illegal dumping and crime
- Privacy - balconies on top two floor and sill heights should be 1.8m instead of 1.7m
- Out of character in terms of 6 storey height, visual bulk and density
- Lot width
- No clotheslines
- Aesthetic due to the location of garbage area at the front of the property
- Objectives of the Zone and Village Centre
- Exceptions to development standards - SEPP 1 Objection/BLEP Clause 4.6
- Height of the building requiring commonwealth approval

POLICY IMPACT

This matter has no direct policy implications as the proposal complies with BLEP 2001 and BDCP 2005, with variations limited to the RFDC in regards to building separation, communal open space and building depth. The development achieves good urban and is considered appropriate in the context of the site, and would not set a precedent for development elsewhere in the LGA.

FINANCIAL IMPACT

The proposed matter being reported has no direct financial implications.

RECOMMENDATION

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

ATTACHMENTS

A - Plans

B - Conditions of Consent

DA-983/2014 ASSESSMENT REPORT

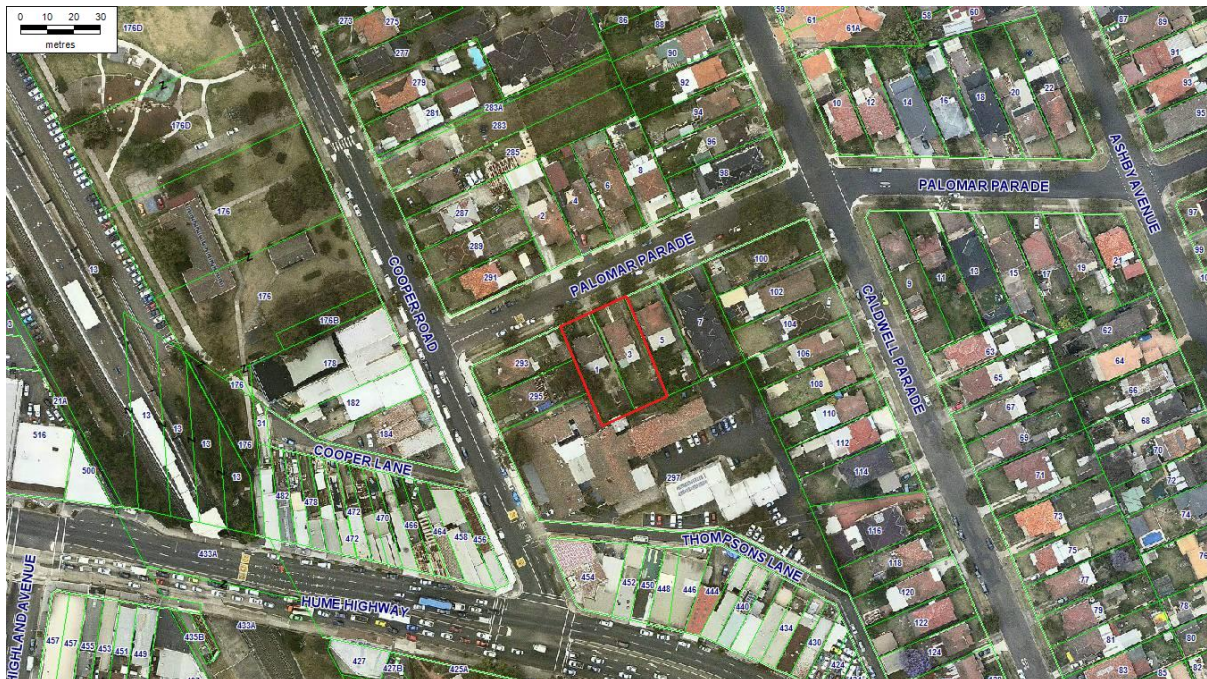
SITE & LOCALITY DESCRIPTION

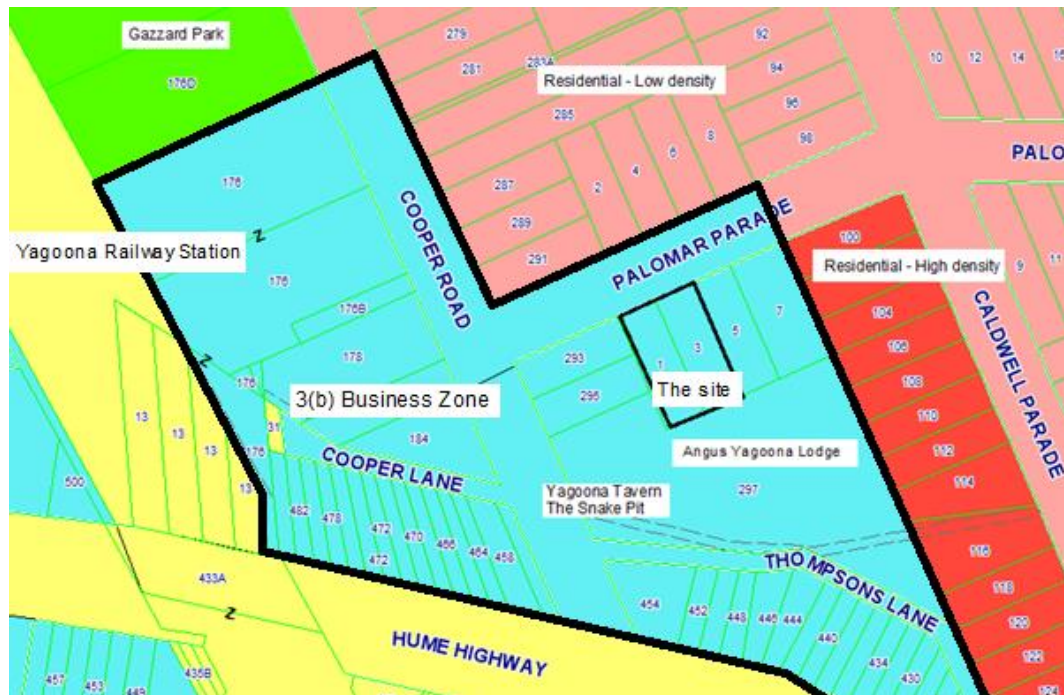
The subject site is known as No. 1 and No. 3 Palomar Parade, Yagoona. The total site area is 1075.4m² with a frontage of 26.82m along Palomar Parade and is zoned 3(b) Business – Other Centres under Bankstown Local Environmental Plan 2001. The site has a fall of approximately 1m from east to west. The subject site is located on the southern side of Palomar Parade between Cooper Road and Caldwell Parade. The site currently contains two single storey dwellings and associated outbuildings.

Development surrounding the site is generally characterised by Yagoona Railway Station and retail and community facilities to the south and west along Cooper Road and the Hume Highway. Low density residential development is located to the north, while higher density residential zoned land is located to the east of the site along Caldwell Parade.

To the east of the site is a recently constructed three storey residential flat building, while one single dwelling is located between that existing residential flat building and the proposed development. The Yagoona Railway Station is located 200 metres to the north-west of the site, which is located adjacent to community facilities, an oval, new playground equipment and cycle ways within 'Gazzard Park'.

The existing development along the western side of Cooper Road largely consists of older shop top housing, while Yagoona Tavern/'The Snake Pit' and Angus Lodge (a two-three storey boarding house) directly adjoins the rear of the site to the south.





PROPOSED DEVELOPMENT

The Development Application proposes the demolition of existing structures and construction of a six storey, residential flat building containing twenty-nine (29) residential units (including 1 x 1 bed, 27 x 2 bed and 1 x 3 bed units of which 8 are affordable dwellings and 1 is an adaptable dwelling), with three storey's of basement carparking containing forty-seven (47) spaces that is accessible off Palomar Parade, lodged under State Environmental Planning Policy (Affordable Rental Housing) 2009.

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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) aims to '*facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards*'. Division 1 (Clauses 10 to 17 inclusive) of the ARHSEPP applies to development for the purposes of a residential flat building. An assessment of the proposal against the applicable Clauses of Division 1 is provided below.

Clause	Requirement	Proposal	Complies
10 - Development to which Division applies	(1)(a) the development concerned is permitted with consent under another environmental planning instrument, and	The proposal is defined as 'Residential Flat Building' which is permitted with Council consent under the BLEP 2001 in the 3(b) Business zone	Yes
	(1)(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the <u>Heritage Act 1977</u> .	The site does not contain a heritage item nor is it in the vicinity of a heritage item	Yes
	(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.	The site is located within 200m of Yagoona Train Station which satisfies 'accessibility' requirements under the AHRSEPP.	Yes
	(3) Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of	The site is located within 200m of Yagoona Train Station which satisfies 'accessibility' requirements under the AHRSEPP.	Yes

	those zones.		
11, 12 (Repealed)	-	-	-
13 Floor space ratios	<p>(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.</p>	<p>20% of the gross floor area is to be used for the purpose of affordable housing.</p> <p>The units that are to be used as affordable units are as follows: Ground floor: G03, G04 Level 1: 102, 105, 106, Level 2: 205, 206 Level 3: 305</p>	Yes
	<p>(2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</p> <p>(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where:</p> <p>AH is the percentage of the gross floor area of the development that is used for affordable housing.</p> <p>Y = $AH \div 100$</p>	<p>Permitted floor space is 2:1, plus Y</p> <p>Where $Y = AH \div 100$</p> <p>$AH = 20\%$ or 0.2:1</p> <p>Total permissible = 2.2:1</p> <p>Total proposed = 2.19:1</p>	Yes

14 Standards that cannot be used to refuse consent Site and solar access requirements	(a) Repealed	-	-
	(b) Site Area Minimum 450sqm	1075.4m ²	Yes
	(c) Landscaped Area at least 30 per cent of the site area is to be landscaped	32%	Yes
	(d) Deep Soil Zone 15% of total site area	15%	Yes
	(e) Solar Access Min 70% of dwellings to receive min 3hrs solar access between 9am and 3pm in mid-winter	70% of proposed units receive 3 hours solar access	Yes
(2) General	(a) parking at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms,	<ul style="list-style-type: none"> • 1 bed x 1 (0.5 spaces each unit) = 0.5 spaces • 2 bed x 29 (1 space each unit) = 29 spaces • 3 bed x 1 (1.5 spaces each unit) = 1.5 spaces <p>Total spaces required = 31</p> <p>Total spaces provided = 47</p>	Yes
	(b) dwelling size <ul style="list-style-type: none"> • 50 square metres in the case of a dwelling having 1 bedroom, or • 70 square metres in the case of a dwelling having 2 bedrooms, or • 95 square metres in the case of a dwelling having 3 or more bedrooms. 	All units meet the minimum requirements	Yes
15 Design Requirements	Consideration of Seniors Living	The Seniors Living Policy is not applicable as State	N/A

	Policy: Urban Design Guidelines for Infill Development	Environmental Planning Policy No 65—Design Quality of Residential Flat Development applies	
16A Character of Area	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the area.	<p>The site is zoned 3 (b) Business – Other Centres in which residential flat buildings are permitted. The development complies with the maximum 6 storey limit which was set in policy to achieve higher densities in close proximity to train stations and commercial centres.</p> <p>It is noted that the area is in currently in transition and that redevelopment of older single dwellings is occurring with newer construction including (but not limited to) dual occupancy, villa developments, residential flat buildings, mixed use and commercial developments.</p> <p>The proposal is well designed and is considerate to the existing surrounding development and compatible with the desired future character of the area. The character of the area is further discussed below.</p>	Yes
17 Must be used as affordable housing for 10 years	The dwellings are to be used for the purposes of affordable housing and managed by a registered community housing provider	A condition of consent will be imposed to ensure compliance with this clause.	Yes
18 Subdivision	Land on which development has been carried out may be subdivided with consent of the consent authority	Subdivision is not sought as part of Development Application.	N/A

As demonstrated above, the proposal complies with all of the standards contained within Division 1 (Clauses 10 to 17 inclusive) State Environmental Planning Policy (Affordable Rental Housing) 2009.

Character of the area

Development surrounding the site is generally characterised by Yagoona Railway Station and retail and community facilities to the south and west along Cooper Road and the Hume Highway. Low density residential development is located to the north, while higher density residential zoned land is located to the east of the site along Caldwell Parade. It is noted that many residential sites in the locality currently contain older single dwelling houses and that the area is currently in transition to higher densities as part of the desired future character illustrated in Council's DCP, LEP and North West Central Local Area Plan to increase densities in and around train stations and commercial centres.

To the east of the site is a recent three storey residential flat building (approved under DA-499/2003), while one single dwelling is located between that existing residential flat building and the proposed development. The Yagoona Railway Station is located 200 metres to the west of the site, which is located adjacent to community facilities, an oval, new playground equipment and cycle ways within 'Gazzard Park'.

The existing development along the western side of Cooper Road largely consists of older shop top housing, while Yagoona Tavern/'The Snake Pit' and Angus Lodge (a 2-3 storey boarding house) directly adjoins the rear of the site to the south.

North West Central Area Plan, 2014 states that the aim of Village Centres is to *'provide a wide range of retail and commercial opportunities, excellent transport options and a diverse selection of higher density residential and mixed use development. The population within these centres are supported by good quality public spaces. The open spaces and community facilities in the centres will address the needs of the community. Our village centres are: Revesby, Padstow, Yagoona, and Chester Hill. The walking catchment of village centres is a 600 metre radius and can contain between 2,000 and 5,000 dwellings'* (North West Central Local Area Plan, 2014)

Yagoona Centre has experienced a loss of retail expenditure to nearby centres such as the Bankstown CBD due to a lack of a larger supermarket. *'In 2007, Council adopted the Yagoona Town Centre Renewal Strategy. The strategy contains actions which Council is currently implementing to create a new central place as the focus for retail and community activities next to the railway station, including the development or expansion of a large scale supermarket anchor. The actions also provide opportunities for population growth and the upgrade of infrastructure and facilities'* (North West Central Local Area Plan, 2014).

It is noted that the Yagoona Town Centre is in its early stages of making a transition from older single storey dwellings and shop top housing to development achieving higher densities. These include (but not limited to) newer dual occupancy, villa, residential flat buildings, mixed use and commercial developments.

In the immediate locality (southern side of Palomar Parade and along Cooper Road), there are sites with permitted building heights of up to 20m and densities of 2:1. On the western side of Yagoona Railway Station there are sites with permitted building heights up to 26m and densities of up to 3:1. Once the area is further developed, the residential area will evolve to be more consistent with the proposal in terms of its scale. The proposal is considered to be compatible with the longer term intended character of the area while being considerate to the existing development during the transition.

The proposal is considered to offer a quality design outcome within the context of the surrounding area. The proposal contributes in a positive manner to the quality and identity of the precinct. As demonstrated above, the proposed development meets the relevant standards set out in the ARHSEPP and satisfies the aims and intent of the policy.

Deemed State Environmental Planning Policy (SEPP) – Georges River Catchment

It is considered that the proposed development will not significantly impact on the environment of the Georges River, either in a local or regional context. The proposal is considered to meet the aims and objectives of the Georges River Catchment (SEPP).

State Environmental Planning Policy No 55—Remediation of Land

The application is considered to be satisfactory in regards to the objectives and requirements of State Environmental Planning Policy No 55—Remediation of Land.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (SEPP 65)

In assessing an application that contains four or more self contained dwellings in a building of at least three storey in height, Council is required to consider the provisions of SEPP65, which aims to improve the design quality of residential flat development in NSW. The proposal is consistent with the design quality principles contained within the policy, which promotes development that is of good design, appropriate context, scale and density given the desired future character of the area.

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 the north-eastern part of the retail/commercial centre of Yagoona. This commercial area generally surrounds Yagoona Railway Station to the south-west of the site. Recent development within the Yagoona Town Centre includes a series of mixed-use buildings incorporating retail/commercial land uses at the ground floor level with residential apartments above.

It is noted that the area is currently in transition and that the proposed development results in an appropriate built form for the site which is consistent with the longer term desired future character illustrated in Council's DCP, LEP and North West Central Area Plan to increase densities in and around train stations and commercial centres. The proposal is considered to be compatible with the longer term intended character of the area while being considerate to the existing development in the shorter term.

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 West Central Local 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 not strictly conforming to the 'Rules of Thumb'. The development has a floor space ratio that is generally consistent with the future desired character that is envisaged for the Yagoona Town Centre.

The zone permits a floor space ratio of 2:1 under BLEP 2001 and the development qualifies for a FSR bonus of 20% under the ARHSEPP. It is noted that although the proposed floor space of 2.19:1 complies with the ARHSEPP it is marginally higher than the 2:1 otherwise permitted in the zone. However, the bonus floor area will not be immediately apparent on visual inspection of the site and still fits within an appropriate building envelope - achieving satisfactory building setbacks and separation and resultant solar access and privacy between dwellings.

It is considered that the bulk and scale of the development is compatible with the desired character of the locality as required by the ARHSEPP and the development is suitably located within walking distance of Yagoona Railway Station. The provision of affordable housing within areas that are accessible to public transport is promoted and required under the ARHSEPP.

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 and two bedroom units, including an adaptable unit, providing a range of choice and housing affordability

6. Landscape

The development will involve the planting two new street trees - *Corymbia maculate* (Spotted Gum) and three endemic species of trees are to be planted within the deep soil zone that achieve a minimum height at maturity of 15 metres. The chosen street trees and the deep soil planting will improve the streetscape amenity in the medium to longer term. Overall 32% of the site is dedicated to landscaping which is consistent with the ARHSEPP.

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 one adaptable unit and eight affordable units - providing a range of choice and housing affordability.

8. Safety and Security

The development is considered to achieve public and private safety, by limiting 'dead spaces' around the building that are accessible to the public. These spaces to the sides and rear of the site have been incorporated into private courtyards and communal open space so that there is a sense of ownership of these areas. Communal open space areas at the centre of the site have good sightlines and the balconies facing the street provide good opportunities for passive surveillance.

Further, the main entrance is clearly visible in the front façade and there is a clear definition between public and private spaces.

9. Social dimensions

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

10. Aesthetics

Building materials proposed include rendered facade with portions of composited horizontal and vertical timber cladding, aluminium framed windows and doors, metal and timber framed glazed balustrades and fixed privacy screens. The development is considered to be of a good architectural quality, which is designed to complement the character of the existing and emerging developments in the area.

The proposed development is consistent with the Design Quality Principles and is considered to be satisfactory in terms of key 'rules of thumb' contained in the Residential Flat Design Code, as illustrated in the table below.

'RULES OF THUMB'	PROPOSED	COMPLIES
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 13m at worst. The back of 85% of kitchens are within 8m of a window.	Yes. Non-conforming ('deepest') parts of the affected apartments generally contain dwelling entries and bathrooms, therefore no amenity loss. Overall the layout of the single aspect apartments have been well considered and achieved good amenity with open plan layout of living rooms adjacent to private open space or balconies.
Apartment size 1 bed – min. 50m ² 2 bed – min. 70m ² 3 bed – min. 95m ²	All units meet the minimum requirements	Yes
Balcony depth Min. 2m depth to primary balconies.	All primary balconies have minimum 2m depth.	Yes
Floor to ceiling heights 2.7m	3m	Yes.
Internal circulation Max. 8 units accessed from a single corridor.	Maximum 6 apartments accessed from a single corridor.	Yes
Communal open space 25% – 30% of the site area is to be communal open space.	6% (or 63m ²) of the site is designated as communal open space, which are provided as two separate areas within the centre of the development.	No. Comment: Although the on-site provision is short of the required 25%, accessibility to public open space can be taken into account. The development site is located within 200m of Gazzard Park, which contains community facilities, oval, new playground equipment and cycle ways. Originally there was proposed approx.25% communal open space. However, these areas around the side and rear of the

		<p>site, have been better incorporated into the private open space of the ground floor units.</p> <p>This ensures that all communal areas have good sightlines and promote personal safety without dead hidden spaces that promote the opportunity for anti-social behavior.</p>
Solar access 70% of units should receive 3hrs solar access between 9am – 3pm midwinter.	70% of units receive 3hrs direct solar access between 9am – 3pm midwinter.	Yes
Natural ventilation Building depths, which support natural ventilation typically range from 10 to 18 metres. 60% of units to be naturally ventilated. 25% of kitchens to have access to natural ventilation. Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	20m depth 80% of units are naturally ventilated. 90% of kitchens have a window within 5m of the kitchen.	No Yes Yes Comment: A building depth of 20m is considered acceptable in this case as the development provides adequate amenity for the building occupants in terms of solar access and natural ventilation. This is assisted by all units having a higher ceiling height of 3m (rather than the recommended 2.7m), 80% of the units are cross ventilated and 70% of the units achieve the minimum solar access requirements.
Building Separation	See table below	No

As demonstrated by the above table the proposal complies with the provisions of the Residential Flat Design Code, with the exception of building separation, communal open space and building depth. Building separation is further discussed below. Overall, the proposed development has been assessed as being satisfactory as it meets the aims and intentions of the RFDC.

Building Separation

The Residential Flat Design Code states that the building separation control may be varied in response to site and context constraints. Where a development proposes less than the recommended distances apart it must be demonstrated that solar access and acoustic and visual privacy has been satisfactorily achieved.

The RFDC's suggested dimensions for building separation are shown in the table below. The overall total building setback dimension stated in the RFDC is halved, to show the approximate setback that would be required from the proposed building to the boundary (the remainder of the separation would be accommodated on the adjoining property).

	Between habitable rooms/balconies		Between habitable/ balconies and non-habitable rooms		Between non-habitable rooms		Compliance
	RFDC	Proposed	RFDC	Proposed	RFDC	Proposed	
FIRST 4 STOREYS							
Building separation	12m	Side: <u>north-east</u> 5m to existing ingle storey dwelling (No.5 Palomar) & potential 7m between future development (max 4 storey) <u>south-west</u> 20m to existing dwelling (No. 293 Cooper Road) minimum 12m to future development Rear: 12m	9m	Side: <u>north-east</u> 5m to existing single storey dwelling (No.5 Palomar) & potential 7m between future development (max 4 storey) <u>south-west</u> 20m to existing dwelling (No. 293 Cooper Road) minimum 9m to future development Rear: 12m	6m	Side: <u>north-east</u> 5m to existing single storey dwelling (No.5 Palomar) & potential 7m between future development (max 4 storey) <u>south-west</u> 20m to existing dwelling (No. 293 Cooper Road) minimum 6m to future development Rear: 12m	No
Setbacks (half the building separation)	6m	Side: 3.5m Rear: 6m	4.5m	Side: 3.5m Rear: 6m	3m	Side: 3.5m Rear: 6m	
5 TO 8 STOREYS							
Building separation	18m	Side: <u>north-east</u> N/A existing dwelling (No.5 Palomar) is one storey & maximum future development is 4 storeys <u>south-west</u> 20m to existing dwelling (No. 293 Cooper Road) minimum 18m can be achieved to future development Rear: N/A existing	13m	Side: <u>north-east</u> N/A existing dwelling (No.5 Palomar) is one storey & maximum future development is 4 storeys Note: setback is 6m to building and 4m to balcony on fifth floor - being habitable/balcony with no development potential on the fifth floor to the north- east <u>south-west</u>	9m	Side: <u>north-east</u> N/A existing dwelling (No.5 Palomar) is one storey & maximum future development is 4 storeys <u>south-west</u> 20m to existing dwelling (No. 293 Cooper Road) minimum 9m can be achieved to future development Rear: N/A existing	No

		boarding house (No. 297 Cooper Rd) is two storeys along this boundary. 18m can be achieved between future development		20m to existing dwelling (No. 293 Cooper Road) minimum 13m can be achieved to future development Rear: N/A existing boarding house (No. 297 Cooper) is two storeys along this boundary. 13m can be achieved between future development		boarding house (No. 297 Cooper) is two storeys along this boundary. 9m can be achieved between future development	
Setbacks (half the building separation)	9m	<p><u>north-east</u> N/A unlikely to have a future fifth floor at No. 5 Palomar</p> <p><u>south-west</u> 6m to boundary. Future development at No. 293 Cooper Road may have zero front setback along Cooper Road, allowing a 12m setback to the upper levels to achieve 18m building separation between habitable rooms/balconies</p> <p>Rear: 6m to boundary. Existing boarding house (No. 297 Cooper Rd) is two storey and any potential redevelopment of the site would most likely include the retention of these buildings.</p>	6.5m	<p><u>north-east</u> N/A unlikely to have a future fifth floor at No. 5 Palomar</p> <p><u>south-west</u> 6m to boundary. Future development at No. 293 Cooper Road may have zero front setback along Cooper Road, allowing a 7m setback to the upper levels to achieve 13m building separation between habitable/balconies and non-habitable rooms</p> <p>Rear: 6m to boundary. Existing boarding house (No. 297 Cooper Rd) is two storey and any potential redevelopment of the site would most likely include the retention of these buildings</p>	4.5m	<p><u>north-east</u> N/A unlikely to have a future fifth floor at No. 5 Palomar</p> <p><u>south-west</u> 6m to boundary.</p> <p>Rear: 6m to boundary.</p>	

Setbacks - Residential Flat Design Code (RFDC)

The RFDC does not dictate specific numerical controls in relation to side and rear setbacks, rather it provides objectives which aim to *'minimise the impact of the development on light, air, sun, privacy, views and outlook for the neighbouring properties, including future buildings'* and to *'retain or create a rhythm or pattern of development that positively defines the streetscape so that space is not just what is left over around the built form'*.

Also, the RFDC provides a checklist that should be considered in assessing the suitability of proposed building's side and rear setbacks, which states *'Relate side setbacks to existing streetscape patterns', 'Test side and rear setback with building separation, open space and deep soil zones'* and *'Test side and rear setback for overshadowing of other parts of the development and/or adjoining properties, and of private open space'*.

It is considered that the design of the development meets the side and rear setback objectives of the RFDC and is assessed as being satisfactory with regards to the checklist. Through it's design the development minimises the impact on the adjoining properties (with regard to overshadowing, open space & deep soil zones) and provides setbacks that are consistent with other residential flat development in the street.

In this regard, there is an existing three storey residential flat building located to the east at No. 7 Palomar Parade which is similarly setback 3.5m to the side boundaries. The proposed development has adopted the same 3.5m side setback on the lower four levels, with an increased setback to the upper two floors of 6m (and 4m to balcony on fifth floor). This repetition of the 3.5m setback is considered to be satisfactory as all windows along the side boundaries (with the exception of doors to balconies on levels 5 & 6) have sill heights of 1.7m which result in a similar impact to non-habitable rooms.

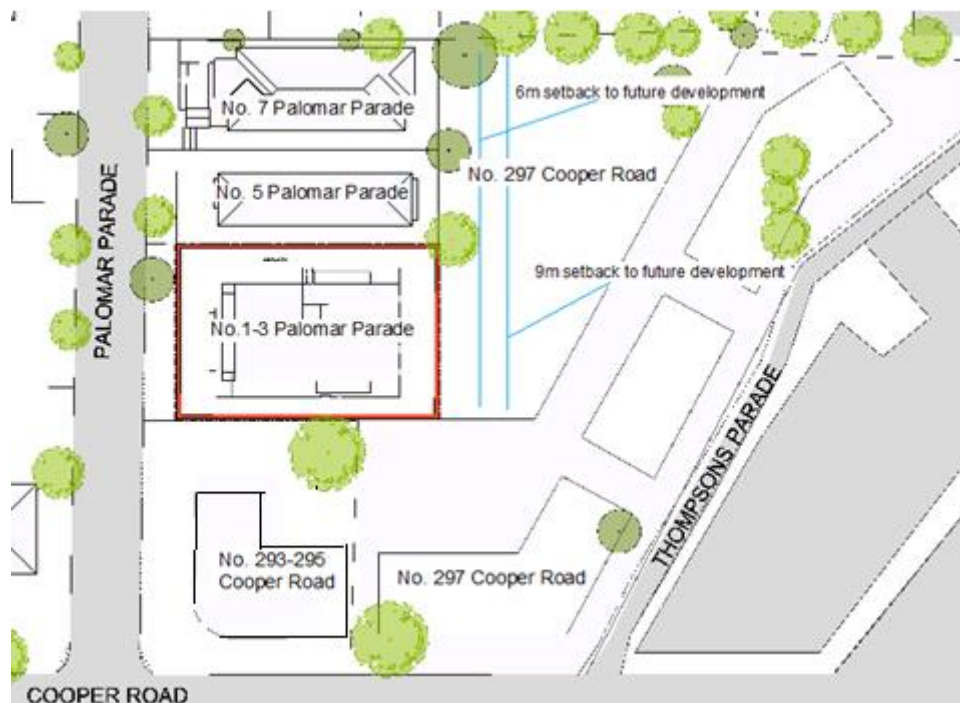
The balconies on the top two floors will have privacy screening, making it difficult to look directly into the private open space areas of adjoining residential properties - specifically No. 5 Palomar and No. 293 Cooper Road. The higher sill heights, together with privacy screening will ensure that privacy between the existing and potential future occupants (once redeveloped) of No. 5 Palomar Parade and No. 293 Cooper Road is maintained.

Building Separation - Residential Flat Design Code (RFDC)

In relation to building separation, the RFDC provides objectives to be met when varying building separation. These objectives aim to *'ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings', 'provide visual and acoustic privacy for existing and new residents'* and *'control overshadowing of adjacent properties and private or shared open space'*.

Also, the RFDC provides a checklist that should be considered in assessing the suitability of proposed building separation, which states that '*Building separation controls may be varied in response to site and context constraints*' and '*Developments that propose less than the recommended distances apart must demonstrate that daylight access, urban form and visual and acoustic privacy has been satisfactorily achieved*'

The table above indicates that satisfactory building setbacks have been proposed to this development in order to achieve suitable building separation in the short term and potential future development (on adjoining sites) that are generally consistent with the recommended distances of the RFDC. Please refer to a sketch below which indicates a potential future layout of development on the adjoining sites which further highlight that the recommended building separations of the RFDC can be achieved between future developments on adjoining sites.



With regards to the potential future development of No. 5 Palomar Parade, it is considered that a side setback of 3.5m (total 7m building separation) may be satisfactory if similar sill heights (of 1.7m) and privacy screening are proposed to maintain privacy between buildings, and achieve a similar impact to that which would result between non-habitable rooms.

A further discussion of solar access is provided elsewhere in this report. The assessment confirms that the development maintains satisfactory levels of solar access to the occupants of the existing adjoining dwellings and to the potential future occupants of the proposed development.

The proposed building setbacks and the resultant building separation is considered to meet the relevant objectives of the RFDC. The proposed setbacks would not compromise the ability of neighbouring sites to meet the requirements of the RFDC and achieve the yield and density allowed under the DCP and LEP.

The proposed development results in an appropriate built form for the site which is consistent with the longer term desired future character illustrated in Council's DCP, LEP and North West Central Local Area Plan to increase densities in and around train stations and commercial centres.

State Environmental Planning Policy (State and Regional Development) 2011

SEPP (State and Regional Development) states that a regional panel may exercise the consent authority functions of the council for the determination of applications for development of a class or description included in Schedule 4A of the EP&A Act. Schedule 4A(6)(b) of the Act includes '*Private infrastructure and community facilities over \$5 million*' (which includes Affordable Housing). As the proposed development has a value of \$7.72 million, the application is reported to the Sydney West JRPP for determination.

Bankstown Local Environmental Plan 2001

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 Plan had been publically exhibited. The savings and transitional provisions contained within Clause 1.8A of the BLEP 2015 has the effect of limiting consideration of the provisions contained within the BLEP 2015 to only those applications lodged on or after this date. 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 BLEP 2001 and the exhibited draft.

The following clauses of the *Bankstown Local Environmental Plan 2001* are relevant to the proposed development and were taken into consideration:

Clause 2 Objectives of the Plan

The relevant objectives of the Plan are contained in Clause 2 of the BLEP 2001 and are as follows:

2 Objectives of this plan

The objectives of this plan are:

- (a) *to regulate development in accordance with the following principles:*
 - (i) *new buildings should be designed to achieve:*
 - (A) *good urban design, and*
 - (B) *public and private safety, and*
 - (C) *energy and resource efficiency, and*
 - (ii) *remnant bushland, natural watercourses and threatened species should be protected, and*
 - (iii) *intensive trip generating activities should be concentrated in locations most accessible to rail transport, and*

- (iv) *new development should not diminish the role of the Bankstown central business district (CBD) as a sub-regional centre, and*
- (v) *new development in or affecting residential areas should be compatible with the prevailing suburban character and amenity of the locality of the development site, and*
- (b) *to provide a framework within which the Council may prepare development control plans to make more detailed provisions.*

The proposed building is of good urban design and is considered compatible with the changing character of the area - as promoted by North West Central Local Area Plan 2014 and BDCP 2005 - Part D5 *Key Development Sites in Business Zones* (this is discussed in more detailed in other sections of the report).

The development is considered to achieve public and private safety, by limiting 'dead spaces' around the building that are accessible to the public. These spaces to the sides and rear of the site have been incorporated into private courtyards and communal open space so there is a sense of ownership of these areas. Communal open space areas at the centre of the site have good sightlines and the balconies facing the street provide good opportunities for passive surveillance.

All units are designed to comply with Council's energy rating requirements and to maximise solar access as far as practicable.

Clause 16 General objectives of these special provisions

The proposed development appropriately addresses likely impacts relating to existing vegetation, stormwater management, and ambient noise levels.

Clause 19 Ecologically sustainable development

The subject site is accessible to public transport, and the proposed development meets the required energy and water efficiency targets as illustrated in the submitted BASIX Certificates. The proposed removal of existing vegetation has been assessed and supported by Council's Tree Management Officer, and appropriate means of managing stormwater runoff have been incorporated.

Clause 20 Trees

It is proposed to remove four (4) existing trees from the development site, two (2) of which are located within the nature strip. The remainder of the vegetation on site is exempt from a Tree Preservation Order and can be removed at anytime. The trees proposed for removal are generally in good condition, however are of low environmental significance.

The proposed tree removal has been assessed by Council's Tree Management Officer and is supported, subject to replacement of the two (2) *Callistemon viminalis* (Weeping bottlebrush) street trees with two (2) x 200Litre *Corymbia maculata* (Spotted Gum). The chosen replacement street trees will improve the streetscape amenity in the medium to longer term. In addition to the street trees three (3) endemic species of trees are to be planted within the site that achieve a minimum height at maturity of 15 metres.

Clause 23 - Development adjacent to residential zones

On the northern side of Palomar Parade (opposite the development site) the land is zoned Residential 2(a). As such, Clause 23 of BLEP2001 applies. Clause 23 provides as follows:

23 *Development adjacent to residential zones*

In determining a development application that relates to land in a zone other than Zone 2 (a), 2 (b) or 2 (c) adjoining land in Zone 2 (a), 2 (b) or 2 (c), the consent authority must take into consideration the following matters:

- (a) whether any proposed building is compatible with the height, scale, siting and character of existing residential development within the adjoining residential zone,*
- (b) whether any goods, plant, equipment and other material used in carrying out the proposed development will be stored or suitably screened from residential development,*
- (c) whether the proposed development will maintain reasonable solar access to residential development between the hours of 9 am and 3 pm during the winter solstice,*
- (d) whether noise generation from fixed sources or motor vehicles associated with the proposed development will be effectively insulated or otherwise minimised,*
- (e) whether the proposed development will otherwise cause nuisance to residents, by way of hours of operation, traffic movement, parking, headlight glare, security lighting, fumes, gases, smoke, dust or odours, or the like,*
- (f) whether any windows or balconies facing residential areas will be treated to avoid overlooking of private yard space or windows in residences.*

It is noted that the area is currently in transition and that redevelopment of older single dwellings is occurring with the newer development achieving increased densities and height. These include (but not limited to) newer dual occupancy, villa, residential flat building and mixed use and commercial developments - with maximum heights ranging from 20-26m and FSR of 2:1-3:1 within the Yagoona Town Centre. The proposal is considered to be compatible with the longer term intended character of the area while being considerate to the existing development during the transition.

The development site is located on the southern side of Palomar Parade and the properties zoned low density residential are located opposite on the northern side of Palomar Parade. Any potential shadows cast from the proposed development will not fall on these residential properties.

The proposal does not result in adverse impacts on the Residential 2(a) Zone in terms of building compatibility, noise and amenity impacts, overshadowing, privacy, and traffic and parking (these matters are addressed elsewhere in this report). It is therefore considered that the development is consistent with Clause 23 of BLEP 2001.

Clause 30 Floor space ratios

BLEP 2001 floor space ratio map prescribes a maximum floor space ratio of 2:1 for the site. However, Clause 13 of the ARHSEPP permits a floor space ratio (FSR) bonus for infill affordable housing development which varies according to the proportion of proposed development to be used for affordable housing purposes.

The development qualifies for a FSR bonus of 20% in addition to that permitted under the BLEP 2001, equating to a total floor space ratio of 2.2:1 - which the development does not exceed.

Clause 30B Height of buildings

BLEP 2001 height map prescribes a maximum height of 20m for the site. The building height proposed is 18.5m and therefore complies with this requirement.

Clause 48 of BLEP 2001- Objectives of the zone

The subject site is zoned 3(b) - Business - Other Centres. Under the provisions of the BLEP 2001, the relevant objectives of the zone are contained in Clause 48 and are as follows:

48 *Objectives of the Business zones*

(2) *The objectives of Zone 3 (b) are:*

- (a) *to encourage the provision of retail, business, community, service and entertainment facilities to serve residential areas in the catchment of the zone, without detracting from the primary role of the Bankstown CBD, and*
- (b) *to promote the redevelopment of older centres and those in decay, and*
- (c) *to enable residential development in business zones, whether or not in conjunction with commercial activity, to promote activity and services in those zones.*

The proposed development is consistent with the objectives of the 3(b) – Business Other Centres, which aims to redevelop older commercial centres and promote higher density residential development in these areas. The development has been designed to increase the density of the site - in line with Council's longer term strategic vision. This will help promote activity within the zone to service and revitalise the rundown existing commercial premises and stimulate further development aiming to achieve the desired future higher density commercial area.

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 Plan had been publically exhibited. Pursuant to the matters for consideration contained in Section 79C(1) of the EP&A Act, 1979, the provisions contained within each of these EPIs are to be considered in the assessment of the subject development application.

On March 5, 2015, the Bankstown Local Environmental Plan 2015 (BLEP 2015) was published on the NSW Legislation website and hence, came into effect on this date. The savings and transitional provisions contained within Clause 1.8A of the BLEP 2015 has the effect of limiting consideration of the provisions contained within the BLEP 2015 to only those applications lodged on or after this date. 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 BLEP 2001 and the exhibited draft.

BLEP 2015 essentially represents the published version of the draft LEP, hence consideration has been given to the provisions contained within this revision of the document. Whilst 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.

With respect to the proposed development lodged under the ARHSEPP, it is considered that the proposal remains consistent with the aims and objectives of the BLEP 2015. Approval of the proposal would not be inconsistent with the intent and purpose of the instrument.

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

Bankstown Development Control Plan 2005 Part D4 – *Business Zones* and Part D5 – *Key Development Sites in Business Zones* apply to land within Zone 3(b) Business–Other Centres. Part D4 provides general development controls for business zones while Part D5 provides controls that are site specific. Part D5 prevails to the extent of any inconsistency (with Part D4) or where there is a duplication of controls within the policies.

The following table provides a summary of the development application against the relevant controls contained within Part D4 and Part D5 of BDCP2005.

STANDARD	Required	Proposed	Compliance
BDCP 2005 – PART D4 <i>Business Zones</i>	Ceiling height Minimum 2.7m for living areas	3 metres	Yes
	Depth Maximum depth of cross-through dwellings (single or dual aspect) is 14m	Less than 14 metres	Yes
BDCP 2005 – PART D5 <i>Key Development Sites in Business Zones</i>	Height limit 6 storey provided the site is at least 20m wide	6 Storeys 26.82 metres wide	Yes
	Front Setback 6 metres	6 metres	Yes
	Side and rear setbacks To comply with the Residential Flat Design Code (RFDC)	No numerical standards - merit assessment to be undertaken	Considered satisfactory, refer to RFDC assessment earlier in this report.

As demonstrated by the above table the proposal complies with the provisions of Part D4 and D5 of BDCP 2005. An assessment of the proposed setbacks in relation to the provisions of the Residential Flat Design Code and recommended distances for building separation have been undertaken. The assessment has been previously discussed in this report, which concludes that the proposed setbacks are considered satisfactory in this case.

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

There are no planning agreements relevant to this development application.

The provisions of the Regulations - section 79C(1)(a)(iv)

The proposed development is assessed as being satisfactory with the matters for consideration prompted by the Regulations.

Any Coastal zone management plan - section 79C(1)(a)(v)

The development site is not within the coastal zone, and there is no relevant coastal management plan.

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

Based on the assessment provided in this report, subject to the conditions of consent, the proposed development is not assessed as having an unreasonable impact upon the surrounding natural, social, economic and built environments.

The potential impact of the proposed development on No. 5 Palomar Parade and No. 293 Cooper Road are discussed below, specifically relating to isolation of allotments and access to sunlight.

Isolation of adjoining allotments

The proposed development seeks to amalgamate two lots - being Lot 18 & 19 DP 12360 (No. 1-3 Palomar Parade), which will leave one residual lot - being Lot 17 DP12360 (No. 5 Palomar Parade) to the north-east of the subject site. The residual lot has an area of approximately 537.7m² and a frontage of 13.41m to Palomar Parade and currently accommodates one (1) single storey detached dwelling house and a detached garage and carport at the rear of the site.

Further to the east of No. 5 Palomar Parade is a three (3) storey residential flat building with basement car parking which was first occupied in 2006 (at No. 7 Palomar Parade). As this building is relatively new it is unlikely to be redeveloped in the near future and therefore No. 5 Palomar Parade is considered to be an isolated allotment.

The Land & Environment Court of NSW has established planning principles addressing applications involving isolated lots. The principles are set out in *Melissa Grech v Auburn Council* [2004] NSWLEC 40, the principles are:

- 1) *Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the*

owners of the properties should commence at an early stage and prior to the lodgment of the development application.

- 2) Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*
- 3) Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.*

It is noted that all attempts to purchase the isolated allotment have failed and an agreement has not been achieved to date. The applicant has provided sufficient evidence to satisfy the requirements of the Land & Environment Court principles by the submission of details of the negotiations between the owners of the properties along with an independent property valuation.

Note:

- The applicant obtained a valuation report for the isolated allotment dated 2 June 2015 prepared by Malcom Craig – Certified Practising Valuer.
- The applicant obtained an updated valuation report for the isolated allotment dated 28 September 2015 prepared by Malcom Craig – Certified Practising Valuer. The amended valuation report corrected the zoning of the property as the original report incorrectly stated that the property was zoned residential. Further, two additional properties (that are similarly zoned business) were added to the report as sales evidence to support the valuation figure. The original valuation figure was confirmed by the second updated report.

First principle:

The applicant has provided a written submission suggesting that negotiations may have commenced between the applicant and owner of the isolated allotment as early as September 2014, however formal documentation submitted to Council include:

- A letter from the applicant's solicitor to the owner of No. 5 Palomar Parade, dated 19 May 2015 which contained an offer which represented a figure 17.6% above the valuation figure.
- A letter from the applicant's solicitor to the owner of No. 5 Palomar Parade, dated 15 June 2015 which contained an offer which represented a figure 21% above the valuation figure.
- A letter from the applicant's solicitor to Council, dated 7 July 2015 stating that all offers to date were declined by the owner of No. 5 Palomar Parade.
- A letter from the applicant's solicitor to the owner of No. 5 Palomar Parade, dated 27 July 2015 which contained an offer which represented a figure 32%

above the valuation figure (including a small sum to cover any unreasonable expenses likely to be incurred by the sale).

Second principle:

As previously mentioned, the applicant's solicitor has provided evidence to indicate that an offer was made to the owner of the isolated allotment that was 32% above the valuation figure. Further, the owner of the isolated allotment has not provided a counter offer or evidence (by way of further independent valuations) to justify a purchase price in excess of latest offer.

It is noted that no agreement to purchase the isolated property has been achieved and it is considered that the applicant has provided sufficient evidence to satisfy the requirements of both the first and second court principle by the submission of details of the negotiations between the owners of the properties along with an independent valuation.

Third principle

In regards to whether the offer is deemed reasonable the following information has been taken into consideration:

- The independent valuation was supported by sales evidence of two other properties in the locality, as listed below:

Address	Sale price & date	Site size & frontage	Comments in valuation report dated 28th September 2015
6 Charlton Street Yagoona	\$710,000 December 2014	Frontage: 12.19m Site area: 518.5m ²	<i>Zoned R2. A 1950s vintage single level clad dwelling comprising three bedrooms, one bathroom and separate lounge and dining room. No car accommodation. Dated internally. Similar site area: 533 sq. m. Analyses at a Sale Rate of \$1,332 per sq. m. of site area.'</i>
11 Emery Avenue Yagoona	\$708,000 29 August 2015	Frontage: 19.3m Site area: 556m ²	<i>'Zoned R2. A 1950s vintage single level brick dwelling comprising three bedrooms (all with built in wardrobes), two bathrooms, formal living, separate family/meals area, sunroom, two carports and lock up garage. Larger site area: 571 sq.m. Analyses at a Sale Rate of \$1,409 per sq. m. of site area.'</i>

It is noted that the above mentioned properties are zoned Residential 2(a) under BLEP 2001 (or R2 Low Density Residential under BLEP 2015) and that the subject site at No. 5 Palomar Parade is zoned 3(b) - Business under Bankstown Local Environmental Plan 2001.

For this reason, the applicant has provided a second valuation dated 28th of September 2015 prepared by Malcom Craig – Certified Practising Valuer,

which includes sales evidence of two other properties that are similarly zoned 3(b) - Business under BLEP 2001 (or B2 Local Centre under BLEP 2015), as listed below:

Address	Sale price & date	Site size & frontage	Comments in valuation report dated 28th September 2015
15 The Crescent Yagoona	\$1,094,837 March 2015	Frontage: 13.462m Site area: 619.7m ²	<i>'Zoned B2 and located near the subject property. A three bedroom older style fibro clad dwelling with polished timber floors and single detached garage. Site area: 620 sq.m. The improvements are irrelevant since sold as a development site with the adjacent property. Analyses at a Sale Rate of \$1,765 per sq. m. of site area.'</i>
17 The Crescent Yagoona	\$1,094,837 March 2015	Frontage: 13.462m Site area: 619.7m ²	<i>'Zoned B2 and located near the subject property. A three bedroom older style fibro clad/brick dwelling with a single garage. Site area: 620 sq. m. The improvements are irrelevant since sold as a development site with the adjacent property. Analyses at a Sale Rate of \$1,765 per sq. m. of site area.'</i>

It is noted that the above properties at No. 15 and No. 17 The Crescent Yagoona were sold as combined development site which may influence (increase) the value.

- No further independent valuations have been prepared to indicate that the current value of the property is in excess of the latest offer.

While it is acknowledged that the isolation of the site is not preferable, it is considered that the applicant has provided sufficient evidence in regards to the undertaking of negotiations between the owner of the isolated allotment and that given the evidence provided, the latest offer is deemed to be reasonable. The requirements of the third court principle have therefore been met.

Further, the Land and Environment Court added an additional fourth principle in relation to site isolation in *Cornerstone Property Group Pty Ltd vs. Warringah Council [2004] NSWLEC 189*, which provides as follows:

- 4) *Can orderly and economic use and development of the separate site be achieved if amalgamation is not feasible?*
 - *In answering this question the key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*
 - *To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and*

- *The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.*

7 PALOMAR PARADE

5 PALOMAR PARADE
POTENTIAL ENVELOPE

1-3 PALOMAR PARADE

20M HEIGHT LIMIT

293 - 295 COOPER ROAD
POTENTIAL DEVELOPMENT

297 FUTURE DEVELOPMENT

BOUNDARY

BOUNDARY

ROOF LEVEL
RL 42.45

LEVEL 05
RL 50.00

LEVEL 04
RL 51.00

LEVEL 03
RL 50.15

LEVEL 02
RL 51.50

LEVEL 01
RL 49.00

GROUND FLOOR
RL 49.00

293-295 COOPER ROAD

293-295 COOPER ROAD

A floor plan of a house. The layout includes a central hallway with a staircase labeled 'STAIRS' and a door labeled '5'. To the left of the hallway is a large room labeled '6'. To the right of the hallway are three smaller rooms labeled '1', '2', and '3' in sequence. A fourth room labeled '4' is located at the bottom right, adjacent to the hallway. The house is surrounded by a green lawn, and there is a grey area on the left side, possibly a driveway or garden path. A dashed line with an arrow points towards the left side of the house.

[illegible]

POTENTIAL FLOOR PLAN - LEVEL 1 & 2

POTENTIAL FLOOR PLAN – LEVEL 1 & 2

The sketches of the potential future development of No. 5 Palomar Parade indicate that a residential flat building (or possibly a mixed use development) could be accommodated on the site. A residential flat building is a permissible form of development within the zone and a height of four (4) storeys is permitted for sites that are less than 20m in width under BDCP 2015 – Part A2 *Corridors*.

Similarly to the subject development, a 3.5m side setback could be provided to the side boundary and would achieve the objectives of the RFDC in terms of building separation (as discussed previously in this report). It is considered that a well-designed building on the site would achieve adequate levels of privacy and solar access and result in an outcome that is consistent with the RFDC, as well as Council's LEP and DCP.

Access to sunlight

There are two dwelling houses that are located at No. 5 Palomar and No. 293 Cooper Road that may be partially affected by the development in terms of overshadowing. It is noted that there are no specific numerical development controls relating to solar access in BLEP 2001 or BDCP 2005 for existing adjoining residential dwellings within the 3(b) business zone.

An assessment has been carried out taking into consideration the development controls that would apply if the adjoining dwellings were located within a low density residential zone. The requirements of BDCP 2005 that would apply to low density residential zones are stated below:

Living areas: At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.

Private open space: A minimum 50% of the private open space required for the dwelling house and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space.

No. 5 Palomar Parade

- *Solar access to living areas*

An assessment of the existing and proposed solar access to habitable rooms of the dwelling have revealed that overall the living areas within the dwelling will continue to receive at least 3 hours solar access during mid-winter. The solar access achieved to each room is stated in the table below:

Room	Window orientation	Current solar access	Proposed reduction in solar access	Proposed solar access
Bedrooms				
Bedroom 1	North-west	6 hours	Nil	6 hours
Bedroom 2	North-west	8 hours	Nil	8 hours
Living areas				
Living area 1	North-east	0.5 hours	Nil	0.5 hours
Living area 2	North-east	1.5 hours	Nil	1.5 hours
Dining room	South-west	2 hours	1 hour	1 hour
Kitchen	South-west	2 hours	1.5 hour	0.5 hours
Total solar access to living areas		6 hours	2.5 hours	3.5 hours
Total solar access to dwelling (all rooms)		20 hours	2.5 hours	17.5 hours

Although some solar access is lost to the kitchen and dining room in the late afternoon, the loss is considered acceptable in this case as the dwelling still receives the minimum requirements that would be required within a low density residential zone. Further, the bedrooms are in full sun during mid-winter and as such it is concluded that the overall amenity of the existing dwelling in terms of access to sunlight is considered to be satisfactory.

- *Solar access private open space*

Shadow diagrams have been provided showing the existing and proposed shadows cast on the rear private open space area of No. 5 Palomar Parade at the equinox. This includes the shadows cast by the existing flat building at No. 7 Palomar Parade, the dwelling at No. 5 Palomar (including the rear verandah, carport and garage – the vegetation and small shed have been excluded) and the proposed development at No.1-3 Palomar Parade.

It is noted that some solar access is lost at 4pm and 5pm, however 3 hours is maintained between 9am and 3pm at the equinox.

The calculations are as follows:

Time	Size of private open space (POS)	Existing area solar access to POS	Existing % solar access to POS	Proposed area solar access to POS	Proposed % solar access to POS	Change	Existing % solar access retained
9am	155m ²	10m ²	6.4%	10m ²	6.4%	NIL	100%
10am	155m ²	55m ²	35%	55m ²	35%	NIL	100%
11am	155m ²	98m ²	63%	98m ²	63%	NIL	100%
12pm	155m ²	115m ²	74%	115m ²	74%	NIL	100%
1pm	155m ²	121m ²	78%	121m ²	78%	NIL	100%
2pm	155m ²	130m ²	83%	130m ²	83%	NIL	100%
3pm	155m ²	118m ²	76%	121m ²	78%	+3m ² /2.5%	100%
4pm	155m ²	103m ²	66%	16m ²	10%	-87m ² /85%	15%
5pm	155m ²	76m ²	49%	0m ²	0%	-76m ² /100%	0%

As previously mentioned there are no specific numerical development controls within Council's LEP or DCP for existing adjoining residential development within the 3(b) business zone. The minimum requirements that would apply to the private open space of dwelling houses in a low density residential zone would be *"a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox"*. The existing dwelling at No. 5 Palomar Parade currently receives at least 3 hours sunlight to 50% of the private open space area and will continue to receive at least 3 hours after the proposed development is constructed.

No. 293 Cooper Road

An assessment revealed that this site will only be partially overshadowed by the proposed development in the morning up until around 10am. The shadow cast by the proposed development falls on a small portion of the rear south-eastern corner of the site at the equinox. This area of the site is currently occupied by the garage and attached carport, and as such will not affect the usable area within the rear yard.

After 11am this site is virtually unaffected by the proposed development and maintains the existing level of solar access received to the private open space areas and to all windows (including any living room windows) of the dwelling during mid-winter.

A further assessment has been carried out with regards to the Land & Environment Court of NSW established planning principles relating to access to sunlight. The principles are set out in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

The Benevolent Society v Waverley Council [2010] NSWLEC 1082 states:

Where guidelines dealing with the hours of sunlight on a window or open space leave open the question what proportion of the window or open space should be in sunlight, and whether the sunlight should be measured at floor, table or a standing person's eye level, assessment of the adequacy of solar access should be undertaken with the following principles in mind, where relevant:

Principle	Is the development satisfactory in regards to the principle
<i>The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.</i>	<p>Yes the development is satisfactory.</p> <p>The sites are within a high density business zone. The area is currently in transition from lower density residential (lot sizes of approx. 550m² with detached single dwellings) to higher density mixed use developments and residential flat buildings with a potential development height of 6 storey and floor space ratio of 2:1.</p> <p>It is noted that the dwellings at No. 5 Palomar and No. 293 are currently</p>

	<p>single dwellings (i.e. low density), however they are zoned as a 3(b) Business and as such the envisaged future development on the sites is a higher density commercial zone.</p> <p>It is considered necessary to retain some solar access to these dwellings so that the amenity as currently enjoyed by the occupants is not unreasonably reduced during the transition phase. This has been achieved (discussed in further detail above).</p>
<p><i>The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.</i></p>	<p>Yes the development is satisfactory. As demonstrated above, the majority of solar access is maintained for both adjoining dwellings.</p> <p>It is noted that No. 5 Palomar loses some solar access to the living and private open space areas. However, the loss is considered acceptable given the high density zoning and that 3 hours solar access is maintained to the living areas during mid winter and to the private open space area at the equinox.</p>
<p><i>Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.</i></p>	<p>Yes the development is satisfactory. The design of the development results in an adequate level of solar access to the adjoining properties.</p>
<p><i>For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.</i></p>	<p>Yes the development is satisfactory. All windows noted in the assessment received direct solar access.</p>
<p><i>For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.</i></p>	<p>Yes the development is satisfactory. It has been demonstrated that portion and percentage of the private open space areas receiving solar access meets the minimum 3 hours that would be typically achieved in a low density residential zone rather than what would be typical of a higher density zone.</p>

<p><i>Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.</i></p>	<p>Yes the development is satisfactory. The calculations above have regard to fences, roof overhangs and changes in levels. The property at No.5 Palomar has several trees and a small shed located within the rear yard of the property which have not been taken into consideration as part of the assessment.</p> <p>The calculations reveal that the level of solar access maintained is considered satisfactory in maintaining amenity for the adjoining residents.</p>
<p><i>In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.</i></p>	<p>It is considered that future development will be able to achieve a reasonable level of solar access.</p>

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

The application was advertised/notified on four (4) separate occasions. Being:

- 1) 1 October 2014 to 20 October 2014,
- 2) 23 January 2015 to 2 February 2015
- 3) 17 March 2015 to 30 March 2015, and
- 4) 5 August 2015 to 26 August 2015.

During these notification/advertising periods, forty-six (46) submissions were received from ten (10) separate households, which raised concerns relating to the following:

- ***The development does not comply with Council's Development Control Plan – Part D2.***

BDCP 2005 – Part D2 applies to land within Zone 2(a) Residential, 2(b) Residential, 2(c) Residential and 1 Rural for development that involves family housing, dwelling houses, dual occupancies, rowhouses, villas and also applies to terrace houses on land within 3(b) Business–Other Centres. BDCP 2005 – Part D2 therefore does not apply to residential flat buildings within the 3(b) Business zone.

As this site is zoned 3(b) – Business Other Centres under BLEP 2001, BDCP 2005 – Part D5 (Key Development Sites in Business Zones) provides site specific controls in relation to setbacks (front setback - 6m and side and rear setbacks to comply with the RFDC) and height (6 Storey). BDCP 2005 – Part D4 (Business Zones) also applies to this development however Part 5 prevails to the extent of any inconsistency.

Both Part D4 and Part D5 do not provide specific controls in relation to solar access to adjoining residential dwellings. The assessment of the proposal in regards to solar access, setbacks, building separation and privacy are discussed elsewhere in this report, which concluded that no unreasonable impact on the adjoining properties or locality are likely to result from the development.

- ***Solar Access to the adjoining dwellings***

Concern has been raised that the shadow diagrams submitted to Council were difficult to read and newer plans have not been made available to the public. It has been requested that the determination of the development application be delayed until the more recent shadow diagrams be made available so that adjoining residents can determine if solar access is maintained.

It is noted that Council staff offered to meet with residents to show the most recent shadow diagrams and information and also to explain the assessment of these plans. Those offers were declined.

As a thorough assessment of the shadow impact has been carried out and has concluded that sufficient solar access is maintained to the adjoining properties. It is considered unreasonable to defer the application on this basis.

- ***Inconsistencies and inaccuracies in the plans and supplementary documents is deceptive***

Concern was also raised that the original shadow diagrams incorrectly show the potential future development of No. 293, rather than the existing single storey cottage and detached garage with carport that is currently located on the site. Although this is correct, the shadow diagram does show the correct shadows cast by the proposed development (at 1-3 Palomar Parade), and as such a thorough assessment of the proposed development's impact on the adjoining properties in regards to solar access has been carried out, and found to be satisfactory.

The current shadow diagrams for No. 5 Palomar Parade are to scale and show the associated outbuildings, correct setbacks and the correct shadows cast at both the equinox and mid-winter.

- ***Council has withdrawn it's "Further Info Before Approval" letter from its list of documents available online***

The subject letter was not originally available online nor has it been removed since. The letter has not been published online, the letter would however be made available if requested via the submission of an 'Access to Information Application' in accordance with the Government Information (Public Access) ACT 2009 & Government Information (Public Access) Regulation 2009.

- ***Building depth***

Concern has been raised that the proposed building has a depth of approximately 27m when the RFDC states *"In general, an apartment building depth of 10-18m is appropriate"*.

The depth of the building is the dimension of the shorter axis. The proposed building has a depth of 20m. A building depth of 20m is considered acceptable in this case as the development provides adequate amenity for the building occupants in terms

of solar access and natural ventilation. This is assisted by all units having a higher ceiling height of 3m (rather than the recommended 2.7m), 80% of the units are cross ventilated and 70% of the units achieve the minimum solar access requirements.

Pedestrian safety – sight distances

The development plans have been amended to comply with the Australian Standards relating to minimum sight lines and for pedestrian safety. The Australian Standard requires that a triangular area with a width of 2m and depth of 2.5m is kept clear of obstructions to visibility.

- ***Reduction of communal open space and potential future development of Gazzard Park***

At this stage, Council is considering potential options for the possible upgrading of the community facilities located near Gazzard Park – the existing oval and existing playground will be maintained.

- ***Errors in the geotechnical report submitted and potential impact on structural adequacy of existing homes***

A Geotechnical report is not required at the development application stage. A structural engineer will ensure that the construction plans are designed to take into consideration the soil conditions, site stability, slopes etc. and determine the type of footings required to adequately support the load of the proposed structure. At the Construction Certificate stage the Principle Certifying Authority will check the adequacy of the documentation submitted in this regard and may request a geotechnical report if considered necessary (if one has not already been provided).

A standard condition of consent will require the preparation of a dilapidation report – condition to read:

Prior to the commencement of works, a dilapidation report shall be prepared by the developer and a copy provided to the owners of properties directly adjoining the subject site. The report must clearly identify the condition of existing structures on these adjoining properties prior to the commencement of works.

All care shall be taken during the construction process to ensure adjoining structures are protected, and should any change in condition occur from that recorded in the dilapidation report. On the completion of the proposed work, and prior to the issue of the final compliance certificate, a certificate prepared by an appropriately qualified engineer, to the effect that no damage has resulted to the adjoining premises, is to be provided to the Principal Certifying Authority. If damage is identified which is considered to require rectification, the damage shall be rectified or satisfactory agreement for rectification of the damage, is to be made with the affected person/s, as soon as possible and prior to occupation of the development - the rectification of such shall be at full cost to the developer.

Note: Where permission is not granted to access the property and evidence in writing that permission is not granted to enter the property can be provided, the report is not required for that property.

- **SEPP 65 - building separation and setbacks**

Concern was raised that the proposed development does not comply with SEPP 65 in regards to building separation and setbacks. The proposal was generally compliant with the objectives and intent of SEPP 65. A detailed assessment of the application and non-compliances are discussed elsewhere in this report.

The submission listed the following properties to demonstrate larger building separations:

- 203-207 Auburn Road Yagoona (site area of 2090m², zoned R4 High Density Residential, FSR 1:1),
- 350 Hume Highway Bankstown (site area of 8485m², zoned B6 Enterprise Corridor, FSR 1.75:1),
- 351 Hume highway Bankstown (site area of 8589m², R4 High Density Residential, FSR 1:1), and
- Approved 6 storey (towers) on the Hume Highway and Breasly Place.

A search of Council's records indicate that the address of the development mentioned in the submission to Council is most likely to be the development at No.9-11 Church Road Yagoona. This site has an area of 961.2m², frontage of 23.7m and is zoned B2 – Local Centre (with a maximum FSR of 2:1 and height limit of 26m).

DA-1133/2014 was approved on 10 July 2015 for an eight storey residential flat building development with twenty-five (25) residential units and one (1) small retail shop. This development has zero setback for the basement levels and a 3m setback to all eight (8) floors on one side boundary (south) to achieve a greater building separation to the northern side (of 10m) for potential future development No. 13-15 Church Road.

The subject proposal at No. 1-3 Palomar Parade is not dissimilar to this development, with 3.5m setbacks to the boundary which will be offset by larger setbacks to the potential future development on the adjoining properties at No. 293-295 and No. 297 Cooper Road. The potential future development at No. 5 Palomar is likely to accommodate a maximum building height of four stories and achieve a building separation of 7m. This is considered satisfactory if similar treatments (including sill heights of 1.7m and privacy screening) are also proposed which would result in an impact that is similar to that which would be likely of between non-habitable rooms.

Greater setbacks and building separation were achieved between the buildings on these sites mentioned above (including Auburn Road and Hume Highway) due to the larger site areas, different zoning, lower maximum floor space ratios and different site context.

The submission also stated that the development at Auburn Road was spread over three sites with a total area of 2090m² as opposed to this development which is two lots with a total site area of 1076m² - emphasizing the fact that the scale and bulk of the subjected development is an over development of the site. Please refer to the dot point below "lot width" which demonstrates that the subject development meets the site specific lot width requirements stated under Council's Development Control Plan.

In regards to the potential redevelopment (and building separation) of those sites adjoining the development site (at No.1-3 Palomar Parade) it is considered that satisfactory building setbacks have been proposed in order to achieve suitable building separation in the short term and potential future development (on adjoining sites) that are generally consistent with the recommended distances of the RFDC. Please refer to previous sections of this report which detail the assessment of building separation.

- **Lot width**

Concern was raised that the development would not be permitted if the application was lodged today as the required lot width has increased for residential flat buildings since the application was lodged. This is due to Clause 3.3 BDCP 2015 – Part B2 *Commercial Centres* which states that:

3.3 *The minimum primary frontage for residential flat buildings with 3 or more storeys is 30 metres.*

The lot width has not increased for the proposed development on the subject site since the application was lodged, the requirement above was a control that was carried over from BDCP 2005 – Part B4 *Business Zones*. Clause 3.3 of BDCP 2005 – Part D4 stated:

3.3 *The minimum primary frontage for residential flat buildings with 3 or more storeys is 30 metres. This clause applies to residential flat buildings where the dwellings are not attached to a shop or office.*

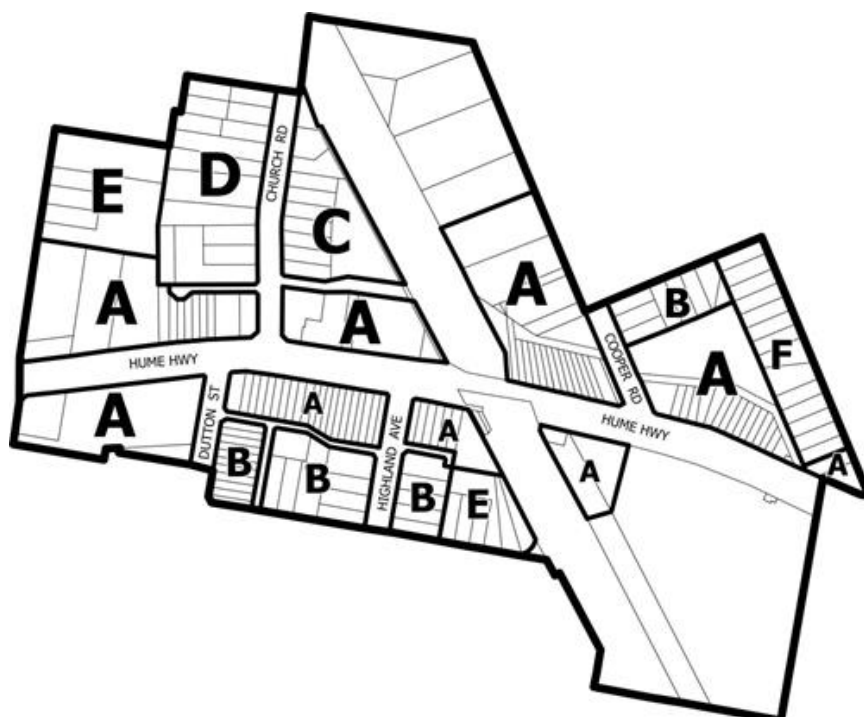
This clause does not apply to this site as the site specific controls in BDCP 2005 - Part D5 prevail over the controls in Part D4. Clause 7.2 of Part D5 prevails which states that the development standard for building height in Precinct B (which the site is located within) is "6 storeys (no lofts) provided the site is at least 20 metres wide at the front building line. Otherwise, a 2 storey limit applies".

In regards to what controls would apply if the application was lodged today, Section 3 of BDCP 2015 – Part B2 *Commercial Centres* states that "This section provides the building envelope controls for development in the Chester Hill, Greenacre, Panania, Padstow and Punchbowl village and small village centres and the East Hills neighbourhood centre within Zone B2 Local Centre." It therefore excludes Yagoona Village Centre. The policy also states that "Certain development may need to comply with Parts A1 to A3 of this DCP. These parts provide more detailed development controls for centres, corridors and key development sites in the business zones. The development controls include storey limits, setbacks, landscape buffer zones and access. If applicable to a development application, the development controls of

Parts A1 to A3 will prevail if there is an inconsistency with any development controls in Part B2”.

Therefore clause 3.3 of BDCP 2015 – Part B2 does not apply to the site if the application was lodged today, rather the site specific controls of BDCP 2015 – Part A2 *Corridors* that are consistent with the site specific controls previously required by BDCP 2005 – Part D5 *Key Development Sites in Business Zones*. The site is located within Precinct B and Section 4 of BDCP 2015 – Part A2 *Corridors* provides as follows:

	Precinct B
Storey limit (not including basements)	6 storeys provided the site is at least 20 metres wide at the front building line. Otherwise, a 4 storey limit applies. Council does not allow development to have attics.
Minimum setback to Dutton Street, Highland Avenue & Cooper Road	3 metres for the first storey (i.e. the ground floor) and second storey, and 6 metres for the remaining storeys.
Minimum setback to The Crescent & Palomar Parade	6 metres
Minimum setback to the side and rear boundaries	Must comply with the Residential Flat Design Code.
Special requirements	3 storey limit applies to any part of a development within a 10 metre setback to The Crescent to provide a height and built form transition to neighbouring houses.



The development application complies with the above requirements for Precinct B as set out in Section 4 of BDCP 2015 – Part A2 *Corridors*.

- **Telecommunications disruption potential**

Any potential disruption to telecommunications during the construction phase is a matter to be dealt with by the relevant authority and is not a matter for Council.

- **Traffic, parking and large trucks during construction**

It is considered that Palomar Parade and the surrounding street network has sufficient capacity to accommodate potential additional traffic that is generated by the proposed development. The development provides an adequate number of carparking spaces to meet the demands of the future occupants which is specified under State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP).

Concern was raised regarding large trucks accessing the site during construction as the street currently has a weight restriction on vehicles. This issue is not a planning matter.

In regards to the construction phase, a standard condition of consent would require that a Traffic Management Plan is submitted prior to the issue of a Construction Certificate, the condition reads as follows:

- 1) *The route for transportation to and from the development site of bulk and excavation materials shall generally be by the shortest possible route to the nearest "regional road", with every effort to avoid school zones on public roads. The applicant shall nominate the route for approval by Council prior to commencement of any work on the site. An Agreement to Council's satisfaction, signed by the applicant/owner specifying the approved route and acknowledging responsibility to pay Council for damages to public property adjacent to the site shall be lodged with Council prior to release of any Construction Certificate. All damage must be rectified upon completion of work.*
- 2) *Prior to the issue of any Construction Certificate for this development, the applicant must obtain approval from Council for a Site, Pedestrian and Traffic Management Plan. This Plan must address the measures that will be implemented for the protection of adjoining properties, pedestrian safety and traffic management and other requirements as specified below.*

A PRIVATE CERTIFIER CANNOT APPROVE YOUR SITE, PEDESTRIAN & TRAFFIC MANAGEMENT PLAN

This plan shall include details of the following:

- a) *Proposed ingress and egress points for vehicles to and from the construction site;*
- b) *Proposed protection of pedestrians, adjacent to the construction site;*
- c) *Proposed hoardings, scaffolding and/or fencing to secure the construction site;*
- d) *Proposed pedestrian management whilst vehicles are entering/exiting the construction site;*
- e) *Proposed measures to be implemented for the protection of all public roads and footway areas surrounding the construction site from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like;*
- f) *Proposed method of loading and unloading excavation machines, building material, construction materials and waste containers during the construction period;*
- g) *Proposed traffic control measures such as advanced warning signs, barricades, warning lights, after hours contact numbers etc are required to be displayed and shall*

be in accordance with Council's and the NSW Roads and Maritime Services requirements and AS1742.3.

- h) Proposed method of support of any excavation, adjacent to adjoining buildings or the public road. The proposed method of support is to be certified by a Civil Engineer with National Professional Engineering Registration (NPER) in the construction of civil works.*
- i) Proposed measures to be implemented in order to ensure that no soil/excavated material is transported on wheels or tracks of vehicles or plant and deposited on the public road.*
- j) Proposed measures for protection of the environment including procedures to control environmental impacts of work e.g. sediment control, proper removal, disposal or recycling of waste materials, protection of vegetation and control/prevention of pollution i.e. water, air noise, land pollution.*

The approved Site, Pedestrian and Traffic Management Plan is to be implemented prior to the commencement of any works on the construction site. The applicant will be required to pay for inspections by Council Officers in accordance with Council's adopted fees and charges.

In addition a RMS Approval / Road Occupancy Licence will be required for works on Regional or State Roads or within 100m of a traffic facility including roundabouts and traffic signals. Refer to Council's Development Engineering Standards for a list of Regional and State Roads.

- **Acoustic impacts**

An acoustic assessment has been carried out, which has concluded that the development is satisfactory. It is likely there will be some increase in noise on site as a result of the additional dwellings, however the increase would be marginal and should not unreasonably impact on the adjoining properties or locality.

- **Potential future development of No. 5 Palomar Parade and constraining the development potential and reducing value of adjoining sites**

This matter has been addressed elsewhere in the report. The assessment concluded that the site at No. 5 Palomar Parade may potentially be redeveloped given careful consideration to a well-designed building that achieves adequate levels of privacy and solar access and a resultant outcome consistent with the RFDC, as well as Council's LEP and DCP.

In this regard, a residential flat building is a permissible form of development within the zone and a height of four (4) storey's is permitted for sites that are less than 20m in width under BDCP 2015 – Part A2 Corridors.

- **Unreasonable offers to purchase the isolated allotment**

While it is acknowledged that the isolation of the site is not preferable, it is considered that the applicant has provided sufficient evidence in regards to the undertaking of negotiations between the owner of the isolated allotment and that the latest offer is deemed to be reasonable. All offers have been declined and further evidence (such as a further independent valuations) have not been prepared to indicate that the current value of the isolated allotment is in excess of the current offer. This matter is further discussed elsewhere in this report.

- **Single aspect southerly apartments – 10% max**

The development has been amended to provide only three single southerly aspect apartments which equates to 10%.

- **Demolition and construction disruptive to residents – safety asbestos, noise and air pollution during construction**

Standard conditions of consent will require that the developer carries out demolition and construction in accordance with the Australian Standards and Work Health and Safety requirements.

The following standard condition is required for all developments proposing demolition:

Permission is granted for the demolition of structures currently existing on the property, subject to strict compliance with the following: -

- a) *The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.*
- b) *Written notice is to be given to Bankstown City Council for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections shall be undertaken by Bankstown City Council:*
 - (i) *A precommencement inspection shall be carried out by Council when all the site works required as part of this consent are installed on the site and prior to demolition commencing.*
 - (ii) *A final inspection shall be carried out by Council when the demolition works have been completed to ensure that the site is left in a satisfactory manner, in accordance with the conditions of this consent.*

NOTE: Payment of an inspection fee at Council's current rate will be required prior to each inspection. Council requires 24 hours notice to carry out inspections. Arrangements for inspections can be made by phoning 9707 9410, 9707 9412 or 9707 9635.

- c) *Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, license number, contact phone number and site address.*
- d) *Prior to demolition, the applicant must erect a 2.4m high temporary fence or hoarding between the work site and any public place. Access to the site shall be restricted to Authorised Persons Only and the site shall be secured against unauthorised entry when the building work is not in progress or the site is otherwise unoccupied. Where demolition is to occur within 3m of a public place a Work Permit application for the construction of a Class A or Class B hoarding shall be submitted to Council for approval.*
- e) *The demolition plans must be submitted to the appropriate Sydney Water Office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's*

requirements, the demolition plans will be stamped indicating that no further requirements are necessary.

- f) *Demolition is to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001.*
- g) *The hours of demolition work shall be limited to between 7.00am and 6.00pm on weekdays, 7.00am and 1.00pm on Saturdays and no work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.*
- h) *Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.*
- i) *Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.*
- j) *Demolition procedures shall maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.*
- k) *During demolition, the public footway and public road shall be clear at all times and shall not be obstructed by any demolished material or vehicles. The public road and footway shall be swept (NOT hosed) clean of any material, including clay, soil and sand. (NOTE: If required, Council will clean the public road/footway at the applicant's expense). On the spot fines may be levied by Council against the demolisher and or owner for failure to comply with this condition.*
- l) *All vehicles leaving the site with demolition materials shall have their loads covered and vehicles shall not track soil and other material onto the public roads and footways and the footway shall be suitably protected against damage when plant and vehicles access the site. All loading of vehicles with demolished materials shall occur on site.*
- m) *The burning of any demolished material on site is not permitted and offenders will be prosecuted.*
- n) *Care shall be taken during demolition to ensure that existing services on the site (ie. sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services shall be repaired by the relevant authority at the applicant's expense.*
- o) *Suitable erosion and sediment control measures shall be erected prior to the commencement of demolition works and shall be maintained at all times.*
- p) *Prior to the demolition of any building constructed before 1970, a Work Plan shall be prepared and submitted to Council in accordance with Australian Standard AS2601-2001 by a person with suitable expertise and experience. The Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.*

- **Potential for increase in rubbish and illegal dumping and crime**

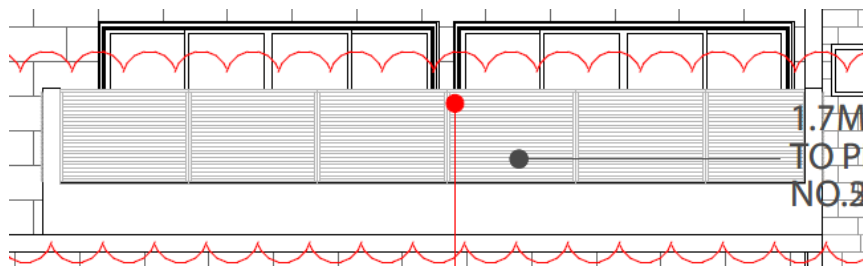
There is no evidence to suggest that the proposed development would result in any direct increase in crime or anti-social issues in the locality.

- **Privacy - balconies on top two floor and sill heights should be 1.8m instead of 1.7m**

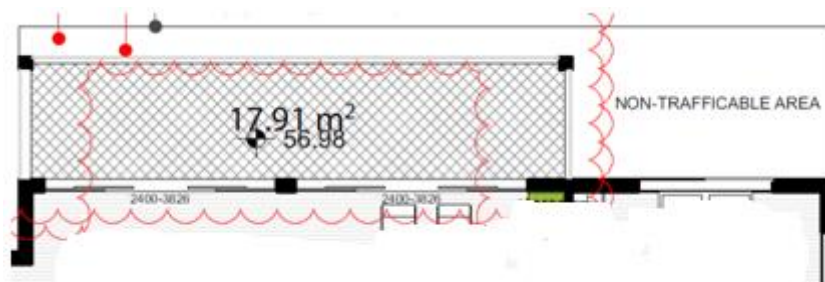
All the windows along the side boundaries (with the exception of doors to balconies on levels 5 & 6) have sill heights of 1.7m, which result in a similar impact to of between non-habitable rooms. Sill heights of 1.7m make it difficult for a person of average height to be able to casually overlook into adjoining properties and as such are considered to be satisfactory in maintaining the privacy between dwellings. In addition to the higher sill heights privacy louvers have been added to the windows and balconies.

The balconies on the side top two floors will have fixed privacy screening (1.7m high) which will make it difficult to look directly into the private open space areas of adjoining residential properties, specifically No. 5 Palomar and No. 293 Cooper Road. The higher sill heights and privacy screening will ensure that privacy between the existing and potential future occupants (once redeveloped) of No. 5 Palomar Parade and No. 293 Cooper Road is maintained.

Please refer to the sketch below which shows the privacy screening on the balconies which face the side boundaries:

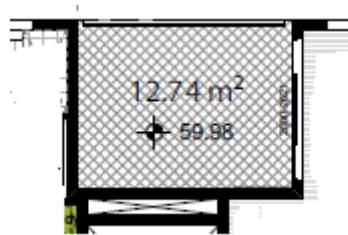


The submission also states that the balconies on the fifth level (of which there is one on the east and west elevations) measure 2.5m x 8.8m. This balcony has been reduced to 2m in width and is 8.95m in length, the design and dimensions of these balconies are considered to be satisfactory. No unreasonable impacts are envisaged to result due to the addition of privacy screening and the height being a minimum of one storey above the maximum building potential on No. 5 Palomar Parade (and a greater building separation to No. 293 Cooper Road). Please refer to the sketch below showing the layout of the balcony.



It is noted that there is one balcony on the sixth floor (on the east and west elevations) which is set into the main building wall (setback 6m from the boundary) and also has privacy screening up to 1.7m in height. Likewise, it is considered that

the design and dimensions of the balconies are considered to be satisfactory and no unreasonable impacts area envisaged as a result.



- **Out of character in terms of 6 storey height, visual bulk and density**

The site is zoned as 3(b) business – other centres and has site specific controls under BDCP 2005 - Part D5 *Key Development Sites in Business Zones*, that permits 6 storey development on the subject site. This is compatible with the changing character of the area - as promoted by North West Central Local Area Plan 2014. Please refer to the character section (under ARHSEPP) of this report for further information.

In regards to the building density, a floor space ratio of 2:1 is permitted under BLEP 2001 and the development qualifies for a FSR bonus of 20% under the ARHSEPP. The development proposes a floor space ratio of 2.19:1 which may be marginally higher than the 2.1 permitted under the LEP. However, the bonus floor area will not be immediately apparent on visual inspection of the site and still fits within an appropriate building envelop - achieving satisfactory building setbacks and separation and resultant solar access and privacy between dwellings.

It is considered that the bulk and scale of the development is compatible with desired future character of the locality as required by the ARHSEPP and the development is suitably located within walking distance of Yagoona Railway Station. The provision of affordable housing within areas that are accessible to public transport is promoted and required under the ARHSEPP.

- **No clotheslines**

A condition will require the provision of clotheslines within the communal space.

- **Aesthetic due to the location of garbage area at the front of the property**

The waste storage area has been located within 10m of the property boundary (as required by Council's waste section) and is considered to be suitably integrated into the building so as to ensure that the storage area is not intrusive for both the residents of the subject property and the adjoining properties.

- **Objectives of the Zone and Village Centre**

The proposed development is consistent with the objectives of the 3(b) – Business Other Centres and the objectives of the Village Centres, which aim to redevelop older commercial centres and promote higher density residential and commercial

development in these areas. The development has been designed to increase the density of the site - in line with Council's longer term strategic vision. This will help promote activity within the zone to service and revitalise the rundown existing commercial premises and stimulate development to achieve the desired future commercial area.

- **Exceptions to development standards - SEPP 1 Objection/BLEP Clause 4.6**

Concern was raised that the application should have been supported by a SEPP 1 Objection or a Clause 4.6 Variation as provided to support other applications such as the development at No. 350 Hume Highway Yagoona.

A SEPP 1 Objection or a Clause 4.6 variation is not required for this application as there are no proposed variations to the development standards contained within Bankstown Local Environmental Plan, in contrast to the case with the proposed height variation at 350 Hume Highway.

- **Height of the building requiring commonwealth approval**

The following condition of consent would require that the necessary approval for building height is obtained prior to the issue of a Construction Certificate.

Approval from Bankstown Airport Limited is required for the height of the proposed development, including height limits for construction equipment. The Construction Certificate shall not be issued until such approval from Bankstown Airport Limited is obtained. The development shall be compliant at all times with the provisions of any such approval.

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

The proposed development would not contravene the public interest. The proposed development responds appropriately to the site-specific development controls contained in the *Bankstown Development Control Plan 2005* and the *Bankstown Local Environmental Plan 2001*, and the requirements of the *SEPP 65 Residential Flat Design Code* and *Affordable Rental Housing SEPP*. Matters raised in public submissions have been satisfactorily addressed, and it is not considered that there would be any 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 relevant specific environmental planning instruments, including State Environmental Planning Policy No 65—Design Quality of Residential Flat Developments, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy No 55—Remediation of Land, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment, Bankstown Local Environmental Plan 2001, Draft BLEP 2015, as well as Part D4 & D5 of the Bankstown Development Control Plan 2005.

The proposed development results in an appropriate built form for the site which is consistent with the longer term future desired future character illustrated in Council's DCP, LEP and North West Central Local Area Plan to increase densities in and around train stations and commercial centres. The proposal is considered to be compatible with the longer term intended character of the area while being considerate to the existing development during the short term.

Relevant planning controls have been appropriately responded to and no significant or unresolved matters have been raised in public submissions. Approval of this application would facilitate the development of one of the key sites in Yagoona's Town Centre and assist in achieving higher densities and the provision of affordable housing on sites within walking distance of a train station, without having any unacceptable or unreasonable impacts on the surrounding locality.