

ITEM	11 - 17 Cross Street, BANKSTOWN
	Demolition of Existing Structures and Construction of Two (2) Residential Flat Buildings Containing a Total 150 Units with New Vehicular Access from Cross Street
FILE	DA-220/2015 - Bankstown Ward - 2015SYW073
ZONING	B4 Mixed Use
DATE OF LODGEMENT	16 March 2015
APPLICANT	Maxims Family Trust
OWNERS	Anne Lim and Chieu Lim
SITE AREA	4426.23m²
ESTIMATED VALUE	\$25,527,416

SUMMARY REPORT

This matter is reported to the Sydney South 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 \$25,527,416, which exceeds the capital investment threshold of \$20million for 'general development'.

Development Application No. DA-220/2015 proposes the demolition of existing structures and site works to facilitate construction of two (2) new 11- and 12-storey residential flat buildings consisting of a total 150 residential units, an above ground multi-level car park, landscaping, drainage works and new vehicular access from Cross Street.

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 Development and the Bankstown Local Environmental Plan 2015, as well as Parts A1 and B5 of the Bankstown Development Control Plan 2015. The application fails to comply in regards to floor space ratio and building height, with some minor variations to the requirements contained in the Residential Flat Design Code/Apartment Design Guide. However, the assessment of the development application has found that these variations are justified in the circumstances of this case, in the context of both the overall development and the surrounding locality.

The application was advertised and notified for a period of twenty-one (21) days, from 1 to 21 April 2015. Following the submission of numerous sets of amended plans and details, the application was re-advertised and notified for a further period of twenty-one (21) days, from 17 May to 6 June 2017. Following these advertising and notification periods a total of two (2) objections have been received (1 following the first period, and 1 more following the second period) raising concerns relating to noise and acoustic impacts, other impacts on adjoining properties during the construction phase, as well as impacts on approved development to north relating to the zero setback.

POLICY IMPACT

This matter has no direct policy implications. The proposed variations to floor space ratio and building height, along with the minor variations to elements of SEPP 65, are considered to be 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 - Section 79C Assessment Report
- B - Conditions of Consent
- C - Locality Plan
- D - Objectors Map *
- E - Site Plan
- F - Elevations

DA-220/2015 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 11 - 17 Cross Street, Bankstown. The site is an irregular allotment that is currently zoned B4 Mixed Use.

The site runs from Stacey Street to the east through to Cross Street to the west, and has a frontage of 20.115m to Stacey Street and a frontage of 43.94m to Cross Street. The total area of the site is 4426.23m². The site contains two 2-storey commercial buildings on the part of the site fronting Cross Street.

The surrounding development consists of two sites immediately to the north, both currently carrying approvals for 14-storey mixed use development issued by the Sydney West Regional Planning Panel. On the opposite side of Cross Street to the west is a recently-completed 9-storey residential flat building. To the south-west is an existing 7-storey mixed use development, while to the south-east is an existing service station. On the opposite, eastern side of Stacey Street, are residential properties zoned R2 Low Density Residential.



PROPOSED DEVELOPMENT

The Development Application proposes the demolition of existing structures on site and the construction of two (2) new Residential Flat Buildings containing a total of 150 residential apartments with new vehicular access proposed from Cross Street.

The proposed development comprises Building4 A, being an 11-storey building fronting Cross St, which contains 4 levels of above ground car parking and 98 residential apartments. Building B is a 12-storey building fronting Stacey Street, which contains 52 residential apartments. A perspective view from Cross Street of the north-west corner of Building A of the development is shown below:



Artists Impression of proposed development, viewed from Cross St

BACKGROUND/HISTORY

The application was lodged on 16 March 2015. Council sent correspondence to the applicant on 5 June 2015, outlining deficiencies in the plans and details submitted, including the failure to acknowledge existing Sydney Water easements across the site. The applicant was advised to liaise with Sydney Water, as no consideration could be given to the project moving forward until the issue of easements across the site were adequately resolved.

Council received notification from Sydney Water on 27 October 2016 of Sydney Water's satisfaction with the proposed development, subject to additional conditions to be imposed. The further assessment of the development has been able to continue only from this point.

SECTION 79C ASSESSMENT

The proposed development has been assessed pursuant to section 79C of the *Environmental Planning and Assessment Act, 1979*.

Environmental planning instruments [section 79C(1)(a)(i)]

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

In accordance with Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act, 1979*, development with a capital investment value in excess of \$20million is classified as regional development under Clause 20 of the SRD SEPP. In accordance with Clause 21(1)(a) of the SRD SEPP the consent authority function is to be exercised by the Regional Planning Panel. The subject application has a capital investment value of \$25,527,416 and, as such, the subject application is required to be determined by the Sydney South Planning Panel.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 requires Council to consider whether the development site is contaminated and, if it is, whether it is suitable for the proposed development either in its contaminated state or following remediation works.

The applicant has submitted a Stage 2 Environmental Site Assessment Report prepared by Environmental Investigation Services (EIS). The Stage 2 ESA has determined that the site can be considered suitable for the proposed development, subject to some additional works being undertaken in order to address matters associated with contamination that relate to the existing buildings on site. The report recommends that, prior to demolition, a Hazardous Materials Assessment be undertaken for the existing buildings. Once demolition is completed, the site is to be inspected by an environmental engineer and a validation report is to be prepared by a suitably qualified environmental consultant and submitted prior to the issue of a Construction Certificate.

As such, a remedial action plan is not required for the site, and it is therefore considered that the consent authority can be satisfied that the development site can be considered suitable for the proposed development, in accordance with Clause 7 of SEPP 55.

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

SEPP No. 65 applies to residential flat buildings having 4 or more units and 3 or more storeys. Accordingly the SEPP applies in this instance, and an assessment against the Design Quality Principles has been carried out. The application was lodged with Council on 16 March 2015, prior to the amendments to SEPP 65 and the introduction of the Apartment Design Guide (ADG), which came into force in June-July 2015, replacing the Residential Flat Design Code (RFDC). As such, the assessment of the application is subject to the provisions of RFDC. In this instance, the requirements of both the RFDC and the ADG have been considered, given the circumstances regarding the timing of both the lodgement of the application and the amendments to SEPP 65, and given that the ADG represents current best practice when it comes to apartment design.

The proposed development is consistent with the Design Quality Principles and responds appropriately to the site's context. Moreover, the application generally conforms with the key 'rules of thumb' contained in the Residential Flat Design Code/Design Criteria in the Apartment Design Guide, as illustrated in the table below.

RFDC/ADG Requirement	PROPOSED	COMPLIES?
Building depth 10m/12m – 18m is appropriate. If greater than 18m then good solar access and ventilation must be achieved.	Building depth ranges from 15m-26m. Apartment depths generally do not exceed 10m, with the majority of apartments being corner apartments that achieve good access to sunlight and cross ventilation.	Yes. Building A is designed off a central east-west core, with single-aspect and corner apartments off either side (N and S). Larger units in the centre have compliant depth. Building B is designed off a central north-south core, with single aspect and corner apartments off either side (E and W) Solar access and natural ventilation have been achieved (see elsewhere in table below).
Natural ventilation (RFDC) 60% of units to be naturally cross ventilated. 25% of kitchens to have access to natural ventilation. Natural ventilation (ADG) 60% of units are naturally cross ventilated in the first 9 storeys of the building.	62.6% of units are naturally cross-ventilated (72 of 115 in first 9 storeys, 94 of 150 overall) 50% of kitchens either have a window or sit in the natural cross-ventilation path of the unit.	Yes

<p>Building separation (RFDC) 12m separation between buildings over 3 storeys and up to 4 storeys. 18m separation between buildings over 4 storeys and up to 8 storeys. 24m separation between buildings over 8 storeys. 0m where street wall building types is in context</p> <p>Visual Privacy (ADG) 6m (up to 12m/4 storeys); 9m (up to 25m/5-8 storeys); and 12m (over 25m/9 storeys) to habitable rooms and balconies Half these distances to non-habitable rooms. 0m to blank walls</p>	See detailed discussion below	See detailed discussion below
<p>Communal open space (RFDC) 25% – 30% of the site area is to be communal open space. 25% of the communal open space should be deep soil zones</p> <p>Communal Open Space (ADG) 25% of the site area is to be communal open space. 7% of the site area is to be set aside as deep soil zones with a minimum 6m dimension</p>	<p>22% of the site area (979m²) is provided as communal open space.</p> <p>9.2% of the site area, or 37% of the required COS (409m²) is provided as deep soil zones, however the minimum dimension is not achieved, due primarily to the way that existing easements traverse the site and the need for these easements to be hardstand.</p>	See discussion below.
<p>Apartment layout (RFDC) Single aspect apartments should be no more than 8m from a window. Back of kitchen no more than 8m from a window.</p> <p>Apartment Layout (ADG) In open plan layouts, the maximum habitable room depth is 8m from a window</p>	<p>The depths of single aspect apartments range from 8m to 10m at worst. The back of 93.3% of kitchens are within 8m of a window.</p> <p>The depth of all habitable rooms are within 8m of a window, apart from Unit A.02 on Levels 2-8 and Unit A.01 on Levels 9 and 10</p>	Yes. Despite failing the RFDC requirement for single aspect unit depth, the only failure under the ADG is depth of the combined living/kitchen/dining in Unit A02 on levels 2-8 and A01 on Levels 9 and 10. These units have an angled window and the depth of the room increases from 8.4m to 10m along the angled line of the window. This occurs in only 10 of the 150 units (6.7%), and the amenity of these units is considered to be acceptable.
<p>Apartment Size (RFDC) 1 bed – min. 50m² 2 bed – min. 70m² 3 bed – min. 95m²</p> <p>Apartment Size (ADG) 1 bed – min. 50m²</p>	<p>1 bed – min. 56m² 2 bed – min. 77m² 3 bed – min. 100m²</p> <p>All min rooms sizes and dimensions have been met</p>	Yes

<p>2 bed – min. 70m² 3 bed – min. 90m² add 5m² for 2nd bath/WC</p> <p>Room sizes: Main beds 10m², other beds 9m² (min), with min 3m dimension (excl. robe)</p> <p>Living Room min width: Studio/1 bed – 3.6m 2-bed/3-beds – 4m</p>		
<p>Balcony depth (RFDC) Min. 2m depth to primary balconies.</p> <p>Private Open Space (ADG) 1 bed – 8m²/2m depth 2 bed – 10m²/2m depth 3+ bed – 12m²/2.4m depth</p>	<p>All primary balconies have minimum 2m depth.</p> <p>All balconies meet the minimum depth, however some fail the minimum area based on the number of bedrooms</p>	See discussion below
<p>Floor to ceiling heights Min. 3.3m ground floor and 2.7m for other floors. If variation is sought then satisfactory daylight access must be demonstrated.</p>	Floor-to-ceiling heights are 2.7m to all floors, including ground floor which constitutes Managers Offices, lift lobbies and garbage store rooms.	See discussion below
<p>Circulation (RFDC & ADG) Max. 8 units accessed from a single corridor.</p>	Minimum 5 to maximum 7 apartments accessed from a single corridor.	Yes
<p>Solar access (RFDC) 70% of units should receive 3hrs solar access between 9am – 3pm midwinter. Limit the number of single aspect apartments with a southerly aspect to a maximum of 10%.</p> <p>(ADG) 70% of units should receive 2hrs solar access between 9am – 3pm midwinter. A max of 15% of apartments receive no direct sunlight between 9am – 3pm midwinter</p> <p>Proposal must ensure solar access to neighbouring properties is not reduced by more than 20%</p>	<p>Less than 70% of units receive 3hrs direct solar access between 9am – 3pm midwinter.</p> <p>16 of the 150 units (10.67%) are single aspect apartments oriented to the south</p> <p>110 of 150 units (73%) receive 2hrs direct solar access between 9am – 3pm midwinter.</p> <p>14 of the 150 units (9.3%) will receive no direct solar access between 9am-3pm midwinter</p> <p>Adjoining development to South (7 Cross): existing solar access is 34 of 80 units. Proposal will result in an additional 6 units (17.6%) failing to comply with solar access</p>	<p>Yes</p> <p>Solar access complies with the requirements of the ADG and is considered acceptable as this is the current minimum performance requirement for apartment development.</p> <p>While there is 1 additional single-aspect south-facing apartment that would fail the RFDC, under the ADG only 9.3% of units receive no sun, which complies.</p> <p>Additional overshadowing of adjoining development to south will not be reduced by more than 20%.</p>

Building separation/Visual Privacy

Compliant or appropriate building separation is achieved in most locations on the site, apart from the north-east corner of Building A, relative to the South West corner of Tower B on the adjoining site to the north (190 Stacey Street, at the eastern end of the subject site). It is noted that the northern setback to Building A is consistently 6m at levels where the ADG would normally require 9m, however as there is no building located on this part of the 196 Stacey Street site to the north (at the western end of the subject site), the potential for visual privacy impact is non-existent.

190 Stacey is encumbered by an easement in the south-west corner, which continues onto the subject site at a point just beyond the mid-point of the site, closer to Stacey St (approximately 60m from Stacey Street, 75m from Cross Street). The easement creates a natural barrier over which development cannot occur.

The development on 190 Stacey Street incorporates a staggered southern elevation that presents to the easement boundary. The design of this building incorporates some south-facing windows that are less than the setbacks in the ADG (which reinforce the “sharing” of the separation distances in the RFDC, under which the DA for 190 Stacey Street was assessed).

If this instance, the first 4 floors of the proposed development in Building A are car parking levels. Level 4 (5th floor) is the first residential level, and there is one unit in the NE corner of each of Levels 5 through to 10 in Building A that sit in relatively close proximity to the SW corner of the approved Tower B on 190 Stacey. From Level 4 up, the separation distances between Building A on the subject site and Tower B on the northern site are as follows:

Level	Proposed	RFDC/ADG requirement
Level 4 (Podium Level)	5m-13m	18m
Shortest distance is part of a 93m ² private terrace to Unit 4.07, which could be reduced and screened if deemed critical, and would result in a distance of 6m to a screen and minimum of 10m between windows. This occurs once between the developments, and is not considered significant enough to warrant extensive change.		
Levels 5-10	8m-16m	18m Levels 5-7, 24m for Levels 8-10
Shortest distance is “window-to-privacy screen”. Minimum window-to-window is 10m		

The ‘pinch point’ is the shortest distance between the two towers, and is a function of the location of the easement across both sites. Due to the staggered nature of the southern elevation of Tower B on 190 Stacey Street, the separation between the buildings rapidly increases as the stagger continues towards the west. Whilst the separation distance fails both the RFDC and ADG requirements, it is considered that the failure is confined to the point of worst case, and does not occur for an extended distance. If the separation failure occurred over a consistent setback along a lengthy stretch of both building walls, the visual privacy impacts would likely be unacceptable. However, given the design and placement of windows in both buildings, especially considering the stagger incorporated in the southern elevation of Tower B on 190 Stacey Street, it is considered that any visual privacy impact is

limited to the point of worst case, and is acceptable in the context of the high density nature of development in the immediate locality, and is worthy of support in this instance.

In other locations, Building B is built to the northern and southern boundaries, and this “street wall” presentation is consistent with the development approved at 190 Stacey Street (nil setback to common boundary). The development at 190 Stacey Street includes an indented lightwell mid-way along Tower A (being the building facing Stacey Street) on the southern boundary. The proposed development has matched the location of the lightwell on the northern boundary, so that the approved lightwell aligns with the proposed lightwell on the subject site. This is considered an appropriate outcome in this location, with no direct presentation of windows to the common boundary. The nil setback to blank walls is considered appropriate in this instance. Where openings are located close to the property boundary, the issue of fire separation can be addressed, and is most appropriately dealt with at construction certificate stage.

Private Open Space

20 of the 150 units (13%) fail to achieve the minimum area of 10m² for balconies provided to 2 bed room units under the ADG. In each of these cases, the balconies have achieved the minimum dimension of 2m. In many cases, these balconies are 2.4m x 3.8m (9.12m²). These balconies were originally designed in order to address the RFDC, which stipulates a minimum dimension of 2m, but does not stipulate a minimum area for balconies. It is considered that the variation to the ADG requirement is minor, the minimum dimensions have been achieved, and the level of amenity afforded to residents of these units would not be affected by the variation. Whilst the outcomes fail the requirements of the ADG, the application was lodged under the RFDC and the impact of the failure is considered so minor as to not warrant refusal of the application on this basis, or require significant redesign in order to accommodate compliance.

Floor to ceiling heights

The application fails to provide ceiling heights at the ground floor level that would allow future adaptation of the ground floor area to commercial use. The applicant has submitted the following justification:

“It is acknowledged that the ADG seeks increased floor-to-ceiling heights at ground floor, for the possibility of conversion of residential floor space to non-residential floor space in the future. However, an increased floor-to-ceiling height is not proposed in this development because the gross floor area at ground level is only 269m², all of which is required for exactly the designed purpose, now and for the foreseeable life of the development. The developer intends to retain all 150 apartments in the development and so the manager’s offices are vital to its onsite management role. Aside from the manager’s offices, the floor space at ground level will never be convertible to non-residential space because it hosts the essential building services and circulation areas.”

It is considered in this instance that the reduced ceiling height is supportable. Potential for future conversion to commercial is limited, given the intended use of the development and the lack of commercial parking spaces provided. However, were the managers offices ever to attempt conversion in future, the ceiling height of 2.7m

is not considered likely to limit the possible options for any commercial use, except for food and drink premises, which generally require greater ceiling heights to accommodate necessary additional services in the ceiling. Furthermore, it is noted that Part A1 of Council's DCP indicates that commercial use of the ground floor is "desirable" but not "essential". As such, it is not considered in this instance that the proposal would unreasonably restrict the flexibility of the space, regardless of the intended use at this time.

Communal Open Space/Deep Soil Zones

The proposal fails to meet the rule of thumb in the RFDC and the design criteria in the ADG in terms of Communal Open Space and Deep Soil Zones.

However, with regard to the Communal Open Space, the proposal is considered to satisfy the design criteria of Objective 3D-1 in the ADG, as follows:

"Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- provide communal spaces elsewhere such as a landscaped roof top terrace or a common room
- provide larger balconies or increased private open space for apartments
- demonstrate good proximity to public open space and facilities and/or provide contributions to public open space"

In this instance the development is located in a business zone, and provides landscaped terraces at Levels 4 and 9 of Building A, comprising 353m² and 220m² respectively. The majority of units are provided with much greater private open space than the minimum requirements, and those 20 that fail (as discussed above) only fail by less than 1m². Furthermore, the site is located less than 100m walking distance from Stevens Reserve, located on the SW corner of the intersection of Stacey and Stanley Streets, which provides for approximately 7500m² of public open space. As such, it is considered that the design guidance in Objective 3D-1 of the ADG has been achieved, and the amount of communal open space that has been provided can be considered appropriate in this context.

With regard to Deep Soil Zones, the site is heavily constrained by easements, both stormwater and sewer related, that are controlled by Sydney Water. The applicant has been required by Sydney Water to address numerous conditions surrounding the treatment of the ground level of the site, with vehicular access required to be provided to allow Sydney Water access to the easement for maintenance purposes. This means that the deep soil zones are generally not the required 6m in dimension. In this instance, given the constraints on the site and those additional constraints imposed by the responsible public authority, the provision of deep soil zones with non-compliant dimensions is not a significant departure in this instance. Water absorption remains possible, whilst deep soil planting can also be accommodated in some locations at ground level, but also on podiums at the upper levels of Building A, consistent with the "Planting on Structures" requirements in the ADG.

Conclusion – SEPP 65

Overall, it is considered that the development satisfactorily addresses the relevant

provisions of both the RFDC (as in force at the time of lodgment) and the ADG (as in force for the majority of time the DA has been under consideration). Where non-compliances exist with the RFDC, the development otherwise complies with the current requirement of the ADG. Where non-compliances are evident, the impact is considered to be minimal and within acceptable limits, and will not have a significant detrimental outcome in terms of the amenity afforded to future residents of both the development site, and neighboring sites, based on either existing or approved developments.

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

Schedule 3 of the Infrastructure SEPP lists types of developments that are to be referred to Roads and Maritime Services (RMS) due to their size or capacity and the potential for impacts on the local road network (including classified roads). The proposed development exceeds the thresholds listed in Schedule 3 of the SEPP and has direct access to Stacey Street which is a classified road. The proposal was accordingly referred to RMS for comment.

The RMS has reviewed the proposed development and raised no objection, subject to certain conditions of consent addressing matters including road noise mitigation, car parking layout, vehicle manoeuvring, stormwater and civil works and potential impacts on RMS assets, and impacts during construction. These requirements have been included in the attachment to this report as recommended conditions of consent.

Clause 102 of the Infrastructure SEPP also requires consideration to be given to acoustic impacts on proposed residential units where development is to occur adjacent to roads where the average number of vehicle movements per day exceeds 40,000. Stacey Street is an arterial road where the vehicle movements per day exceed 40,000. As such, an acoustic report has been submitted with the application, and it is recommended that a condition be imposed requiring compliance with the findings of the acoustic report and the requirements of the Infrastructure SEPP.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (Deemed SEPP)

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that it is generally consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of the GMREP 2.

Bankstown Local Environmental Plan 2015 (BLEP 2015)

The application has been assessed against the relevant clauses of the Bankstown Local Environmental Plan 2015. An assessment of the Development Application revealed that the proposal fails to comply with the provisions of the Bankstown Local

Environmental Plan 2015 relating to floor space ratio (Clause 4.4) and height of buildings (Clause 4.3), as illustrated in the table of non-compliance below.

BLEP 2015 – Table of non-compliance			
STANDARD	PROPOSED	REQUIRED	COMPLIANCE
Height	39.25m max	35m	N – see below
FSR	3:1, frontage to Stacey St is 20.115m	3:1 (2:1 if frontage of less than 20m)	N – see below

Floor Space Ratio

Clause 4.4 of the BLEP 2015 stipulates that the floor space ratio (FSR) for this site is 3:1, however Clause 4.4(2D) stipulates that the maximum FSR reduces to 2:1 where the width of the site at the front building line is less than 30m. The subject site has frontage of 43.94m to Cross St, but also has a frontage of only 20.115m to Stacey St. In accordance with the definition of front building line in the BLEP 2015, the front building line is calculated from Stacey St. As such, the site is considered to have a width at the front building line of less than 30m, and therefore the maximum FSR of 2:1 would apply. The subject application demonstrates a floor space ratio of 3:1.

The applicant has provided a written submission pursuant to Clause 4.6(3) of the BLEP 2015, seeking to justify the proposed variation to the Floor Space Ratio Standard in Clause 4.4(2D) of the BLEP 2015. The submission is reproduced as follows:

This submission made pursuant to clause 4.6 of the BLEP seeks a variation to the FSR development standard applying to the site. In justifying the proposed variation, assessment has been carried out against the relevant sub-clauses of clause 4.6, including cl 4.6(3)(a) and (b), cl 4.6(4)(a)(i) and (ii).

2.1 Clause 4.6(3)(a)

The decision of Justice Preston in *Wehbe V Pittwater* [2007] NSW LEC 827 is authority for the position that there are five ways of establishing that compliance with a development standard is unreasonable or unnecessary. The most commonly-invoked way is to establish that compliance with the development standard is unreasonable or unnecessary *because the objectives of the standard are achieved notwithstanding non-compliance with the standard*. This method of demonstrating that compliance is unreasonable and unnecessary has been determined as the most appropriate way in the instant case.

It is submitted that strict numerical compliance would be unnecessary and unreasonable because:

- **The objectives of the B4 zone and the FSR development standard are achieved notwithstanding non-compliance with the latter.**
 - o Refer to section 2.4, below, for commentary on the objectives of the zone and the development standard.
- **The objectives of the B4 zone and the FSR development standard will be compromised in a complying development.**
 - o In regards to the FSR control:
 - the locality has the capacity and developing character to accommodate a 3:1 FSR and a 2:1 FSR underutilises that opportunity; and
 - insistence on a complying development discourages the proposed lot consolidations (the subject site is three contiguous allotments and such an opportunity should be reasonably maximised).
 - o In regards to the zone:
 - a complying development does not maximise public transport patronage.

- **Applying a 2:1 FSR control merely because the front building line facing Stacey Street is less than 30 metres in length unreasonably ignores the fact that the front building line along Cross Street is more than 30 metres.**
 - o On this point, it is important to recognise that vehicular access to the site will be gained from Cross Street and so it is Cross Street which is the principal road frontage and the most significant front building line in the development; and
 - o Also relevant is the fact that the other major developments approved in the near vicinity all achieve an FSR at or near 3:1 and so the building bulk proposed will be complementary to the developing character of the immediate local area.

2.2 Clause 4.6(3)(b)

There are sufficient environmental grounds to approve the variation, given the proposal:

- responds well to difficult site conditions, including major sewer and stormwater infrastructure burdening the ground plane as well as a localised flooding constraint;
- exhibits a good relationship to the development approved to the north and the existing development to the south:
 - o in the case of the former, it contributes a significant element to the developing streetscape CBCC envisaged (as the former Bankstown City Council) for Stacey Street when it approved the eastern tower on Lot 121 DP625814 and the development under construction on Lot 100 DP708528; and
 - o in the case of the latter, it minimises overshadowing of the neighbouring building and the reduction in the number of solar access-compliant units is within reasonable levels for a high-density environment;
- satisfies key design criteria from the Apartment Design Guide (“ADG”), in a challenging context, including:
 - o apartment sizes and mix;
 - o compliant solar access to more than 70% of apartments; and
 - o significantly larger private open space areas (terraces and balconies), on average; and
- will significantly improve the site’s contribution to the aesthetics of the immediate local area and will complement other apartment buildings currently under construction.

2.3 Clause 4.6(4)(a)(i)

Jensen Bowers submits that this document adequately addresses the matters required to be demonstrated per subclause (3).

2.4 Clause 4.6(4)(a)(ii)

The objectives of the development standard for FSR are stated as follows:

- (a) *to establish the bulk and maximum density of development consistent with the capacity and character of the locality of a development site,*
- (b) *to ensure the bulk of non-residential development in or adjoining a residential zone is compatible with the prevailing suburban character and amenity of the residential zone,*
- (c) *to encourage lot consolidations in commercial centres to facilitate higher quality built form and urban design outcomes.*

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To maintain the role of the Bankstown CBD as a major metropolitan centre.*

In respect of the FSR objectives, the site is capable of comfortably yielding a 3:1 FSR despite the fact the front building line along Stacey Street is less than 30 metres in length and a 3:1 FSR is certainly consistent with the developing character of the locality (recent approvals in the area achieve a 3:1 FSR). In terms of the capacity of the locality, being on the fringe of the Bankstown CBD it has as much capacity as almost anywhere else in Bankstown to accommodate high density residential development and the proximity to the railway station (about 450 metres walking distance) symbolises its capacity.

The close proximity to the railway station also supports the claim that the proposal satisfies the objectives of the zoning given the second objective seeks to maximise public transport patronage. A 3:1

FSR will certainly encourage public transport patronage more than a 2:1 FSR would, all else being equal. Using the same rationale, the proposed FSR will help to 'maintain the role of the Bankstown CBD as a major metropolitan centre' more than a lesser FSR would.

In at least these respects, the proposed FSR achieves the objectives of the FSR development standard and B4 zoning despite it being more than 2:1.

Whilst the proposed development does not comply with the development standard for FSR, per clause 4.4 of the BLEP, it nevertheless continues to meet the objectives of the control and the site's zoning, particularly considering approved FSRs in the immediate locality.

In addition, Jensen Bowers submits that compliance with the development standard is both unnecessary and unreasonable and there are sufficient environmental grounds to justify contravening the standard, for the reasons stated previously herein. Accordingly, Jensen Bowers submits that this 'Request for Clause 4.6 Variation' is worthy of CBCC support and the approval of the Sydney South Planning Panel.

The consent authority must not grant consent for a development that contravenes a development standard unless it is satisfied that the applicant's written statement adequately addresses the matters required to be addressed in Clause 4.6(3), and whether the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of clause 4.4 of the BLEP 2015 in relation to FSR are as follows:

- (a) *to establish the bulk and maximum density of development consistent with the capacity and character of the locality of a development site,*
- (b) *to ensure the bulk of non-residential development in or adjoining a residential zone is compatible with the prevailing suburban character and amenity of the residential zone,*
- (c) *to encourage lot consolidations in commercial centres to facilitate higher quality built form and urban design outcomes.*

Furthermore, the objectives of the B4 Mixed Use zone in the BLEP 2015 are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To maintain the role of the Bankstown CBD as a major metropolitan centre.

The main or dominant frontage of the site is to Cross St, which achieves the minimum lot width requirement of 30m in order to allow for an increased FSR of 3:1 on the site. The non-compliant lot width occurs to Stacey St, however the immediate locality has capacity to develop to the 3:1 FSR, and recent development approvals in the immediate vicinity support the 'precinct-wide' 3:1 FSR. Ultimately, the area will be developed to the 3:1 FSR capacity, and the design of buildings in the context of streetscape and overall bulk and scale in the immediate locality will ensure that the width of the individual allotments will not inform the desired future character of the locality. Relying on width of the site to determine the outcome of character in this instance would result in a building that is not consistent with surrounding development in the immediate locality, nor would seeking amalgamation or consolidation of sites result in a better outcome. Given the unusual nature of the shape of sites in the immediate vicinity, lot width becomes an issue on more occasions than not, and seeking consolidation with the remaining sites would not

facilitate higher quality built form or urban design outcomes, given that the proposed development is considered to be in keeping with existing development approved on surrounding sites.

As such, the proposal is considered to be consistent in terms of bulk, scale and character with existing development constructed, and development approvals granted, in the immediate vicinity and the attainment of the desired future character and objectives of the immediate locality in the B4 Mixed Use zone is achieved, despite the non-compliance. In this instance, it is considered that the applicants' written statement adequately addresses the relevant matters in clause 4.6(3) of the BLEP 2015, and the consent authority can be satisfied that the proposed development is in the public interest, being consistent with both the objectives of the FSR standard and the objectives of the B4 Mixed Use zone. The variation is considered to be worthy of support in this instance.

Height of Buildings

Clause 4.3(2) of the BLEP 2015 stipulates that the maximum height of buildings for this site is 35m. The proposed development seeks approval for a maximum height of 39.25m for Building B fronting Stacey St, and 36.95m to Building A facing Cross Street.

The applicant has provided a written submission pursuant to Clause 4.6(3) of the BLEP 2015, seeking to justify the proposed variation to the Height of Buildings Standard in Clause 4.3(2) of the BLEP 2015. The submission is reproduced as follows:

This submission made pursuant to clause 4.6 of the BLEP seeks a variation to the height of buildings development standard applying to the site. In justifying the proposed variation, assessment has been carried out against the relevant sub-clauses of clause 4.6, including cl 4.6(3)(a) and (b), cl 4.6(4)(a)(i) and (ii).

2.1 Clause 4.6(3)(a)

The decision of Justice Preston in *Wehbe V Pittwater* [2007] NSW LEC 827 is authority for the position that there are five ways of establishing that compliance with a development standard is unreasonable or unnecessary. The most commonly-invoked way is to establish that compliance with the development standard is unreasonable or unnecessary *because the objectives of the standard are achieved notwithstanding non-compliance with the standard*. This method of demonstrating that compliance is unreasonable and unnecessary has been determined as the most appropriate way in the instant case.

It is submitted that strict numerical compliance would be unnecessary and unreasonable because:

- **Proposed finished floor levels in 'Building A' are a necessary response to constraints.**
 - o The proposed ground level sits 500mm above existing ground level to achieve flood immunity.
 - o The typical floor-to-floor height of 3100mm allows for building services to be installed between levels.
 - o The floor-to-floor height of Level 3 is 4100mm to accommodate a necessary structural transfer element in response to Sydney Water assets below ground.
- **The degree of exceedance is negligible and will be imperceptible at street level.**
 - o At the peak of the lift overruns, the larger of the two proposed buildings ('Building A'), is less than two metres higher than the 35-metres height control applicable to the site, when measured from existing ground level. However, the lift overruns are somewhat central to the building, at a good distance from the outer extent of the predominant roof height, such that they will not be visible from street level and thereby will not contribute to the perception of building form or massing.

- o The predominant roof height of 'Building A' is 850mm lower than the peak of the lift overruns and this degree of exceedance of the height control, as a percentage of the overall building height, is negligible (and will be imperceptible at street level). Notably, 'Building A' represents about 65-70% of the total proposed built form, on a horizontal plane.
- **It would be unreasonable to require a strictly compliant height given the height approved on the neighbouring site, to the north.**
 - o The smaller of the two proposed buildings ('Building B') will peak at a height lower than the development immediately adjoining to the north (which peaks at a maximum height of about 44 metres), where that approved building is to be built to the common property boundary. The peak height proposed is 39.25 metres (approximately), although the main roof area is only about 38.4 metres high. Adjoining the approved development to the north, the proposed heights are acceptable and satisfy the objectives of the development standard and the B4 zone. Please refer to Drawing DA 2.05 for a streetscape elevation showing the relative building heights.
- **The non-compliance with the height control does not compromise any on or offsite future residential amenity.**
 - o The proposal largely satisfies the requirements of State Environmental Planning Policy No.65 – Quality design of residential flat development (SEPP 65) and the Apartment Design Guide in terms of at least access to sunlight, natural ventilation and private open space.
 - o The degree to which 'Building B' exceeds the height control has almost no impact on the solar access received by the existing building to the south-west after 9.30am in the winter solstice (see Drawing DA 9.06) and 'Building A's' very minor exceedance of the height control has negligible effects in the same regard.
- **The proposal features both horizontal and vertical articulation through the use of setbacks, balconies and framing elements.** These features aid in providing positive visual interest as well as minimising the perceived height of the building.

2.2 Clause 4.6(3)(b)

The subject site is constrained by two Sydney Water easements, which has proven to be a difficult obstacle for the architect to overcome, but through lengthy negotiations with Sydney Water an appropriate design solution has been achieved. In supporting the intent for development in this locality the negative impacts from a constrained ground plane can be remedied by breaking the 35-metre height plane, where it is reasonably justifiable. For reasons detailed in section 2.1 herein, and given the accumulation of various site-specific constraints, there are sufficient environmental planning grounds to justify contravening the development standard for building height in this case.

The site's constraints at ground level are significant in the context of a case from the New South Wales Land and Environment Court (*Micaul Holdings Pty Limited v Randwick City Council (2015)*) where the site's flood affectation was one of the determinative factors in the favourable consideration of 'sufficient environmental grounds' when approving a 55% exceedance of the height limit for a development in Randwick. Whilst Jensen Bowers recognise that each case ought to be assessed on its own merits and the site's context differs from that in *Micaul*, the case highlights that the proposed height exceedance is only very minor in degree.

2.3 Clause 4.6(4)(a)(i)

Jensen Bowers submits that this document adequately addresses the matters required to be demonstrated per subclause (3).

2.4 Clause 4.6(4)(a)(ii)

The objectives of the development standard for building height are stated as follows:

- (a) *to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) *to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) *to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) *to define focal points by way of nominating greater building heights in certain locations.*

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To maintain the role of the Bankstown CBD as a major metropolitan centre.*

There is little doubt that the height of the proposed buildings is compatible with the character, amenity and landform of the area, especially when considering the approved building height of the neighbouring site to the north. Furthermore, there is no doubt that the proposed building heights support the objectives of the zone, especially when accounting for the constraints of the site at ground level and recognising that the proposed building height is a logical response to those constraints.

In its report to the former Sydney West Joint Regional Planning Panel, the former Bankstown City Council supported a SEPP1 Objection for building height over Lot 121 DP625814 on the basis that the proposed buildings would be 'of appropriate architectural character' and would 'contribute positively to the streetscape.' Council identified that 'Stacey Street marks the eastern edge of the Bankstown CBD and is a visible point of transition from land that is zoned residential to land that is zoned primarily for commercial and high-density purposes.' The same reasoning for supporting that neighbouring development applies to the development proposed herein, at least in respect of how the proposed development achieves the objectives of the FSR development standard and B4 zoning.

Whilst the proposed development does not comply with the development standard for building height, per clause 4.3 of the BLEP, it nevertheless continues to meet the objectives of the control and the site's zoning, particularly considering the approved building height on the site to the immediate north.

In addition, Jensen Bowers submits that compliance with the development standard is both necessary and unreasonable and there are sufficient environmental grounds to justify contravening the standard, for the reasons stated previously herein. Accordingly, Jensen Bowers submits that this 'Request for Clause 4.6 Variation' is worthy of CBCC support and the approval of the Sydney South Planning Panel.

As noted earlier in this report, the consent authority must not grant consent for a development that contravenes a development standard unless it is satisfied that the applicant's written statement adequately addresses the matters required to be addressed in Clause 4.6(3), and whether the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

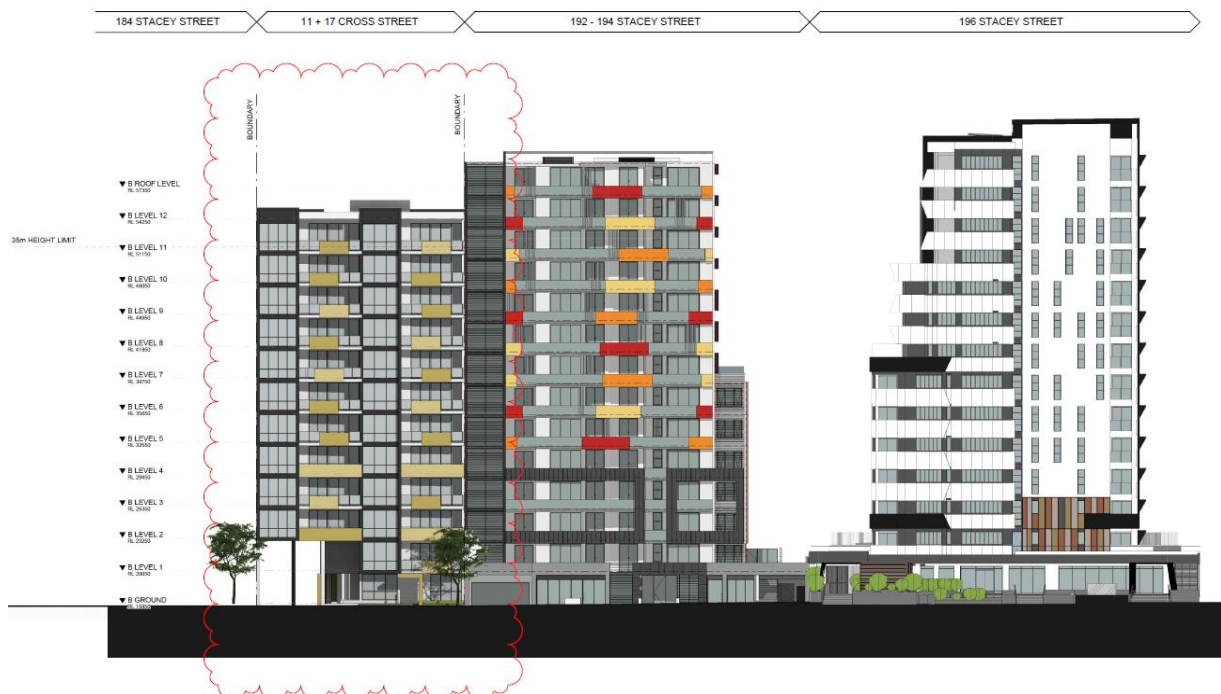
The objectives of clause 4.3 of the BLEP 2015 in relation to height of buildings are as follows:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,
- (d) to define focal points by way of nominating greater building heights in certain locations.

Furthermore, the objectives of the B4 Mixed Use zone in the BLEP 2015 are again reproduced below:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To maintain the role of the Bankstown CBD as a major metropolitan centre.

The site is burdened by easements for both stormwater and sewer that fall under the jurisdiction of Sydney Water. The existence of these easements result in no ability to incorporate basement car parking on the site. As such, 4 levels of car parking are provided above ground level. The overall development does not exceed the maximum FSR of 3:1 (see above). Were the constraints at ground level non-existent, the car parking would be able to be provided as basements, and the overall development, currently at the maximum FSR of 3:1 would sit below the maximum building height of 35m. Furthermore, the breach in height would not result in the development being inconsistent with the height of other buildings either under construction (196 Stacey Street = 46.2m) or already approved (190 Stacey St = 43.5m) in the immediate vicinity of the site. It is considered that, in this instance, these reasons form an appropriate basis for the application of clause 4.6 to provide flexibility in the application of development standards, and the variation to height is therefore worthy of support.



Representation of Stacey St streetscape incorporating existing approvals for sites to the north

As such, the proposal is considered to be consistent in terms of the character of the area, with the additional height assisting in defining a focal point of the city (Bankstown CBD). This in turn ensures the proposed development achieves the objectives of the B4 Mixed Use zone, particularly maintaining the Bankstown CBD as a major metropolitan centre. In this instance, it is considered that the applicants' written statement adequately addresses the relevant matters in clause 4.6(3) of the BLEP 2015, and the consent authority can be satisfied that the proposed development is in the public interest, being consistent with both the objectives of the Height of Buildings standard and the objectives of the B4 Mixed Use zone. The variation is considered to be worthy of support in this instance.

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

No draft EPI's are applicable to the proposed development.

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

The following table provides a summary of the development application against the controls contained in Parts A1 and B5 of the Bankstown Development Control Plan 2015.

STANDARD	PROPOSED	BDCP 2015 PART A1		BDCP 2015 PART B5	
		REQUIRED	COMPLIANCE	REQUIRED	COMPLIANCE
Setbacks Stacey St Cross St	1.1-5.4m 2m	5m 0m	N Y	N/A N/A	N/A N/A
Awning	Proposed along Stacey St	Must be provided	Y	N/A	N/A
Car Parking (Part B5 of BDCP 2015)	180 spaces - 150 residential - 30 visitor	N/A	N/A	Min 1 - Max 3 spaces per dwelling (150- 450 spaces); 1 visitor space per 5 dwgs (30 spaces)	Y

Setback to Stacey Street

Part A1 of the BDCP 2015 requires a 5m setback to Stacey Street. The subject application proposes a setback of 5.4m to the building wall at the northern end of the eastern elevation, however this reduces to a minimum of 1.1m at the southern end of the eastern elevation. The alignment of Stacey Street almost exactly matches the 11am alignment of the sun on 21 June, meaning that the eastern elevation of the building must be angled in order to ensure that compliant solar access can be achieved to units in the eastern elevation (in this case, 21 units). A similar method was used on the adjoining site to the north (190 Stacey Street), where building wall elements in the eastern elevation started at 6m closer to the northern boundary (where 196 Stacey adjoins and was approved at a setback of 9m under a different DCP at the time), and reduced to 4m closest to the southern boundary (with the subject site).

The proposal seeks to continue this “angled” presentation to Stacey Street, in order to ensure solar access is achieved to the eastern elevation. This can only be done if the setback is varied. It is considered that the variation to the setback control is worthy of support in this instance, as the development will continue the streetscape theme of facing more north-east, as opposed to a directly parallel setback to Stacey Street. It is considered to be consistent with the desired future outcomes along Stacey Street, and will not affect the ability of the adjoining site to the south to achieve compliance. The remaining site to the south (180-184 Stacey Street) has a frontage in excess of 80m to Stacey Street, and will need to consider alternative architectural treatments in order to ensure that solar access can be achieved, and would need to do this regardless of whether the subject site achieved compliance with the Stacey Street setback or not.

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

Not applicable in this instance.

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

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

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

The proposed development is not considered likely to result in any significant detrimental environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development controls and/or the 'rules of thumb' in the RFDC/design criteria in the ADG occur, the impact is not considered to be unreasonable or likely to be significantly detrimental. As such, it is considered that the impact of the proposed development on the locality will be acceptable.

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

The site is considered suitable for the proposed development.

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

The application was advertised and notified for a period of twenty-one (21) days, from 1 to 21 April 2015. Following the submission of numerous sets of amended plans and details, the application was re-advertised and notified for a further period of twenty-one (21) days, from 17 May to 6 June 2017. Following these advertising and notification periods a total of two (2) objections have been received (1 following the first period, and 1 more following the second period) raising concerns relating to noise and acoustic impacts, other impacts on adjoining properties during the construction phase, as well as impacts on approved development to north relating to the zero setback.

1. Noise and Acoustic Impacts

The proposal needs to make adequate consideration of the existing 24 hour use of the adjoining service station on potential acoustic amenity for the proposed residences.

Comment: The applicant has submitted an acoustic report with the application which is considered to have satisfactorily considered all of the potential noise impacts likely to affect the proposed development. The report includes recommendations to address these acoustic impacts, and it is considered that the attenuation measures proposed are an acceptable response to the potential acoustic impacts.

2. Impacts during Construction Phase

It is requested that a dilapidation report be prepared and provided to adjoining property owners. Construction workers must not utilize parking facilities on adjoining sites during the construction of the proposed development.

Comment: Should the application be approved, it is recommended that conditions of consent be imposed requiring the above matters to be satisfactorily addressed.

3. Zero boundary setback

There will be impacts on cross ventilation, fire separation and solar/daylight access to the approved development at 190 Stacey St, which has lightwells and openings facing the southern boundary.

Comment: The proposed development has been modified so as to ensure that the lightwells in both the approved development at 190 Stacey Street and the proposed development will align, to minimise the impact of blank walls near lightwells. There are no fire safety issues that cannot be satisfactorily resolved at construction certificate stage. Any openings within 3m of the property boundary in the existing approved development at 190 Stacey Street would need to be appropriately treated in terms of fire separation, regardless of the proposed development at 11-17 Cross Street.

The approval of 190 Stacey Street always envisaged the development of 11-17 Cross Street at a zero lot line, and any openings along the southern elevation of the development at 190 Stacey St were always considered to be 'temporary' in the wider context of the development of the precinct. Solar access is not possible to any windows in the southern elevation, and again, any daylight access was never guaranteed, as a result of the approved zero lot line to 190 Stacey Street. Otherwise, the southern elevation of 190 Stacey Street would have needed to be setback a minimum of 6m from the southern boundary (northern boundary of the subject site).

As such, it is considered that the proposed development satisfactorily addresses issues raised in submission.

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

Based on the assessment of the development application, above, the proposed development is not considered to contravene the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the *Environmental Planning and Assessment Act, 1979* and the specific environmental planning instruments, including State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development and the Bankstown Local Environmental Plan 2015, as well as Part A1 of the Bankstown Development Control Plan 2015.

The application fails to comply in regards to floor space ratio and building height, as well as minor non-compliances with the RFDC/ADG. However, the assessment of the development application has found that these variations are justified in the circumstances of this case, in the context of both the overall development and the surrounding locality.

RECOMMENDATION

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

ATTACHMENTS

- A Conditions of Consents
- B Site/Ground Floor Plan
- C Level 1 Plan
- D Level 2 Plan
- E Level 3 Plan
- F Level 4 Plan - Podium
- G Level 5-8 Plan - Typical
- H Level 9 Plan
- I Level 10 Plan
- J Level 11 Plan
- K Roof Plan
- L North Elevation
- M Building A East West Elevations
- N Building B East West Elevations
- O South Elevation
- P Streetscape Elevation from Stacey Street
- Q Sections
- R Solar Access – Winter Solstice
- S Solar Access – Equinox
- T Solar Access – Winter, 7 Cross St (East)
- U Solar Access – Winter, 7 Cross St (West)
- V Stacey St Perspective
- W Cross Street Perspective