

ITEM	74-80 Restwell Street and 1-9 Leonard Street, BANKSTOWN NSW 2200
	Construction of a seven (part six) storey residential flat building containing 156 residential apartments above two levels of basement car parking
FILE	DA-576/2015 - East Ward
ZONING	R4 High Density Residential
DATE OF LODGEMENT	1 June 2015
APPLICANT	Le Chateau Developments Pty Ltd
OWNERS	Le Chateau Developments Pty Ltd
ESTIMATED COST	\$41,406,536.11
CIV	\$37,642,305.55
AUTHOR	Development Services (Samantha Mitchell)

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 Capital Investment Value (CIV) of \$37,642,305.55 and exceeds the capital investment threshold for 'general development', as well as 'Council related development'. Council was the owner of the subject site at the time lodgement, however the sale of the land settled on 11 November 2015 and the site is now owned by the applicant.

Development Application No. DA-576/2015 proposes the construction of a seven (part six) storey residential flat building containing 156 residential apartments above two levels of basement car parking.

DA-576/2015 has been assessed against *State Environmental Planning Policy (State and Regional Development) 2011*, *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy No. 55 – Remediation of Land*, *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015* and generally complies with the relevant provisions. The application is recommended for approval subject to the attached conditions of consent.

The application was advertised and notified upon lodgement for a period of twenty-one (21) days from 17 June 2015 to 7 July 2015. Two (2) objections were received during this period. Upon the lodgement of amended plans and additional information, the application was subsequently re-notified for a period of fourteen (14) days from 14 October 2015 to 27 October 2015 and one (1) objection was received from a previous objector. The objections made against the proposed development raise concerns relating to bulk and scale, overshadowing, traffic and parking impacts, visual/acoustic privacy and security, waste management, isolation of allotments, and noise and air pollution during construction. The issues raised do not warrant refusal of the development application, and the proposed development is considered to be suitable for the site and the locality with respect to these matters.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

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

DA-576/2015 SECTION 79C ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 74-80 Restwell Street and 1-9 Leonard Street, Bankstown and is zoned R4 High Density Residential. The consolidated development site has an area of 6,363sqm, a frontage of approximately 54 metres to Restwell Street and a frontage of approximately 67 metres to Leonard Street.

The site comprises of nine (9) allotments which are all currently vacant, with the exception of several small trees and shrubs. There are five (5) *Callistemon viminalis* (Bottlebrush) street trees located along the Leonard Street frontage. The site is relatively level with a 3.5 metre slope from the north-east corner to the south-west corner.

Development to the south and east of the site predominantly consists of single and two storey detached dwelling houses. However, Council is currently assessing development applications for residential flat buildings in the immediate locality at Nos. 21-25 Leonard Street, 41-43 Leonard Street, 18-22 Stanley Street and 27-37 Percy Street as a result of the recent rezoning to R4 High Density Residential.

Development to the north of the site consists of the Bankstown Chinese Baptist Church, a heritage item, at the corner of Leonard Street and Stanley Street; an at-grade Council-owned car park fronting Stanley Street; and small row of one and two storey commercial buildings fronting Restwell Street. Bankstown Public School, also a heritage item, and Bankstown Memorial Oval are located to the west of the site on the western side of Restwell Street.

The site locality is illustrated in the aerial photo below.



PROPOSED DEVELOPMENT

The Development Application proposes the following works:

- Retention of two (2) on-site trees and removal of all other vegetation;
- Excavation and site preparation works;
- Construction of a seven (part six) storey residential flat building containing 156 apartments above two (2) levels of basement car parking. The development consists of 20 x 1-bedroom units, 115 x 2-bedroom units and 21 x 3-bedroom units. The basement car park contains of 221 parking spaces, i.e. 190 residential spaces and 31 visitor spaces.
- Construction of a new vehicular access to the basement car park from the southern end of the Leonard Street frontage, and two additional VFCs for garbage collection at the northern ends of Leonard Street and Restwell Street.
- Provision of communal open space and landscaping, including a multi-sports half court, BBQ area and pedestrian paths.

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)]

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The subject site is located within the Georges River Catchment and accordingly GMREP No. 2 applies. The proposed works are consistent with the relevant planning principles outlined in the GMREP No. 2, and the proposal does not include any of the specific development types listed under the 'planning control table'.

State Environmental Planning Policy (State and Regional Development) 2011

Part 4 (Regional Development) of the State Environmental Planning Policy (State and Regional Development) 2011 applies to this application as it is for the purposes of 'general development' with a capital investment value of more than \$20 million, as specified in Schedule 4A of the EP&A Act, 1979. The subject site was also owned by Council at the time of lodgement and therefore constituted 'Council related development' with a capital investment value of more than \$5 million, however the sale of the land settled on 11 November 2015 and the site is now owned by the applicant. Accordingly, the development application is to be determined by the Sydney West Joint Regional Planning Panel.

State Environmental Planning Policy (Infrastructure) 2007

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. The proposed development is deemed to be 'traffic generating development' in accordance with Schedule 3 of the SEPP as

the development includes the provision of 221 basement car parking spaces. Accordingly, the proposal was referred to RMS for comment.

The RMS has reviewed the proposed development and raised no objection, subject to the imposition of conditions of consent relating to compliance with Australian Standards for the layout of the car parking area, and the requirement for a Construction Traffic Management Plan to be submitted to the RMS prior to the issue of a Construction Certificate. These requirements have been included as conditions of consent.

State Environmental Planning Policy No. 55 – Remediation of Land

Under the provisions of Clause 7(1) of SEPP No. 55, a consent authority must not consent to the carrying out of any development on land unless:

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

A Stage 1 Environmental Site Assessment, prepared by Environmental Investigation Services, dated 18 May 2015, was submitted with the development application. This report provides the following information with respect to the site history:

- The aerial photographs and land title records indicate that the site has been used for residential purposes since at least 1910 up until late 1980's;*
- The individual residences on the site were progressively demolished between 1994 to 2014;*
- The Council of the Municipality of Bankstown owned the site since at least 1980's to the present date;*
- WorkCover records did not indicate any licenses to store dangerous goods at the site; and*
- NSW EPA records did not indicate any notices for the site.*

The Stage 1 ESA identifies three potential Areas of Environmental Concern (AEC), including fill material, use of pesticides and hazardous building materials. An examination of these matters revealed evidence of fibre cement fragments and asbestos assessed to be of a moderate risk.

The report states that the site would be suitable for the proposed development provided the following additional work is undertaken to better assess the risks:

- 1. Undertake a preliminary Stage 2 ESA to meet the sampling density outlined in the NSW EPA Contaminated Sites Sampling Design Guidelines (1995);*
- 2. Undertake a waste classification assessment for the off-site disposal of material excavated for the proposed development; and*

3. *Prepare a Remediation Action Plan (RAP) and an Asbestos Management Plan (AMP) for the asbestos encountered at the site.*

Accordingly, Council requested a Stage 2 Environmental Site Assessment to be submitted during the assessment of the application. The Stage 2 Environmental Site Assessment, prepared by Environmental Investigation Services, dated 25 November 2015, concludes that *“...the site can be made suitable for the proposed development provided that the following recommendations are implemented to address the data gaps and to better manage/characterise the risks:*

1. *Prepare a Remediation Action Plan (RAP) to outline the remedial measures for the site;*
2. *Prepare a Validation Assessment (VA) report on completion of remediation; and*
3. *Undertake a Quantitative Health Risk Assessment for the CoPC [Contaminant of Primary Concern] encountered in the groundwater in accordance with enHealth and Appendix VII of the Guidelines for the NSW Site Auditor Scheme (2006).”*

The data gaps, referred to in Section 8.5 of the Stage 2 ESA, include the following:

- *The limited TCLP [Toxicity Characteristic Leaching Procedure] analysis undertaken for the ESA was confined to selected fill samples. Additional TCLP analysis should be undertaken to confirm the waste classification to the fill material that will be excavated as part of the remediation plan; and*
- *Additional groundwater testing will be required as part of the remediation plan.*

Subsequent to the above, and in order to address the data gaps identified in the report, the applicant also submitted a Remediation Action Plan (RAP), prepared by Environmental Investigation Services, dated 25 November 2015. The RAP discusses a number of remediation options relating to soil remediation, groundwater remediation and site-specific remediation. The RAP concludes that *“...the site can be made suitable for the proposed development provided the recommendations in this RAP are successfully implemented which include the following:*

- *Stage specific additional investigation works to address the data gaps identified in the RAP;*
- *Undertake Human Health Risk Assessments (HHRA) for the development;*
- *Completion of the remediation and validation works outlined in the RAP; and*
- *Preparation of long term Groundwater Management Plans (GMP) in areas where long term management of residual groundwater contamination is required.”*

It is noted that the data gaps referred to above, as identified in Section 3.6 of the RAP, are consistent with those identified in the Stage 2 ESA. It is further noted that the applicant also submitted an Asbestos Management Plan (AMP), prepared by Environmental Investigation Services, dated 25 November 2015, during the assessment of the application in accordance with the recommendations contained in the Stage 1 ESA.

Conditions of consent requiring remediation of the site to occur in accordance with the recommendations contained in the Stage 2 ESA, the RAP and the AMP, have been incorporated into the approval. Council has also imposed a condition requiring a long term Groundwater Management Plan (GMP) to be submitted to Council prior to the issue of a construction certificate, in accordance with those recommendations.

In light of the above, it is considered that Clause 7(1)(c) of SEPP No. 55 has been satisfactorily addressed. Accordingly, the development site is considered to be suitable for the proposed residential use.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

SEPP No. 65 applies to residential flat buildings having 4 or more units and 3 or more storeys. Accordingly the SEPP applies to the proposed development, and an assessment against the Design Quality Principles and Residential Flat Design Code (RFDC) has been undertaken.

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

'RULE OF THUMB'	PROPOSAL	COMPLIANCE
Deep soil zone A minimum of 25% of the open space area should be a deep soil zone.	The application proposes approximately 1,265sqm of deep soil zone along the southern elevation and portions of the northern elevation. This equates to 34% of the open space area.	Yes.
Open space 25% - 30% of the site area is to be communal open space. 25sqm of private open space shall be provided to ground floor units with a minimum dimension of 4 metres in one direction.	More than 40% of the site area is dedicated to communal open space. The private open space of 4 of the 21 ground floor units is less than 25sqm (ranging from 19sm-21sqm).	Yes. No. However, the majority of units contain private open space that significantly exceeds 25sqm, i.e. an average of 41sqm per unit. Given the extent of communal open space provided, which includes a multi-sports half court and BBQ area, the minor non-compliance for 4 units is considered to be acceptable. It is also noted that the Apartment Design Guide, which now supersedes the Residential Flat Design Code, provides for a minimum area of 15sqm for ground floor apartments, therefore all private open space areas would comply with this requirements.
Planting on structures A range of minimum soil standards are identified for	Open space areas and landscape plantings are proposed above the basement	No. However, the conditions of consent include a requirement for the landscape plan to be

plantings on structures, including basements.	along the northern elevation of the site, including raised planters on podiums. No details are provided relating to soil provisions and landscape maintenance.	amended to incorporate details on soil provisions and landscape maintenance and irrigation systems.
Safety Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	No formal crime risk assessment was completed for the proposed development.	<p>No. However, Crime Prevention Through Environmental Design (CPTED) Guidelines, prepared by Department of Urban Affairs and Planning, 2001 identify four principles for the minimization of crime opportunities, being surveillance, access control, territorial reinforcement and space management. The development incorporates solid and transparent fence lines to the eastern and western boundaries, incorporating small feature trees and mass plantings, promoting active surveillance. The location of terraces and balconies to pathways and access points provides for clear sightlines and surveillance between public and private spaces.</p> <p>The landscaped pathways and access points provide clear access areas and restrict movement. Restricted access is provided to internal areas and car parking. The design incorporates communal open space, including a multi-sports half court and BBQ area, providing opportunities for people to gather in public space and to feel ownership and responsibility.</p> <p>Conditions of consent have been imposed with respect to lighting and security. The proposed development is therefore considered to be acceptable with respect to safety.</p>
Building separation 12m separation between buildings 3 to 4 storeys. 18m separation between buildings 5 to 8 storeys.	The development is 7 storeys in height with a 6 storey component through the central portion of the building. The development provides a minimum setback of 8.6m to the building wall and 4.1m to the balconies on the northern boundary for the eastern wing of the building. The development provides a minimum setback of 10.9m to the building wall and 10.2m to	No. The development results in a minor non-compliance for a small portion of the building wall and balconies on the northern elevation adjacent to the Leonard Street frontage. This portion of the development is adjacent to the heritage item at No. 26 Stanley Street. The minor non-compliance is not likely to result in any adverse visual or acoustic privacy impacts as the adjoining heritage item is zoned SP2 Place

	<p>the balconies on the southern elevation, with the exclusion of one balcony on each upper level (Units 1.11-5.11) which is positioned 7.4m from the north-east corner of the allotment at No. 82 Restwell Street.</p>	<p>of Public Worship under the BLEP 2015, and residential development is not permissible within that zoning.</p> <p>The separation non-compliance relating to the balconies of Units 1.11-5.11 has been addressed through the use of planter boxes and visual privacy screening to address any potential impacts on the residential properties to the south of the site. The proposed development achieves a generous setback of up to 28m and 12m to the northern and southern boundaries, respectively, through the central portion of the building. The development is therefore considered to achieve the overall intent of the building separation 'rule of thumb'.</p>
<p>Pedestrian access Identify access requirements from the street or car parking areas to the apartment entrance. Follow the accessibility standard set out in AS 1428 (parts 1 and 2) as a minimum.</p> <p>Provide barrier free access to at least 20% of dwellings.</p>	<p>All ground floor units fronting Restwell Street and Leonard Street are provided with separate street entrances. The main building entrance is accessible from the street and the basement car park via a lift / stairs. Ramps are provided.</p> <p>Multiple entrances to the ground floor building are provided.</p>	<p>Yes. Council has assessed the development against the requirements of the Building Code of Australia (BCA) and determined that the development complies with the performance requirements of the BCA, subject to conditions of consent. Council's assessment did not identify any inconsistencies with AS 1428.</p>
<p>Vehicle access Generally limit the width of driveways to a maximum of 6 metres.</p> <p>Locate vehicle entries away from main pedestrian entries and on secondary frontages.</p>	<p>The width of the proposed driveway to the basement is 6.4m.</p> <p>The vehicular access to the basement is via a designated driveway on Leonard Street only, and the pedestrian access points are in separate locations.</p>	<p>No. However, according to AS 2890.1:2004, this is a Category 2 driveway requiring a minimum combined entry and exit width of 6m. The proposed driveway width of 6.4m is a minor non-compliance with the requirement, but consistent with the minimum combined width under AS 2890.1:2004. Given the substantial width of the Leonard Street frontage, the driveway width is not likely to dominate the streetscape.</p>
<p>Apartment layout Single aspect units should be limited to a depth of 8m from a window.</p> <p>The back of the kitchen should be no more than 8 metres from a window.</p> <p>The width of cross-over and cross-through units over 15</p>	<p>Approximately 40% of the single aspect units have a depth of more than 8m from a window.</p> <p>The back of the kitchen of approximately 28% of units is located more than 8m from a window.</p>	<p>No. However, the maximum depth of a single aspect unit is 10.8m, and the majority of non-compliant units exceed the 'rule of thumb' by up to 1 metre only.</p> <p>No. However, the maximum distance of the back of the kitchen from a window is 9.3m, and the majority of non-compliant</p>

metres deep should be 4 metres or greater. Buildings not meeting the minimum standards listed above must demonstrate how satisfactory daylight and natural ventilation can be achieved.	The development does not contain any cross-over units. All cross-through units are less than 14 metres or less in depth.	units exceed the 'rule of thumb' by up to 1 metre only. Yes. In general, the development demonstrates satisfactory daylight and natural ventilation outcomes.
Apartment size 1 bed – min. 50m ² 2 bed – min. 70m ² 3 bed – min. 95m ²	1 bed – 48m ² to 51m ² 2 bed – 70m ² to 78m ² 3 bed – 90m ² to 91m ²	No. The non-compliance of up to 5m ² in unit size is considered to be minor in nature in this instance as the spatial arrangement of the units and the overall building will provide good residential amenity. It is further noted that the Apartment Design Guide, which now supersedes the Residential Flat Design Code, requires a minimum internal area of 90m ² for 3 bedroom units, therefore the proposal would be compliant with this provision.
Balcony depth Min. 2m depth to primary balconies.	The minimum balcony depth ranges from 200mm to 2.8m.	No. A small portion of balconies contain areas that are less than 2m in depth, however these areas are not the primary usable space of those balconies. All balconies are assessed to be practical and functional, and are considered to satisfactorily achieve the intent of this 'rule of thumb'.
Floor to ceiling heights Min. 3.3m for the ground floor and 2.7m for all other floors. If a variation is sought then satisfactory daylight access must be demonstrated.	All storeys propose a minimum floor to floor height of 3.225m, which equates to a floor to ceiling height of approximately 2.925m with a 300mm slab.	No. While the proposed development complies for all upper floors, the floor to ceiling height on the ground floor is less than 3.3m. Despite this non-compliance, a satisfactory level of solar access is achieved to the majority of ground floor units, and given the site orientation and layout, an increase to the ground floor ceiling height would not significantly benefit solar access. Accordingly, the proposed development is considered to achieve the intent of this 'rule of thumb'.
Ground floor apartments Optimise the number of ground floor units with separate entries and provide ground floor units with access to private open space.	All ground floor units fronting Restwell Street and Leonard Street are provided with separate street entrances via the private open space. All other ground floor units benefit from access to the communal open space via the private open space.	Yes.

Internal circulation Max. 8 units accessed from a single corridor.	All 21 ground floor units are accessed from a single corridor. With respect to the upper floors, 8 units or less are accessed from a single corridor.	No. However, the 21 ground floor units can be accessed via both street frontages and via the communal open space at several locations throughout the site. As such, the internal circulation of the ground floor level is considered to be satisfactory.
Storage 1 bed – min. 6m ³ 2 bed – min. 8m ³ 3 bed – min. 10m ³	The application proposes approximately 1,392m ³ of storage area in the basement which is allocated to individual units. In addition, the application proposes 437m ³ of storage area within the units. The total amount of storage area proposed equates to 1,829m ³ , i.e. an average of 11.7m ³ per unit.	Yes.
Solar access 70% of units should receive 3 hours solar access between 9am and 3pm at the midwinter solstice.	109 units, i.e. 69.9%, achieve 2 hours of solar access between 8am and 4pm at the midwinter solstice. With the inclusion of skylights to the upper floor south-facing apartments, 112 units achieve solar access, i.e. 71.7%.	No. Given the east-west orientation of the site which results in the longer boundaries fronting north and south, there is a large number of south-facing units. The RFDC permits 2 hours of solar access in dense urban areas, and the Bankstown Development Control Plan 2015 allows for consideration of solar access between 8am and 4pm. In this instance it is therefore considered reasonable allow leniency to the controls, as the proposed development generally achieves the intent of the solar access 'rule of thumb'.
Natural ventilation Building depths should typically range from 10 to 18 metres. 60% of units should be naturally cross ventilated. 25% of kitchens should have access to natural ventilation. Developments which seek to vary the minimum standards must demonstrate how natural ventilation can be satisfactorily achieved.	The depth of the building ranges from 8m to 21m in certain locations, however the typical depth of the building is approximately 17m. The applicant submitted a Natural Ventilation Compliance Report, prepared by Webb Australia, dated 11 November 2015, which demonstrates that 60% of units achieve natural cross ventilation. This figure is achieved through a combination of dual aspect units in different pressure zones; single aspect units designed to induce air flow through the location of windows, doors and skylights; and single aspect units designed to induce air flow through pressure differential methods including the use of blade walls and louvres.	Yes.

	Approximately 42% of kitchens are naturally ventilated as they are located immediately adjacent to a window or openable skylight, or are positioned in a well-ventilated location within the unit.	
Waste management Supply waste management plans as part of the development application submission as per the NSW Waste Board.	A Waste Management Plan was submitted with the development application. The application has been reviewed by Council's Resource Recovery Officer, and is considered to be acceptable subject to the imposition of conditions of consent.	Yes.
Water conservation Rainwater is not to be collected from roofs coated with lead or bitumen-based paints, or from asbestos-cement roofs. Normal guttering is sufficient for water collection provided that it is kept clear of leaves and debris.	The BASIX Certificate (No. 630024M_04) incorporates 3 to 4 star water efficient fixtures and appliances and achieved a water score of 45 against a pass target of 40.	Yes. The intent of the code for water conservation is to reduce mains consumption of potable water and reduce the quantity of urban stormwater runoff. The building incorporates guttering to collect rainwater. The capacity of the system exceeds the minimum water targets of BASIX. The development therefore generally meets the intent of the code for water conservation.

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

The State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the development and aims to encourage sustainable residential development.

BASIX Certificate No. 630024M_04, dated 25 September 2015, was submitted with the development application and demonstrates that the proposal achieves compliance with the BASIX thermal, energy and water efficiency targets.

Bankstown Local Environmental Plan 2015

The following clauses of the Bankstown Local Environmental Plan (BLEP) 2015 are relevant to the proposed development and were taken into consideration:

- Clause 1.2 – Aims of Plan;
- Clause 1.3 – Land to which Plan applies;
- Clause 2.1 – Land Use zones;
- Clause 2.2 – Zoning of land to which Plan applies;
- Clause 2.3 – Zone objectives and Land Use Table;
- Clause 4.1B – Minimum lot sizes and special provisions for certain dwellings;
- Clause 4.3 – Height of buildings;
- Clause 4.4 – Floor space ratio;

- Clause 4.5 – Calculation of floor space ratio and site area;
- Clause 4.6 – Exceptions to development standards;
- Clause 5.9 – Preservation of trees or vegetation;
- Clause 5.10 – Heritage conservation;
- Clause 6.1 – Acid sulfate soils;
- Clause 6.2 – Earthworks.

An assessment of the Development Application revealed that the proposal complies with the matters raised in each of the above clauses of the BLEP 2015, with the exception of Clause 4.4 relating to floor space ratio. In addition, further assessment is provided below with respect to Clause 5.10 relating to heritage conservation and Clause 6.1 relating to acid sulfate soils.

Clause 4.4 – Floor space ratio

Clause 4.4 of the BLEP 2015 states:

- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The floor space ratio that applies to the subject site as shown on the map is 2:1. The above clause and Floor Space Ratio Map contained within the BLEP 2015 is supported by objectives which provide guidance for the numerical control. The objectives 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.*

The proposed development results in a floor space ratio of 2.14:1, which exceeds the maximum gross floor area permitted on the site by approximately 885sqm or 7%. Of the objectives listed above, objective (a) is the only relevant objective in the consideration of the proposed FSR variation as the other objectives relate to non-residential development.

The applicant has made a submission pursuant to Clause 4.6 of the BLEP 2015, seeking a variation to the provisions of Clause 4.4(2). The submission and the proposed variation is discussed in the following section of this report.

Clause 4.6 – Exceptions to development standards

Pursuant to Clause 4.6 of the BLEP 2015, the applicant has made a submission seeking a variation to the provisions of Clause 4.4(2) of the BLEP 2015. An extract from the applicant's submission is provided below:

1. *The density that would result from approval of the proposed development is much less than is achievable on the site if development was proposed to the maximum building height and maximised in other respects. The resulting density would undoubtedly be viewed as being consistent with the capacity and character of the locality;*
2. *With the inclusion of significant areas of ground-floor private open space, the building bulk is necessarily less than could arguably be achieved from the site. The building bulk would undoubtedly be consistent with the capacity and character of the locality;*
3. *The proposal, as demonstrated by the accompanying shadow studies provided, there would be no adverse impacts on adjoining and nearby properties to the south in their current form. It should also be noted that the land to the south of the site has been rezoned to enable residential flat development to be constructed to a height of 19m. It has been determined that this proposal would subsequently have no adverse impacts on the amenity of any future development of this adjoining land; and*
4. *The proposed built form, apart from being below the maximum height permitted, also provides substantial side boundary setbacks and complies with the building separation controls within SEPP 65.*

In consideration of a Clause 4.6 submission, Council is required to assess the proposal with regard to the following matters:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.4(2) prescribes the maximum permissible floor space ratio for development on the subject site. This clause is a development standard.

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

An extract of the applicant's Clause 4.6 submission has been reproduced above, along with the objectives for the floor space ratio control as contained in Clause 4.4 of the BLEP 2015.

In addressing the proposed variation to the maximum floor space ratio control, consideration must be given primarily to whether the built form is consistent with objective (a) of the control to establish development that conforms to the desired 'capacity and character of the locality'.

The building envelope controls applicable to this specific site under the BLEP 2015 intend to provide for a built form transition between the higher density controls that apply to the B4 Mixed Use zoning to the north and the lower density controls that apply to the R4 High Density Residential zoning to the south. The sites to the north can accommodate a 3:1 FSR and a 35m building height with nil setback to the primary frontage. The sites immediately to the south can accommodate a 1.75:1 FSR and a 19m building height with a 6m setback to the primary frontage.

The applicant's Clause 4.6 submission argues that the subject site is capable of accommodating a higher FSR based on the applicable building envelope controls, which include a maximum height of 25m and a minimum setback of 3m to the primary frontage. It is agreed that the building height and setback controls induce a higher density than that achievable with a FSR of 2:1. The reduced setback control of 3m, as opposed to 6m for a typical residential flat building development, provides a greater incentive for a larger building footprint, while the building height control of 25m allows a development that is up to eight storeys. With a FSR of 2:1, there is little opportunity to obtain the number of storeys and setback intended by the controls that apply to the site. As such, it is considered that there is sufficient environmental planning grounds to justify a contravention to the development standard given the proposed development results in an inconsequential FSR variation in response to the height and setback provisions, and in response to desired built form transition that the controls intend to achieve.

In order to provide further guidance as to whether objective (a) has been satisfied, consideration should also be given to the proposal's compliance with other relevant planning provisions. To a large degree, an assessment of the proposal against the provisions of the Residential Flat Design Code would provide this guidance. Earlier sections of this report have assessed the proposal's compliance with the provisions of the RFDC. That assessment concluded that the proposal is largely compliant with the provisions of the Code and that, where variations are proposed, those variations are considered to be worthy of support. Accordingly, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development remains an appropriate built form outcome for the site, despite the contravention to the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) 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, and*

It is considered that the applicant's justification for the proposed FSR variation is acceptable, and that sufficient environmental planning grounds exist for support of the proposed variation. Accordingly, compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case. The proposed variation satisfactorily addresses the objectives for development within

the R4 High Density Residential zone as discussed above, and the development will therefore be in the public interest.

In accordance with the above, it is considered that the Clause 4.6 submission seeking consideration of a FSR variation of 2.14:1 is worthy of support in this instance.

Clause 5.10 – Heritage conservation

The subject site is located to the south of Heritage Item No. I14 'Bankstown Chinese Baptist Church' at No. 26 Stanley Street, and to the east of Heritage Item No. I11 'Bankstown Public School' at No. 61 Restwell Street on the western side of the road.

Clause 5.10(5) of the BLEP 2015 reads as follows:

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

The applicant submitted a Statement of Heritage Impact, prepared by Graham Brooks and Associates, dated May 2015. This report concludes the following:

- The subject site at 74-80 Restwell Street and 1-9 Leonard Street, Bankstown, is not listed as an item of heritage significance in any statutory instrument.*
- It is located in the vicinity of the listed heritage items at 61 Restwell Street and 26 Stanley Street, namely Bankstown Public School and the Bankstown Chinese Baptist Church.*
- The proposed development will have no adverse impact on the established heritage significance of the heritage items in the vicinity.*
- The impact upon the setting, and views, of heritage items in the vicinity of the subject site is considered to be acceptable from a heritage perspective.*
- The proposed development is consistent with the heritage provisions of the Bankstown LEP 2015.*

The Statement of Heritage Impact was referred to Council's Principal Strategic Planner for review, and concern was raised solely with respect to the proximity of the northern balconies of the eastern wing of the development to the heritage item at No. 26 Stanley Street.

The building wall of the development is proposed to be located a minimum of 8.6 metres from the northern boundary. All balconies are located 5.6 metres from the northern boundary, with the exclusion of the top floor balcony and roof which is located 4.1 metres at the closest point. With consideration given to the setback of the Church from the common boundary by approximately 2.5 metres, the proposed development will, at minimum, achieve a separation of 11.1 metres to the building wall and 8.1

metres to balconies. The only encroachment on this separation distance relates to the seventh floor balcony, however this impact is considered to be negligible given the balcony will be positioned approximately 19 metres above the natural ground level, i.e. approximately 7.5 metres above the ridge of the Church.

The balconies on the north-eastern wing of the development have been designed in a manner that does not impose on the heritage item. This is through the use of materials and finishes, including glass balustrades and horizontal composite timber battens, that are sympathetic in appearance and complement the façade of the building and the streetscape. It is further noted that the balconies have specifically been orientated to the north to improve amenity to the units by maximising solar access and positioning the balconies away from the street frontage.

Accordingly, it is considered that the separation proposed between the subject development and the heritage item at No. 26 Stanley is reasonable and is not likely to adversely impact the setting or views of the Church. As such, the proposed development is considered to be acceptable with respect to Clause 5.10 of the BLEP 2015, with no further information or studies required.

Clause 6.1 – Acid sulfate soils

The development site is affected by Class 5 Acid Sulfate Soils. Clause 6.1 of the BLEP 2015 requires the submission of a preliminary assessment and the consideration of an Acid Sulfate Soils Management Plan for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

The Stage 2 Environmental Site Assessment, prepared by Environmental Investigation Services, dated 25 November 2015, does not identify the site as being located in an acid sulfate soil risk area. Nevertheless, a condition of consent has been imposed requiring a Construction Environmental Management Plan, incorporating a Water Management Plan and Acid Sulfate Soils Management Plan, to be submitted to and approved by Council prior to the issue of a construction certificate. The proposed development is therefore satisfactory with regard to Clause 6.1 of the BLEP 2015.

In accordance with the above assessment, the proposed development is considered to be acceptable with regard to the relevant objectives and controls contained in the BLEP 2015.

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

There are no draft environmental planning instruments applicable to the proposed development, and the provisions of Section 97C(1)(a)(ii) therefore do not apply to this development.

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

The development has been assessed against the following parts of the Bankstown Development Control Plan (BDCP) 2015:

- Part B1 - Residential Development;
- Part B5 - Parking;
- Part B11 - Tree Preservation Order; and
- Development Engineering Standards.

The following table provides a detailed assessment of the proposal against the key development standards contained in Part B1 and Part B5 of the BDCP 2015.

DCP CONTROL	PROPOSAL	COMPLIANCE
Isolation of allotments The proposed development must not have the effect of isolating land with an area of less than 1,200m ² and a width of less than 20m at the front building line.	<p>There are no allotments to the north of the site that result in isolation due to the heritage item, the Council-owned car park, and Fitzpatrick Lane that separates the sites at the northern end of Restwell Street.</p> <p>The sites to the south on Restwell Street, which comprise of Nos. 82-88 (approx. 2,770m² and 54m frontage), could accommodate 1 or 2 residential flat buildings. It is noted that No. 90 is already developed for this purpose.</p> <p>The sites to the south on Leonard Street, which comprise of Nos. 11-19 (approx. 2,672m² and 54m frontage), could also accommodate 1 or 2 residential flat buildings. It is noted that a development application for a residential flat building at Nos. 21-15 Leonard Street is currently under assessment by Council.</p>	Yes.
Storey limit (not including basements) The subject site benefits from a maximum building height of 25m, which allows a maximum of 8 storeys (no attic).	The proposed development is 7 storeys on the Restwell Street and Leonard Street frontages, and 6 storeys for the central portion of the building. The proposed development complies with the maximum building height of 25m.	Yes.
Setbacks to the primary and secondary frontages Min. 3m setback for the allotments at Nos. 1-9 Leonard Street and Nos. 74-80 Restwell Street.	The building wall and balconies are setback a minimum of 3m from both street frontages.	Yes.
Setbacks to the side and rear boundaries Min. 4.5m provided the average setback is 0.6 multiplied by the wall height.	The wall height of the proposed development ranges from approximately 21m to 24m, therefore a minimum setback of 4.5m is required to the side boundaries with an average	Compliance with this control is difficult to assess, given the staggered setback of the building to the northern and southern side boundaries. However, it is considered that the proposed

	setback of 12.6m to 14.4m. The application proposes a setback ranging from approximately 8.6m to 34.8m to the northern (side) boundary and a setback ranging from approximately 10.9m to 18.9m to the southern (side) boundary.	development generally achieves the intent of the control. Furthermore, the proximity of the building to the side boundaries of the site has been assessed in detail above under the building separation control contained in the RFDC, and is considered to be satisfactory.
Basement setback Min. 2m to side and rear boundaries.	The basement is setback a minimum of 2m to all boundaries.	Yes.
Driveway setback Min. 1m.	The driveway is setback a minimum of 2m to the southern boundary.	Yes.
Private open space Located behind front building line, with the exclusion of balconies used to articulate the façade.	The ground floor eastern and western units contain private open space that is marginally within the 3m front setback of the site. The patios of these units are setback a minimum of 2m from the eastern boundary (Leonard Street) and 1m from the western boundary (Restwell Street).	No. However, the patios are satisfactorily screened by landscaping and fencing. The patios also serve to articulate the front façade, and improve street activation as these units are provided with direct access from Leonard Street and Restwell Street.
Adaptable housing Min. 1 adaptable dwelling plus an adaptable dwelling for every 50 dwellings.	The application proposes 5 adaptable dwellings, i.e. one nominated unit on levels 1 to 5.	Yes.
Roof pitch Max. 35 degrees.	The application proposes a predominantly flat roof with a maximum pitch of 5 degrees.	Yes.
Waste storage areas May be located forward of the front building line provided it is setback a minimum of 1.5m from the primary frontage.	The application proposes two waste storage areas that are setback 1.5m from the Restwell Street and Leonard Street frontages.	Yes.
Landscaping Development must landscape the following areas on the allotment by way of trees and shrubs with preference given to native vegetation endemic to the City of Bankstown. (a) a minimum 45% of the area between the building and the primary frontage; and (b) a minimum 45% of the area between the building and the secondary frontage; and (c) plant more than one 75 litre tree between the building and the primary frontage.	<p>The landscaping plan incorporates landscaping treatment to the primary frontages on Restwell Street and Leonard Street. Council has calculated approximately 56% of the Restwell Street frontage to consist of landscaping, and 69% of the Leonard Street frontage to consist of landscaping.</p> <p>The proposed development has been reviewed by Council's Tree Management Officer, and is considered to be acceptable subject to conditions of consent.</p>	Yes.

Car parking Min. 221 spaces (1 space / 1 bed, 1.2 spaces / 2 bed, 1.5 / 3 bed plus 1 visitor / 5 units)	The application proposes 221 parking spaces – 190 resident spaces and 31 visitor spaces.	Yes.
Parking requirements for people with disabilities Min. 2 spaces (1 disabled space / 100 spaces).	The application proposes 6 disabled resident spaces and 1 disabled visitor space.	Yes.

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

There are no planning agreements applicable to the proposed development.

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

The proposed development is consistent with the relevant provisions of the *Environmental Planning and Assessment Regulation, 2000*.

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

The site is not located within a coastal zone as defined in the *Coastal Protection Act, 1979*, and the provisions of Section 79C(1)(a)(v) therefore do not apply to this development.

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

As discussed in this report, the proposed development is acceptable with regard to its likely environmental, social and economic impacts on the locality.

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

The proposed development is permitted with consent on the subject site, and represents a built form that is compatible with the existing and desired future character of the locality. Environmental matters have been appropriately addressed, with the proposed tree removal, stormwater design, heritage matters, traffic impacts and contamination matters having been examined by Council officers and supported. The site is therefore considered to be suitable for the proposed development.

Submissions [section 79C(d)]

The application was advertised and notified upon lodgement for a period of twenty-one (21) days from 17 June 2015 to 7 July 2015. Two (2) objections were received during this period. Upon the lodgement of amended plans and additional information, the application was subsequently re-notified for a period of fourteen (14) days from 14 October 2015 to 27 October 2015 and one (1) objection was received from a previous objector. The objections made against the proposed development raise concerns relating to bulk and scale, overshadowing, traffic and parking impacts, visual/acoustic privacy and security, waste management, isolation of allotments, and noise and air pollution during construction. These issues are discussed in further detail below.

Bulk and scale

- *The scale is inconsistent with the surrounding area.*
- *The rest of Leonard Street has a lower floor space ratio and building height.*

Comments

The built form of the proposed development is generally in keeping with the building envelope controls governed by the BLEP 2015, the BDCP 2015 and the RFDC, with the exclusion of the proposed FSR variation which has been discussed in detail previously. As the locality is zoned R4 High Density Residential, the proposed development is consistent with the desired future character of the area which is likely to encompass high density residential flat buildings in the future. It therefore considered that the visual bulk/scale and streetscape impacts of the proposed development are satisfactory.

Site-specific building envelope controls were applied to the subject site under the BLEP 2015 as the site was considered suitable to accommodate a built form that acts as a transition between the higher-density business zone to the north and the lower-density residential zone to the south. The proposed development is consistent with the built form anticipated for the site in accordance with these controls.

Overshadowing

- *Solar access to adjoining properties, in particular Nos. 11 and 13 Leonard Street – overshadowing of windows and private open space.*
- *Impact on health and amenity due to the potential growth of toxic mould where there is dampness and inadequate natural lighting.*

Comments

The proposed development was amended throughout the assessment process to increase the setback of the building wall to the primary frontages. The hourly shadow diagrams submitted with the application demonstrate that the proposed development will maintain approximately 3 hours of solar access to the front living areas of the properties fronting Leonard Street in the morning hours and the properties fronting Restwell Street in the afternoon hours at the mid-winter solstice. The hourly shadow diagrams also demonstrate that the development will maintain approximately 3 hours of solar access to at least 50% of the private open space of the properties to the south at the equinox.

The proposed development is considered to result in an acceptable level of impact on the adjoining properties given the high density zoning of the locality and the likely future development of the older building stock to the south of the site. There is no evidence to suggest that the proposed development will be responsible for the growth of toxic mould or similar health and amenity impacts.

Traffic and parking impacts

- *Increased traffic congestion.*

- *Reduction in availability of street car parking spaces.*
- *Location of driveway adjacent to the southern boundary and associated traffic safety issues.*

Comments

The provision of 221 parking spaces, i.e. 190 residential spaces and 31 visitor spaces, complies with the minimum car parking requirements contained in the BDCP 2015 based on the total number of units proposed and the number of bedrooms within each unit. As such, any potential impact on the availability of on-street car parking within the locality is considered reasonable and does not warrant refusal of the development application.

In accordance with the BLEP 2015, Leonard Street and Restwell Street is zoned R4 High Density Residential, which allows higher density development largely due to the proximity of this area to the Bankstown CBD and the availability of public transport. The proposed development is not considered to be unreasonable with respect to any likely impact on traffic congestion within the locality, as a certain level of impact is expected in association with the desired future density and character of the area. Furthermore, the RMS has assessed the application under the provisions of SEPP (Infrastructure) 2007 with respect to traffic and parking requirements, and raised no objection to the proposed development subject to the imposition of conditions of consent relating to the design criteria for car parking areas, and the preparation of a Construction Traffic Management Plan.

The proposed driveway adjacent to the southern boundary of the site on Leonard Street which allows access to the basement is clear of visual obstructions and is not considered likely to result in traffic safety issues or unreasonable noise impacts.

Visual/acoustic privacy and security

- *Visual privacy and security impacts from windows and balconies on southern elevation.*
- *Acoustic impacts from balconies and outdoor areas.*

Comments

The proposed development incorporates balconies and windows that face the neighbouring residential properties on the southern and eastern elevations. Views to the east are primarily over the front setback areas of properties located on the eastern side of Leonard Street. The greatest potential for visual privacy impacts is to the private open space areas of dwellings to the south.

The majority of balconies on the southern elevation are provided with adjustable screening to a portion of the balcony, and certain balconies contain planter box screening to minimise views. Given the substantial setback of the development to the southern boundary, as well as the proposed landscaping along this boundary, it is considered that visual privacy and security impacts are likely to be minor in nature and consistent with that of a high density residential locality.

Any acoustic impacts from balconies and outdoor areas are not likely to be constant in terms of impact, and are considered reasonable within the locality which is zoned to accommodate high density residential development.

Waste management

- *Waste management issues due to an increase in the number of residents.*

Comments

The application proposes waste collection from two waste storage areas at the northern end of the Restwell Street and Leonard Street frontages. The proposed development has been reviewed by Council's Resource Recovery Officer and is considered to be acceptable, subject to the imposition of conditions of consent.

Isolation of allotments

- *Concern for No. 11 Leonard Street being isolated as Nos. 13-19 have entered into a sales contract to sell their land as a development site.*

Comments

The proposed development does not result in the isolation of any allotments. The proposal complies with Clause 9.1, Part B1 of the BDCP 2015 with respect to this matter, as discussed in detail above.

The potential isolation of allotments immediately to the south of the site will be considered in the assessment of any future development application submitted to Council in relation to these allotments.

Noise and air pollution

- *Noise and air pollution during construction works.*

Comments

Council's standard condition of consent relating to the hours permitted for site and construction works has been imposed on the development consent. There may be a certain level of dust and noise pollution associated with the excavation and construction process, however these impacts are manageable and will be temporary only. Nevertheless, a condition of consent has also been imposed requiring the preparation of a Construction Environmental Management Plan prior to the issue of a construction certificate, to identify management and mitigation measures during construction works.

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

The proposed development would not contravene the public interest. The proposed development responds appropriately to the requirements of the *SEPP 65 Residential Flat Design Code*, as well as the relevant standards and controls contained in the

Bankstown Local Environmental Plan 2015 and the Bankstown Development Control Plan 2015. Matters raised in the public submissions have been satisfactorily addressed, and it is considered that there will be no unreasonable impacts on the locality.

CONCLUSION

The Development Application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act, 1979 and the provisions of State Environmental Planning Policy (State and Regional Development) 2011, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

The proposed development represents an appropriate built form for the site and the relevant planning controls have been appropriately responded to. No significant or unresolved matters have been raised in public submissions, and the proposal is not considered to have any unacceptable or unreasonable impacts on the surrounding locality.

RECOMMENDATION

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