

ITEM	<p>74-80 Restwell Street and 1-9 Leonard Street, Bankstown</p> <p>Construction of a seven (part six) storey residential flat building containing 156 residential apartments above two levels of basement car parking with strata title subdivision</p> <p>S96(2) Amendment: Modification to the approved development to include four additional units, 12 additional basement car parking spaces, a rooftop communal open space area, relocated pump room/plant and fire services, and associated modifications to the building</p>
FILE	DA-576/2015/3 (Panel Ref. 2016SYW190)
ZONING	R4 High Density Residential
DATE OF LODGEMENT	12 August 2016
APPLICANT	Le Chateau Developments Pty Ltd C/- Jensen Bowers
OWNERS	Le Chateau Developments Pty Ltd
AUTHOR	Development Services (Samantha Mitchell)

SUMMARY REPORT

Section 96(2) Application No. DA-576/2015/3 seeks to modify a determination made by the Sydney West Joint Regional Planning Panel and, according to Clause 21(1)(b) of *State Environmental Planning Policy (State and Regional Development) 2011*, is reported to the Sydney South Planning Panel for determination.

The application proposes to alter the previously approved residential flat building development via the following modifications:

- *Addition of four apartments to the topmost level of the building (Level 6);*
- *Addition of one communal open space area to Level 6;*
- *Addition of twelve car parks to the basement (eight in Basement Level 02 and four in Basement Level 01);*
- *Addition of seven bicycle spaces to the basement;*
- *Relocated pump room (from Basement Level 02 to Basement Level 01);*
- *Several relocated structural columns;*
- *Some relocated windows;*
- *Several relocated fire hydrants and sprinkler boosters;*
- *Removal of skylights from some apartments on Level 5; and*

- *Addition of skylights to some apartments on Level 6.*

The application has been assessed in accordance with the provisions of Sections 79C and 96(2) of the *Environmental Planning and Assessment Act, 1979* which includes, amongst other things, an assessment against *Bankstown Local Environmental Plan 2015*, *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and Apartment Design Guide*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, and *Bankstown Development Control Plan 2015*. While some elements of the proposal are consistent with the relevant provisions, the application is not supported due to the non-compliances and impacts primarily associated with the provision of the additional units and communal open space on Level 6 of the approved development.

The application was advertised and notified for a period of twenty-one (21) days from 31 August 2016 to 20 September 2016. No submissions were received.

BACKGROUND / HISTORY

At a meeting held on 10 December 2015, the Sydney West Joint Regional Planning Panel resolved to approve the construction of a seven (part six) storey residential flat building containing 156 residential apartments above two levels of basement car parking at the subject site.

The development was approved with a floor space ratio (FSR) of 2.14:1, which exceeded the maximum gross floor area (GFA) permitted on site by approximately 885sqm (i.e. 7%). The Panel considered the applicant's request to vary the development standard contained in Clause 4.4(2) Floor Space Ratio of the BLEP 2015 and determined that *'compliance with the standard would be unreasonable and unnecessary in the circumstances of this case as the variation will not result in a building that is inconsistent with the scale and pattern of buildings within and planned for this locality and the development remains consistent with the underlying intent of the standards and the objectives of the zone'*.

Approval is now sought for the inclusion of four additional units (2 x 2 bedroom and 2 x 3 bedroom), a rooftop communal open space area, 12 additional basement car parking spaces, relocated pump room/plant and fire services and associated modifications to the building under the subject Section 96(2) Application.

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 refused for the following reasons:

1. Pursuant to Section 96(2)(a) of the *Environmental Planning and Assessment Act, 1979*, the proposed modifications are not considered to result in substantially the same development as the development for which consent was originally granted due to the extent of modifications proposed in relation to the number of units contained within the development, the building envelope, the roof plane and the gross floor area.
2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the application fails to satisfy the aims contained in Clause 1.2(2)(d) and (i) of the Bankstown Local Environmental Plan 2015 with respect to demonstrating compatibility with the prevailing character of the area and achieving good urban design.
3. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the application fails to demonstrate compliance with Clause 4.3(2) of the Bankstown Local Environmental Plan 2015 with respect to the height of the modified development.
4. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the application results in a further departure from the floor space ratio development standard contained in Clause 4.4(2) of the Bankstown Local Environmental Plan 2015. The points of justification provided by the applicant do not demonstrate any direct environmental benefits to warrant support of the additional gross floor area.
5. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the additional units proposed do not satisfy the design criteria contained in *Apartment Design Guide* in accordance with Clauses 29 and 30 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*.
6. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, an amended BASIX certificate for the modified development was not submitted in accordance with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.
7. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act, 1979*, the proposed modifications are likely to result in adverse environmental impacts due to the reasons outlined above.
8. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979*, the site is not considered to be suitable for the proposed development, as modified, due to the reasons outlined above.
9. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979*, the proposed modifications are not considered to be in the public interest due to the reasons outlined above.

DA-576/2015/3 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 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 has recently approved a number of development applications for residential flat buildings in the immediate locality at Nos. 21-25 Leonard Street, 35-39 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. Council is also currently assessing development applications for residential flat buildings at Nos. 18-20 Leonard Street and 22-30 Leonard Street.

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 and locality is illustrated in the aerial photograph below.



PROPOSED DEVELOPMENT

The statement submitted with the subject application describes the proposed modifications to DA-576/2015 as follows:

- *Addition of four apartments to the topmost level of the building (Level 6);*
- *Addition of one communal open space area to Level 6;*
- *Addition of twelve car parks to the basement (eight in Basement Level 02 and four in Basement Level 01);*
- *Addition of seven bicycle spaces to the basement;*
- *Relocated pump room (from Basement Level 02 to Basement Level 01);*
- *Several relocated structural columns;*
- *Some relocated windows;*
- *Several relocated fire hydrants and sprinkler boosters;*
- *Removal of skylights from some apartments on Level 5; and*
- *Addition of skylights to some apartments on Level 6.*

It is noted that the above description fails to acknowledge other modifications detailed on the architectural plans, including:

- Modifications to some balconies associated with relocated structural columns;
- Significant modifications to the configuration of both basement levels;
- Provision of a mechanical exhaust for the basement in the centre of the ground floor communal open space area (approximately 2.5m in height); and
- Modifications to the floor height of each level.

PANEL BRIEFING MEETING

At the Sydney South Planning Panel briefing meeting held on 22 December 2016, the following matters were raised:

- The applicant's justification for a further departure from the floor space ratio development standard;
- The absence of direct environmental benefits that result from the floor space ratio non-compliance;
- The cumulative impact of the floor space ratio non-compliance on the future development of sites to the south;
- The utility of the rooftop communal open space area and associated amenity impacts;
- The surplus car parking spaces proposed in the basement and the design of the communal open space area in allowing the provision of additional units in this location in the future;
- The assessment of the additional units against the design criteria contained in the Apartment Design Guide; and
- The streetscape presentation and building envelope as a result of the proposed modifications.

SECTION 96(2) ASSESSMENT

The proposed modifications have been assessed pursuant to section 96 of the *Environmental Planning and Assessment Act, 1979*.

(a) *the development as modified is substantially the same development as the development for which the consent was originally granted*

The Panel does not have the jurisdiction to approve the proposed modifications, as the modifications would result in a development that is not substantially the same development as that to which the consent was originally granted.

With respect to the original development approved by DA-576/2015, the modifications would result in the following notable inconsistencies:

- A further breach to the FSR development standard. Approval is sought for an additional 423sqm of gross floor area (in addition to the original breach of 885sqm), which results in a FSR of 2.21:1. This exceeds the maximum permitted FSR of 2:1 by 10.5%, and exceeds the approved FSR of 2.14:1 by an additional 3.5%;
- An increase in the number of apartments accommodated in the development to include four additional units (2 x 2 bedroom and 2 x 3 bedroom units);
- Amendments to the building envelope and roof plane as a result of the additional gross floor area being concentrated in the central area of Level 6. This creates a consistent building height of 7 storeys for the full length of the development, as opposed to a part 6-storey building height.
- New rooftop communal open space comprising a total area of 240sqm; and
- Amendments to the basement configuration and the provision of an additional 12 car parking spaces.

It is also important to note that, throughout the assessment of DA-576/2015, significant consideration was given to the building envelope in justifying the floor space ratio non-compliance. The primary justification was that the building envelope comprised of two 7-storey wings fronting Restwell Street and Leonard Street with a central 6-storey component. The intention of this particular building envelope was to achieve an appropriate streetscape and built form transition from the higher density sites on the northern side of Stanley Street to the lower density sites to the south of the subject site, while maintaining a 'reasonable' departure from the floor space ratio development standard. Accordingly, the FSR variation previously supported for the original development was contingent on the development achieving the envisaged character of the area, in accordance with Council's planning controls.

The development (as modified) no longer achieves the intention of the approved building envelope. A further departure from the floor space ratio development standard does not provide any positive contribution to the streetscape or built form with respect to the character of the locality. Rather, the proposed

modifications contribute to the overall bulk of the central component of the development, without providing a sympathetic step or relief in the roof plane.

Accordingly, the development (as modified) is not considered to result in substantially the same development as the development for which consent was originally granted. Furthermore, the proposed modifications invalidate the grounds for the FSR variation granted by approval of DA-576/2015, and therefore the character of the modified development is not substantially the same as that originally approved.

(b) the application has been notified in accordance with the regulations or a development control plan

The application was advertised and notified for a period of twenty-one (21) days from 31 August 2016 to 20 September 2016, in accordance with the Bankstown Development Control Plan 2015.

(c) Council has consulted with the relevant Minister, public authority or approval body

Consultation with the minister, public authority or approval body was not required for this application.

(d) any submissions made concerning the proposed modification

No submissions were received.

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)]

Bankstown Local Environmental Plan 2015

The following clauses of *Bankstown Local Environmental Plan 2015* are relevant to the subject application 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 4.3 – Height of buildings;
- Clause 4.4 – Floor space ratio;
- Clause 4.5 – Calculation of floor space ratio and site area.

An assessment of the subject application revealed that some elements of the proposed modifications comply with the above clauses, however the primary aspects

of the application are not considered to satisfy Clauses 1.2, 4.3 and 4.4 of the BLEP 2015. Further assessment is provided below with respect to these matters.

Clause 1.2 – Aims of Plan

The proposed gross floor area associated with the additional four units, as well as the proposed rooftop communal open space area, is not considered to satisfy certain aims of the BLEP 2015. These aims include *‘to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown’* and *‘to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety’*.

The additional four units do not result in development that is compatible with the prevailing character of the immediate locality. As mentioned previously in this report, the additional gross floor area is concentrated in the central portion of the building envelope and therefore does not provide any positive contribution to the streetscape character or the amenity of the locality. The proposal simply results in an increase in the density and yield of the development, with no direct environmental benefit.

Furthermore, the proposed configuration of the rooftop communal open space in relation to the existing and proposed units on Level 6 of the development does not achieve good urban design. The communal open space area is likely to result in adverse visual and acoustic impacts on the adjacent residential units, i.e. Units 6.08, 6.14 and 6.21. The amenity of the communal open space area is also likely to be poor due to the southerly orientation and the segregation of this space into three separate areas.

Clause 4.3 – Height of buildings

While not stated in the description of the proposed modifications submitted with the application, the architectural plans include notations on the elevations and sections stating that *‘floor heights are increased by 25mm at each floor L1 to roof as per structural and services requirements but roof top height remains same as per approved DA’*. However, DA-576/2015 was approved with a roof height of RL 43.925 and the architectural plans submitted with the subject application propose a roof height of RL 44.075. It is unclear as to whether the modifications to the roof height affect the overall building height, particularly with respect to the southern elevation of the development. Accordingly, the architectural plans do not provide sufficient detail of the maximum building height of the development (as modified), and therefore fail to demonstrate compliance with Clause 4.3(2) of the BLEP 2015.

Clause 4.4 – Floor space ratio

The proposed gross floor area associated with the additional four units results in a further departure from the floor space ratio development standard contained in Clause 4.4(2) of the BLEP 2015, which allows a maximum floor space ratio of 2:1 for the subject site.

As mentioned previously in this report, the Sydney West Joint Regional Planning Panel approved DA-576/2015 with a floor space ratio of 2.14:1, which exceeded the maximum gross floor area permitted on site by approximately 885sqm (i.e. 7%). Approval is now sought for modifications that result in approximately 423sqm of additional gross floor area, i.e. a total FSR of 2.21:1. This exceeds the maximum permitted FSR of 2:1 by 10.5%, and exceeds the approved FSR of 2.14:1 by an additional 3.5%.

The justification submitted with the application includes the following points (in summary):

1. The exceedance is minor, and is less than examples of FSR variations recently approved by the Court;
2. The application includes the provision of additional car parking, bicycle parking and communal open space;
3. The additional units do not exceed the maximum building height plane and do not result in an increase in the number of storeys; and
4. The additional impacts (e.g. overshadowing) are reasonable.

In response to the above points, Council would like to offer the following comments:

Point 1

To firstly state that the variation sought is less than those recently approved by the Land and Environment Court, as grounds to support the modification, not only fails to have suitable regard to the circumstance of each of these individual cases determined in Court but, in itself, fails to provide for any valid reason as to why a variation should be provided in this particular instance.

Point 2

The provisions of additional car parking, bicycle parking and communal open space is not considered to be of relevance as the approved development complies with the applicable planning controls relating to these requirements.

Furthermore, it would be expected that where a development provides additional residential units, accordingly, additional on-site facilities be provided. Justification for additional gross floor area on the basis that the required on-site facilities can be provided more or less suggests that it is the ability of the development to accommodate on-site facilities that should determine the gross floor area. The on-site facilities have no relationship to the FSR objectives through which the application should be considered against.

With respect to the communal open space in particular, the approved development provides generous open space at ground floor level comprising of a multi-sports half court, BBQ area and extensive landscaping. As such, the proposed rooftop communal open space is not considered to be of any significant benefit for the residents of the development beyond that provided by the approved communal facilities at ground level.

Point 3

It is acknowledged that the additional units are proposed below the maximum building height plane. However, the development standard in which the applicant seeks to modify relates to the floor space ratio. Compliance with the building height control is not sufficient to argue that a variation is warranted to the bulk, scale and built form of the development. Compliance with the building height plane would be expected of a compliant development.

Point 4

The applicant specifically states:

“Jensen Bowers acknowledges the increased shadowing impacts from the additional four apartments but it appears that the increased shadowing would not affect properties that won’t be affected by the shadowing from the approved development. In fact, additional shadowing impacts appear to be a reasonable consideration only in the winter solstice diagrams, with shadowing at other times of the year being so similar to the shadowing that would result from the approved development.”

As acknowledged in the above paragraph, additional overshadowing impacts arise as a result of the additional four units proposed. This suggests that the additional units will result in a further impact beyond that which was originally approved. It is often argued that an absence of impact or harm provides grounds to support a variation. While such an argument is, in itself, not entirely sustainable, an absence of impact cannot be argued in this instance.

The relevant objective of the floor space ratio development standard, which is the subject of the merits or otherwise of the departure, is 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,

The applicant has failed to demonstrate that the development (as modified) provides for an appropriate ‘bulk’ given the increase in height of the central component of the development providing for a more or less continuous building mass of 7 storeys from Restwell Street to Leonard Street.

The above objective also requires development to be consistent with the capacity and character of the locality. The specific density set by the development standards contained in the BLEP 2015 at the strategic planning stage largely relates to the likely demand for facilities and services when a locality is developed to full capacity. Approval of a further departure from the floor space ratio development standard is likely to set an undesirable precedent for the future development of surrounding sites. This will result in a cumulative impact on the capacity of the locality due to the number of residents, and will therefore require the provision of additional community facilities, recreation facilities, schools, services, street parking, road networks and the like. As such, the proposed modifications are not considered to satisfy the objective of the FSR development standard.

Having regard to the above, it is considered that the proposed modifications do not result in a development that is compatible with the locality, and the proposal fails to satisfy the relevant aims, objectives and development standards of the BLEP 2015.

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

At the time of assessment of DA-576/2015, the *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* and the *Residential Flat Design Code* applied to the development. These policies are now superseded by *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* and the *Apartment Design Guide*.

With respect to SEPP 65, the proposed modifications are not considered to alter the development's general compliance with the Design Quality Principles. As such, a detailed assessment of the proposed modifications against these principles is not provided in this report.

However, the Apartment Design Guide was released in 2015 and applies to the modified development with respect to the design of the four additional units. An assessment of the application against the key applicable design criteria contained in Part 4 of the Apartment Design Guide is provided in the table below. It is noted that the proposed modifications do not alter the development's compliance with the design criteria contained in Part 3 of the ADG in relation to communal open space, deep soil zones, visual privacy (building separation) and car parking, therefore an assessment of the modifications against Part 3 of the ADG has not been provided.

DESIGN CRITERIA	PROPOSAL	COMPLIANCE
Part 4 – Designing the building		
4A-1 Solar access Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours of direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area.	The four additional units all orientate to the north, and therefore achieve more than 2 hours of solar access between 9am and 3pm at the mid-winter solstice.	Yes
4B-3 Natural cross-ventilation At least 60% of apartment are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	The apartment design and layout of the four additional units generally mirror the approved units immediately below (e.g. single aspect and north facing). During the assessment of DA-576/2015, the applicant submitted a Natural Ventilation Compliance Report, prepared by Webb Australia, to demonstrate that these particular units achieved natural cross-ventilation by reliance on induced air flow through the location of windows, doors and skylights, or through the use of blade walls and louvres, despite the single	Yes

	<p>aspect layout. The JRPP supported the applicant's reliance on this report to demonstrate compliance with the natural cross-ventilation controls. The proposed modifications under the subject application are therefore considered to be consistent with the approved development with respect to natural cross-ventilation.</p>	
<p>4D-1 Apartment size</p> <p>1 bedroom – min. 50sqm 2 bedroom – min. 70sqm 3 bedroom – min. 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>Every habitable room must have a window in an external wall with a total area of not less than 10% of the floor area of the room.</p>	<p>The proposed unit sizes are as follows:</p> <p>Unit 6.21 (3 bed, 2 bath) = 92.99sqm Unit 6.22 (2 bed, 2 bath) = 75.37sqm Unit 6.23 (2 bed, 2 bath) = 72.72sqm Unit 6.24 (3 bed, 2 bath) = 92.49sqm</p> <p>Units 6.21, 6.23 and 6.24 do not meet the minimum internal area requirements for 2 and 3 bedrooms units containing two bathrooms.</p> <p>All habitable rooms have a window in an external wall that exceeds 10% of the floor area of the room.</p>	<p>No</p> <p>Yes</p>
<p>4D-2 Environmental performance</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>The open plan living area in all four units exceed a depth of 8m from a window (up to 9.4m).</p>	<p>No</p>
<p>4D-3 Apartment layouts</p> <p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space). Bedrooms have a minimum dimensions of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of 3.6m for studio and 1 bedroom apartments and 4m for 2 and 3 bedrooms apartments.</p>	<p>All four units comply with the minimum area and dimension requirements for bedrooms.</p> <p>The living rooms in Units 6.22, 6.23 and 6.24 are less than 4m in width (ranging from 3.5m – 3.8m). Unit 6.21 complies, with a living room width of 4.5m.</p>	<p>Yes</p> <p>No</p>
<p>4E-1 Private open space</p> <p>Balconies: 1 bed – 8sqm, 2m depth 2 bed – 10sqm, 2m depth 3 bed – 12sqm, 2.4m depth</p>	<p>The balcony area and depth complies for the 2 bedroom units (Units 6.22 and 6.23). The balconies for the 3 bedroom units (Units 6.21 and 6.24) meet the minimum area requirement but do not meet the minimum width requirement (ranging from 1m – 2m).</p>	<p>No</p>
<p>4F-1 Common circulation spaces</p> <p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>The modifications propose a maximum of four units to be accessed off the new corridor on Level 5.</p>	<p>Yes</p>

4G-1 Storage 1 bed – 6cbm 2 bed – 8cbm 3 bed – 10cbm At least 50% of the required storage is to be located within the apartment.	The modifications do not demonstrate compliance with the storage area requirements for the four additional units. The architectural plans do not provide any detail of 50% of the required storage area being accommodated within the units.	No
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As demonstrated above, the four additional units proposed as part of the subject application do not comply with several design criteria contained in Part 4 of the Apartment Design Guide.

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.

An amended BASIX certificate is required to demonstrate that the modified proposal achieves compliance with the BASIX thermal, energy and water efficiency targets, and to provide accurate details in relation to the total number of units and car parking spaces. An amended BASIX certificate was not submitted with the application.

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 79C(1)(a)(ii) therefore do not apply to this application.

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

The *Bankstown Development Control Plan 2015* supports the *Bankstown Local Environmental Plan 2015* by providing additional objectives and development controls. The proposed modifications do not alter the approved development's compliance with the applicable controls contained in the BDCP 2015.

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

There are no planning agreements applicable to the proposed modifications.

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

The proposed modifications are not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation, 2000*.

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

The development site is located within the Georges River Estuary Coastal Zone Management Plan. The proposed modifications do not contravene any relevant provisions of the plan.

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

The proposed modifications are likely to have an adverse impact on the built environment in the locality. The development (as modified) no longer achieves the intention of the approved building envelope, with no relief or transition being provided in the built form. Furthermore, the modifications are likely to result in cumulative impacts on existing and future development surrounding the site, and will also set an undesirable precedent for similar breaches to the FSR development standard.

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

While the site is suitable to accommodate a residential flat building development, the site is not considered suitable to accommodate some of the proposed modifications. The modifications that specifically relate to an increase in the number of units contained within the development, amendments to the roof plane and building envelope for Level 6 of the development, and a significant increase in the gross floor area resulting in a further departure from the floor space ratio development standard, all compromise the integrity of the approved development.

The approved development was supported with a departure from the floor space development standard, primarily on the basis that the departure would allow for a building envelope that provided an appropriate streetscape presentation to assist in achieving a built form transition from the higher density sites on the northern side of Stanley Street to the lower density sites on the southern side of the subject site. The development (as modified) no longer achieves the intention of the approved building envelope and the proposed modifications therefore invalidate the grounds for the FSR variation granted by the approval of DA-576/2015.

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

The application was advertised and notified for a period of twenty-one (21) days from 31 August 2016 to 20 September 2016. No submissions were received.

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

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and the environment are avoided. Allowing for the variations or the departures to Council's controls, as well as controls contained in State Government policies, such as those proposed through this application, would undermine the integrity of those particular controls. Accordingly, support of the modifications would not be in the public interest.

CONCLUSION

The application has been assessed in accordance with the provisions of Sections 79C and 96(2) of the *Environmental Planning and Assessment Act, 1979* which includes, amongst other things, an assessment against *Bankstown Local Environmental Plan 2015*, *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* and *Apartment Design Guide, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, and *Bankstown Development Control Plan 2015*. While some elements of the proposal are consistent with the relevant provisions, the application is not supported due to the non-compliances and impacts primarily associated with the provision of the additional units and communal open space on Level 6 of the approved development.

The report identifies the application's compliance, or otherwise, with State policies and Council controls. The departures have not been adequately justified such that there exists sufficient grounds in which it could be argued that the modifications should be supported. On this basis, the application is recommended for refusal.

RECOMMENDATION

It is recommended that the application be refused for the following reasons:

1. Pursuant to Section 96(2)(a) of the *Environmental Planning and Assessment Act, 1979*, the proposed modifications are not considered to result in substantially the same development as the development for which consent was originally granted due to the extent of modifications proposed in relation to the number of units contained within the development, the building envelope, the roof plane and the gross floor area.
2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the application fails to satisfy the aims contained in Clause 1.2(2)(d) and (i) of the *Bankstown Local Environmental Plan 2015* with respect to demonstrating compatibility with the prevailing character of the area and achieving good urban design.
3. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the application fails to demonstrate compliance with Clause 4.3(2) of the *Bankstown Local Environmental Plan 2015* with respect to the height of the modified development.
4. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the application results in a further departure from the floor space ratio development standard contained in Clause 4.4(2) of the *Bankstown Local Environmental Plan 2015*. The points of justification provided by the applicant do not demonstrate any direct environmental benefits to warrant support of the additional gross floor area.
5. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, the additional units proposed do not satisfy the design criteria contained in *Apartment Design Guide* in accordance with Clauses 29 and 30 of

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

6. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*, an amended BASIX certificate for the modified development was not submitted in accordance with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.
7. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act, 1979*, the proposed modifications are likely to result in adverse environmental impacts due to the reasons outlined above.
8. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979*, the site is not considered to be suitable for the proposed development, as modified, due to the reasons outlined above.
9. Pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979*, the proposed modifications are not considered to be in the public interest due to the reasons outlined above.