

<b>ITEM</b>	<b>144-146 Boronia Road, GREENACRE NSW 2190</b>
	<b>Demolition of existing site structures and construction of a fifty-two (52) room boarding house, manager's residence, communal room, outdoor areas, associated site works, landscaping and basement car parking under SEPP (Affordable Rental Housing) 2009</b>
<b>FILE</b>	<b>DA-384/2018 - Bankstown Ward</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>18 May 2018</b>
<b>APPLICANT</b>	<b>CK Design</b>
<b>OWNERS</b>	<b>George Steven Valiotis and Stamatia Valiotis</b>
<b>CAPITAL INVESTMENT VALUE</b>	<b>\$5,443,043</b>
<b>AUTHOR</b>	<b>Development Services (Samantha Mitchell)</b>

### **SUMMARY REPORT**

This matter is reported to the Sydney South Planning Panel as the development application is for the purposes of 'affordable housing' and exceeds a capital investment value of \$5 million in accordance with Schedule 7(5)(a) of *State Environmental Planning Policy (State and Regional Development) 2011*.

Development Application No. DA-384/2018 proposes the demolition of existing site structures and construction of a fifty-two (52) room boarding house, manager's residence, communal room, outdoor areas, associated site works, landscaping and basement car parking under *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

DA-384/2018 has been assessed against *State Environmental Planning Policy (State and Regional Development) 2011*, *State Environmental Planning Policy No. 55 – Remediation of Land*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

An assessment of the development against the matters for consideration contained in Section 4.15 of the *Environmental Planning & Assessment Act 1979* (which includes an assessment against the above planning controls) reveals that the application does not strictly satisfy Clause 29(2)(a) of SEPP ARH, Clause 4.3(2B)(c) of BLEP 2015 and Clause 10.2, Part B1 of BDCP 2015 with respect to the building and wall height for boarding rooms not facing the street; Clause 29(2)(d)(ii) of SEPP ARH with respect to the dimension of private open space for the boarding house manager; Clause 10.11, Part B1 of BDCP 2015 with respect to the design of the basement level; and Clause 10.27, Part B1 of BDCP 2015 with respect to the upper floor side and rear balconies. As the report demonstrates, these departures are sufficiently justified and are not likely to result in any adverse impacts on the surrounding properties or the broader locality.

The application was neighbour notified and advertised in *The Torch* and *The Express* newspapers consistent with the provisions contained in BDCP 2015. The application was initially on exhibition for a period of twenty one (21) days from 30 May 2018 to 20 June 2018. A total of thirty-five (35) submissions were received, which comprised thirty (30) individual objections and five (5) petition letters containing a total of 102 signatures. The amended application was re-notified for a period of fourteen (14) days from 29 November 2018 to 12 December 2018, and subsequently re-notified again for a period of thirty-five (35) days from 11 December 2018 to 15 January 2019 due to an incorrect neighbour notification plan on Council's ePlanning Portal. A total of forty-seven (47) submissions were received, which comprise forty-four (44) individual objections and three (3) petition letters containing a total of fifty (50) signatures. The points of objection relevant to the assessment of the development application have been grouped into the key issues outlined below:

- Traffic generation, congestion and road safety (both during construction and operation);
- On-site car parking and street parking;
- Insufficient public transport;
- Inconsistency with the character of the neighbourhood and the low density residential zone;
- Excessive floor space ratio;
- Excessive building height;
- Bulk and scale, visual impact and streetscape presentation;
- Incompatible front setback;
- Height of basement above existing natural ground level;
- Overshadowing;
- Inadequate on-site landscaping and landscape plan;
- On-site stormwater drainage;
- Impacts on existing infrastructure (water, sewer and stormwater drainage), facilities and services;
- Visual and acoustic privacy impacts;
- Impacts on mental health and wellbeing of surrounding residents;
- Boundary fencing;
- Poor amenity to boarding rooms due to size of living areas;
- Lack of storage space;
- Total number of lodgers, intensity of use and associated increase in population;

- Waste collection, location of waste store room and overflowing bins;
- Safety/security, crime, violence, loitering, drug/alcohol abuse, smoking and anti-social behaviour associated with boarding house lodgers and a transient population;
- Proximity to Scout Hall and Banksia Road Primary School;
- Access through Scout Hall site and adjoining public open space (Leo Reserve);
- Boarding house management issues;
- Use of the development for the purpose of tourist and visitor accommodation;
- Low income rental requirements;
- Impact on tree on adjoining property;
- Impact on the value of surrounding properties;
- Asbestos from the demolition of existing structures;
- Consideration of acid sulfate soils;
- Insufficient community consultation and neighbour notification range;
- Access to information during advertising / notification period and time permitted to provide a submission; and
- Further points of objection outlined in Attachment E.

The concerns raised in the submissions have been addressed in this report and do not warrant refusal or further amendments to the development.

### **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.

### **ATTACHMENTS**

- A - Conditions of Consent
- B - Notification Map
- C - Site Plan
- D - Elevations
- E - Further Points of Objection
- F - Clause 4.6 Submission

## **DA-384/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

The subject site is legally described as Lots 3 and 4 in Deposited Plan 236854, however is more commonly referred to as Nos. 144 and 146 Boronia Road, Greenacre. The site is zoned R2 Low Density Residential under *Bankstown Local Environmental Plan 2015* (BLEP 2015). The site is located on the southern side of Boronia Road, approximately 165 metres west of the intersection with Hillcrest Avenue and approximately 350 metres east of the intersection with Hume Highway.

The site comprises two regular rectangular shaped allotments with a combined frontage of 40.23 metres to Boronia Road. The two allotments are of varied depth – No. 144 has side (eastern and western) boundary lengths of 50.29 metres and No. 146 has side boundary lengths of 75.285 metres. The site has a combined area of 2,525.9m<sup>2</sup>. The site has a fall from the north-west (front) corner to the south-east (rear) corner of 2.5 metres. The site is currently occupied by two single storey detached dwelling houses with associated outbuildings.

The on-site vegetation consists of three trees, one of which is considered to be of significance (White Feather Honey Myrtle). There are two street trees (Bottlebrush and Brush Box) in the nature strip forward of the site and one street tree (Bottlebrush) forward of the adjoining site at No. 142 Boronia Road. There is one tree (White Cypress) considered to be of significance on the adjoining property at No. 16 Orana Place adjacent to the western boundary of the rear portion of the subject site.

The adjoining site to the east at No. 142 Boronia Road contains a single storey detached building currently used as a Scout Hall. The adjoining the site to the west at No. 148 contains a single storey detached dwelling house, with Council approval for the construction of a two storey dual occupancy with outbuildings under DA-758/2017. The adjoining properties to the south (rear) of the site at Nos. 12A-17 Orana Place contain single and two storey detached dwelling houses. To the east of these properties (to the south east of the subject site) is an open space area known as Leo Reserve at No. 4 Burraneer Crescent.

Other properties in proximity of the site include Nos. 134 and 138 which contain battle-axe subdivisions with a dwelling on each lot (approved in the late 80s and 90s), and No. 140 which contains a three-dwelling cluster home development (approved in the late 90s). Properties opposite the site on the northern side of Boronia Road contain a mix of single and two storey detached dwelling houses.

The aerial photograph below identifies the site and the siting of developments on the adjoining and nearby sites.



## **PROPOSED DEVELOPMENT**

The Development Application proposes the demolition of existing site structures and construction of a fifty-two (52) room boarding house, manager's residence, communal room, outdoor areas, associated site works, landscaping and basement car parking under *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH).

Block A is a two (2) storey building located in the site's north-west (front) corner that contains seventeen (17) double rooms (including one (1) accessible room) and two (2) single rooms.

Block B is a two (2) storey building located in the sites' north-east (front) corner that contains sixteen (16) double rooms (including one (1) accessible room) and six (6) single rooms (including one (1) accessible room).

Block C is a single storey building adjacent to the eastern (side) boundary of the site that contains three (3) double rooms and a double manager's room.

Block D is a single storey building in the south-east (rear) corner of the site that contains four (4) double rooms.

Block E is a single storey building to the south (rear) of the site that contains four (4) double rooms.

Block F is a single storey building in the south-west (rear) corner of the site that contains a community room, shared kitchen, shared accessible bathroom, and a covered communal open space patio.

The development includes common pedestrian access between Blocks A and B, as well as to the west of Block A, 308m<sup>2</sup> of communal open space in the central part of the site, a shared clothes drying area between Blocks C and D, and various planter beds.

The development includes a basement car park beneath Blocks A and B that is accessed from Boronia Road via a driveway in the north-east corner of the site. The basement accommodates twenty-six (26) car parking spaces (including two (2) accessible spaces), eleven (11) motorcycle parking spaces, eleven (11) bicycle parking spaces, a waste store room and adjacent loading area, and lift and stair access to the ground floor of the development.

#### **SECTION 4.15 ASSESSMENT**

The proposed development has been assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

#### **Environmental planning instruments [section 4.15(1)(a)(i)]**

#### **State Environmental Planning Policy (State and Regional Development) 2011**

Part 4 – Regionally Significant Development of *State Environmental Planning Policy (State and Regional Development) 2011* (SEPP SRD) applies to this application as it is for the purposes of private infrastructure and community facilities (i.e. affordable housing) with a capital investment value of more than \$5 million, as specified in Schedule 7(5)(b) of SEPP SRD. The applicant provided the following comments with respect to this matter:

*“The proposed boarding house is for the purpose of affordable housing.*

*Section 6 of SEPPARH relevantly provides:*

***affordable housing*** means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

- (1) *In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:*
  - (a) *has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*

- (b) *is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*
- (2) *In this Policy, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.*

*A development consent condition can be imposed to this effect where the occupants are to satisfy the affordable housing definition criteria. We do not see any further issue with satisfying this definition. It is incumbent of the operator of the boarding house to lease the premises to satisfy the definition. Council will note from the size of the units (i.e. many units at 15.5sqm and 17sqm) that the area of these units is well under the maximum area permitted under the ARHSEPP. In our opinion the design, layout and size of the units will make them viable affordable rental boarding rooms.”*

A condition of consent has been imposed to reflect the above requirement. Accordingly, the development application is to be determined by the Sydney South Planning Panel.

#### State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) specifies that a consent authority must not consent to the carrying out of any development on land unless:

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

The subject site has long been used for residential purposes, however there is also historical use at No. 144 involving vehicle storage, mechanical work and washing.

This was subject to a Detailed Environmental Site Assessment, prepared by DLA Environmental, dated November 2013, which describes the property as containing a carport type structure at the rear of the site constructed of metal and compressed cement sheeting with a hydraulic car lift and high pressure washing system installed. The report also details record of an Underground Storage Tank (UST) having been present on site, which was installed and licensed in 1956 for the storage of Mineral Spirits. The report notes that the tank had been removed prior to the assessment, however the date of removal was unknown.

The report contains the following conclusion:



*“The sampling regime and subsequent assessment and reporting of the Site complied with the stated DQO’s and is therefore generally considered to be adequate to determine the land use suitability of the Site.*

*No groundwater was encountered during the investigation of the site to a maximum depth of 3m bgl. No soil contamination identified in the base of the tank pit excavation and soils throughout the remainder of the site were analysed and found to be compliant with the adopted site criteria for residential landuse. Sandy fill soils were present within the tank pit, where the USAT had been previously removed, with some TRH concentrations recorded to be present. Detections of TRH were compliant with the NEPM 2013 Vapour Intrusion criteria for soils at the depths that they were encountered.*

*The completion of this report concludes that the Site was deemed suitable for the proposed end land use as defined by the NEPM 2013 Residential A – Residential with Garden / Accessible soil landuse criteria. It should be noted that this investigation report does not guarantee that all soils at the Site are natural and identifies the presence of fill material at the site. However, visual inspection supported by chemical analysis of soil sampling, demonstrated that the residual soil in the study area meets the agreed criteria: NEPM (1999) Revised 2013 Table 1A(1) Residential A – Residential with Garden / Accessible soil.”*

Council’s Environmental Health Officer reviewed the Detailed Environmental Site Assessment report and raised no concerns with the proposed development. Conditions of consent have been imposed requiring the detailed site investigation to form part of the development consent, for work to cease if contaminants are discovered during the construction process, for excavated soil to be analysed and classified prior to off-site disposal, and for any imported fill to be verified and to meet applicable EPA guidelines.

Based on the above, it is considered that the development has satisfactorily addressed SEPP 55 by demonstrating that the site is suitable for the proposed use, subject to conditions of consent.

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

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

BASIX Certificate No. 916314M\_03, dated 26 November 2018, was submitted throughout the assessment of the development application and demonstrates that the proposal achieves compliance with the BASIX water, thermal comfort and energy efficiency targets.



## State Environmental Planning Policy (Infrastructure) 2007

*State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure) aims to facilitate the effective delivery of infrastructure, including providing appropriate consultation with relevant public authorities about certain development during the assessment process.

The subject site is located on Boronia Road, which is a classified road (Main Road) for the purposes of SEPP Infrastructure. In accordance with Section 138 of the *Roads Act 1993*, the application was referred to Roads and Maritime Services (RMS) for concurrence as the application comprises the removal of two existing vehicular footway crossings and the construction of a new vehicular footway crossing on Boronia Road. RMS granted concurrence to the proposed development subject to conditions of consent.

In addition to the above, Clause 101(2) of SEPP Infrastructure states that a consent authority must not grant consent to a development that has a frontage to a classified road unless it has considered the following:

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) *the design of the vehicular access to the land, or*
  - (ii) *the emission of smoke or dust from the development, or*
  - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The application proposes to remove the two existing vehicular footway crossings and construct one two-way vehicular footway crossing on the eastern side of the site's frontage. While there is no opportunity for vehicular access to the land to be provided by a road other than the classified road, the proposal reduces the number of vehicular footway crossings from two to one, and the design of the development ensures all vehicles are able to leave the site in a forward direction (which is not currently the case for the dwelling at No. 146 Boronia Road). These matters have also been addressed in the conclusions of the Traffic and Parking Impact Assessment Report, dated August 2018, prepared by Hemanote Consultants Pty Ltd, and the supplementary letters. Accordingly, the safety, efficiency and on-going operation of Boronia Road will not be adversely impacted as a result of the proposed development.

Furthermore, Clause 102(3) of SEPP Infrastructure states that a consent authority must consider the following with respect to the impact of road noise or vibration on non-road development:

*If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*

- (a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

An Acoustic Assessment Report, dated 5 June 2018, prepared by Acoustic Logic, was submitted throughout the assessment of the development application. The report concludes that the construction of the proposed development, if carried out in accordance with the acoustic treatment recommendations, will meet the required internal noise levels of Clause 102 of SEPP Infrastructure. Accordingly, a condition of consent has been imposed requiring the development to be constructed in accordance with the recommendations contained in the Acoustic Report.

#### State Environmental Planning Policy (Affordable Rental Housing) 2009

The subject development application was lodged with Council on 18 May 2018. On 28 February 2019, during the assessment of the application, *State Environmental Planning Policy (Affordable Rental Housing) Amendments (Boarding House Development) 2019* came into force. The amendment included the insertion of the following additional clause:

#### **30AA Boarding houses in Zone R2 Low Density Residential**

*A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.*

The amendment also included the insertion of the following savings and transitional provisions in relation to the amendment:

#### **54C Savings and transitional provisions—2019 amendment**

- (1) This clause applies to a development application that was made before the commencement of the amending SEPP and was not determined by a consent authority or, if appealed, not finally determined by a court before that commencement.*
- (2) The application must be determined by applying all provisions of this Policy as if the amending SEPP had not commenced.*
- (3) In this clause, the amending SEPP means State Environmental Planning Policy (Affordable Rental Housing) Amendment (Boarding House Development) 2019.*

Based on the above, Clause 30AA of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH) does not apply to the assessment of the subject development application. As such, there is no limit on the number of boarding rooms that can be accommodated within the proposed development in this instance.

The following table provides a summary of the development application against the relevant numerical controls contained in Division 3 'Boarding houses' of SEPP ARH.

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Accessible area (Clause 27(2))	For the application of the controls contained in Division 3, the land must be located within an 'accessible area' as defined by clause 4 of the SEPP	The site is located approximately 135 metres from a bus stop on the southern side of Boronia Road, which is serviced by Bus Route No M90 providing access to Bankstown, Milperra, Moorebank and Liverpool	Yes
Floor space ratio (Clause 29(1)(a))	Consistent with the max. FSR for any form of residential accommodation permitted on the land (Clause 4.4(2) of BLEP 2015 identifies a maximum permitted FSR of 0.5:1)	0.49:1 (1,238.8m <sup>2</sup> :2,525.9m <sup>2</sup> )	Yes
Building height (Clause 29(2)(a))	Consistent with the max. building height permitted under another EPI (Clause 4.3(2B)(c) of BLEP 2015 identifies a maximum building height of 9m and a maximum wall height of 7m for a dwelling facing the road, and a maximum building height of 6m and a maximum wall height of 3m of all other dwellings at the rear of the lot for boarding houses)	<p>The proposed development comprises six separate building envelopes, two of which (Blocks A and B) face the street and four of which (Blocks C, D, E and F) are positioned to the rear of the lot. Blocks A and B are 2 storey with a maximum building height of 7.7m and a maximum wall height of 6.95m. Blocks C, D, E and F are single storey with a maximum building height of 3.8m and a maximum wall height of 2.97m.</p> <p>The wording of the development standard, however, refers to 'a dwelling' facing the road and 'all other dwellings'. Blocks A and B contain boarding rooms on the first floor (i.e. second storey) to the rear of rooms that face the road. These rooms face the side and rear of the site and therefore do not face the road.</p>	<b>No, see further comments below under BLEP 2015 and Clause 4.6 submission</b>
Landscaped area (Clause 29(2)(b))	The landscape treatment of the front setback area is to be 'compatible with the streetscape'	49.5% of the front setback area is landscaped, which not only exceeds that required under Council's control (of 45%) but is consistent with the existing landscape setting provided along Boronia Road	Yes
Solar access (Clause 29(2)(c))	Where the development provides more than one communal living room, one of these rooms is to receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	The communal living room provided within Block F will receive direct sunlight between 12 noon and 3pm in mid-winter	Yes

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Private open space (Clause 29(2)(d)(i) and (ii))	<p>One area of at least 20m<sup>2</sup> with a minimum dimension of 3 metres is provided for the use of the lodgers</p> <p>One area of at least 8m<sup>2</sup> with a minimum dimension of 2.5 metres is provided for use for the boarding house manager</p>	<p>The application proposes three separate areas of communal open space. This includes 88m<sup>2</sup> of communal open space to the north and west of the communal living room, 166m<sup>2</sup> of communal open space to the east of the communal living room, and 75m<sup>2</sup> of communal open space to the north of Block E. All areas exceed a dimension of 3 metres.</p> <p>17m<sup>2</sup> of private open space with a min. dimension of 1.5 metres has been provided for use for the boarding house manager</p>	<p>Yes</p> <p><b>No, see further comments below</b></p>
Parking (Clause 29(2)(e)(iia))	<p>At least 0.5 car parking spaces are provided for each boarding room</p> <p>Not more than 1 parking space provided for each person employed in connection with the development and who is a resident on site</p>	<p>Twenty-six (26) car parking spaces are proposed in the basement of the development, which equates to 0.5 spaces per boarding room.</p> <p>No employee parking spaces are proposed (which satisfies the requirement for 'not more than 1').</p>	Yes
Size of boarding rooms (Clause 29(2)(f)(ii))	Each boarding room to have a GFA (excluding any area used for the purposes of private kitchen or bathroom facilities) of least 12m <sup>2</sup> (for single lodgers) and 16m <sup>2</sup> in any other case	The GFA of the boarding rooms range from 15.5m <sup>2</sup> to 20.5m <sup>2</sup> (excluding the kitchen and bathroom facilities)	Yes
Communal living room (Clause 30(1)(a))	If a boarding house has 5 or more boarding rooms, at least one communal living room is to be provided	One communal living room, with shared kitchen and bathroom facilities, is proposed in Block F	Yes
GFA of each boarding room (Clause 30(1)(b))	No boarding room is to have a GFA (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m <sup>2</sup>	No boarding room has a GFA of more than 25m <sup>2</sup> (excluding the kitchen and bathroom facilities)	Yes
Number of lodgers (Clause 30(1)(c))	No boarding room is to be occupied by more than 2 adult lodgers	Given that the maximum permitted GFA of a boarding room is satisfied, it is unlikely that any of the rooms are able to accommodate more than 2 adult lodgers. The Plan of Management and House Rules (PoM), dated 23 November 2018, also specifies the maximum number of lodgers per boarding room, and this is reflected in the conditions of consent.	Yes
Boarding house manager (Clause 30(1)(e))	If the boarding house has the capacity to accommodate 20 or more lodgers, a boarding room is to be provided for a boarding house manager	A boarding room is provided in Block C, which has been made available for a boarding house manager	Yes
Bicycle / motor cycle parking (Clause 30(1)(h))	At least one parking space will be provided for a bicycle and a motor cycle for every 5 boarding rooms	11 motor cycle spaces and 11 bicycle spaces have been provided	Yes

### Character of local area

Clause 30A of Division 3 of SEPP ARH reads as follows:

*A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.*

During the assessment of the development application, the proposal was reviewed by Council's Senior Urban Designer to ensure the design the development is an appropriate fit for the low density suburban context. The following comments were provided with respect to design changes:

- Softening the building form through amendments to the ground and first floor front setbacks;
- Variation to the architectural treatment between the upper and lower levels (including variation in colour or materials);
- Variation across the facades of the two blocks fronting Boronia Road (including variation in colours, materials or architectural elements) to ensure that the rhythm of the streetscape is maintained;
- Amendments to balcony balustrade design to ensure privacy can be achieved within each room, and variation in detail, colour or material to contribute to variation across the facades; and
- Amendments to front fencing (including solid components and landscaping) to improve privacy and maintain variation within the streetscape.

The key element of Clause 30A is the reference to “...whether the design of the development is compatible with the local area.” With consideration given to the NSW Land and Environment Court Planning Principle relating to the compatibility of a proposal with surrounding development, it is noted that the most apposite meaning of ‘compatible’ in an urban design context is ‘capable of existing together in harmony’. ‘Compatibility’ is therefore considered to be different from ‘sameness’. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve. The Planning Principle also acknowledges situations where the planning controls envisage a change in character, in which case compatibility with the future character is more appropriate than with the existing.

In order to test whether a proposed development is compatible with its context, two questions should be asked:

- *Are the proposal's physical impacts on the surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

With respect to the abovementioned questions, the following points are noted:

- The proposed development was amended to address the abovementioned concerns raised by Council's Senior Urban Designer. This is evident in the variation to the front setback, architectural treatment, materials and colours on the upper and lower levels of the front façade of Blocks A and B, the variation in the façade design of Blocks A and B, variation in balcony balustrades, and improvements to front fencing and landscaping.
- The bulk and scale of the proposed development is in keeping with that envisaged for the immediate locality, reinforced by the fact that the development generally satisfies the development standards contained in BLEP 2015 and the built form controls relating to boarding house developments in BDCP 2015.
- The proposed development's presentation to Boronia Street is not unlike that of a multi-dwelling housing development, as the two storey built form is confined to the front portion of the site with single storey built elements to the rear of the site.
- The finishes and materials chosen are in keeping with those of the newer developments in the broader locality.
- The proposed development has been designed to protect the visual amenity of the adjoining dwellings through the use of privacy screens to a number of windows and balconies of the rooms along the side and rear elevations of the first floor.
- The proposed development does not place any constraints on the development potential of surrounding sites.
- Various types of development of a similar built form are permissible in the R2 Low Density Residential zone, including seniors housing, multi-dwelling housing and dual occupancies. The lots in proximity to the subject site, in particular those on the southern side of Boronia Road, range significantly in area, width and depth, and it is therefore reasonable to expect that these lots will comprise a mix of development types in the future.
- The locality is an area in transition, with older dwelling houses being redeveloped by new development of greater density. This is evident in the approved and/or constructed two storey dual occupancies at Nos. 129, 148 and 160 Boronia Road, Nos. 55, 63 and 65 Highview Avenue, and Nos. 64 and 70 Hillcrest Avenue. There is also a number of older battle-axe dual occupancies at Nos. 134, 138 and 140 Boronia Road, and multi-dwelling housing developments at Nos. 31, 77, 80 and 98 Boronia Road. The proposed development is therefore in harmony with old and new developments in the locality, and the existing and likely future character of the street.

The design of the development is therefore considered to be compatible with the character of the local area.

As demonstrated above, the proposal is generally consistent with the provisions contained in SEPP ARH. Further discussion is provided below with respect to the minimum dimension of the manager's private open space.

Clause 29(2)(d)(ii) - Private open space

Clause 29(2)(d)(ii) of SEPP ARH reads as follows:

**29 Standards that cannot be used to refuse consent**

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(d) **private open space**

*if at least the following private open space areas are provided (other than the front setback area):*

(ii) *if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation*

The application proposes 17 square metres of private open space to the north and east of the boarding house manager's room in Block C, however the minimum dimension of the private open space is 1.5 metres as opposed to 2.5 metres. The private open space is considered to be acceptable in this instance as it is more than double the minimum area requirement, it is suitably fenced to ensure privacy, and it incorporates a deck that is directly accessible via sliding glazed doors from the open plan living area of the manager's room. It is considered that the private open space is functional and will provide an appropriate level of amenity for the manager of the boarding house. It is further noted that this provision is not a development standard, rather it is a discretionary standard that allows the consent authority to support a development that does not strictly satisfy the provision.

With regard to the above, it is considered appropriate in this instance to support the proposal with respect to Clause 29(2)(d)(ii) of SEPP ARH.

Bankstown Local Environmental Plan 2015

The following clauses of the *Bankstown Local Environmental Plan 2015* (BLEP 2015) were taken into consideration:

Clause 1.2 – Aims of Plan

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 2.7 – Demolition requires development consent

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



An assessment of the Development Application revealed that the proposal complies with the matters raised in each of the above clauses of BLEP 2015, with the exception of the height of buildings development standard (as discussed in further detail below). The following table provides a more detailed assessment against the zoning and numerical development standards contained in the abovementioned clauses.

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Zoning	The subject site is zoned R2 Low Density Residential.	Boarding houses are permitted with consent in the R2 Low Density Residential zone.	Yes
Minimum lot size	A minimum lot area of 1,200sqm and a minimum lot width at the front building line of 20m is required for boarding houses in the R2 Low Density Residential zone.	The subject site has a combined lot area of 2,525.9m <sup>2</sup> and a combined width of 40.23m at the front building line.	Yes
Height of buildings	For boarding houses in the R2 Low Density Residential zone, the maximum building height for a dwelling facing the road is 9 metres and the maximum wall height is 7 metres, and the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.	<p>The proposed development comprises six separate building envelopes, two of which (Blocks A and B) face the street and four of which (Blocks C, D, E and F) are positioned to the rear of the lot. Blocks A and B are 2 storey with a maximum building height of 7.7m and a maximum wall height of 6.95m. Blocks C, D, E and F are single storey with a maximum building height of 3.8m and a maximum wall height of 2.97m.</p> <p>The wording of the development standard, however, refers to 'a dwelling' facing the road and 'all other dwellings'. Blocks A and B contain boarding rooms on the first floor (i.e. second storey) to the rear of rooms that face the road. These rooms face the side and rear of the site and therefore do not face the road.</p>	<b>No, see further comments below</b>
Floor space ratio	Max. 0.50:1	0.49:1	Yes

As demonstrated above, the proposal is generally consistent with the relevant provisions contained in BLEP 2015. Further discussion is provided below with respect to the contravention to the height of buildings development standard contained in Clause 4.3, and the associated Clause 4.6 submission to seek flexibility in the application of this development standard.

#### Clause 4.3 – Height of Buildings

The proposal complies with the development standards contained in BLEP 2015, with the exception of Clause 4.3(2B)(c), which reads as follows:

(2B) *Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*

(c) *for multi dwelling housing and boarding houses:*

- (i) *the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
- (ii) *the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.*

The departure to the development standard is considered to be a technical non-compliance due to the wording of the clause. The clause applies to multi-dwelling housing developments as well as boarding house developments, and therefore refers to a 'dwelling' facing a road and 'all other dwellings' at the rear of the lot. With respect to the application of the clause to a boarding house development, the wording is ambiguous as boarding houses contain 'boarding rooms' as opposed to 'dwellings' (in terms of their size and function). Notwithstanding this, a boarding room that is self-contained (i.e. with an internal bathroom and kitchenette) is considered to be a 'dwelling' for the purposes of SEPP BASIX.

The proposed development consists of six 'blocks' of boarding rooms. Blocks A and B are two storeys with a building height of less than 9m and a wall height of less than 7m, while Blocks C to F are single storey with a building height of less than 6m and a wall height of less than 3m. Blocks A and B, which are located at the northern (front) of the site, contain multiple boarding rooms that face the road (Boronia Road), the side and the rear of the site. All boarding rooms within Blocks A and B are self-contained, and therefore could be defined as 'dwellings'. If the requirements of Clause 4.3(2B)(c) of BLEP 2015 were strictly applied, boarding room Nos. 38-41 in Block A and Nos. 46-52 in Block B would not be permitted as these boarding rooms do not 'face a road'. However, it is considered that this is not the intention of the development standard.

Pursuant to Clause 4.6 of BLEP 2015, the applicant has made a submission seeking a variation to the provisions contained in Clause 4.3 of BLEP 2015. The Clause 4.6 submission describes the departure as follows:

*"The height non-compliance occurs due to a technical application of the LEP clause, not from the development itself. The front blocks (Block A and Block B) facing Boronia Road comprise two sets of boarding rooms – one behind the other and both within a two storey building that fronts Boronia Road. Council, in adopting the strict interpretation of what constitutes a 'dwelling' requires that only one dwelling or in this case, one boarding room facing Boronia Road, be located in a building which is over 6m high. The boarding rooms behind these front facing rooms are interpreted as being required to be within a single storey building. While it is considered an anomaly due to the size of the individual boarding rooms (less than 25sqm gross floor area), they are provided with their own facilities and are capable of separate occupancy. The clause it seems was not intended to apply to boarding house typologies where internal facilities are provided. The clause would not apply to a boarding house with no facilities in the room as this would not constitute a dwelling. Its arguable the clause has not work to do as the building is readily and legally categorized as a boarding house and not a dwelling."*

An assessment of the development against Clause 4.6(2), (3) and (4) of BLEP 2015, including extracts from the applicant's submission, is provided below:

- (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 4.3(2B)(c) prescribes a maximum building height of 9 metres and a maximum wall height of 7m for a dwelling facing a road, and a maximum building height of 6 metres and a maximum wall height of 3 metres for all other dwellings at the rear of the lot. Blocks A and B, which contain boarding rooms on the first floor (i.e. second storey) that do not face a road (i.e. that face the side and rear of the site), have a building height of up to 7.7 metres and a wall height of up to 6.95 metres.

This clause is not expressly excluded from the operation of Clause 4.6.

- (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***

An extract from the applicant's submission with respect to this point is provided below:

*"The consequence of strict application of the control would lead to a built form that steps down by one storey after a depth of one boarding room or approx. 12m from the front boundary. This is significantly less than a two storey single dwelling that would be permissible and less than the potential redevelopment of adjoining land and adjacent properties. Further, the length of Lot 4 (75m) lends itself to a longer two storey built form. If the LEP provision is applied less than 20% of the length of Lot 4 would be able to be two storey in this case. In these circumstances compliance is unreasonable and unnecessary and the built form appearance would be adversely affected by strict compliance when considered in this context having regard to the potential for new infill development.*

*Having regard to the planning principles in Project Ventures Constructions v Pittwater Council the subject proposal is deemed to be compatible with the likely future bulk and scale of dwellings fronting Boronia Road. In our opinion the proposal would be more in keeping with the strategic planning outcomes envisaged for this area than a proposal that strictly complied with the height control.*

*The future development potential of adjoining sites remains a relevant consideration in the overall strategic planning and urban design outcomes. The proposal offers a sound opportunity to fulfill the objectives and strategic vision that is not true for all development proposals. As articulated the proposal offers a similar two storey building depth of potential new single dwellings along Boronia Road.”*

The applicant’s submission adequately demonstrates that compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case. The intention of the development standard is to regulate the bulk of building envelopes on sites zoned R2 Low Density Residential, and the development is appropriately designed in this regard.

In the application of this development standard to a multi-dwelling housing development, typically the development will comprise a two storey built form at the front of the site (often resembling a dual-occupancy) and two or more single storey built forms to the rear of the site. As result, the two storey built form will accommodate approximately one-third of the length of the site. The proposed development has been designed so that the two storey element of Block A equates to approximately 33% of the length of No. 146 Boronia Road, while the two storey element of Block B equates to approximately 35% of the length of No. 144 Boronia Road.

The development application was accompanied by a site context plan that depicts the two storey building zone of the proposed development, alongside the approved dual occupancy on the adjoining site to the west and potential future dual occupancy and multi-dwelling housing developments to the east and west of the site. It is evident that the depth of the two storey element of Blocks A and B is generally consistent with potential future development in the immediate vicinity of the site, with consideration given to the varied depths of the sites along the southern side of Boronia Road.

Furthermore, it is considered that the redistribution of the side and rear-facing first floor boarding rooms of Blocks A and B to the ground floor of the development to achieve compliance with the development standard would result in an inferior development outcome. The boarding rooms would most likely accommodate the central part of the site, which would increase the overall building footprint and impervious area, and significantly reduce the amount of communal open space.

**(b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

An extract from the applicant's submission with respect to this point is provided below:

- *"The development satisfies the R2 Low Density Residential zone objectives;*
- *The development satisfies the height of building objectives;*
- *Relevant clause 4.6 objectives are satisfied;*
- *The development provides for the orderly development of the site;*
- *The design and layout of the development has considered the ongoing amenity and function of the adjoining properties and minimises impacts to the extent necessary across the site;*
- *The landuse mix that is evolving along Boronia Road provides a social benefit by offering future affordable housing to the local community thus achieving the strategic housing initiatives of the State Government;*
- *The development provides equitable access and variety of residential accommodation in an area that is accessible to services, employment and public transport;*
- *The subclause HOB departure does not in itself create any significant adverse impact by way of privacy loss or bulk and scale;*
- *The variation does not unduly impose on any adjoining property, result in reduced development potential on adjoining sites or result in significant adverse amenity loss;*
- *The built form that is proposed better relates to the built form context now and in the future than a development which strictly complied with the control."*

The applicant's submission adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal achieves the intention of the development standard in ensuring the two storey built form is confined to the front of the subject site. The contravention also allows for a much more orderly site layout than would be the case if the side and rear-facing first floor boarding rooms of Blocks A and B were relocated to the ground floor level.

**(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 sub-clause (3);**

The applicant's written submission adequately addresses the matters required by sub-clause (3).

- (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;**

The proposed development is in the public interest because it is in keeping with the objectives of Clause 4.3 – Height of Buildings and the R2 Low Density Residential zone of BLEP 2015. In particular, the development satisfies the objectives relating to compatibility with the character and amenity of the area, maintaining the suburban character by limiting the height of development to a maximum of two storeys, providing appropriate height transitions between development, providing for the housing needs of the community within a low density residential environment, and allowing for the development of low density housing that has regard to local amenity.

The proposal seeks to replace older, existing buildings with a permissible, generally compliant boarding house development. The design incorporates building elements and architectural features that aim to minimise impacts on adjoining developments, whilst providing a built form that is consistent with the likely future character of the area. The side and rear-facing first floor boarding rooms of Blocks A and B will not result in any adverse overshadowing, visual or acoustic amenity impacts on the surrounding properties, nor will these boarding rooms be overly visible from the public domain.

- (b) the concurrence of the Director-General has been obtained.**

The concurrence of the Director General is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 17-006.

With regard to the above, it is considered appropriate in this instance to support the submission under Clause 4.6 of BLEP 2015 to permit the proposed development.

**Draft environmental planning instruments [section 4.15(1)(a)(ii)]**

There are no draft environmental planning instruments applicable to the proposed development.

**Development control plans [section 4.15(1)(a)(iii)]**

**Part B1 – Residential Development**

The following table provides a summary of the development application against the applicable controls contained in Section 10 and Section 14, Part B1 of *Bankstown Development Control Plan 2015* (BDCP 2015) where the controls have not been addressed or included in SEPP ARH.

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Storey limit	Max. 2 storey facing the street and single storey for all other dwellings	Blocks A and B at the front of the site are 2 storey while Blocks C to F are single storey. However, Blocks A and B contain boarding rooms on the first floor (i.e. second storey) that do not face the street.	<b>No, refer to Clause 4.6 discussion above</b>
Site conditions	<p>The siting of boarding houses and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property</p> <p>Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing of an adjoining property, except where the fill is contained within the ground floor perimeter of boarding houses to a height no greater than 1 metre above the ground level (existing) of the allotment</p>	<p>The development appropriately responds to the fall of the land</p> <p>The development complies with this requirement</p>	<p>Yes</p> <p>Yes</p>
Front setback	Ground floor – min. 5.5 metres First floor – min. 6.5 metres	5.5 metres 6.5 metres	Yes Yes
Side setback	For building walls <7 metres, a minimum setback of 900mm is required	The development is setback a minimum of 1.5 metres to the side boundaries of the allotment	Yes
Basement	The basement level must not project beyond the ground floor perimeter of boarding houses	The basement level is positioned primarily below Blocks A and B at the front of the site, however it marginally projects beyond the ground floor perimeter to the front, rear and in between the two blocks	<b>No, see further comments below</b>
Private open space	Development must locate the private open space behind the front building line	All private and communal open space is located behind the front building line	Yes
Access to sunlight	At least 70% of boarding rooms must receive a minimum of 3 hours of sunlight between 8am and 4pm at the mid-winter solstice	With consideration given to the clerestory windows to the roof of boarding rooms, 38 of the 52 boarding rooms (i.e. 73%) receive a minimum of 3 hours of sunlight between 8am and 4pm	Yes
Access to sunlight to a living area of an adjoining dwelling	At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice	<p>The proposed development maintains a minimum of 3 hours to a living area of the dwelling house to the west (as well as the approved dual occupancy), and all dwellings to the south.</p> <p>The site adjoins a Scout Hall to the east.</p>	Yes
Access to sunlight to the POS of an adjoining site	A minimum 50% of the private open space required for boarding houses and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox	The proposed development maintains a minimum of 3 hours to at least 50% of the private open space of all surrounding dwellings	Yes



STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Access to sunlight to an adjoining hot water system	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties	No overshadowing will occur of an adjoining solar hot water system, photovoltaic panel or other type of solar collector	Yes
Visual privacy to an adjoining development	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council	Views from all side and rear facing windows of the ground floor boarding rooms will generally be restricted by the 1.8 metre high boundary fence. It is recommended that a condition of consent be imposed requiring a privacy screen (consistent with that proposed for boarding room Nos. 47 and 48) to be installed to the balustrade of the private open space area of boarding room Nos. 17 and 18 to further restrict views towards the Scout Hall to the east.  Views from all side and rear facing windows of the first floor boarding rooms will be minimal as windows are either offset from adjacent windows, views are restricted by external privacy screens, or the windows are substantially setback from properties to the rear. The rear-facing boarding rooms in Block A comprise of windows with privacy screens installed to a height of 1.5 metres above the floor level, and the windows are positioned 28 metres from the rear boundary of the site. The rear-facing boarding rooms in Block B have privacy screens installed to the balconies and the windows are positioned 44 metres from the rear boundary of the site. The side-facing (eastern) boarding room windows in Block B are adjacent to single storey development.	Yes, subject to condition of consent
Visual privacy to an adjoining POS	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling	The treatment to the windows of boarding rooms, as described above, satisfactorily addresses this clause. All side and rear facing windows of boarding rooms on the first floor of the development have some form of screening to assist in restricting views towards the private open space of surrounding dwellings, and the substantial setback of the rear facing first floor windows from the rear boundary of the site will prevent overlooking of more than 50% of the surrounding private open space areas.	Yes

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Upper floor side or rear balconies	Council may allow boarding houses to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design: (a) does not have an external staircase; and (b) does not exceed a width of 1.5 metres throughout; and (c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building	The development includes side and rear facing balconies to the upper floor of Block B. The balconies do not have external staircases, do not exceed a width of 1.5 metres, and incorporate satisfactory screening as the balconies are recessed into the building and have vertical lattice screens to the balustrades. However, each balcony is accessed directly from a boarding room, all of which are designed as studio units with combined living and bedroom areas.	<b>No, see further comments below</b>
Roof-top balconies	Council does not allow boarding houses to have roof-top balconies and the like	The development does not include any roof-top balconies	Yes
Roof pitch	Max. roof pitch of 35 degrees	Roof pitches range from 0 to 3 degrees	Yes
Attics	Council does not allow boarding houses to have attics	No attics are proposed	Yes
Plant and ventilation	The siting of a plant room, lift motor room, mechanical ventilation stack, exhaust stack, and the like must: (a) integrate with the architectural features of the building to which it is attached; or (b) be sufficiently screened when viewed from the street and neighbouring properties.	The development does not include any services that are not appropriately integrated into the architectural features of the building	Yes
Demolition	Development for the purpose of boarding houses must demolish all existing dwellings (not including any heritage items) on the allotment	Existing dwellings and associated outbuildings are proposed to be demolished	Yes
Adaptable boarding room	Boarding houses with 10 or more boarding rooms must provide at least one adaptable boarding room plus an adaptable boarding room for every 50 boarding rooms in accordance with AS 4299–Adaptable Housing	Three (3) of the boarding rooms are accessible (Rooms 7, 16 and 20)	Yes
Design of on-site car parking	The design and siting of car parking structures and driveways must ensure vehicles can leave the allotment in a forward direction  Development must locate the car parking spaces behind the front building line	Sufficient manoeuvring area is available within the basement to enable vehicles to enter and exit the site in a forward direction, including waste collection vehicles  All on-site car parking spaces are located within the basement	Yes  Yes

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Tree retention	Development must retain and protect any significant trees on the allotment and adjoining allotments	<p>The proposed development ensures the retention and protection of the <i>Melaleuca decora</i> (White Feather Honeymyrtle) adjacent to the western side boundary of the site. There are no other trees on the subject site considered to be worthy of retention.</p> <p>The removal of the <i>Callistemon</i> (Bottlebrush) street tree forward of No. 144 is considered to be acceptable subject to the requirement for a replacement street tree. The two other street trees forward of the subject and adjoining sites are to be retained and protected.</p> <p>A condition of consent has imposed requiring the footprint of Block E to be relocated 1.5 metres to the east (i.e. with a setback of 3.0 metres to the western (side) boundary) to ensure the retention and protection of the <i>Callitris columellaris</i> (White Cypress) on the adjoining property at No. 16 Orana Place. This matter is discussed in further detail below under Part B11 of BDCP 2015.</p>	Yes, subject to conditions of consent
Landscaping	<p>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 (refer to Appendix 4 and Appendix 5 for a list of suitable species):</p> <p>(a) a minimum 45% of the area between the boarding house and the primary frontage; and</p> <p>(c) plant more than one 75 litre tree between the boarding house and the primary frontage</p>	<p>49.5% of the area between the boarding house and the primary frontage comprises of landscaping</p> <p>Three (3) x 75 litre trees are proposed to be planted between the boarding house and the primary frontage</p>	Yes
Front fence height	The maximum fence height for a front fence is 1.8 metres	The front fence of the proposed development is a maximum height of 1.1 metres above the existing natural ground level	Yes
Front fence design	<p>The external appearance of a front fence along the front boundary of an allotment or facing a classified road must ensure:</p> <p>(a) the section of the front fence that comprises solid construction (not including solid piers) must not exceed a fence height of 1 metre above natural ground level; and</p> <p>(b) the remaining height of the front fence must comprise open style construction such as spaced timber pickets or wrought iron that enhance and unify the building design</p>	The front fence comprises primarily of 1.1 metre high rendered brick columns with 1.1 metre high galvanized steel handrails in between. The front fence also includes a 1.1 metre high rendered brick wall on either side of the central pedestrian entry pathway. A condition of consent has been imposed requiring the rendered brick wall to be a maximum of 1 metre above the natural ground level.	Yes, subject to condition of consent

STANDARD	REQUIRED / PERMITTED	PROPOSED	COMPLIANCE
Front fence material	Council does not allow the following types of front fences along a classified road: (a) chain wire, metal sheeting, brushwood, and electric fences; and (b) noise attenuation walls	These materials are not proposed	Yes
Dividing fences	Dividing fences require development consent where the average fence height exceeds 1.8 metres	A condition of consent has been imposed requiring the replacement of all side and rear boundary fencing at full cost to the developer and in consultation with the adjoining property owners.	Yes

The following comments are offered with regard to the non-compliances identified in the table above.

### Design of basement level

Clause 10.11, Part B1 of BDCP 2015 reads as follows:

*The basement level must not project beyond the ground floor perimeter of boarding houses.*

As outlined in the table above, the basement level is positioned primarily below Blocks A and B at the front of the site, however it marginally projects beyond the ground floor perimeter to the front, rear and in between the two blocks.

It would not be possible to achieve compliance with this development control without the proposed development comprising a single building envelope fronting Boronia Road, or two separate basement car parking areas. The former would result in an inferior streetscape and built form outcome as the development would have a continuous frontage of approximately 33 metres with no break or relief in the building façade, and no central pedestrian entrance to the site. The latter would result in an impractical basement configuration, and an additional driveway and vehicular footway crossing on Boronia Road.

The intention of this development control is primarily to ensure the basement is not excessive in area so that sufficient deep soil landscaping and pervious areas can be accommodated on site. The proposed basement has been designed so that there is enough area to accommodate on-site parking, vehicular manoeuvrability and waste storage/collection, with no area used for any other purpose. The proposed development accommodates approximately 600m<sup>2</sup> (24% of the site area) of landscaped areas, the majority of which can accommodate deep soil planting.

Based on the above, the proposed development is considered to be acceptable with respect to Clause 10.11, Part B1 of BDCP 2015.

### Upper floor side and rear balconies

Clause 10.27, Part B1 of BDCP 2015 reads as follows:

*Council may allow boarding houses in Zones R2 and R3 to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design:*

- (a) does not have an external staircase; and*
- (b) does not exceed a width of 1.5 metres throughout; and*
- (c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building.*

As outlined in the table above, the development includes side and rear facing balconies to the upper floor of Block B that are accessed directly from a boarding room, all of which are designed as studio units with combined living and bedroom areas. Notwithstanding this non-compliance, the balconies have been appropriately designed in accordance with parts (a) to (c) of the clause.

This non-compliance is solely due to the fact that the balconies are accessible from a combined living and bedroom area, as opposed to a bedroom or other low activity room. In this regard, it is considered that the nature of a boarding room living area is not consistent with the nature of a dwelling living area for which this control typically applies. Each boarding room will have a maximum of 1 or 2 lodgers (depending on the size of the room). The PoM confirms that the maximum number of persons permitted within each room is to be consistent with the signed occupancy agreement (i.e. 1 or 2 lodgers), and that the lodgers must not cause a nuisance from noise associated with amplified music, loud talking or the like. The balconies have a narrow width of 800mm, and are therefore unlikely to accommodate any outdoor entertaining furniture, nor would the balconies be permitted to be used for entertaining purposes due to the 'house rules' contained in the PoM. As such it is considered that the function of the upper floor side and rear facing balconies are similar to that of a balcony that is accessible from a bedroom or other low activity room in a dwelling.

As discussed above, views from all side and rear facing windows (glazed sliding doors) of the first floor boarding rooms will be minimal as the windows are either offset from windows of adjacent developments, views are restricted by external privacy screens, or the windows are substantially setback from properties to the rear. More specifically, the rear-facing boarding rooms in Block B have privacy screens installed to the balcony balustrades and the windows (glazed sliding doors) are positioned 44 metres from the rear boundary of the site, while the side-facing (eastern) boarding room windows (glazed sliding doors) are adjacent to single storey development to the east.

While private open space is not required for each boarding room, it is considered that the proposed balconies will improve the general amenity to the boarding rooms, particularly those that are south-facing.

Based on the above, the proposed development is considered to be acceptable with respect to Clause 10.27, Part B1 of BDCP 2015.

## Part B5 – Parking

The proposed development has been assessed against the applicable controls contained in Part B5 of BDCP 2015. Council's Development Engineer has reviewed the application and confirmed that the configuration of the basement car park complies with the applicable controls and Australian Standards.

As outlined previously in this report, the proposed development achieves compliance with the discretionary development standard for car parking as contained in Clause 29(2)(e)(iia) of SEPP ARH, which requires 0.5 car parking spaces to be provided for each boarding room in the case of a development not carried out by or on behalf of a social housing provider.

Based on the above, the proposed development is considered to be acceptable with respect to Part B5 of BDCP 2015.

## Part B11 – Tree Preservation Order

The proposed development has been assessed against the applicable objectives and controls contained in Part B11 of BDCP 2015.

### Site trees

The site contains a *Melaleuca decora* (White Feather Honey myrtle) adjacent to the western (side) boundary. This is a mature specimen in good condition, and the species is now classified as an Endangered Ecological Community under the *Biodiversity Conservation Act 2016*. The footprint of Block F, which contains the communal room, has been relocated to achieve a 3.9 metre setback to the western (side) boundary of the site. This ensures that the building is outside of the 2.9 metre structural root zone (SRZ) and 4.0 metre tree protection zone (TPZ) of the tree. The proposed basement beneath Block A is outside of the SRZ and TPZ of the tree. The minor encroachment into the TPZ as a result of the paved footpath to the south of the planter bed adjacent to the tree is considered to be acceptable. Council's Tree Management Officer has reviewed the proposal and has confirmed that the proposed development allows for the adequate retention and protection of the tree. Detailed conditions of consent have been imposed with respect to protection measures during demolition, excavation and construction.

Council's Tree Management Officer confirmed that there are no other trees on the subject site that are worthy of retention. Accordingly, a condition of consent has been imposed requiring a minimum of four (4) x 75L replacement trees to be planted on site, comprising two trees known to attain a minimum height of 10 metres at maturity in the front setback and two trees known to attain a minimum height of 15 metres at maturity in the rear communal open space area.

### Street trees

The proposed development requires the removal of a *Callistemon* (Bottlebrush) located on Council's nature strip forward of No. 144 Boronia Road to accommodate the proposed driveway adjacent to the eastern boundary of the site. Council's Tree Management Officer had no objection to the removal of this street tree, subject to a condition of consent for a replacement tree to be planted in Council's nature strip. Conditions of consent have also been imposed in relation to the retention and protection of the *Callistemon* (Bottlebrush) located on Council's nature strip forward of No. 142 Boronia Road and the *Lophostemon confertus* (Brush Box) located on Council's nature strip forward of No. 146 Boronia Road.

### Trees on adjoining sites

The property at No. 16 Orana Place to the rear of the subject site contains a *Callitris columellaris* (White Cypress) adjacent to the western (side) boundary of No. 144 Boronia Road. Block E is proposed to be setback 1.5 metres from the western (side) boundary, and therefore achieves a setback of approximately 1.8 metres from the trunk of the White Cypress. The applicant submitted an Arboricultural Impact Assessment & Tree Protection Measures report examining the extent of impact on the tree as a result of the proposed development and recommendations for suitable protection and construction methods. This includes the construction of a suspended slab on piers for the portion of Block E that encroaches on the TPZ. Council's Tree Management Officer reviewed the proposal and determined that, despite the proposal of suitable construction methods, the proximity of Block E to the White Cypress will result in the tree being deemed 'exempt' in accordance with Clause 2.4(a), Part B11 of BDCP 2015. This control reads as follows:

#### **2.4 Despite clause 2.3, Part B11 does not apply to:**

- (a) *Trees located within 3.0 metres of the external wall of an approved dwelling, not including a secondary dwelling. The distance shall be measured from the external wall of the approved dwelling to the centre of the trunk of the tree at 1.4 metres above ground level*

Based on the above, Council's Tree Management Officer has recommended a setback of 3.0 metres to the western boundary for Block E. This will achieve a distance of approximately 3.3 metres from the external wall of Block E and the centre of the trunk of the White Cypress. The relocation of the building footprint of Block E will result in a separation of 2.7 metres between the western wall of Block D and the eastern wall of Block E. While this will require the deletion of the central planter bed between the two blocks, it is considered that an appropriate level of separation and amenity will be maintained to these boarding rooms.

Accordingly, a condition of consent has been imposed requiring the building footprint of Block E to be relocated east to achieve a setback of 3.0 metres to the western (side) boundary and for the planter bed between Blocks D and E to be deleted. The awnings over the entry of boarding room Nos. 26 to 33 shall also be modified if necessary. The Construction Certificate plans are required to reflect these



amendments, and the plans are to be submitted to Council for approval prior to the issue of a Construction Certificate.

It is considered that the abovementioned requirement is an acceptable response to this issue for the following reasons:

- Block E achieves a greater setback to the western boundary than the existing outbuilding (nil setback), and will therefore have less of an impact on the roots of the tree and will reduce the encroachment into the SRZ and TPZ.
- Block E is lower in height than the existing outbuilding (approx. 4.4m), and will therefore have less of an impact on the canopy of the tree.
- The proposed development will result in a significant reduction in hardstand area adjacent to the western boundary, which will be reinstated to grass and will therefore increase the amount of permeable soil in close proximity to the tree.
- The construction process will be in accordance with the tree protection measures recommended in the Arborist Report and a Tree Management Plan to be prepared and submitted prior to the issue of a Construction Certificate to ensure the protection of the tree.

Based on the above, the proposed development is considered to be acceptable with respect to Part B11 of BDCP 2015, subject to the conditions of consent described above.

#### Part B13 – Waste Management and Minimisation

The proposed development has been assessed against the applicable controls contained in Part B13 of BDCP 2015. Council's Resource Recovery Officer reviewed the application and confirmed that the proposed boarding house development is classified as a 'commercial development' for the purposes of waste collection, i.e. waste is to be collected by a private contractor rather than Council's household bin collection service.

Boronia Road is a classified road (Main Road), therefore the application proposes for waste collection to occur within the basement of the development in the loading dock adjacent to the waste store room. The application was accompanied by a letter from a private waste collection contractor specifying the size of a small waste collection vehicle, the size and dimensions of the bins to be stored in the waste store room, and the manner in which bins are lifted to tip waste into the vehicle. The application was also accompanied by a letter from a Traffic Engineer and swept path diagrams confirming that the small waste collection vehicle (as specified by the waste contractor) is able to access and manoeuvre throughout the basement, and enter and exit the site in a forward direction. The Traffic Engineer also certified that the design and layout of the basement satisfies Australian Standards and that there is adequate headroom clearance to accommodate the waste collection vehicle and the lifting of bins.

Based on the above, the proposed development is considered to be acceptable with respect to Part B13 of BDCP 2015.

### **Planning agreements [section 4.15(1)(a)(iia)]**

A planning agreement has not been entered into under Section 7.4 of the *Environmental Planning and Assessment Act 1979* nor has the applicant offered to enter into a draft planning agreement.

### **The regulations [section 4.15(1)(a)(iv)]**

The development remains consistent with the provisions contained in the *Environmental Planning and Assessment Regulation 2000*.

### **The likely impacts of the development [section 4.15(1)(b)]**

The proposed development is not likely to result in any significant adverse environmental, social or economic impacts on the locality. As detailed in this report, where non-compliances with the relevant development standards or controls occur, these are sufficiently justified. As such, it is considered that the impact of the proposed development on the locality is acceptable.

### **Suitability of the site [section 4.15(1)(c)]**

The site is considered suitable for the proposed development. The development results in an appropriate built form for the site, which is consistent with the existing and desired future character of the locality as reflected in BLEP 2015 and BDCP 2015.

### **Submissions [section 4.15(1)(d)]**

The application was neighbour notified and advertised in The Torch and The Express newspapers consistent with the provisions contained in BDCP 2015. The application was initially on exhibition for a period of twenty one (21) days from 30 May 2018 to 20 June 2018. A total of thirty-five (35) submissions were received, which comprise thirty (30) individual objections and five (5) petition letters containing a total of 102 signatures. The amended application was re-notified for a period of fourteen (14) days from 29 November 2018 to 12 December 2018, and subsequently re-notified again for a period of thirty-five (35) days from 11 December 2018 to 15 January 2019 due to an incorrect neighbour notification plan on Council's ePlanning Portal. A total of forty-seven (47) submissions were received, which comprise forty-four (44) individual objections and three (3) petition letters containing a total of fifty (50) signatures.

Due to the number of submissions received, the points of objection relevant to the assessment of the development application have been grouped into the key issues outlined below.

### **Traffic generation, congestion and road safety (both during construction and operation)**

It is acknowledged that Boronia Road is a classified road that experiences a higher volume of vehicle movements than other streets in low density residential localities.

Notwithstanding this, there are no restrictions/controls (in any relevant planning legislation) that prohibit boarding house developments on classified roads. Each development application is considered on its merits (in light of what's existing in the street), as has been undertaken with the assessment of this development application.

Consideration has been given to the cumulative traffic impacts of the proposed development. The Traffic & Parking Assessment Report was reviewed by Council's Traffic Engineer and was found to be acceptable, and no concerns were raised with respect to the accuracy of the data contained in the report. Council's assessment has determined that Boronia Road and the surrounding road network have the capacity to accommodate the additional vehicle movements generated by this development without impacting the safety, efficiency or on-going operation of Boronia Road, the surrounding road network or nearby intersections.

Furthermore, the development application was referred to RMS in accordance with Section 138 of the *Roads Act 1993*, and RMS granted concurrence subject to conditions of consent relating to both the construction and operation of the development. Council's standards conditions of consent relating to traffic management and site operations have also been imposed.

The proposed development is considered to be acceptable with respect to traffic generation, congestion and road safety. These matters have also been addressed throughout this report, in particular under SEPP Infrastructure.

#### On-site car parking and street parking

The proposed development achieves compliance with the discretionary development standard for car parking as contained in Clause 29(2)(e)(iia) of SEPP ARH, which requires 0.5 car parking spaces to be provided for each boarding room in the case of a development not carried out by or on behalf of a social housing provider. The proposed development includes twenty-six (26) car parking spaces in the basement of the development, two (2) of which are accessible spaces. It is therefore determined that the proposed development is acceptable with respect to on-site car parking and that the development is therefore unlikely to result in an adverse impact on street car parking in the locality.

With respect to the requirement for an employee car parking space, SEPP ARH specifies that a consent authority must not refuse consent to a boarding house development if *'not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site'*. In this instance, the application proposes one on-site manager, therefore if one (or less than one) car parking space(s) are provided for the manager, the consent authority cannot refuse the application on this basis. No car parking spaces are proposed to be allocated to the on-site manager, therefore the consent authority is unable to refuse the application on these grounds.

RMS has imposed a condition of consent requiring full time "No Stopping" restrictions to be implemented along the full frontage of the site on Boronia Road prior to the issue of the Occupation Certificate to improve sight lines for vehicles

exiting onto Boronia Road. Similarly, as suggested by RMS, Council's Traffic Engineer has imposed a condition of consent for the developer to apply to the Canterbury Bankstown Traffic Committee to seek approval to fund a "No Stopping" restriction for 5 metres across the western part of the frontage of No. 142 Boronia Road (subject to consultation with and approval from the owner(s) of No. 142 Boronia Road). The proposed development accommodates on-site car parking as required by SEPP ARH. Boronia Road is a classified road, therefore the Council and/or the Panel do not have the ability to override the conditions of consent imposed by RMS. There is no requirement for the development to maintain an uninterrupted kerb (along the site's frontage) to accommodate street parking. The proposed development is therefore considered to be acceptable with respect to this matter.

#### Insufficient public transport

Clause 27(2) of SEPP ARH requires boarding house developments proposed under this Policy to be located within an 'accessible area' as defined by Clause 4 of SEPP ARH. The definition of 'accessible area' includes 400 metres walking distance of a bus stop used by a regular bus service that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

The site is located approximately 135 metres from a bus stop on the southern side of Boronia Road, which is serviced by Bus Route No. M90 providing access to Bankstown, Milperra, Moorebank and Liverpool. A review of the timetable for this service confirmed that it satisfies the frequency of service requirements outlined above. It must therefore be accepted that the proposed development is acceptable with respect to access to public transport.

#### Inconsistency with the character of the neighbourhood and the low density residential zone

The compatibility of the proposed development with the character of the neighbourhood has been discussed above under the 'character of local area' requirements of SEPP ARH. The design of the development is considered to be compatible as the architectural elements and bulk and scale is in keeping with that envisaged for the locality; the presentation to Boronia Road resembles a multi-dwelling housing development or two attached dual occupancy developments side by side when viewed from the public domain; and the locality is an area in transition. The proposed development is a permissible form of development in the R2 Low Density Residential zone and is not considered to be inconsistent with the existing or likely future character of the locality.

#### Excessive floor space ratio

The proposed development results in a floor space ratio (FSR) of 0.49:1, which complies with the maximum permissible FSR of 0.50:1. Accordingly, the FSR of the proposed development is not considered to be excessive.

### Excessive building height

The building and wall height of the proposed development has been discussed in detail in this report under BLEP 2015 and the Clause 4.6 submission. The maximum building height is 7.7 metres, which is well below the maximum permissible building height of 9.0 metres in the R2 Low Density Residential zone. The departure to the development standard relating to the building and wall height of boarding rooms that do not face a road is considered to be a technical non-compliance due to the wording of the clause. This issue is outlined above in this report and is considered to be suitability justified. The proposed development achieves the intention of the building and wall height development standards and is therefore not considered to be excessive.

### Bulk and scale, visual impact and streetscape presentation

The bulk/scale, visual impact and streetscape presentation of the proposed development has been discussed in detail throughout this report, in particular under the 'character of local area' requirement of SEPP ARH.

The bulk/scale of the proposed development is considered to be acceptable as the development complies with the FSR development standard, and appropriately responds to the maximum building height and wall height development standards as outlined in the Clause 4.6 submission. Furthermore, the proposed development complies with other development controls that guide the building envelope, such as front and side setbacks, solar access, landscaped area and open space. The proposed development is of a similar bulk and scale to a multi-dwelling housing development (which is permissible in the zone), as it presents to Boronia Road with a built form that resembles two attached dual occupancies and the remaining blocks to the rear are all single storey in height.

The visual impact and streetscape presentation of the development is also considered to be acceptable as the design incorporates variation to the architectural treatment, colours and materials between the upper and lower levels and across the facades of the two blocks fronting Boronia Road.

Not only is the development permissible with consent in the R2 Low Density Residential zone, the site is located within an 'accessible area' as defined by SEPP ARH and the development satisfied the 'character of local area' test as provided in Clause 30A. It would therefore be difficult to justify an argument that the development is not suitable for this particular site.

### Incompatible front setback

The proposed development is setback 5.5m from the front boundary for the ground floor and 6.5m from the front boundary for the first floor. This complies with the front setback control contained in Part B1 of BDCP 2015. This control applies to all forms of residential development in the R2 Low Density Residential zone, and therefore the front setback of the proposed development is considered to be compatible with the existing and likely future development in the locality.

### Height of basement above existing natural ground level

The basement level is a maximum of 800mm in height above the existing natural ground level when measured from the floor level of the storey above (i.e. the ground floor). This satisfies the definition of 'basement' in BLEP 2015 and is therefore considered to be acceptable. The development has been designed to achieve appropriate head clearance heights of all vehicles required to access the basement.

### Overshadowing

The overshadowing impacts of the proposed development have been discussed above under Part B1 of BDCP 2015. The proposed development complies with the solar access controls as it maintains an acceptable level of solar access to the living area and private open space of the surrounding residential properties.

### Inadequate on-site landscaping and landscape plan

The proposed development complies with the applicable development controls relating to on-site landscaping. Furthermore, conditions of consent have been imposed requiring replacement site trees and street trees, and for a detailed landscape plan prepared by a qualified landscape architect or designer prior to the issue of a Construction Certificate.

### On-site stormwater drainage

During the assessment of the development application, the applicant submitted evidence to Council of a 1.5m wide drainage easement that was registered on the property title of No. 142 Boronia Road in 2011. The drainage easement benefits the property at No. 144 Boronia Road, and runs along the western boundary of No. 142 Boronia Road from the south-east corner of No. 144 Boronia Road to the existing stormwater easement (open stormwater channel) that traverses the south-east corner of No. 142 Boronia Road. The development application proposes for stormwater runoff to be collected into an on-site detention (OSD) system and drained to the open stormwater channel to the south via the 1.5m wide drainage easement that burdens No. 142 Boronia Road. The proposed stormwater drainage system was reviewed by Council's Development Engineer and is considered to be acceptable, subject to conditions of consent. The proposal does not seek to utilise the existing 1.5m wide stormwater drainage easement across No. 17 Orana Street that also benefits No. 144 Boronia Road.

### Impacts on existing infrastructure (water, sewer and stormwater drainage), facilities and services

The proposed development has been reviewed by Council's Development Engineer with respect to on-site stormwater drainage, and is considered to be acceptable. The existing stormwater infrastructure in the locality (i.e. the open stormwater channel to the south of the site) is capable of catering for the increase in stormwater runoff that will result from the proposed development.

A condition of consent has been imposed requiring the approved building plans to be submitted to Sydney Water for assessment prior to the issue of a Construction Certificate. This is to determine if the proposed structures would affect any Sydney Water infrastructure (i.e. sewer and water mains) or if there are any additional requirements. Furthermore, the developer is required to obtain a Section 73 compliance certificate under the *Sydney Water Act 1994* and submit this to the principal certifying authority prior to occupation of the development. The intention of this certificate is to ensure the development receives appropriate water, water waste and drainage, and that the new building does not affect Sydney Water assets.

As stated above, the subject site is satisfactorily serviced by public transport. The bus route in the vicinity of the site provides access to Bankstown, Milperra, Moorebank and Liverpool city centres. Accordingly, the lodgers of the boarding house will have satisfactory access to facilities and services, and the development is not considered to be of a scale that will adversely impact the operation or capacity of local facilities and services.

### Visual and acoustic privacy impacts

The visual privacy impacts of the proposed development have been discussed in detail throughout this report, in particular under Part B1 of BDCP 2015. The proposed development has been appropriately designed with respect to the visual privacy development controls, and is therefore not likely to result in any adverse impacts on the surrounding residential properties.

An Acoustic Report was submitted with the application, which determined that the acoustic impacts associated with the development will be acceptable provided the development is constructed and operated in accordance with the recommendations contained in the report. The Acoustic Report was reviewed by Council's Environmental Health Officer who agreed with the assessment. The Acoustic Report has been referenced in the conditions of consent, which includes a requirement for the report to be amended to reflect the approved development (containing basement parking and a larger communal open space area, as opposed to at-grade parking) prior to the issue of a Construction Certificate, and further approval to be sought from Council if this results in any changes to the operational recommendations.

With respect to the operational aspects of the use, the Acoustic Report recommends for the communal room to be closed between 10pm and 8am, for no more than 20 people to occupy the communal room at any one time, for doors to remain closed during any music activities, and for a sound limiter to be installed within the room with a maximum allowable sound pressure level of 75dB(A). The PoM submitted with the application further supplements restrictions on the operation of the use, including a maximum of two persons within each boarding room or a maximum of one person in the case of the single room (i.e. no guests permitted), and a restriction on the use of the outdoor communal area between 9.00pm (10.00pm in summer) to 10.00am. A condition of consent has been imposed requiring the boarding house to operate in accordance with the PoM at all times. The proposed development is therefore considered to be acceptable with respect to acoustic privacy impacts on the surrounding residential properties.



### Impacts on mental health and wellbeing of surrounding residents

The proposed development is a permissible form of development in the R2 Low Density Residential zone. It cannot be reasonably argued that the development will be responsible for an adverse impacts on the mental health or wellbeing of surrounding residents.

### Boundary fencing

A condition of consent has been imposed requiring a new 1.8m fence to be erected along all side and rear boundaries of the subject site at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners.

### Poor amenity to boarding rooms due to size of living areas

Clause 29(2)(f)(ii) of SEPP ARH requires each boarding room to have a gross floor area (GFA) (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least 12m<sup>2</sup> (for single lodgers) and 16m<sup>2</sup> in any other case. Furthermore, Clause 30(1)(b) of SEPP ARH requires no boarding room to have a GFA (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m<sup>2</sup>. The proposed development has been designed to satisfy these requirements, and therefore the amenity and size of the boarding rooms is considered to be acceptable.

### Lack of storage space

There are no development controls in any applicable legislation that require individual or communal storage space within boarding house developments.

### Total number of lodgers, intensity of use and associated increase in population

SEPP ARH includes a development standard that requires no boarding room to be occupied by more than two adult lodgers. Based on the size of the proposed boarding rooms, the application seeks approval for forty-four (44) double rooms and eight (8) single rooms, which allows a maximum of 96 lodgers. This is outlined in the PoM submitted with the development application, and has also been included as a condition of consent. The proposed development is consistent with the provisions of SEPP ARH, and is also permissible in the R2 Low Density Residential zone, therefore the intensity of the use and the associated increased in population is considered to be acceptable.

### Waste collection, location of waste store room and overflowing bins

The proposed waste store room is located in the basement of the development. The application proposes for waste collection to occur within the basement in the loading dock adjacent to the waste store room. The proposed development is classified as a 'commercial development' for the purposes of waste collection, i.e. waste is to be

collected by a private contractor rather than Council's household bin collection service. It is the responsibility of the operator of the boarding house to ensure waste is collected at a frequency suitable to the rate at which waste is accumulated on site. The proposed development is considered to be acceptable with respect to the applicable controls contained in Part B13 of BDCP 2015.

Safety/security, crime, violence, loitering, drug/alcohol abuse, smoking and anti-social behaviour associated with boarding house lodgers and a transient population

There are no particular design aspects of this development that would suggest, following construction and occupation, the development will result in an increase in safety/security issues, crime or violence in the area. A Crime Prevention Through Environmental Design (CPTED) assessment accompanied the application. The proposal was reviewed by Council's Coordinator Community Planning and Development with respect to safety and crime prevention, and was found to be acceptable.

With respect to the suggestion that the lodgers will loiter, the development accommodates landscaped areas, communal private open space and a communal room for use by the lodgers as required by SEPP ARH. It would be hard to justify that what has been provided is insufficient in this instance, particularly as the controls are discretionary standards.

The PoM satisfactorily addresses concerns relating to drug/alcohol abuse and anti-social behaviour, and further addresses safety/security and crime issues. This includes, but is not limited to, the following requirements:

- All lodgers in the boarding house are to sign an agreement undertaking to comply with the rules.
- The Manager is to enforce all the rules of the boarding house.
- The Manager, subject to any limitation imposed by the Residential Tenancies Act, is to remove any person from the boarding house who fails to comply with any rule after one warning, unless a serious breach occurs in which case no warning is required. If that person fails or refuses to leave the boarding house, the Manager is to contact the Police immediately.
- The Manager is to take all reasonable steps necessary to ensure that occupants of the boarding house do not affect the amenity of neighbours.
- CCTV surveillance of the common areas and grounds are to be maintained in good working order, and viewable and accessible by the Manager in the manager's room.
- The Manager is to contact the Police of any suspected criminal activity, or any domestic violence or disturbance.
- Alcohol is not to be consumed outside of the boarding house except within the designated outdoor communal area. No intoxicated persons shall be permitted within the communal areas.
- No illicit drugs or illegal activity shall be permitted within the boarding house and its immediate environs.
- Smoking is only permitted in the external courtyard and balconies of the premises or designated smoke permitted rooms.

A condition of consent has been imposed requiring the boarding house to operate and be managed in accordance with the PoM at all times.

While boarding houses are often perceived to accommodate a 'transient population', all lodgers are subject to a minimum rental term of 3 months.

#### Proximity to Scout Hall and Banksia Road Primary School

A boarding house is a permissible form of development on the subject site, and the site is therefore permitted to be developed for that purpose as would be the case for any other site in the R2 Low Density Residential zone that meets the lot area and lot width requirements, regardless the developments proximity to other facilities. There are no development controls in any applicable legislation that prevent the approval of boarding house developments in proximity to scout halls or primary schools. There is also no legislative requirement for child protection checks for lodgers of boarding house developments, however the PoM includes a clause that requires the Manager of the boarding house to undertake child protection and police criminal checks of occupants as part of the tenant selection process. As stated above, the CPTED assessment and PoM submitted with the application have been reviewed by Council officers and are considered to be acceptable. The proposed development is not considered to result in an adverse impact on the safety or wellbeing of children or young people in the locality.

#### Access through Scout Hall site and adjoining public open space (Leo Reserve)

The proposed development does not seek approval for any access from the side or rear of the site to the adjacent Scout Hall site at No. 142 Boronia Road or the adjoining public open space (Leo Reserve) at No. 4 Burraneer Crescent. Access to the proposed development is solely via Boronia Road. It is understood that the Scout Hall site is currently informally used as a thoroughfare by local residents, however the proposed development does not affect or seek to formalise this arrangement in any way. This matter is unrelated to the assessment of the subject development application.

#### Boarding house management issues

The PoM is consistent with the provisions of SEPP ARH with respect to the number of lodgers and on-site management requirements. The PoM has been reviewed by Council's Environmental Health Officer (with respect to acoustic amenity impacts) and Council's Coordinator Community Planning and Development (with respect to safety and crime prevention). No concerns were raised by Council's officers in terms of the proposed management of the boarding house. A condition of consent has been imposed requiring the boarding house to be managed in accordance with the PoM at all times.

#### Use of the development for the purpose of tourist and visitor accommodation

The subject application seeks approval for a boarding house, as defined in BLEP 2015. The definition reads as follows:

***boarding house means a building that:***

- (a) is wholly or partly let in lodging, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

*but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

The subject application does not seek approval for the use of the site for any form of tourist and visitor accommodation. A condition of consent has been imposed requiring the development to be constructed and operated in a manner that ensures compliance with the definition contained in BLEP 2015.

#### Low income rental requirements

The proposed boarding house is for the purpose of affordable housing and has been proposed in accordance with Section 6 of SEPP ARH, which outlines the definition of 'affordable housing' and the associated income test, eligibility requirements and the National Rental Affordability Scheme. A condition of consent has been imposed reflecting this leasing requirement.

#### Impact on tree on adjoining property

The impact of the proposed development on the tree on the adjoining property has been discussed above in this report under Part B11 of BDCP 2015. The proposed development is considered to be acceptable subject to a condition of consent requiring the building footprint of Block E to be relocated further to the east to achieve a setback of 3.0 metres to the western (side) boundary and therefore a greater distance from the tree on the adjoining property. Conditions of consent have also been imposed in relation to tree protection measures during the construction process in accordance with the Arborist Report and the requirement for a Tree Management Plan to be implemented.

#### Impact on the value of surrounding properties

The proposed boarding house is a permissible form of development on the subject site, and the site is therefore permitted to be developed for that purpose as would be the case for any other site in the R2 Low Density Residential zone that meets the lot area and lot width requirements. There is no evidence to suggest that the proposed development will adversely impact the value of the surrounding residential properties or those in the broader locality.

### Asbestos from the demolition of existing structures

Council's standard condition of consent has been imposed with respect to the demolition of existing structures. The condition requires (amongst other matters) the developer to notify adjoining residents seven (7) working days prior to demolition, to provide written notice to Council prior to demolition to arrange pre and post-demolition inspections, for demolition to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001, and for materials containing asbestos cement to be removed by a licensed contractor who has current WorkCover Accreditation in asbestos removal.

### Consideration of acid sulfate soils

In accordance with the Acid Sulfate Soils Map referenced in Clause 6.1 of BLEP 2015, the subject site is not affected by acid sulfate soils. As such, no further assessment is required with respect to this matter.

### Insufficient community consultation and neighbour notification range

There is no legislative requirement for an applicant or for Council to undertake community consultation prior to the lodgement of a development application or during the assessment of a development application. Furthermore, it is not a requirement of BDCP 2015 for all residents of the street to be individually consulted or informed of a proposed development. The development application was neighbour notified and advertised in *The Torch* and *The Express* newspapers consistent with the provisions contained in the *'Introduction and List of Amendments'* of BDCP 2015, with the application being on exhibition initially for a period of twenty one (21) days from 30 May 2018 to 20 June 2018, and being re-notified for a period of fourteen (14) days from 29 November 2018 to 12 December 2018, and for a period of thirty-five (35) days from 11 December 2018 to 15 January 2019. The notification period was increased over the Christmas/New Year period in accordance with legislation.

### Access to information during advertising / notification period and time permitted to provide a submission

The architectural plans and supplementary documents were available to view at Council's Customer Service Centre and the notification plan was available to view on Council's ePlanning Portal during each advertising / notification period. The development application was notified and advertised in a manner that is consistent with the provisions contained in the *'Introduction and List of Amendments'* of BDCP 2015. Several members of the public were advised during the assessment of the application that Council would still consider any submissions received outside of the notification period (up until determination of the application).

### Further points of objection outlined in Attachment E

One submission received, in addition to identifying a number of concerns relating to the development, went into considerable detail identifying possible design and operational solutions that the objector felt would bring about a more appropriate built form outcome for the site in addition to ensuring a more functional development and

use of the site. The submission include 70 specific items or comments (a. to rrr. as identified in Attachment E). The concerns raised in the submission and the design and operational suggestions provided by the objector have been grouped as follows:

- **Issues relating to the bulk, scale and height of the development**

Issues relating to the bulk, scale and height of the proposed development have been discussed in detail throughout this report, and the development is considered to be acceptable. The development has been designed to conform to the slope of the site to the rear. The ground floor level of Blocks A and B are naturally higher due to the contours of the land and the basement level below these blocks. Similarly, the ground floor level of Block C is higher than Blocks D and E due to the contours of the land. There is no need for the floor to ceiling height of Blocks D and E to be reduced from 2.7m to 2.4m as the building and wall height of these blocks is compliant. There are no controls in SEPP ARH or BDCP 2015 relating to the rear setback of boarding house developments, however the proposed setback of 2.75 metres to the rear boundary for Blocks D and E is considered to be acceptable as it satisfies Building Code of Australia (BCA) requirements and is greater than the minimum side setback control of 1.5 metres.

- **Issues relating to the proposed on-site car parking arrangements**

Issues relating to on-site car parking have been discussed in detail throughout this report, and the development is considered to be acceptable. The two accessible car parking spaces are acceptable (the number of accessible car parking spaces is not required to correspond with the number of accessible boarding rooms). There is no requirement for a car wash bay to be provided for boarding house developments.

- **Issues relating to potential overlooking / loss of privacy**

Issues relating to visual privacy have been discussed in detail throughout this report, and the development is considered to be acceptable. Blocks A and B are setback an acceptable distance from the rear boundary of the site. The design of the side and rear-facing balconies of Block B are considered to be acceptable with respect to potential privacy impacts. It would not be appropriate for the planter beds within the site to be replaced by 2 metre high security gates as this would significantly reduce the amenity and landscape features of the boarding house development. The planter beds are not likely to result in an adverse impact on visual privacy or security. Privacy impacts towards the east have also been discussed in this report. CCTV cameras are to be installed to the common areas and grounds of the property, and are not proposed to be directed towards adjoining properties. Similarly, a condition of consent has been imposed requiring lighting to be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.

- **Issues relating to side and rear boundary fencing**

Issues relating to boundary fencing have been discussed above, and the development is considered to be acceptable. Council's standard condition of consent has been imposed with respect to replacement boundary fencing, which is to a height of 1.8m above the existing natural ground level and is to be replaced at the cost of the developer. An increase in the height of the boundary fencing by up to 600mm (i.e. up to 2.4m in height) is not necessary as the development has been designed to address impacts on surrounding properties without reliance on higher boundary fencing. Furthermore, 2.4m high boundary fences would result in additional overshadowing impacts on the private open space of neighbouring properties to the south.

- **Issues relating to security**

Issues relating to security have been discussed in detail throughout this report, and the development is considered to be acceptable. The design of the front fence of the development complies with the BDCP 2015, subject to a condition of consent. There is no requirement for 2m high security fencing to the front of a boarding house, nor would this be supported by Council from a streetscape perspective. Similarly, there is no requirement for security fencing to be provided within the grounds of the boarding house development. The proposed boundary fencing provides an acceptable level of security to adjoining properties. The development has been assessed with respect to CPTED requirements and is deemed to be acceptable.

- **Issues relating to adjoining vegetation**

The impact of the rear blocks on vegetation on the subject site and adjoining sites has been discussed in detail throughout this report, and is considered to be acceptable.

- **Issues relating to stormwater management**

Issues relating to stormwater management have been discussed above, and the development is considered to be acceptable. The subject site is not flood affected. The medium-risk stormwater flooding in the locality affects properties in closer proximity to the open stormwater channel to the south and east.

- **Issues relating to the on-site storage and collection of waste**

The on-site storage of waste and collection process has been discussed above, and the development is considered to be acceptable. All waste is to be accommodated in the basement of the development and is to be collected by a private contractor. There is no requirement for waste chutes to be provided in two storey boarding house developments.

- **Issues relating to light spill / glare**

As stated above, a condition of consent has been imposed requiring lighting to be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents. This includes a requirement for external lighting to be linked to a motion sensor to minimise impact during night time periods. This addresses concerns relating to light spill and glare.

- **Issues relating to on-site services**

On-site services relating to fire and emergency evacuation are required to be addressed at the Construction Certificate stage in accordance with BCA requirements.

- **Issues relating to the acoustic impact**

Issues relating to the acoustic impact of the development have been discussed in detail throughout this report, and the development is considered to be acceptable subject to conditions of consent. The location of air conditioning units have not been identified on the architectural plans. Accordingly, the location of air conditioning units will require compliance with the provisions of Subdivision 3 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. If clothes dryers are proposed in addition to the external clothes lines, these will be accommodated within the boarding rooms and are therefore not likely to result in adverse acoustic impacts. The use of the communal areas and smoking on site has been addressed in the PoM and is considered to be acceptable. The Acoustic Report was reviewed by Council's Environmental Health Officer and was found to be acceptable, with no concerns raised with respect to the accuracy of the data contained in the report relating to traffic noise from with Boronia Road.

- **Issues relating to the impact on the character of the area**

Issues relating to the development's compatibility with the character of the area have been discussed in detail throughout this report, and the development is considered to be acceptable.

- **Works the objector requests Council to undertake**

The suggested works have been noted by Council, however it is respectfully advised that these works are not required as a result of the proposed development and are unrelated to the proposed development.

- **Design and operational suggestions**

The design and operational suggestions have been noted by Council, however it is respectfully advised Council is required to assess the development as proposed by the applicant. The design and operation of the development in this instance is considered to be acceptable, subject to conditions of consent. No further amendments are warranted.



It is noted that all submissions received have been considered by Council during the assessment of the development application and the preparation of this report.

### **The public interest [section 4.15(1)(e)]**

The proposed development would not contravene the public interest. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by ensuring that any adverse impacts on the surrounding area and the environment are avoided. As the report has demonstrated, the design of the development appropriately responds to the development standards contained in SEPP ARH and BLEP 2015, in addition to the development controls contained in BDCP 2015. The matters raised in the public submissions have been satisfactorily addressed, and there is not likely to be any unreasonable impacts on the locality.

### **CONCLUSION**

The development application has been assessed against the matters for consideration contained in Section 4.15 of the *Environmental Planning & Assessment Act 1979* requiring, amongst other things, an assessment against the provisions contained in *State Environmental Planning Policy (State and Regional Development) 2011*, *State Environmental Planning Policy No. 55 – Remediation of Land*, *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*, *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy (Affordable Rental Housing) 2009*, *Bankstown Local Environmental Plan 2015* and *Bankstown Development Control Plan 2015*.

The proposed development results in an appropriate built form for the site which is consistent with the existing and likely future character of the locality. The applicable development standards and controls have been satisfactorily addressed and no significant or unresolved matters have been raised in the public submissions. Approval of this development application would facilitate the provision of affordable rental housing on the subject site in an 'accessible area', without an unacceptable or unreasonable impact on the surrounding properties or broader locality.

### **RECOMMENDATION**

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