

## **DA-965/2014/A Section 4.55 Assessment**

<b>DESCRIPTION</b>	<b>Demolition of Existing Structures, Construction of 290 Residential Units, Commercial Floor Space, Associated Basement Car Parking, Extension to Kearns Lane and Associated Landscaping and Civil Works under the Provisions of the Affordable Rental Housing SEPP 2009</b>
<b>PROPOSED MODIFICATION</b>	<b>Increase the floor to ceiling heights of Levels 1 to 6, increase overall building height, change to unit mix, changes to the building layout, and changes to materials schedule</b>
<b>S4.55 TYPE</b>	<b>Section 4.55(2)</b>
<b>PROPERTY</b>	<b>350 Hume Highway, BANKSTOWN NSW 2200</b>
<b>ZONING</b>	<b>B6 Enterprise Corridor</b>
<b>DATE OF LODGEMENT</b>	<b>10 May 2022</b>
<b>APPLICANT</b>	<b>Chanine Design Pty Limited</b>
<b>OWNERS</b>	<b>Hume 88 Pty Ltd</b>

### **BACKGROUND**

In July 2015 the Sydney West Joint Regional Planning Panel approved DA-965/2014 and granted consent for the demolition of existing structures at the subject site and construction of 290 residential apartments across 3 buildings, commercial floor space, basement car parking, and an extension to Kearns Lane. The 3 approved buildings were referred to in the assessment of DA-965/2014 as the 'Hume Highway' building (at the southern end of the site), the 'Central' building (at the centre of the site), and the 'George Street' building (at the northern end of the site).

A construction certificate was issued in July 2016 and works approved under DA-965/2014 were subsequently commenced. The works have progressed to completion of the basement carpark under the approved 'Central' and 'George Street' buildings, however the carpark structure remains open to the sky as the basement roof slab has not yet been constructed. The buildings at the Hume Highway end of the site are yet to be demolished and are presently occupied for the purposes of a building supply business.

When DA-965/2014 was approved, sprinklers were not required in the approved buildings according to the provisions of the Building Code of Australia (BCA), which was in force at the time. However the National Construction Code (NCC) has since been introduced and it includes provisions that require the development to be fully sprinklered.

The subject modification application seeks to amend the development approved under DA-965/2014 to provide additional floor-to-floor height at each residential level to meet the NCC sprinkler requirements. The proposed amendments would result in an increase in the overall building height across the development by up to an additional 942mm. The buildings approved under the original DA exceeded the maximum building height limits prescribed by the *Bankstown Local Environmental Plan 2001* (which has since been repealed but was in force at the time). The extent of this height breach would therefore be increased, albeit only marginally, by the proposed modifications.

Because the development approved under DA-965/2014 breached an LEP development standard, and according to the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consents*, this current section 4.55(2) application is required to be reported to the Panel for determination.

### **SITE & LOCALITY DESCRIPTION**

The site is legally described as Lot 350 in DP 1190796, being No. 350 Hume Highway, Bankstown. It is an 11,722m<sup>2</sup> allotment that enjoys two street frontages, Hume Highway to the south and George Street to the north.

The site contains an existing warehouse/showroom at its southern (Hume Highway) end that is occupied by a building supply business. Vehicle access to this part of the site is from the eastern end of the Hume Highway frontage. Works approved under DA-965/2014 have commenced at the northern (George Street) end of the site, however have progressed only as far as an unroofed basement parking area.

The aerial photo below illustrates the site and its surrounds as they currently exist.



Development surrounding the site comprises a mix of land uses. Low and medium density residential development is located west and north of the site. Commercial development, including a licensed premises (Three Swallows Hotel) and a group of local shops, is located to the east of the site. South of the site, across the Hume Highway, is a school, a fire station, residential apartments, and detached dwellings. There are also a number of heritage-listed buildings in the vicinity of the site, including two former corner shops opposite the site at the Hume Highway and Meredith Street/The Boulevard intersection. The proposed modifications would not undermine the position adopted under the original DA in relation to these heritage-listed buildings (i.e. there would not be any unreasonable impact).

## **PROPOSED DEVELOPMENT**

The subject modification application is submitted under the provisions of section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*. The application seeks to amend DA-965/2014 and involves the following modifications:

- Increase the floor-to-floor heights of Levels 1 to 6 to allow for the provision of a sprinkler system to meet the current NCC requirements.
- Adjustment to the approved apartment mix (8 x less 2-bedroom apartments, 3 x more 1-bedroom apartments, and 5 x more 3-bedroom apartments).
- Adjustment to the approved car parking layout to account for structural changes (6 x additional car parking spaces provided).
- Various minor changes to the plans including revised basement storage arrangements, additional fire exits, amended commercial space and lobby, and adjustments to the materials schedule.

## **SECTION 4.55(2) ASSESSMENT**

The proposed modifications have been assessed pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*.

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

The proposed modifications are minor in the context of the approved development. Although additional building height is sought, it is modest and necessary in order for the development to proceed according to the current NCC provisions. There is no proposed change to the suite of approved land uses at the site, and the general layout and arrangement of the development would remain unchanged. The development, as proposed to be modified, is therefore substantially the same as that originally consented to under DA-965/2014.

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

The application has been advertised for 21 days in accordance with the notification requirements of Council's Community Participation Plan.

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

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

**(d) any submissions made concerning the proposed modification**

No submissions have been made with respect to the proposed modifications.

**SECTION 4.15 ASSESSMENT**

The proposed modifications have 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 (Housing) 2021***

DA-965/2014 was assessed and determined under the 'In-fill affordable housing' provisions of *SEPP (Affordable Rental Housing) 2009*. Although the provisions of this SEPP have since been consolidated into *SEPP (Housing) 2021*, the applicable standards remain the same. These standards cover matters including floor space ratio, landscaped area and deep soil zones, solar access, and car parking. The proposed modifications would not cause the development to breach any of these standards. In fact, the proposed modification would result in a small reduction in the floor space ratio of the development, from the approved 2.21:1 down to a proposed 2.19:1.

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

At the time that the assessment of DA-965/2014 was undertaken, the design guidelines called-in under *SEPP No. 65* were contained in the Residential Flat Design Code (RFDC). The RFDC has since been replaced by the Apartment Design Guide (ADG).

Despite the proposed modifications that would result in some minor internal layout changes to some apartments, the level of compliance with the applicable criteria contained in the ADG (and the now superseded RFDC) would remain unchanged. There is, however, one matter that warrants particular consideration and this matter is discussed in more detail below.

**Ceiling heights**

The development approved under DA-965/2014 provided 2.9m floor-to-floor heights for the residential levels of each building. This comprised a 2.7m floor-to-ceiling height, with a 200mm allowance for the floor, ceiling and slab construction.

According to the provisions of the RFDC, the only nominated criteria relating to ceiling heights was set out in Part 3 – Building Design. The applicable ‘rule of thumb’ suggested that for residential flat buildings, or for residential floors in mixed use buildings, a minimum 2.7m floor-to-ceiling level was required. The RFDC did not seek to guide floor-to-floor heights.

The ADG, however, does seek to provide some guidance on floor-to-floor heights. Section 4C – Ceiling Heights (Figure 4C.5) requires that 3.1m be provided from floor-to-floor for residential levels. According to the applicable design criteria, this includes a minimum 2.7m floor-to-ceiling height which is consistent with the RFDC.

The applicant has identified that the approved 2.9m floor-to-floor heights would not allow for the provision of sprinklers and the required 2.7m floor-to-ceiling heights. The provision of sprinklers within the existing ceiling heights would mean that the minimum 2.7m would be reduced to 2.54m, hence compromising the internal amenity of the approved apartments in each building. This is the reason for the proposed additional building height.

Initially, the proposed modification sought an additional 200mm per residential floor in order to provide sufficient allowance for the sprinklers. However following an assessment of the proposal, which included advice from Council’s fire safety expert as well as some independent advice on the matter, Council expressed a view that the proposed 200mm allowance may be excessive. The applicant was requested to review the proposed modification, to determine the absolute minimum sprinkler allowance that is required in order to achieve NCC compliance.

The applicant subsequently amended the proposed sprinkler allowance to 157mm per residential floor. This allowance was supported by a submission from the applicant’s consultant that examined the actual construction of the sprinkler system, including pipe sizes, downturns, and crossovers. Council’s fire safety expert reviewed this proposal and advised that the proposed allowance of 157mm is reasonable, and represents an acceptable cavity for accommodation of the sprinkler system.

Although the proposed 3.057m floor-to-floor height is still less than the ADG criteria of 3.1m, it has been examined in detail by a number of experts and deemed to be sufficient for the construction of the development approved under DA-965/2014.

### ***State Environmental Planning Policy (Resilience and Hazards) 2021***

The original DA was assessed against the provisions of *SEPP No. 55 – Remediation of Land*, the provisions of which have since been consolidated into *SEPP (Resilience and Hazards) 2021*. The proposed modifications would not alter the previous conclusions drawn with regard to the suitability of the site with regard to any associated contamination and remediation requirements.

## ***State Environmental Planning Policy (Transport and Infrastructure) 2021***

The original DA was assessed against the provisions of *SEPP (Infrastructure) 2007*, the provisions of which have since been consolidated into *SEPP (Transport and Infrastructure) 2021*. The proposed modifications do not seek any changes to the approved access arrangements for the development and hence referral to Transport for NSW is not required.

## ***Bankstown Local Environmental Plan 2015***

The development, as proposed to be modified, remains consistent with the relevant and applicable clauses contained in the *Bankstown Local Environmental Plan 2015*, with one exception. An assessment of the application has identified that the proposed modifications would result in a further breach of the 'height of buildings' development standard set out in clause 4.3.

As noted and discussed earlier in this report, the proposed modification seeks an additional 157mm height for each residential floor of the approved buildings to accommodate a sprinkler system. As a result, the overall height of the approved buildings is proposed to increase as follows:

- 'Hume Highway' building increased by 942mm (i.e. 6 floors x 157mm per floor)
- 'Central' building increased by 942mm (i.e. 6 floors x 157mm per floor)
- 'George Street' building increased by 471mm (i.e. 3 floors x 157mm per floor)

Clause 4.3 of the *Bankstown Local Environmental Plan 2015* states as follows:

**4.3(2)**     *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The development approved under DA-965/2014 by the Sydney West Joint Regional Planning Panel breached the maximum building heights allowed by the Bankstown Local Environmental Plan (a copy of the assessment report is attached). Support for this breach was based, amongst other things, on a design approach that concentrated the bulk of the proposed building mass to the part of the site where it had the least potential to impact the locality by way of bulk and scale and overshadowing. This remains the case for the proposed modification. Despite the additional height, all three buildings are affected and hence there would generally be a uniform increase in the building height across the site (noting that less additional height would be added to the George Street building owing to its lesser number of storeys). The transition of building mass across the site would remain appropriate, and the modest extent of the proposed building height would not be of any direct amenity impact to neighbouring properties, nor to the various approved buildings within the site itself.

It should be noted that the version of the Bankstown Local Environmental Plan under which DA-965/2014 was assessed and determined has since been replaced by the BLEP 2015. While most provisions in the LEP that apply to the subject site remain the same, the Building Height Map called-in under clause 4.3 has in fact changed, and the maximum allowable building heights across the site have been reduced. Although this extends the technical breach in building height, the development has the benefit of the consent that was granted under the former version of the LEP, and it would be unreasonable to apply the current LEP height standards as a measure of what built form is appropriate.

It is also important to note that the former BLEP 2001 and the current BLEP 2015 both include a floor space ratio standard that serves to control the overall intensity of the development. Broader strategic planning matters such as impacts on infrastructure, traffic generation or the like are therefore not determined by compliance with the BLEP height standard, which is in contrast to an instrument without a floor space ratio standard, such as the *Canterbury LEP 2012*, where the height standard is the only controlling factor.

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

The draft Canterbury Bankstown Local Environmental Plan 2020 applies to the subject site. The Draft LEP has been publicly exhibited, was adopted by the Canterbury Bankstown Local Planning Panel on 30 June 2020, and is in the process of being finalised by the Department of Planning. While the draft instrument proposes the introduction of some additional provisions, in the most part, the Draft LEP provides for an administrative conversion of both the Bankstown Local Environmental Plan 2015 and the Canterbury Local Environmental Plan 2012 into a combined document under the Standard Instrument LEP template. The development, as proposed to be modified, is not inconsistent with the provisions contained within the draft consolidated instrument.

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

As above with regard to the provisions set out in *SEPP No. 65*, the level of compliance with the applicable controls contained in the *Bankstown DCP 2015* would remain unchanged. The DCP does include maximum building height provisions, however these are expressed as a number of storeys rather than height in metres. The proposed modification does not seek any change to the number of storeys in each of the approved buildings.

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

There are no planning agreements associated with this development.

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

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021*.

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

The proposed modifications, resulting in less than 1 metre of additional building height, would not alter the previous conclusions drawn under DA-965/2014 with regard to the likely impacts of the development.

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

The key attributes of the approved development are not sought to change, and the conclusions drawn with regard to the suitability of the site for the development approved under the original DA remain valid.

It is noted that the original DA required endorsement by the Department of Infrastructure and Regional Development with regard to its relationship with the prescribed airspace for Bankstown Airport. The Department approved a maximum height of 89.4m AHD for the development. The modified proposal would remain within this height limit, however for completeness it is recommended that Condition 6 of DA-965/2014 be amended to require that the modification plans also be endorsed by the Department.

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

As noted earlier in this report, no submissions have been made with respect to the proposed modifications.

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

The public interest is served through the detailed assessment of this application under the *Environmental Planning and Assessment Act 1979* and the applicable environmental planning instruments, development control plans and policies. According to Council's assessment of the subject section 4.55(2) application, the proposed modifications would not contravene the public interest.

## **CONCLUSION**

The development, as proposed to be modified, would remain substantially the same as that originally considered and approved in July 2015 by the Sydney West Joint Regional Planning Panel. The proposed modifications are acceptable having regard to the provisions of sections 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979* and warrant the Panel's support.

## **RECOMMENDATION**

It is recommended that the application be approved and DA-965/2014 be modified as set out in the attached recommended conditions of consent.