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| **COUNCIL ASSESSMENT REPORT**  SYDNEY SOUTH PLANNING PANEL | |

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| PANEL REFERENCE & DA NUMBER | PPSSSH - 132 |
| PROPOSAL | Concept DA encompassing Stages 1 and 2 of proposed redevelopment of the subject sites, with a detailed DA for Stage 1 of the proposed redevelopment. Concept DA (for Stages 1 & 2) includes: public roads and public domain layout; building envelopes (retail, residential and childcare centre); and parking. Stage 1 Detailed Development Application includes: the redevelopment of the southern part of existing shopping centre; construction of basement car parking, a 130-place childcare centre and 90 residential units in a residential flat building arrangement up to 6 storeys in height; demolition of existing dwelling and construction of a new road at 87 Norfolk Rd; landscaping and associated civil works and services. |
| ADDRESS | Lot 9 DP 10945 – 353 Waterloo Road, Greenacre  Lot 41 DP 1037863 – 355 Waterloo Road, Greenacre  Lot 24 DP 10945 – 87 Norfolk Road, Greenacre |
| APPLICANT | Henroth Pty Ltd and 87 Norfolk Pty Ltd |
| OWNER | Henroth Pty Ltd and 87 Norfolk Pty Ltd |
| DA LODGEMENT DATE | 22 February 2023 |
| APPLICATION TYPE | Concept DA for Stages 1 and 2, Detailed DA for Stage 1 |
| REGIONALLY SIGNIFICANT CRITERIA | Chapter 2: State and Regional Development - Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as the development is general development valued at over $30 million. |
| CIV | $ 110,874,500.00 (excluding GST) |
| CLAUSE 4.6 REQUESTS | Clause 4.3 and 6.14 of the Bankstown Local Environmental Plan 2015 |
| KEY SEPP/LEP | BASIX SEPP, Biodiversity and Conservation SEPP, Resilience and Hazards SEPP, Transport and Infrastructure SEPP, SEPP 65, BLEP 2015 |
| TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS | 23 total  16 unique |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | Landscape Plan, Design Verification Statement, Architectural Plans, Waste Management Plan, Voluntary Planning Agreement, Traffic Report, Survey Plan, Structural Engineers report, Statement of Environmental Effects, Owners consent, Bankstown DCP Compliance Report, CPTED Report, Infrastructure Due Diligence report, Public Art Strategy, Stormwater Report, Landscape Design Statement, Heritage impact statement, Geotechnical report, Cost estimate report, Clause 4.6 variation report, Civil Engineering plans, Biodiversity Assessment Method Letter, BASIX Certificate, Arborists report. |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) | N/A |
| RECOMMENDATION | Refusal |
| SCHEDULED MEETING DATE | 5 June 2023 |
| PLAN VERSION | Select Date Version No |
| PREPARED BY | Michael Bonnici |
| DATE OF REPORT | 29 May 2023 |

**SITE DETAILS**

The subject site comprises three (3) separate allotments, being legally described as:

* Lot 9 in Deposited Plan 10945 (site area of 696.8m2) with a street address of 353 Waterloo Road Greenacre,
* Lot 41 in Deposited Plan 1037863 (site area of 5.626 hectares) with a street address of 355 Waterloo Road Greenacre; and
* Lot 24 in Deposited Plan 10945 (site area of 696.8m2) with a street address of 87 Norfolk Road Greenacre.

Nos 353 and 355 Waterloo Road are zoned B2 Local Centre under the Bankstown Local Environmental Plan 2015 (see Figure 1) and collectively have a 213.62 metre frontage to Waterloo Road (to the west), a rear or eastern boundary of 217.345 metres, a southern boundary (excluding No 87 Norfolk Road) of 193.62 metres and a northern boundary measuring 235.68 metres. The shopping centre known as the Chullora Marketplace occupies the B2 zoned land with the centre containing various retail / commercial land uses with ancillary car parking areas, unloading and loading areas and associated structures.

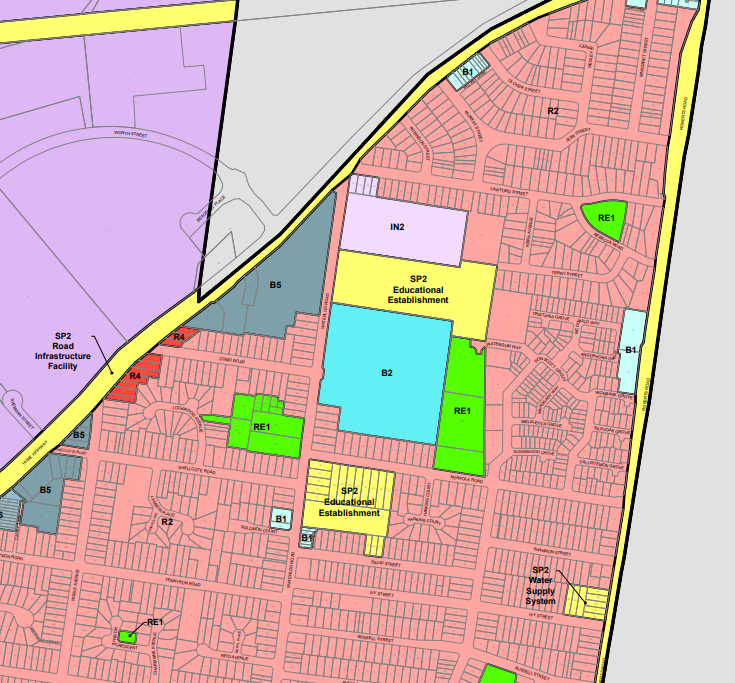


Figure 1 - Zoning Map

No 87 Norfolk Road (to the south of the shopping centre site) is rectangular in shape and has a 15.24 metre frontage to Waterloo Road and a depth of 45.72 metres and is currently occupied by a single storey free standing dwelling. The site is zoned R2 Low Density Residential under the Bankstown Local Environmental Plan 2015.

The ‘site’, collectively, is irregular in shape and has a total area of 5.76536ha (57,653.6m2).



Figure 2 - Aerial Satellite view (Nearmap, 2023)

On-site vegetation is essentially confined to along the sites northern and western boundary with further landscaping interspersed within the at-grade bitumen car parking area that presents to Waterloo Road. The land has a fall of approximately 4.5m from the sites eastern boundary to its western boundary (to Waterloo Road).

Adjoining the site to the south (along the northern side of Norfolk Road) exists predominately single storey free standing dwelling houses, with the exceptions being an old multi-dwelling housing development at No 95-97 and two storey dwellings at No 91 and 93 Norfolk Road. All of the adjoining sites to the south are zoned R2 Low Density Residential under the Bankstown Local Environmental Plan 2015.

Adjoining the site to the west (along the eastern and western sides of Waterloo Road, north of its intersection with Norfolk Road), the character of the built form is essentially repeated with single storey free standing dwellings dominating. Again, all of these sites are zoned R2 Low Density Residential. Diagonally adjacent the sites northwestern corner (on the western side of Waterloo) exists land with a B5 Business Development zone which is occupied by a Suttons dealership with associated vehicle repairs / servicing.

To the east of the site is Norfolk Reserve which is zoned RE1 Public Recreation, whilst to the north of the shopping centre itself is the Malek Fahd Islamic School which is zoned SP2 Educational Establishment.

Of relevance to the assessment of this development application is that ‘Stages 1 and 2’ (as detailed below) are proposed to be carried out and occupy the southern portion of the existing shopping centre site and the residential property address of No 87 Norfolk Road.

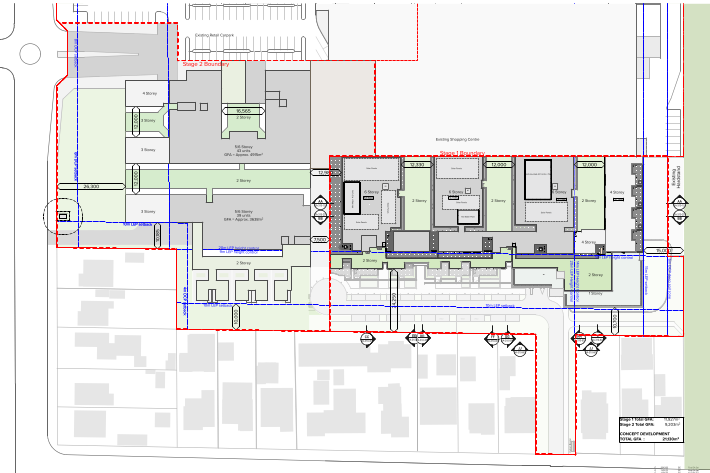


Figure 3 - Stages 1 and 2 Site Plan

**PROPOSED DEVELOPMENT**

Development Application No DA-91/2023 seeks consent for a Concept DA encompassing Stages 1 and 2 of the redevelopment of the Chullora Marketplace site with a detailed DA for Stage 1 of the proposed redevelopment.

Concept DA (for Stages 1 and 2) includes: public roads and public domain layout; building envelopes (retail, residential and childcare centre); and parking.

Stage 1 Detailed Development Application includes: the redevelopment of the southern part of the existing shopping centre (including partial demolition of the southern end of the shopping centre); construction of basement car parking, a 130-place child care centre and ninety (90) residential units in a residential flat building arrangement up to 6 storeys in height, demolition of existing dwelling and construction of a new road at No 87 Norfolk Road, landscaping and associated civil works and services.

A summary of the Stage 1 development proposal is provided below:

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| --- | --- |
| **Level / Floor** | **Description** |
| Basement Level 2 | * 123 car parking spaces comprising 8 visitor spaces, 1 accessible visitor space, 104 residential spaces, 9 adaptable residential spaces and 1 waste collection trailer parking space * Garbage holding rooms * Bulky waste areas * Storage cages * Plant areas |
| Basement Level 1 | * 166 car parking spaces comprising 40 childcare spaces, 2 childcare accessible spaces, 5 accessible spaces and 119 retail spaces * Trolley storage areas * Comms and switch rooms * Exhaust and plant rooms * Storage areas |
| Ground Floor | * Two commercial tenancies * 6 x two storey units * 6 visitor parking spaces * Plant and storage areas * Child care centre * Loading dock area |
| Level 01 | * 6 x two storey units (as above) * Child care centre (as above) |
| Level 02 | * 4 x one bedroom units * 13 x two bedroom units * 3 x three bedroom units * 4 x four bedroom (two storey) units * Communal open space |
| Level 03 | * 5 x one bedroom units * 13 x two bedroom units * 3 x three bedroom units |
| Level 04 | * 5 x one bedroom units * 12 x two bedroom units * 3 x three bedroom units |
| Level 05 | * 3 x one bedroom units * 12 x two bedroom units * 4 x three bedroom units |

Further details are provided below with respect the dwelling mix.

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| --- | --- |
| **Bedroom Type** | **Number** |
| 1 bedroom | 17 |
| 2 bedroom | 50 |
| 3 bedroom | 19 |
| 4 bedroom | 4 |

The application seeks ‘concept’ approval under ‘Stage 2’ which includes a mixed use development comprising;

* Two x six storey buildings comprising of 82 units
* 342 car parking spaces across 3 levels of basement car parking
* Three retail tenancies
* A communal plaza
* A park
* A new access driveway off Waterloo Road

This application is subject to a Voluntary Planning Agreement (VPA).

The applicant has advised that Stages 3 and 4 of the redevelopment of the Chullora Marketplace will follow.

**SITE HISTORY**

Historically, the site was owned by the Liebentritt family and operated as the Cumberland Pottery and Tile Works between 1863 and 1969, notwithstanding that portions of land had been sold and subdivided for residential allotments. In 1955 part of the site was leased to the MGM Corporation for use as a Twin Drive-In Theatre which operated until at least 1970.

Planning Proposal PP-2020-358 was determined on 12 February 2021 and later published on 30 July 2021 which had the effect of modifying or introducing the following site-specific controls in the Bankstown Local Environmental Plan 2015;

* Rezone No 353 Waterloo Road, Greenacre from R2 Low Density Residential to B2 Local Centre, hence enabling its inclusion into the Chullora Marketplace site.
* The inclusion of Clause 6.14 which provided for, amongst other things, height and setback controls for the development of the Chullora Marketplace site and a minimum required floor space ratio for the ‘commercial ‘land uses on the site

In addition, Section 9 of ‘Part A3 – Key Infill Development Sites’ of the Bankstown Development Control Plan 2015 came into effect providing for a number of built form controls, details relating to the provision of landscaping and public domain improvement works, development controls, minimum required environmental standards, etc.

**LAND AND ENVIRONMENT COURT**

On 27 April 2023 the applicant lodged a Class 1 appeal with the Land and Environment Court pursuant to the provisions contained within Section 8.11 of the Environmental Planning and Assessment Act, 1979.

At the time of writing this report, a conciliation conference under S34 of the Land and Environment Court Act 1979 is arranged for 17 October 2023.

**STATUTORY CONSIDERATIONS**

Biodiversity Conservation Act 2016

The subject site is located immediately west of Norfolk Reserve. Native vegetation within this reserve comprises Cumberland Plain and is identified as Cooks River / Castlereagh Ironbark Forest in the Sydney Basin Bioregion which is listed as an endangered ecological community.

Accompanying the development application was the following document;

* ‘Biodiversity Assessment Report’ prepared by Travers Bushfire & Ecology, referenced as ‘REF: 18HEN07’ and dated 12 December 2022.

The applicant’s Biodiversity Development Assessment Report identified the following as being recorded within the reserve;

* Three (3) threatened fauna species; Powerful Owl (*Ninox strenua*), Grey-headed Flying-fox (*Pteropus poliocephalus*) and Large Bent-winged Bat (*Miniopterus orianae oceanensis*)
* Two (2) threatened flora species; *Acacia pubescens* and *Tylophora woollsii*
* No endangered populations
* One (1) endangered ecological community; Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion

The applicant’s Biodiversity Development Assessment Report concluded;

*The state assessment of significance has concluded that the proposed stage 1 development will not have a significant impact on any threatened species, populations or TECs. Therefore, (a) a Species Impact Statement is not required for the proposal and (b) biodiversity offsetting is not required.*

Council’s Environmental Planner has reviewed the applicant’s Biodiversity Assessment Report, providing the following comments;

1. *A Vegetation Management Plan must be prepared in accordance with best practice methodology and include the replanting of all structural layers (canopy, midstorey and groundcover).  Species selected must contain a high diversity, be consistent with the species list for Plant Community Type (PCT) 3448 – Castlereagh Ironbark Forest and be of local provenance. The Vegetation Management Plan must incorporate the entire 6 metre wide deep soil zone proposed along the total length of the eastern boundary of the subject site, adjacent to Norfolk Reserve.  To maintain light along the western edge of Norfolk Reserve the following planting densities must be maintained.*
   * *Trees must be planted approximately 20 metres apart*
   * *Shrubs must be planted approximately 10 metres apart*
   * *Ground covers should be planted densely to reduce weed growth*
2. *The Landscape Plan must be updated to include the 6m vegetated deep soil zone adjacent to Norfolk Reserve. The vegetation densities and species selection must be consistent with the requirements of the Vegetation Management Plan listed above.*
3. *Trees required to be removed to support the development would need to be replaced at a minimum 3:1 ratio in accordance with Council’s Tree Management Manual.*
4. *A sediment and erosion control plan must be prepared in accordance with best practice methodology to protect Norfolk Reserve.*
5. *Any works on the subject site must not impact the tree protection zones of any trees in Norfolk Reserve or outside of the subject site.*

Given the above, the proposal fails to confirm whether the *development is likely to significantly affect threatened species or their habitats* as required under Part 7 of the Biodiversity Conservation Act 2016 and would be subject to a vegetation management plan (amongst other things) in ensuring that the tests prescribed in the Act can be satisfied.

**SECTION 4.15 ASSESSMENT**

When determining this application, the relevant matters listed in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* must be considered. In this regard, the following environmental planning instruments, draft environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

1. State Environmental Planning Policy (Planning Systems) 2021
2. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
3. State Environmental Planning Policy (Resilience and Hazards) 2021
4. State Environmental Planning Policy (Transport and Infrastructure) 2021
5. State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
6. State Environmental Planning Policy (Biodiversity and Conservation) 2021
7. Bankstown Local Environmental Plan 2015
8. Draft Canterbury-Bankstown Local Environmental Plan 2023
9. Bankstown Development Control Plan 2015
10. Bankstown Development Engineering Standards
11. Canterbury-Bankstown Local Infrastructure Contributions Plan 2022

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

* ***State Environmental Planning Policy (Planning Systems) 2021***

Clause 2.19(1) of Part 2.4 of SEPP (Planning Systems) 2021 reads as follows;

*Development specified in Schedule 6 is declared to be regionally significant development for the purposes of the Act.*

Schedule 6 of SEPP (Planning Systems) 2021, in part, reads;

***2   General development over $30 million***

*Development that has a capital investment value of more than $30 million.*

As the CIV of Stage 1 of the development exceeds $30 million, the development is defined as being a ‘regionally significant development’ hence the Sydney South Planning Panel are the determining authority.

Council Briefing with the Sydney South Planning Panel

Council attended a Site Inspection on 21 March 2023, Pre Briefing Meeting with the Sydney South Planning Panel on 27 March 2023 and Briefing Meeting on 3 May 2023 in relation to this development. The Key Issues discussed at the Briefing were recorded as follows;

*The Panel notes the key issues raised in Council’s Briefing Note, which reflect the matters raised in the Panel’s Record of the Kick-Off Briefing, held on 23 March 2023, remain unresolved. These matters relate to permissibility and design of the access laneway, need for concept DA/masterplan for the whole site, parking, access and traffic movements, FSR and height (including justification for “bonus” height and cl.4.6 request), overshadowing. The additional issues raised in Council’s briefing note include residential amenity and compliance with the ADG, potential impact and interrelationship of the proposed childcare centre with other proposed uses and the design quality of the development.*

*The Council has also identified the need for further information such as:*

* *Parking study to determine the number of spaces required for all stages of the development.*
* *Provision of a Heritage and Archaeological Assessment for the heritage item “Site of Liebentritt Pottery”.*

*The Panel also notes that:*

* *A Class 1 appeal to the Land and Environment Court (LEC) against the deemed refusal of the application has been lodged.*
* *Concerns raised in submissions include privacy, solar access, traffic, building height, parking, overdevelopment, acoustic impacts.*
* *Public determination meeting required due to >10 unique submissions being received during public exhibition period.*
* *Concurrence and referrals received from TfNSW and Ausgrid.*

The architectural plans (and the supporting documentation) the subject of this assessment report, remain the same as those plans and documents that were lodged with the development application and subsequently presented to the Panel on 23 March 2023 (at the Kick-Off Briefing) and 3 May 2023 (at the Council Briefing).

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

In accordance with SEPP (BASIX) 2004, a BASIX Certificate accompanied the development application. The Certificate makes a number of energy / resource commitments relating to water, energy and thermal comfort. The submitted BASIX certificate references the incorrect street address to which the development is located. In addition, the certificate references incorrect roof area, car parking spaces (under site details), common area lawn and common area garden. Given the above, the requirements of SEPP (BASIX) 2004 have not been satisfied.

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

Clause 4.6(1) of Chapter 4 of SEPP (Resilience and Hazards) 2021 requires Council to consider whether the land is contaminated prior to granting consent to the carrying out of any development on that land. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make it suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

Accompanying the development application were the following documents;

1. ‘Report on Geotechnical Assessment’ prepared by Douglas Partners, referenced as Project 72807.1, Document No. R.001.Rev0, dated 6 December 2022
2. ‘Report on Preliminary Site Investigation (Contamination)’ prepared by Douglas Partners, referenced as Project 72807.1, Document No. R.002Rev0, dated 2 December 2022

Council’s Environmental Health Officer has reviewed each of these documents. Their response was as follows;

*The samples relied on to prepare the Preliminary Site Investigation, prepared by Douglas Partners Pty Ltd, dated December 2022 are from 2012. A revised Preliminary Site Investigation which complies with Consultants Reporting on Contaminated Land 2020 and National Environmental Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) and all current guidelines is required.*

In the absence of a revised Preliminary Site Investigation being furnished to Council, Council is unable to form the view that the site will be suitable for the proposed use having regard to Clause 4.6(1) of SEPP (Resilience and Hazards) 2021, therefore there is no power to proceed with the application.

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

Division 5 Electricity transmission or distribution - Subdivision 2 Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

The development was referred to Ausgrid having regard to the provisions contained in Clause 2.48 of SEPP (Transport and Infrastructure) 2021.

Council is in receipt of correspondence from Ausgrid confirming that they have no objection to the development proceeding subject to the imposition of a number of conditions of consent, therefore satisfying the requirements of Clause 2.48.

Division 17 Roads and Traffic - Subdivision 2 Development in or adjacent to road corridors and road reservations

Clause 2.122 Traffic-generating development

The development qualifies as ‘traffic generating development’ having regard to Clause 2.122 and Schedule 3 of the SEPP, hence the application was referred to Transport for NSW (TfNSW) for comment / concurrence.

TfNSW have advised;

*TfNSW have reviewed the submitted application and raises no objection as the proposed development is not expected to have a significant impact on the classified road network.*

Given the above, the proposal satisfies the requirements under Clause 2.122 (Traffic-generating development) of the SEPP.

Chapter 3 Educational establishments and child care facilities

Chapter 3 of the SEPP applies to this development as the applicant proposes a 130-place centre based child care facility. As the applicant has indicated, approval is currently only sought for the ‘shell’ of the facility with a future DA being submitted for a fitout of the centre.

The extent to which Council is able to undertake a comprehensive or detailed assessment of the child care centre is limited. In the most part, Council’s assessment is confined to an assessment against Clause 6.8 of the Bankstown Local Environmental Plan 2015 (relating to vehicular access) and an assessment having regard to on-site car parking and its potential impact on traffic flows (based on 130 children).

While the applicant refers to there being 974m2 of unencumbered indoor space, Council is unable to confirm the extent to which this floor area is used for functional and practical indoor use. Areas designated for storage purposes, nappy changing, toilets, kitchen areas, etc have not been provided nor is there any indication provided as to the mix of the ages of the children (i.e. the ability to segregate play areas depending on the age of the children), hence to arrive at any certainty around the merits of the centre accommodating 130 children would be premature.

With respect to the external play areas, it’s noted that not only do the plans provide for an encroachment into the 6 metre wide deep soil zone required along the sites eastern boundary, but it also extends outside the area of the site nominated as comprising ‘Stage 1’ (refer to Architectural Drawing No-030-004 Rev I). As a result, Council is not at a point where it can provide support even for the ‘shell’ of the child care centre component of the development.

*Note – no assessment has been undertaken against the provisions contained within the NSW Child Care Planning Guideline and the Education and Care Services National Regulations in light of the limited details submitted with the development application.*

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

SEPP 65 aims to improve the design quality of residential apartment development and is required to be considered when assessing this application. Residential apartment development is defined under SEPP 65 as development for the purpose of a residential flat building. The development must consist of the erection of a new building, the conversion of an existing building or the substantial redevelopment or refurbishment of an existing building. The building must also be at least 3 or more storeys and contain at least 4 or more dwellings.

SEPP 65 aims to improve the design quality of residential apartment development across NSW and provides an assessment framework, the Apartment Design Guide (ADG), for assessing ‘good design’. Part 3, Division 1, Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a design verification statement from a qualified designer (registered architect) at lodgement of the development application that addresses the design quality principles contained in SEPP 65 and demonstrates how the objectives in Parts 3 and 4 of the ADG have been achieved.

As required by the Regulation, a Design Verification Statement, prepared by registered architect Nicholas Turner, accompanied the development application.

Earlier in the report, under the heading ‘Site Details’, it was evident that the adjoining developments to the south and west not only contain old building stock, but the existing land use zones only reinforce the fact that their intensification in the near future (to any great extent) is highly unlikely. That is, the Building Heights Map restricts the development of these sites to a maximum building height of 9 metres while the Land Use Table provides for somewhat limited ‘intensification’ options.

The purpose of the above paragraph is to shed light on how the development may or may not satisfy the 9 Design Quality Principles. Take for example Principle 1: Context and Neighbourhood Character.

Weight would naturally have been given to the existing context and neighbourhood character of the area when considering the merits or otherwise of the Planning Proposal. Arriving at the maximum building heights of 14 and 20 metres, was an outcome driven by a desire to ensure the built form responds appropriately to the context and character of the area that not only exists today but that which Council sees as being ‘the future’.

As the report will later demonstrate, the application fails to satisfy the 20 metre building height standard – being effectively a breach of the bonus height standard which effectively allows for an increase in the maximum building height on the basis of specific minimum setbacks, deep soil zones, floor space requirements and specific overshadowing benchmarks. More details will be provided regarding this issue in later sections of the report. Notwithstanding that a Clause 4.6 request was provided, concerns are raised in relation to a number of areas specifically as it relates to the context and neighbourhood character of the area;

* The departure to the 20 metre building height standard results in a 6 storey built form, whereas a 20 metre building height standard would envisage a 5 storey building (particularly having regard to the minimum floor to floor heights required for the ‘commercial development’ as explained in more detail later in the report). That is, the building elements provided above the 20 metre height limit, as per the definition of building height in the LEP, are required to be accommodated within this height standard. In effect a 5 storey built form would represent a development that would comply with the building height standard.
* The development provides for a significant utilisation of the available gross floor area that is afforded to the entire site which is a direct consequence of having the proposed additional height. It is questionable whether the remaining GFA would give rise to allowing a built form on the remainder of the site that is in fact compatible with that which is proposed in Stages 1 and 2.

For the above reasons, concern exists as whether the proposed built form responds to the context of the area as existing, as emerging and as envisaged through the Planning Proposal.

As the matter is proceeding to Court, discussion around whether the development satisfactorily addresses the remaining design quality principles will, no doubt, be further dissected but on initial assessment a failure to address the first design principle is concerning.

The proposal has been considered against the various provisions of the Apartment Design Guide in accordance with Clause 28(2)(c) of SEPP 65 with the following non compliances identified, but not limited to:

1. The proposal is inconsistent with *Design Quality Principle 1: Context and neighbourhood character* because it does not appropriately respond and contribute to the context and desired future character of the area, as expressed in the relevant provisions of the BLEP and the BDCP.
2. The proposal is inconsistent with *Design Quality Principle 2: Built form and scale* as it does not achieve a scale and bulk appropriate to the existing or desired future character of the street and surrounding buildings.
3. The proposal is inconsistent with *Design Quality Principle 3:* *Density*, as it results in an inappropriate density having regard to the maximum allowable floor space ratio for the site.
4. The proposal is inconsistent with *Design Quality Principle 5: Landscaping,* as it does not provide sufficient communal open space, consistent with the Objective and Design Criteria of 3D-1 of the ADG.
5. The proposal is inconsistent with *Design Quality Principle 6:* *Amenity,* because the development does not achieve an adequate level of environmental amenity for future and existing residents due to not satisfying the provisions of the ADG.
6. The proposal is inconsistent with *Design Quality Principle 9: Aesthetics*, because the building fails to provide a built form of good proportions and balanced composition of elements and is of a bulk, scale and appearance that is inconsistent with the desired future streetscape character.
7. The proposal fails to provide a ‘wider context plan’ in accordance with Objective 3A of the ADG.
8. The proposal fails to enhance the amenity of the public domain in accordance with Objective 3C-2 of the ADG. The submitted plans show substations above ground and not within basement car parks, the design does not positively address the interface with the adjoining public park / bushland with the childcare centre and loading areas encompassing the deep soil area required. The proposal also incorporates the basement parking being above ground level (on a sloping site) which is inconsistent with the intent of this control.
9. The proposal fails to meet the Objective and Design Criteria of 3D-1 of the ADG because communal open space with a minimum area to equal to 25% of the site area is not provided.
10. The proposal fails to provide communal open space that is designed for a range of activities in accordance with Objective and Design Criteria 3D-2 of the ADG.
11. The proposal fails to meet the Objective and Design Criteria of 3E-1 of the ADG as the required deep soil zones have not been provided.
12. The proposals building entries and pedestrian access are considered a poor design outcome as they don’t provide direct access off the future plaza area, force pedestrians to travel a longer distance if accessed off Waterloo Road and are not clearly identifiable given their ‘tunnel’ function in accordance with Objective and Design Criteria 3G-1 and 3G-2 of the ADG.
13. The proposal fails to provide the vehicle entries at the lowest point in the site (off Waterloo Road) as intended in Part A3 of the BDCP 2015 and as required in Objective 3H-1 of the ADG.
14. In addition, the proposed access point off Norfolk Road does not avoid headlight glare to habitable rooms on the low-density residential properties immediately adjoining in accordance with Objective 3H-1 of the ADG.
15. The proposed long driveway through 87 Norfolk Road is considered to be visually unacceptable, create a poor design outcome for pedestrians and overall poor amenity for neighbouring residential properties in accordance with Objective 3H-1 of the ADG.
16. The proposal fails to provide other modes of transport such as motorbike or bicycle parking and electric vehicle charging stations in accordance with Objective 3J-2 of the ADG.
17. The proposal fails to provide supporting facilities within car parks such as specific apartment storage areas and car wash bays in accordance with Objective 3J-3 of the ADG. In addition, the car park is not safe in that it does not provide safe and designated walking areas for pedestrians that is clearly line marked and identified.
18. The proposal fails to minimise visual impacts of underground car parks in accordance with Objective 3J-4 of the ADG. The proposal incorporates a car park that exceeds a height projecting more than 1m above ground level. The Stage 1 car park is at least 1.5m above natural ground (DA-310-101) with the Stage 2 car park being at least 8m above natural ground (DA-035-002) resulting in an extremely poor design outcome for onlookers from both Waterloo Road and adjoining residential properties.
19. The proposal fails to comply with the requirements of Objective 4A-1 in optimising the number of apartments receiving sunlight to living rooms. Council’s assessment concluded that (when incorporating stage 2) 59% of units receive the minimum of 2 hours direct sunlight between 9am and 3pm at the mid-winter solstice and that 20 units (22.2%) receive no direct sunlight being more than the allowable maximum of 15% (14 units).
20. The proposal fails to provide at least 60% of apartments that are naturally cross ventilated in accordance with Objective and Design Criteria 4B-3 of the ADG.
21. The proposal fails to comply with the requirements of Objective 4D-2 of the ADG. The proposal incorporates four-bedroom units which exceed the maximum habitable room depth of 8m from a window.
22. The proposal fails to provide all master bedrooms with the minimum area of 10m2 and other bedrooms 9m2 in accordance with Objective 4D-3 of the ADG.
23. The proposal fails to provide ground level apartments with the minimum private open space required of 15m2 in accordance with Objective 4E-1 of the ADG.
24. The proposal fails to comply with the requirements of Objective 4F-1 of the ADG. The eastern portion of apartments (units referenced with ‘b’) (being more than 8) are accessed off one circulation core.
25. Given the size of the development, Design Guidance associated with Objective 4F-2 encourages community rooms. Community rooms should be provided.
26. The proposal fails to meet the Objective or Design Criteria of 4G-1 of the ADG regarding adequate and well-designed storage, including at least 50% to be located within the apartments.
27. The proposal fails to provide additional storage allocated to each apartment in accordance with Objective 4G-2 of the ADG.
28. The proposal fails to minimise noise transfer through the siting of buildings and building layout. The eastern apartments immediately adjoin the loading areas which are considered to result in unacceptable amenity impacts given the noise source in accordance with Objective 4H-1 of the ADG.
29. The proposal fails to integrate building services within the overall building façade and fails to provide a building façade that provides visual interest in respecting the character of the area in accordance with Objective 4M-1 of the ADG.
30. The proposal fails to provide a roof design that is integrated into the building and responds positively to the street in accordance with Objective 4N-1 of the ADG. Service elements such as lift overruns are not integrated into the roof design therefore not complementing the building size.
31. Councils Landscape Architects have reviewed the proposal which identifies failures associated with the landscape design failing to provide appropriate plantings and an overall landscape design which is viable and sustainable for residents and adjoining properties in accordance with Objective 4O-1 of the ADG.
32. The proposal fails to detail how the development achieves the benchmark of 20% of the total apartments incorporating the Liveable Housing Guidelines silver level universal design features in accordance with Objective 4Q-1 of the ADG.
33. The proposal fails to provide an acceptable level of amenity in accordance with Objective 4S-2 of the ADG. Residential car parking is accessed via commercial parking areas and safe pedestrian routes are not provided.
34. The proposal fails to address the requirements of Objectives 4V relating to water management and conservation on the site. The proposal fails to provide adequate on-site detention and water sensitive urban design details in achieving both the objectives and design guidance.
35. The proposal fails to provide waste storage facilities that are designed to minimise impacts and provide convenient and accessible locations for various waste services in accordance with Objective 4W of the ADG.

Given the above, the proposal fails to address the requirements of the Apartment Design Guide in accordance with Clause 28(2)(c) of SEPP 65. The apartment design guide aims to deliver better quality design for buildings, improve liveability, deliver sustainability, and improve the relationship of apartments to the public domain. The above non-compliances prove the proposal provides a building of a poor design standard that facilitates poor amenity and a poor overall public domain outcome.

* ***State Environmental Planning Policy (Biodiversity and Conservation) 2021***

The provisions contained within State Environmental Planning Policy (Biodiversity and Conservation) 2021 apply to the development in so far as the proposal seeks the removal of vegetation from the site.

Relevantly Part 2.2 Clause 2.6(1) and Part 2.3 Clause 2.10 of SEPP (Biodiversity and Conservation) 2021 reads as follows;

***2.6   Clearing that requires permit or approval***

*(1)  A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part.*

***2.10   Council may issue permit for clearing of vegetation***

*(1)  A council may issue a permit to a landholder to clear vegetation to which this Part applies in any non-rural area of the State.*

*(2)  A permit cannot be granted to clear native vegetation in any non-rural area of the State that exceeds the biodiversity offsets scheme threshold.*

*(3)  A permit under this Part cannot allow the clearing of vegetation—*

*(a)  that is or forms part of a heritage item or that is within a heritage conservation area, or*

*(b)  that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,*

*unless the council is satisfied that the proposed activity—*

*(c)  is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and*

*(d)  would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area*

*(4)  A permit may be granted under this Part subject to any conditions specified in the permit.*

Accompanying the development application was the following document;

* ‘Arboricultural Impact Appraisal and Method Statement’ prepared by Naturally Trees, referenced as ‘Ref: Henroth Pty Ltd\_AIA and MS – 20/12/2022.

Council’s Landscape Architect reviewed the arboricultural report and the submitted landscape plans. While no objections were raised to the removal of existing on-site vegetation, the proposed re-plantings and the landscape plans were not supported. Council’s Landscape Architect seeks the submission of a revised landscape plan which, amongst other things, ensures compliance is achieved with the deep soil provisions contained in Objective 3E-1 of SEPP 65 (including satisfying minimum deep soil requirements, soil depths and volumes), Objective 3D-1 of SEPP 65 (relating to the communal open space) and the use of suitable tree plantings and landscaping selections notwithstanding that inadequate setbacks have been provided to support the landscaping required. In the absence of these, the proposal is not considered to satisfactorily address the relevant provisions of the Biodiversity and Conservation SEPP.

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

The site is zoned part B2 Local Centre and R2 Low Density Residential under the Bankstown Local Environmental Plan 2015 (the LEP).

Note – The only portion of the site that is zoned R2 Low Density Residential is No. 87 Norfolk Road, with the remainder of the site zoned B2 Local Centre.

Clause 2.3(2) of the LEP states that ‘*the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within that zone’.*

The objectives for the B2 Local Centre zone are as follows:

* *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in work in and visit the local area*
* *To encourage employment opportunities in accessible locations.*
* *To maximise public transport patronage and encourage walking and cycling.*
* *To provide for certain residential uses that are compatible with the mix of uses in local centres.*

Comment: While the development would satisfy the majority of the above objectives, there is no evidence to suggest that the relationship between the land uses and the adjoining public road network, would promote and hence maximise public transport patronage and encourage walking and cycling.

The objectives for the R2 Low Density Residential zone are as follows;

* *To provide for the housing needs of the community within a low density residential environment.*
* *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
* *To allow for certain non-residential development that is compatible with residential uses and does not adversely affect the living environment or amenity of the area.*
* *To allow for the development of low density housing that has regard to local amenity.*
* *To require landscape as a key characteristic in the low density residential environment.*

Comment: No 87 Norfolk Road is being used merely to facilitate vehicular access to the site, to assist in providing the required deep soil areas and to assist in providing the required communal open space to satisfy the DA, not for this site, but for the adjoining shopping centre site (refer to Architectural Drawing No DA-730-010). As such, the development does not satisfy the objectives of the zone.

The following table provides an assessment of the development application against the key controls and clauses in the Bankstown Local Environmental Plan 2015.

|  |  |  |  |
| --- | --- | --- | --- |
| **Part 2 Permitted or prohibited development** | | | |
|  | **Requirement** | **Proposal** | **Complies** |
| 2.1 - Land use zones  2.2 – Zoning of land to which Plan applies  2.3 – Zone objectives and Land Use Table | B2 Local Centre  **Permitted with consent**  Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Function centres; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Service stations; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Any other development not specified in item 2 or 4  R2 Low Density Residential  **Permitted with consent**  Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Tank-based aquaculture; Water recreation structures; Water supply systems | Development proposed on land zoned B2 Local Centre comprises:  **Centre-based child care facility**  **Mixed Use Development**  Each of these uses are ‘Permissible with consent’ in the B2 Local Centre zone  Development proposed on land zoned R2 Low Density Residential comprises:  **Road**  While the Land Use Table identifies ‘roads’ as being permissible with consent, see below for further discussion in respect to the permissibility of the proposed ‘road’ in this instance | No  (See below for further commentary) |
| **Part 4 Principal Development Standards** | | | |
| 4.3 Height of buildings | The maximum building height shown for No 353-355 Waterloo Road on the Height of Buildings map is 11 metres, while the maximum building height for No 87 Norfolk Road is 9 metres | The maximum building height is 22.65 metres. | No - See below for further commentary in respect to the provisions contained in Clause 6.14 of the LEP |
| 4.4 Floor space ratio | The maximum floor space ratio for Nos 353-355 Waterloo Road is 1:1, while the maximum floor space ratio for No 87 Norfolk Road is 0.5:1. | The FSR of the development on Nos 353-355 Waterloo Road is 0.69:1. (see below for how this figure was obtained)  There is no GFA proposed on No 87 Norfolk Road | See below for further commentary in respect to the GFA available for future stages |
| 4.6 Exceptions to development standards | Subject to certain criteria being met, Clause 6.14 of the BLEP allows for a maximum building height of 20 metres on Lot 41 DP 1037863 and a maximum building height of 14 metres on Lot 9 DP 10945.    The applicant proposes a maximum building height of 22.65 metres on Lot 41 DP 1037863, being the portion of the development site afforded a 20 metre maximum building height. | A Clause 4.6 request was submitted in response to the development’s departure to the maximum permitted building height. | See below for commentary in respect to the content of the Cl.4.6. |
| **Part 5 Miscellaneous provisions** | | | |
| 5.6 Architectural roof features | (3) Development consent must not be granted to any such development unless the consent authority is satisfied that –  (a) the architectural roof feature -  (i) comprises a decorative element on the uppermost portion of a building, and  (ii) is not an advertising structure, and  (iii) does not include floor space area and is not reasonably capable of modification to include floor space, and  (iv) will cause minimal overshadowing, and  (b) Any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature | The tests provided under this clause have not been satisfied | No - See below for further commentary. |
| 5.10 Heritage conservation | No 355 Waterloo Road, Greenacre is listed under Part 2 of Schedule 5 of the LEP as an ‘archaeological site’  Item name – Site of “Liebentritt Pottery’  Significance - Local  Item No – A4 | See below for the response provided by Council’s Heritage Advisor | No |
| 5.21 Flood planning | The site is impacted by Medium Risk Flooding | It will be necessary firstly for the applicant to obtain a Stormwater Systems Report from Council. Council’s hydraulic engineer has advised that the stormwater plan shall include the provision for OSD to alleviate flooding downstream. | No |
| 5.23 Public bushland | Development consent must not be granted to development that will disturb, or is reasonably likely to disturb, public bushland unless the consent authority is satisfied that the disturbance of the bushland is essential for a purpose in the public interest, that there is no reasonable alternative to the disturbance, that the development minimises the amount of bushland to be disturbed and the development includes measures to remediate the disturbed bushland | Land immediately to the east of the development site is zoned ‘RE1 Public Recreation’ and contains public bushland.  Within the applicant’s Biodiversity Assessment Report they state that the “… *following avoidance actions have been undertaken to either avoid or minimise impacts on biodiversity values* (of the Norfolk Reserve) … *including a 6m wide deep soil zone, from the eastern boundary adjoining Norfolk Reserve.”*  The 6 metre wide deep soil zone has only, in part, been provided. | No |
| **Part 6 Additional local Provisions** | | | |
| 6.2 Earthworks | Before granting consent to development including earthworks, the following must be considered:   1. drainage patterns and soil stability   (b) the likely future use or redevelopment of the land,  (c) quality of the fill or the soil to be excavated, or both,  (d) effect of development on existing and likely amenity of adjoining properties,  (e) the source of any fill material and the destination of any excavated material,  (f) the likelihood of disturbing relics,  (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,  (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. | A Geotechnical Desktop Assessment was undertaken by Douglas Partners. The geotechnical assessment was undertaken utilising borehole information from previous investigations undertaken by Douglas Partners on the site. These ‘previous investigations’ were conducted in March 2012 and therefore cannot be relied upon. | No |
| 6.4 Biodiversity | The clause applies to land identified as “Biodiversity” on Council’s Terrestrial Biodiversity Map | The site is not identified as “Biodiversity” on the Terrestrial Biodiversity Map | N/A |
| 6.8 Special provisions applying to centre-based child care facilities | Development consent must not be granted for the purpose of a centre-based child care facility on land if the vehicular access to that land is from   1. a classified road, or 2. a cul-de-sac or a road where the carriageway between kerbs is less than 10 metres | The ’proposed road’ off Norfolk Road has a carriageway width (between kerbs) of 5.5 metres. As this road provides vehicular access to the land on which the child care centre is proposed, the development fails to satisfy Clause 6.8(b). | No |
| 6.14 Exception to maximum height of buildings – Chullora Marketplace | While the clause provides for additional height opportunities relating to the Chullora Marketplace site, it’s available upon satisfying particular criteria | Refer below for a detailed assessment against the provisions contained in Clause 6.14. | No |

Permissibility of the proposed ‘road’ in the R2 Low Density Residential zone

The permissibility concerns Lot 24 in DP 10945 known as 87 Norfolk Road Greenacre (***Lot***). It is zoned R2 – Low Density Residential under Bankstown Local Environmental Plan 2015 (***LEP***), but the balance of the proposal over Lot 41 in DP 103783 and Lot 9 in DP 10945 known as 353 to 355 Waterloo Road, Greenacre (the ***Marketplace***) is zoned B2 – Local Centre.

Council is of the view that the road through No 87 Norfolk Road (to access the adjoining commercial land use) is prohibited. Council is seeking formal Counsel advice with respect to this matter. At the time of preparing this report this advice has not been forthcoming.

Clarification re the FSR’s identified

Nos 353-355 Waterloo Road – has a total site area of 56,956.8m2.

Stages 1 and 2 proposes the removal of some commercial floor area within the existing Chullora Marketplace shopping centre to accommodate, amongst other things, a ‘proposed Aldi’ (adjacent the existing TK Maxx) and a ‘mini major’ (adjacent the existing ‘plaza’).

Plans did not accompany the DA of either the existing floor plan of the shopping centre or the resultant floor plan of the shopping centre following the development of Stages 1 and 2. The floor space ratio of 0.69:1, that has been included within the above table, is that which has been provided by the applicant and includes Stages 1 and 2. The absence of the plans of the remainder of the shopping centre do not enable Council to have any certainty as to the accuracy of this figure.

Clause 4.4 – Floor space ratio

No 353-355 Waterloo Road is afforded a maximum permissible floor space ratio of 1:1 as per the floor space ratio map in BLEP 2015. Note - the Planning Proposal did not allow for an increase in the overall permissible GFA, rather it required the development for the purposes of ‘commercial premises’ to be equivalent to an FSR of at least 0:35:1.

As indicated earlier in this report, Stages 3 and 4 of the redevelopment of the Chullora Marketplace site will follow. Should the development subject of this report be approved, it would ‘consume’ 0.69:1 (as indicated by the applicant) of the available 1:1 FSR leaving very little development opportunity to be realised in Stages 3 and 4. Architectural Drawing No DA-920-001 (entitled ‘Masterplan GA Plans Roof Level’) identifies the following;

* Future Stage 3 to comprise of 2 x 3 storey buildings and 3 x 5 storey buildings.
* Future Stage 4 to comprise of 2 x 4 storey buildings, 2 x 5 storey buildings and 1 x 6 storey building

The absence of any specific details being provided relating to Stages 3 and 4, gives rise to concerns as to how the remainder of the site will be developed consistent with the above intensity given the amount of GFA available. Secondly, concern is raised as to whether the development of these future stages will in fact be consistent in character and scale to that proposed with this application (again given the limited GFA that remains available).

Further to the above, the Concept DA provisions of the EP&A Act seek to provide an appropriate level of certainty moving forward that the overall concept for the development site can be accommodated. The failure to provide sufficient detail of Stages 3 and 4 of the proposal result in that certainty not being provided, and undermines the use of the concept DA provisions in the Act.

Clause 5.6 – Architectural roof features

The architectural roof features the applicant is seeking approval for relate to the building elements *‘… included to accommodate the lift overrun and staircase access.’*

Clause 5.6 of the LEP reads as follows:

*(1)  The objectives of this clause are as follows—*

*(a)  to enable minor roof features to exceed the maximum height for a building,*

*(b)  to provide opportunities for architectural roof features that form an integral part of the building’s design.*

*(2)  Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*

*(3)  Development consent must not be granted to any such development unless the consent authority is satisfied that—*

*(a)  the architectural roof feature—*

*(i)  comprises a decorative element on the uppermost portion of a building, and*

Comment – The building elements that exceeds, or causes the buildings to exceed the height limits, do not satisfy the test that they provide for a ‘decorative’ element. ‘Decorative’ is defined in the Oxford Dictionary as ‘*serving to decorate*’ with ‘Decorate’ defined as ‘*provide with adornments*’. Further guidance is also obtained having regard to the Department’s Apartment Design Guide (ADG). The ADG is widely recognised as an assessment framework for promoting ‘good design’ in residential flat building developments. Design Criteria 4N (Roof design) states;

*The Standard Instrument (Local Environmental Plans) Order 2006 allows for architectural roof features that can exceed the maximum building height. This is an important tool for achieving high quality roof design and articulation.*

Objective 4N-1 goes on to encourage roof treatments to be “… *integrated into the building design and positively respond to the street.”* The proposed architectural roof features are not satisfactorily decorative. Rather they appear to serve a single functional purpose being to conceal the built form elements that project beyond the permissible building height. In the absence of the building elements that project above the maximum permissible building height being decorative, the proposal does not provide for any architectural roof feature.

*(ii)  is not an advertising structure, and*

Comment - The roof elements are not advertising structures.

*(iii)  does not include floor space area and is not reasonably capable of modification to include floor space area, and*

Comment – The roof elements do not ‘include floor space area’ nor are these elements deemed ‘reasonably capable of modification to include floor space area’.

*(iv)  will cause minimal overshadowing, and*

Comment - The roof elements will result in additional overshadowing. The extent of the additional overshadowing is deemed ‘minimal’.

*(b)  any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

Comment – The applicant, in their SEE, states that *“architectural roof features will be included to accommodate the lift overrun and staircase access ...”*

The applicant proposes to introduce building elements above the maximum permissible height ‘to accommodate’ the lift overrun and staircase. Subclause (b) above requires these building elements to be firstly ‘*contained in or supported by the roof feature’* and secondly to be ‘*fully integrated into the design of the roof feature*.’

The development doesn’t satisfy the first test. These building elements are not contained in or supported by the roof element, in the absence of there being an architectural roof feature.

The development doesn’t satisfy the second test. These building elements are not fully integrated into the design of the roof feature, again, as indicated above, in the absence of there being an architectural roof feature.

In short, these roof elements are not architectural roof features that engage Clause 5.6 of BLEP.

In the absence of there being an architectural roof feature, the applicant is unable to rely on the provisions contained in Clause 5.6(3)(b) of the BLEP. The building elements that enclose the lift overrun and staircase need to be included as ‘building height’ as per the definition contained in the Dictionary to BLEP 2015 which reads;

*building height**(or**height of building) means—*

*(a)  in relation to the height of a building in metres—the vertical distance from ground level (existing) to* ***the highest point of the building****, or*

*(b)  in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

***(bold emphasis added)***

Clause 5.10 – Heritage Conservation

No. 355 Waterloo Road, Greenacre is listed under Part 2 of Schedule 5 of the Bankstown Local Environmental Plan 2015 as an archaeological site. In response, accompanying the development application, was the following document;

1. ‘Heritage Impact Statement’ prepared by City Plan, referenced as Project #H22-122, dated December 2022

Council’s Heritage Advisor has reviewed this document. Their response was as follows;

*The proposal seeks approval for stages 1 and 2 of the redevelopment of the site at the above mentioned address which is located towards the southern end. It is noted that an HIS has been submitted where it suggests that the former use of the site as a pottery factory is likely towards the north.*

*Whilst this may be the case, given the archaeological significance of the site, an archaeological assessment report is required to be submitted as part of this application and subject to review.*

*The archaeological assessment report shall be prepared by a suitably qualified archaeologist and prepared in accordance with the guidelines set out by the Department of Planning and Environment. The report must assess whether the proposed works have the potential to disturb any archaeological remains and the need for any archaeological investigation prior to commencement of any works on site. The report should also recommend measures and documentation to be undertaken during the process of demolition and excavation works.*

In the absence of an archaeological assessment report, that’s been prepared by a suitably qualified archaeologist, Council is unable to *“… consider the effect of the proposed development on the heritage significance of the item …”* as required by Clause 5.10(4) of the LEP.

Clause 6.14 – Exception to maximum height of buildings – Chullora Marketplace

An assessment against the provisions contained within Clause 6.14 of the LEP is provided below;

1. *This clause applies to Lot 9, DP 10945 and Lot 41, DP 1037863, 353–355 Waterloo Road, Greenacre, known as Chullora Marketplace.*

Comment: The site, being the subject of this development application, includes Lot 9 in Deposited Plan 10945 and Lot 41 in Deposited Plan 1037863 (353-355 Waterloo Road, Greenacre).

In order to the facilitate or accommodate the development, the applicant is reliant on Lot 24 in Deposited Plan 10945 (No 87 Norfolk Road, Greenacre). This property is not referred to in subclause (1).

*(2)  Despite clause 4.3, development consent may be granted to development on land to which this clause applies with a maximum height of—*

*(a)  for development on Lot 41, DP 1037863—20 metres, or*

Comment: The maximum height of the building on Lot 41 in Deposited Plan 1037863 is 22.65 metres thereby failing this control. The applicant has lodged a Clause 4.6 request in response. An assessment of the Clause 4.6 request is provided at the conclusion of the assessment of Clause 6.14.

*(b)  for development on Lot 9, DP 10945—14 metres.*

Comment: The maximum height of the building on Lot 9 in Deposited Plan 10945 is 21.6metres (as a result of a portion of the proposed 5/6 storey RFB in Stage 2 encroaching into the site of Lot 9 DP 10945).

*(3)  However, development consent must not be granted to development on Lot 41, DP 1037863 that results in a building with a height greater than—*

*(a)  14 metres if the building is—*

*(i)  within 46 metres of Waterloo Road, Greenacre, or*

Comment: No part or portion of a building exceeds a height of 14 metres within 46 metres of Waterloo Road.

*(ii)  within 41.5 metres of the eastern boundary adjoining 67 Norfolk Road and 11 Watergum Way, Greenacre, or*

Comment: Architectural Drawing No DA-310-101 identifies a breach to the maximum permitted height of 14 metres in this location/part of the site.

*(b)  9 metres if the building is within 30.5 metres of the southern boundary adjoining 81–105 Norfolk Road, Greenacre.*

Comment: The ‘building’ is over 9 metres in height within 30.5 metres of the southern boundary adjoining 81-105 Norfolk Road, Greenacre and therefore fails this control.

*(4)  Also, development consent must not be granted to development that results in a building with a height greater than the maximum height shown for the land on the*[*Height of Buildings Map*](https://www.planningportal.nsw.gov.au/publications/environmental-planning-instruments/bankstown-local-environmental-plan-2015)*unless the consent authority is satisfied of all of the following—*

1. *Lot 9, DP 10945 and Lot 41, DP 1037863 have been consolidated into a single lot,*

Comment: These lots have not been consolidated into a single allotment with the applicant advising that a plan of consolidation will be registered (by the applicant) prior to consent being granted for this DA. Registration of a plan consolidation at some later date does not satisfy the provisions of this subclause.

1. *without exceeding the floor space ratio otherwise applying to the land, the development includes floor space used for the purposes of commercial premises that is equivalent to a floor space ratio of at least 0.35:1,*

Comment: BLEP 2015 permits a maximum floor space ratio of 1:1. The development proposes a floor space ratio of 0.69:1 (according to the applicant) for Stages 1 and 2. The development includes floor space used for the purposes of ‘commercial premises’ that is equivalent to a floor space ratio of 0.38:1 (again according the applicant, however, in the absence of plans which detail the existing shopping centre floor space, there can be no confidence in the applicants claim).

1. *the development has a building setback of at least 10 metres from the southern boundary adjoining 81–105 Norfolk Road and 351 Waterloo Road, Greenacre,*

Comment: Stage 1 – a minimum 10 metre building setback is proposed to 81-105 Norfolk Road with a minimum 8.59 metre setback proposed to the fence that encloses the proposed external area nominated for the child care centre use. The minimum 10 metre setback is provided to 351 Waterloo Road. Stage 2 – a minimum 9.49 metre setback is proposed to 81-105 Norfolk Road for an element of the building however it is unclear what this setback is demonstrating (refer to Architectural Drawing No DA-030-004).

1. *the development has a building setback of at least 15 metres, including a 6 metre wide deep soil zone, from the eastern boundary adjoining Norfolk Reserve,*

Comment: The development observes a minimum building setback of 15 metres to the sites eastern boundary (being the boundary to Norfolk Reserve).

With respect to the providing a 6 metre wide deep soil zone along this boundary, the applicant states … *“There is an existing hardstand between the existing shopping centre and the eastern boundary. This hardstand will be retained, and will not allow for the creation of a 6m wide deep soil zone. However the southernmost part of the eastern setback will enjoy a 6m deep soil zone. We interpret this requirement to apply only to ‘the development’ (i.e. what is being proposed to be constructed, not existing development on the site), and therefore the provision is satisfied”*

Comment:

(i) Section 5.4 of the applicant’s own Biodiversity Development Assessment Report states, in part;

*“The following avoidance actions have been undertaken to either avoid or minimise impacts on biodiversity values:*

*…*

*the development has a building setback of at least 15 metres, including a 6 m wide deep soil zone, from the eastern boundary adjoining Norfolk Reserve,”* (no emphasis added)

(ii) Section 5.5.1 of the applicant’s own Biodiversity Development Assessment Report states, in part;

“*Currently, there is a fence which extends along the western boundary of Norfolk Reserve adjoining Chullora Marketplace … The consequence of this prescribed impact is minor, particularly given the alternative, i.e., of no fence line, and impacts may be ameliorated through appropriate ongoing management measures. These are recommended in Section 5.4 but fundamentally include a buffer of vegetation between the development and the eastern boundary of Norfolk Reserve in line with Blacktown LEP (2015) –* ***the development has a building setback of at least 15 metres, including a 6 m wide deep soil zone, from the boundary****.* (no emphasis added).

(iii) Architectural Drawing No-030-004 Rev I identifies, amongst other things, the siting of a proposed ALDI supermarket in addition to the extent of ‘Stage 1’. The ‘existing hardstand’, whilst outside the Stage 1 boundary, has been relied upon by the applicant to facilitate the manoeuvring of vehicles. As such this area is deemed to apply to ‘the development’ and the 6m wide deep soil zone should be provided.

(iv) The external play area (provided for the use of children at the child care centre) encroaches within the minimum 6 metre setback. The 6 metre wide deep soil zone should be free of any obstructions (i.e. fences enclosing the external play area should not be provided within this area).

1. *the development will not result in Norfolk Reserve receiving less than 4 hours of direct sunlight between 9am and 3pm on 21 June,*
2. *the development avoids overshadowing of, and other adverse environmental impacts on, the endangered ecological communities and habitats of threatened species in Norfolk Reserve,*

In respect to (e) and (f) above, the overshadowing diagrams accompanying the development application confirm that additional overshadowing of Norfolk Reserve will occur after 3pm on 21 June thereby maintaining existing solar access between 9am and 3pm. No objections were raised by Council’s Environmental Planner with regard to the additional overshadowing.

1. *a development control plan that provides for the matters specified in subclause (6) has been prepared for the land.*

Section 9 of ‘Part A3 – Key Infill Development Sites’ of the Bankstown Development Control Plan 2015 provides for the development controls for the Chullora Marketplace site. See below for that assessment.

*(5)  The consent authority may seek and consider advice from a suitably qualified ecologist in determining whether the consent authority is satisfied of the matters set out in subclause (4)(e) and (f).*

Council’s Environmental Planner assessed the merits of the development having regard to subclauses 4(e) and (f) of Clause 6.14.

*(6)  The development control plan is to provide for the following—*

*(a)  building envelopes and built form controls, including storeys and setbacks at both ground floor and upper storeys, and bulk, massing and modulation of buildings,*

*(b)  appropriate access to, capacity of, and vehicle and pedestrian safety on, the surrounding road network, particularly Waterloo Road,*

*(c)  improved pedestrian and cyclist connectivity,*

*(d)  sustainable transport, including strategies to encourage increased use of public transport, walking and cycling, and by providing for appropriate car parking,*

*(e)  the transition to surrounding land, including low density development, through built form, deep soil planting and additional landscaping,*

*(f)  mitigation of environmental impacts, including overshadowing and impacts on solar access and visual and acoustic privacy,*

*(g)  improvements to landscaped areas and the introduction of new public open spaces, including a central plaza,*

*(h)  an indicative structure plan and key design principles in support of the plan,*

*(i)  application of the Crime Prevention Through Environmental Design principles.*

Section 9 of ‘Part A3 – Key Infill Development Sites’ of the Bankstown Development Control Plan 2015 provides for a number of built form controls, details relating to the provision of landscaping and public domain improvement works, development controls, minimum required environmental standards, etc.

An assessment against the provisions contained within this part of the DCP is provided later in this report. In short, the development failed to have satisfied a number of the controls.

*(7)  In this clause—*

***Crime Prevention Through Environmental Design principles****means principles of the planning, design and structure of cities and neighbourhoods to reduce opportunities for crime, including through natural surveillance, access control, territorial reinforcement and space management.*

***Norfolk Reserve****means the following land in Greenacre—*

*(a)  Lot 3, DP 546653, 67 Norfolk Road,*

*(b)  Lot 21, DP 836445, 67A Norfolk Road,*

*(c)  Lot 200, DP 843319, 11 Watergum Way.*

Noted.

Clause 4.6 Assessment

Clause 6.14(2)(a) of the BLEP allows for a maximum building height of 20 metres on Lot 41 in Deposited Plan 1037863. The applicant argues that a maximum building height of 22.65 metres occurs in the central part of the roof level where the proposed services and plant structure will be located. The applicant indicated that the extent of the breach as being a maximum of 2.65m (13.25%).

For clarification, the applicant is arguing that the building elements on the roof that accommodate the lift overrun and the fire stair access are ‘architectural roof features’ hence were not included within the scope of the Clause 4.6.

However, as indicated earlier, the building elements that accommodate the lift overrun and the fire stair access do not satisfy the test under Clause 5.6 of the BLEP 2015. The building elements comprising of the lift overruns and fire stair access breach the permissible maximum building height hence should be included within the Clause 4.6 request. Furthermore, the additional breaches identified in respect to the provisions contained in Clause 6.14 have not been included or referenced. As such, the submitted Clause 4.6 does not account for the full extent of the elements or departures to the maximum permitted building height. The submitted Clause 4.6 is not satisfactory and the failure to comply with the height breach under Clause 4.3 cannot be supported.

Further to the above, the applicant has submitted a clause 4.6 variation to a allow a breach of the height control in clause 6.14 of the *Bankstown LEP 2015*.  However, clause 6.14 is a local provision similar to a provision discussed at length by Robson J in *Elimatta Pty Ltd v Read and Anor* [2021] NSWLEC 75.  The local provision in that matter dealt with lot sizes, but the relevance here is to the wording of the control.  As in *Elimatta*, the clause uses the language of prohibition (cl 6.14(3) *However, development consent must not be granted…*) and then sets out a number of matters which lead to the prohibition applying.

Robson J found that this language led to the conclusion that the matter was not a development standard susceptible to clause 4.6, but a prohibition outright.

***Section 4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority***

* **Draft Canterbury Bankstown Local Environmental Plan 2023**

The draft Canterbury Bankstown Local Environmental Plan 2023 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 changes proposed to be introduced within the exhibited consolidated instrument, that have specific relevance to the subject DA, include the following.

With regard to the R2 Low Density Residential Objectives, in addition to the mandated zone objectives, consolidate and harmonise the zone objectives of BLEP and CLEP to read:

• *To allow for certain non–residential uses that are compatible with residential uses and do not adversely affect the living environment or amenity of the area.*

*• To allow for the development of land uses that achieve a high standard of urban design and have regard to local amenity.*

*• To require landscape as a key characteristic in the low density residential environment.*

*• To minimise and manage traffic and parking impacts.*

Comment: As indicated earlier in the report (having regard to the existing objectives of the R2 zone), No 87 Norfolk Road is being used merely to facilitate vehicular access to the site, to assist in providing the required deep soil areas and to assist in providing the required communal open space to satisfy the DA, not for this site, but for the adjoining shopping centre site. As such, the development does not satisfy the objectives of the zone.

With regard to the B2 Local Centre Objectives, in addition to the mandated zone objectives, consolidate and harmonise the zone objectives of BLEP and CLEP to read:

*• To provide for certain residential uses that are compatible with the mix of uses in local centres.*

*• To allow for the development of land uses that achieve a high standard of urban and landscape design and have regard to local amenity.*

Comment: The development will not achieve a high standard of urban design, a high standard of landscape design and does have sufficient regard to the amenity of the adjoining residential land uses to the south.

Additional clauses are proposed (referred to as Clause 6.4 and 6.14). They read;

***6.4 Stormwater Management and Water Sensitive Urban Design***

*(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.*

*(2) This clause applies to all land in residential, business and industrial zones.*

*(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development –*

*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

*(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and’*

*(c)* *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonable avoided, minimises and mitigates the impact, and*

*(d) if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.*

*(4) For the purposes of this clause, the water sensitive urban design principles are:*

*(a) Protection and enhancement of water quality, by improving the quality of stormwater runoff from urban catchments.*

*(b) Minimisation of harmful impacts of urban development on water balance and on surface and groundwater flow regimes,*

*(c) Integration of stormwater management systems into the landscape in a manner that provides multiple benefits, including water quality protection, stormwater retention and detention, public open space, and recreational and visual amenity,*

*(d) Retention, where practical, of on-site stormwater for use as an alternative supply to mains water, groundwater or river water.*

Comment: In the absence of sufficient or satisfactory stormwater hydraulic plans, it would be premature to state that the development would satisfy this clause.

***6.14 Design Quality***

*(1) The objective of this clause is to ensure that development achieves good urban design and supports quality places for people.*

*(2) This clause applies to the following development: residential flat buildings, multi dwelling housing, boarding houses, seniors living, mixed use development, shop top housing, commercial premises, industrial buildings, warehouse or distribution centres, centre–based child care*

*facilities, schools, places of worship, registered clubs, community facilities, in relation to:*

* *the erection of a new building, or*
* *in the Council’s opinion, significant alterations or additions that are visible from the public domain.*

*(3) Before granting consent for development, the consent authority must have regard to the following matters, to the extent it considers them relevant to the proposed development:*

*(a) whether the development positively contributes to the urban context and site conditions in terms of natural features, built form, streetscape, street wall height, building separation, setbacks, amenity, building bulk and modulation,*

*(b) whether the development positively contributes to the quality and amenity of the public domain in terms of landscaping, passive surveillance, visual interest and the interface of public and private domain,*

*(c) whether the development uses external materials that are good quality, durable and low-maintenance,*

*(d) whether the development achieves a high standard of architectural detailing and colours that are appropriate to the building type and location,*

*(e) whether the development achieves the principles of ecologically sustainable development,*

*(f) whether the development achieves internal layouts that are functional, efficient and fit for purpose,*

*(g) whether the development integrates a high quality landscape design with the built form,*

*(h) how the development satisfactorily addresses the following matters:*

* *impacts on heritage items, heritage conservation areas or historically significant buildings on the site or in the vicinity of the site,*
* *environmental impacts such as solar access, visual and acoustic privacy, wind, reflectivity, urban heat and water sensitive urban design,*
* *pedestrian, cycle, vehicular and service access and circulation requirements,*
* *the integration of waste management infrastructure in the site layout and building design.*

Comment: A development of this size, intensity, character and mix of land uses would typically be referred to a Council’s Urban Design Review Panel for comment / consideration. In the absence of Council’s draft consolidated plan being published, an Urban Design Review Panel has not yet been established. An external Urban Designer has been engaged by Council so as to assist the Court. Notwithstanding this, the assessment report identified the proposed development’s departure to a number of the Design Criteria as contained in the Apartment Design Guide. Full compliance with the Design Criteria would naturally go some way to providing a development that achieves improved urban design.

***Section 4.15(1)(a)(iii) Any development control plan***

1. **Bankstown Development Control Plan 2015**

The following ‘Parts’ of the Bankstown Development Control Plan 2015 are relevant;

Part A3 – Key Infill Development Sites

Refer to the detailed assessment table provided below.

Part B1 – Residential Development

Section 9, Part B1 of the BDCP 2015 applies to residential flat buildings, serviced apartments and shop top housing developments which prescribes a number of controls that apply to this proposal. Specifically, the proposal fails to consider the design quality principles and apartment design guide associated with SEPP 65, fails to locate substations underground or as integrated into the building design and fails to ensure the ground floor retail has minimal impact on the amenity of adjoining dwellings and neighbouring properties.

Part B2 – Commercial Centres

Part B2 of the BDCP 2015 provides controls for development within Zone B2 Local Centre with objectives to ensure development is compatible with the desired character and role of the particular centre, achieves good urban design and to provide adequate amenity (amongst other things). The proposal fails to satisfy the objectives listed above, given the non-compliances identified in this report under the Apartment Design Guide, BLEP 2015 and Part A3 of the BDCP 2015.

In addition to the above, the proposal fails to locate substations either underground orintegrated into the building design and fails to take into consideration the requirements of Clause 5.38 in considering adjoining land zoned R2 Low Density Residential.

Part B5 – Parking

A report entitled ‘*Traffic Report for Stage 1 redevelopment and concept development application for Stage 2, Chullora Marketplace’* prepared by Colston Budd Rogers accompanied the development application. A number of inconsistencies exist in the submitted documentation that prevents Council from providing a comprehensive response to whether the development satisfies the provisions contained in Part B5 – Parking of the BDCP 2015. For instance;

* Clause 2.25 of the applicant’s Traffic Report states that 60 child care centre / visitor spaces are proposed, Drawing No DA-030-003 refers to their being 40 childcare drop-off spaces while the SEE states that spaces for the centre will be used in association with the retail spaces.
* Drawing A6 within Appendix A of the Traffic report illustrates a swept path around the south eastern corner of the site. The report itself does not make reference to the relevance of this diagram.
* The above swept path is proposed over deep soil areas nominated on Architectural Drawing No DA-730-010 and as relied by the applicant to satisfy the ADG provisions.

An external Traffic Engineer has been engaged by Council so as to assist the Court. Further departures / issues have been raised by our traffic engineer with their concerns included with Council’s SOFAC.

Part B6 – Child care centres

Refer to the comments provided under the assessment of ‘SEPP (Transport and Infrastructure) 2021’. An assessment of the DA against the controls contained within ‘Part B6 – Child care centres’ of the BDCP 2015 would be premature given the absence of sufficient details being provided / available to undertake this assessment.

Part B11 – Tree Preservation Order

Refer to the comments provided under the assessment of ‘SEPP (Biodiversity and Conservation) 2021’. No objections were raised by Council’s Environmental Planner to the removal of the existing vegetation from the site. Concerns were raised however in relation to, amongst other things, the proposed replanting’s.

Part B12 – Flood Risk Management

Refer to the comments provided under the assessment of Bankstown Local Environmental Plan 2015. The site is impacted by Medium Risk Flooding. It will be necessary for the applicant to obtain a Stormwater Systems Report. Council’s hydraulic engineers have advised that the stormwater plans shall include the provision for on-site detention to alleviate flooding downstream.

Part B13 – Waste Management and Minimisation

Part B13 of Bankstown Development Control Plan 2015 supplements the LEP by providing additional objectives and development controls to ensure the design and operation of waste management systems are consistent with Council’s commitment to building and creating a sustainable city. Part B13 also provides objectives and development controls to ensure development is provided with adequate waste storage areas that have minimal impacts on the environment, and minimal impacts on the amenity of occupants within the development and adjoining properties.

The following non-compliances were noted from Councils Waste Officer:

1. The development proposes an incorrect chute placement in both bin storage areas.
   1. Objective (e) within Part B13 is read as follows:

*To ensure development facilitates all waste streams being handled, stored and collected in a manner to reduce risk to health and safety of all users including maintenance (such as caretakers), collection staff and contractors (and required vehicles and equipment).*

* 1. The chute deposit point in the basement bin storage area is located incorrectly and will not work as intended. It must have space on either side for bins to slide across on the linear track automatically when full. The track will not function properly without this correction.

1. Insufficient information has been submitted in regard to the location of the Council Waste Loading Bay in accordance with Clause 2.17, Part B13.
   1. Clause 2.17 of Part B13 reads as follows:

*Development must designate an on–site collection point that is integrated into the design of the development. The collection point can be directly from the bin storage area or a nominated holding area within the site.*

* 1. The plans do not specify a loading bay on the ground floor next to the temporary collection point for Councils Waste collection service.

1. The proposal fails to specify the location of temporary bin collection points on the plans in accordance with Clause 2.12, Part B13.
   1. Clause 2.12, Part B13 reads as follows:

Where a bin storage area cannot be located within 10 metres of a lay back to the nominated collection point, a separate temporary bin holding area is to be provided for the development and designed to comply with the requirements detailed in the Waste Management Guide for New Developments.

* 1. In addition to the above, 3.6.3 of the *Waste Management Guide for New Developments* specifies *The temporary holding area will be required to be of sufficient size to allow the temporary storage of all allocated bins for the development. The holding area will only store bins so they can be serviced and must be returned to the permanent bin storage area once the service is complete. Developments proposing a temporary holding area will require a caretaker to transfer all allocated bins from the bin storage area to the temporary holding area for servicing. Collection staff will collect and return bins to the temporary holding area. The health and safety of all users including caretakers and collection staff is an important consideration when selecting an appropriate location for the temporary holding area.* *General:*
* *Within 10m of a layback to the nominated collection point;*
* *Doorway a minimum 2m;*
* *Only temporarily store bins so they can be serviced;*
* *Be located fully within the development site;*
* *Be located within the front setback of the development but suitably screened so it is not visible from the public domain;*
* *Be of sufficient size to accommodate all bins with additional room for manoeuvring (approximately 15cm between bins); and*
* *Be clearly separated from car parking bays, footpaths and landscaped areas.*
  1. The plans fail to show a temporary collection room that meets the requirements of the BDCP and Waste Management Guide for New Developments.

1. Insufficient information has been provided in relation to ongoing waste management across the site in accordance with Objective (e).
   1. Specifications relating to the bin tug and parking bay locations have not been provided nor addressed in how it will be used in the submitted waste management plan.
   2. Insufficient details have been provided regarding how the bin lift will be maintained and serviced.
   3. Insufficient details have been provided on how the bin lifter (from the recycling 240L’s bins into 1100L’s bins) will be stored, maintained and serviced.
2. Insufficient information has been provided in relation to the bin storage area for the centre based child care centre in accordance with Clauses 5.1 and 5.3.
   1. The proposal fails to provide an enclosed bin storage room with entrance doors for staff, and a 2 metre wide roller door opening onto the loading dock for private waste collection services.

Bankstown Development Engineering Standards

A number of non-compliances were noted by Councils Development Engineer in assessing the proposal against the Bankstown Development Engineering Standards which include:

1. The width of the proposed Norfolk Lane road carriageway is undersized and does not allow for heavy rigid vehicle (HRV) access and the turning circle is undersized. This is a particular issue for waste collection and loading and unloading in the residential areas.
2. Similarly, access to the Stage 2 residential component requires access for HRVs for waste collection.
3. Based on the swept paths provided, the internal bends in the proposed Norfolk Lane are not wide enough to allow for 12m truck movement without mounting over kerbs and footpaths.
4. The proposal fails to provide details / sizes of parking spaces. Insufficient information is available to ensure that all retail spaces and childcare spaces are 2.7m wide and residential spaces are 2.4m wide in accordance with As2890.1:2004, as well as compliant aisle widths.
5. The subject site is partially flood affected and fails to provide a stormwater information report from Council.
6. The proposal fails to provide details of the amended access to the loading areas including swept path assessment from entry up to the loading areas.
7. Regardless of the predevelopment impervious area. The proposed works shall include provision for OSD to elevate flooding downstream. The predevelopment scenario shall consider 50% imperviousness of the site. The currently proposed OSD is severely undersized and fails to meet the requirements of the Development Engineering Standards.
8. The stormwater plans fail to demonstrate a connection point to Council drainage system.

Compliance Table re Part A3 – Key Infill Development Sites

The following table provides an assessment of the development against the provisions contained in Section 9 of Part A3 – Key Infill Development Sites.

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Requirement** | **Proposal** | **Complies** |
| **Part A3 – Key Infill Development Sites** | | | |
| **1.3 Staged Development** | To ensure a viable ongoing operation of the existing shopping centre, the future development of the site may be undertaken progressively and incrementally, consistent with an indicative concept plan (applying to the whole site) which is required to be lodged with Council at the lodgement of the first DA. Each stage of the development proposed to be delivered will involve a detailed plan specific to that stage and should demonstrate consistency with the indicative concept plan (applying to the whole site).  The indicative concept plan (applying to the whole site) is required at each stage of the DA to ensure each stage is consistent with the overarching indicative key design principles and desired character for the site. Council may consider amendments to the indicative concept plan (applying to the entire site) at each stage which are consistent with the desired character and key design principles for the centre. | Architectural Drawing No DA-920-001 accompanied the DA providing for a plan showing the extent of the development proposed in Stages 3 and 4.  Insufficient information has been provided confirming that these future stages demonstrate consistency with the overarching indicative key design principles and the desired future character for the site. | No |
| **1.3 Staged Development** | (a) Minimise overshadowing of Norfolk  Reserve (67-67A Norfolk Road and 11  Watergum Way in Greenacre), and  (b) Avoid overshadowing the Ecologically Endangered Communities (EEC) and habitat of threatened species in Norfolk Reserve, and  (c) Avoid any other potential adverse  environmental impact on the EEC and  habitat of threatened species in Norfolk Reserve. | The overshadowing diagrams accompanying the DA confirm that additional overshadowing of the adjoining Norfolk Reserve will occur after 3pm on 21 June thereby maintaining existing solar access between 9am and 3pm. No objections were raised by Council’s Environmental Planner with regard to the additional shadows that will be cast onto the Reserve | Yes |
| **2. Key Design Principles & Indicative Structure Plan** | (a) Deliver a Central Civic Plaza as a  community hub including high quality  public open spaces: Create a new  Central Civic Plaza as a focal point for  Chullora Local Centre. The Central  Civic Plaza must have active uses to at  least two of its sides and linked to its  surrounding with a network of  pedestrian friendly internal streets. | A Central Civic Plaza is proposed as part of the Concept Plan for Stages 1 and 2. | Further details are required as to its adequacy / suitability |
|  | (b) Create a vibrant local centre which  protects and enhances existing  commercial floor space: Ensure the  future development protects and  enhances the commercial floor space  and local employment opportunities  within the local centre. Retail and  commercial use will continue to remain as the key land use of the local centre, having regard to the objectives of Zone B2 Local Centre. | The applicant has advised that the Chullora Marketplace shopping centre will remain in operation during the development of Stages 1 and 2.  The applicant has advised that the development satisfies the minimum required 0.35:1 FSR for commercial uses – however further clarification is sought in this regard. | Further details are required |
|  | (c) Improve permeability and access:  Introduce a legible and permeable  pattern of new streets which are publicly accessible 24 hours a day and  responds to key connections within  and adjacent neighbourhood. All  internal streets must consist of shared  paths to prioritise access to  pedestrians and cyclists. | Stage 1 - The applicant is of the view that the proposed road on No 87 Norfolk Road satisfies this control. The introduction of this road will bring with it security concerns for the adjoining residents and an adverse impact on their general residential amenity.  Stage 2 - another crossing is proposed off Waterloo Road and proposes to run adjacent the boundary of No 351 Waterloo Road. This will have an adverse impact on the amenity of these residents. | No |
|  | (d) Create a new, activated ‘High  Street’: Ensure new development has  permeable and active street frontages along the new High Street. The use of blank walls should be minimised and major retail parking and service areas of buildings should not be provided from the High Street or adjacent to active retail frontages | The applicant has advised that ‘High Street’ will be designed and developed in Stage 3. | N/A |
|  | (e) Primary retail and service access  from Waterloo Road: Ensure the retail, service vehicles and residential vehicle accesses the site from Waterloo Road. The proposed access is to be highly legible, minimise traffic congestion and vehicle/pedestrian conflict. Major retail parking and servicing should not be provided from the High Street or adjacent to active retail frontages. | The new road through No. 87 Norfolk Road will facilitate access to the site. Motorists utilising this road are able to access proposed retail and residential land uses. | No |
|  | (f) New development along Waterloo  Road to respect the residential amenity of surrounding low density residential properties: Ensure that any new development along Waterloo Road must not adversely impact on the amenity of the existing low density residential properties along Waterloo Road. The use of blank walls is to be minimised along Waterloo Road and new development facing the road is to facilitate passive surveillance | Such details have not been flushed out in the Concept DA. The Stage 2 Concept plans do however comply with the minimum setback requirements to Waterloo Road. | Further details are required before sign-off to this clause is possible |
|  | (g) Minimise overlooking and  overshadowing impacts: Provide  sufficient setbacks and landscape  buffers where appropriate to address  issues such as visual privacy, amenity and solar access to the surrounding  properties and protect the Norfolk  Reserve. | Stage 1 - Shadows cast by the development, over the adjoining Norfolk Reserve to the east, are within acceptable levels.  Stage 2 – Significant overshadowing of No 351 Waterloo Road will occur in Stage 2. Compliance with Clause 6.14(2)(b) of the LEP will provide for a reduced overshadowing impact | No |
| **3.1 Central civic plaza and publicly accessible open spaces** | **C1** As a minimum, a total of 5,000m2  of the site area shall be provided as a  sum of the Central Civic Plaza and  other additional public open space  throughout the site. Public open space refers to land such as civic spaces, green spaces and shared ways, that has no buildings or other built structures, and is always accessible to the public. | The applicant acknowledges that a total of 5,000m2 has not been provided with this DA stating that the balance will be provided in Stages 3 and 4. This issue reinforces the fact that should Stages 2, 3 and 4 not proceed then this objective will not be realised. Notwithstanding this, Drawing No DA-730-020 identifies communal open space that is not functional or practical. The deficiency in area is greater than that identified by the applicant. | No |
|  | **C2** Within the minimum of 5,000m2  public open space provision, a new  Central Civic Plaza must be delivered  and include:  (a) A minimum area of 950m2 and a  minimum width of 25m. The new  Central Civic plaza should function as  a vibrant outdoor location, with a focus on food and drink premises with  outdoor dining adjacent to a retail  setting to provide a social ‘hub’ for the local community.  (b) Be activated with retail uses on at  least two sides, overlooking and facing the open space. | The proposed Central Civic Plaza does not satisfy a minimum area of 950m2 (906m2 provided) nor is the plaza a minimum width of 25 metres. | No |
|  | **C3** Within the minimum of 5,000m2  provision, and in addition to a new  Central Civic Plaza, provide a new  publicly accessible local open space or  a combination of local open spaces  which consists of at least one park that has a minimum area of 1,500m2. The new local open space must be visible from Waterloo Road and be  predominately landscaped:  (a) The design of the Central Civic  Plaza and the publicly accessible open  spaces must consider the following:  i. Be always publicly accessible.  ii. Be of dimensions which create  useable spaces and accommodate a  range of passive and recreational  activities.  iii. Have a minimum of 4 hours of  continuous solar access with at least  50% of direct sunlight between 8am–  4pm at the mid–winter solstice.  iv. Have sheltered edges, with places  for people to sit back and relax.  v. Be accessible from at least one, or  ideally two streets.  vi. Include tree plantings, landscaping  for shading and cooling.  vii. Include appropriate colour, lighting, signage, heritage interpretation of the site and other forms of public art and materials to improve wayfinding and provide a high-quality public domain for pedestrians and cyclists.  viii. Be designed with high quality and  robust material to accommodate a  diverse range of activities, events and  users.  ix. Include Water Sensitive Urban  Design (WSUD) principles and  features as an integral part of the  designing of the public domain. | The applicant proposes a park, as part of Stage 2, that extends along the Waterloo Road frontage (i.e. in the south western corner of the site).  The proposal fails to provide the minimum area required for the park. | No |
|  | (b) All spaces within the public domain should be accessible by people with disabilities (including those in wheelchairs) and elderly people | Such details will need to be demonstrated as part of a detailed assessment of Stage 2 | To be considered in the details provided in Stage 2 |
| **3.2 Access and movement** | **C1** The first development application  for each stage of the development of  any land within the site that includes  residential accommodation, either  standalone or part of a mixed use  development, must be accompanied  by an appropriate urban design and  traffic and transport studies to  demonstrate how that stage of  development indicatively informs the  design of the future development on  the balance of the site consistent with  the indicative concept plan (applying to the whole site) and to inform in detail the design of that specific stage the following:  (a) new streets and connections  including any easements/right of way  where required;  (b) car park layout and access to  separate traffic within the site between different uses and services, including residential, retail/commercial, service vehicles, other different uses and drop off areas to fully assess the impact of the development on the receiving road network and functionality of the site;  (c) locations of the public open space,  including the Central Civic Plaza and the High Street; and  (d) publicly accessible open spaces. | The application was accompanied by an Urban Design report and a Traffic report. The content of these reports have been discussed within this report. In short, concerns are raised with respect to the adequacy of these reports. | No |
|  | **C2** New streets must be highly legible,  permeable and publicly accessible 24  hours a day. New streets must  respond to key connections within and adjacent neighbourhood. All internal streets must consist of shared paths to prioritise access to pedestrians and cyclists | The new road off Norfolk Road is proposed as part of Stage 1 while a new crossing is proposed off Waterloo Road as part of Stage 2.  These ‘new streets’ do not respond to the adjacent neighbourhood with the new road proposed in Stage 2 to run alongside the northern boundary of No 351 Waterloo Road causing a loss of amenity (due to increased headlight glare, engine noise, reduced privacy due to elevated pedestrian and road accessways) for these residents. | No |
|  | **C3** New streets and connections  should generally be in accordance with the key design principles and indicative structure plan outlined in Section 1 and the typical street sections outlined in Figure 3. Provide new publicly accessible streets and pedestrian connections including:  (a) Min 20m wide internal streets for  vehicles (two–way traffic)  (b) Min 15m wide internal streets for  vehicles (one–way traffic)  (c) Min 12m wide for pedestrian only  links. | The new road off Norfolk Road is proposed as part of Stage 1 while a new crossing is proposed off Waterloo Road as part of Stage 2, all failing to meet the minimum road widths specified.  Notwithstanding the issue of permissibility for the road off Norfolk Road, each of these roads are located in close proximity to existing residential properties causing a loss of amenity for these residents. On a site of this size, avoiding impacting the adjoining residents should be very much achievable especially having regard to the fact that it’s a holistic redevelopment.  In addition to this, insufficient detail has been provided as to how deliveries, waste collection occur for the ‘mini major’ and how residential, retail and child care car movements coincide with each other. | No |
|  | **C4** High Street should accommodate  shared paths on either side for  pedestrians and cyclists. High Street  will have a provision of limited on–  street retail parking and dedicated  areas for ride share vehicles and taxi  zone near the Central Civic Plaza. The  design of internal road widths and  manoeuvring paths must accommodate large vehicles including  emergency, waste collection, delivery  and removalist vehicles. High Street  may require up to two lanes of vehicle  traffic in each direction, subject to  detailed design and supporting traffic  and urban design studies submitted at the development application stage.  NOTE: Where Council collection staff  or Council vehicles are required to  enter private property to perform waste collection services, Council will require an unimpeded easement for access to undertake on–site or collect and return service. | ‘High Street’ will be designed and developed in Stage 3. | N/A |
|  | **C5** Major retail, service vehicles and/or residential vehicles should access the site either via Waterloo Road or via the northern entry as close to Waterloo Road as possible. Retail and residential traffic must be separated from service vehicles when moving within the site. | Access to the site for service vehicles is ideally provided along the northern boundary with all loading and unloading to be provided along the rear or eastern boundary.  Residential vehicles are able to access and egress the site via the new road off Norfolk Road hence failing this control. | No |
|  | **C6** Major retail parking and servicing  must not be provided from the High  Street or adjacent to active retail  frontages. | This control predominately relates to Stages 3 and 4 | N/A |
|  | **C7** Major retail parking and servicing  access roads must not encroach into the landscape buffer zone along the  eastern boundary of the site | An existing hardstand area along the eastern boundary of the site is proposed to be retained to accommodate the manoeuvring of service vehicles | No |
|  | **C8** Development must optimise the  opportunities for active street frontages and streetscape design by:  (a) limiting the number of vehicle  accessways to a minimum; and  (b) avoiding the location of car park  entries, driveways and loading docks  at the corners of street intersections. | The development proposes to increase the number of ‘vehicle accessways’ with the introduction of a new road through No 87 Norfolk Road. While this may be seen as optimising the ‘*opportunities for active street frontages and streetscape design’* along Waterloo Road, it’s detrimental to providing ‘*active street frontages and streetscape design’* along the Norfolk Road frontage. | No |
|  | **C9** The preferred parking within the  centre is underground parking. New  car parking must avoid poor  streetscape outcomes and ensure  better utilisation of available land in the local centre. If underground car  parking is not practicable, car parking  is to be ‘sleeved’ with retail and other  active uses at ground level | Stage 1 - the majority of the on-site car parking is provided as ‘underground parking’.  Stage 2 – basement car parking is proposed with some at grade parking sleeved by retail uses  Some ‘basement parking’ projects above NGL and this should be avoided. | No |
|  | **C10** Internal streets will have provision for limited on–street residential and visitor parking, interspersed with street trees, to provide convenient visitor parking for ground level commercial/retail. All internal road reserves must also accommodate footpaths, cycleways, street tree planting and services. | Landscaping and on-street parking is proposed along the internal road (referred to as ‘Norfolk Lane’ as part of Stage 1 works). | Yes |
|  | **C11** Traffic calming techniques should  be adopted for all roads within the  public domain with appropriate design considerations. | Traffic calming devices / controls are able to be imposed through the imposition of appropriate conditions of consent. | Yes |
|  | **C12** On–site parking provision must  comply with Part B5 Parking of the  Bankstown DCP 2015. | The suitability of the on-site car parking arrangements was partially considered in the ‘*Traffic Report for Stage 1 Redevelopment and Concept Development Application for Stage 2, Chullora Marketplace’*. Council’s review of this document has found that it is deficient in detail to allow Council to form a view as to the suitability of these parking arrangements. | No |
|  | **C13** The provision of a cycleway along  the site frontage on Waterloo Road  must be located as an off–road  cycleway and not located within the  road carriageway.  **Consultation with TfNSW:**  Waterloo Road is classified as a  regional road. Prior to preparing a  Transport Impact Assessment Report  (TIA) on each stage of the  development application, the applicant must consult with the Transport of NSW (TfNSW) to confirm scope of assessment to resolve the following issues:  Access arrangements (including  emergency vehicle access);  Potential upgrade requirement  including network and intersection  assessment;  Potential road safety deficiencies;  Pedestrian accessibility, demand management measures and trip  generation rates;  Public transport access;  Any road network capacity;  Air quality and Noise Impact  Assessment for development fronting  Waterloo Road;  Cumulative impact of progressive  development applications on the  surrounding road networks especially  on Waterloo, Como and Norfolk  Roads. | The provision of a cycleway along Waterloo Road relates to a detailed Stage 2 DA and Stage 3 works. | N/A |
| **3.3 Land use and site layout** | **C1** Land use shall be designed and  located in accordance with the  indicative structure plan and key  design principles. | Proposed land uses are reliant on the vehicular access arrangements off Norfolk Road. Council is not of the view that this represents permissible development. | No |
|  | **C2** Ground level non–residential uses  or active street frontages are to be  located around the Central Civic Plaza  and/or the new High Street to activate the public domain. | The Concept plan for Stage 2 proposes non-residential land uses on the ground level | Yes |
|  | **C3** Community uses such as childcare  centres and community facilities are  encouraged to be located in areas  where they will assist in activating the  public domain | The child care centre use, proposed in the south eastern corner of the site, will not activate the public domain to the extent that residential development would having regard to the limited operating hours of the facility | No |
|  | **C4** Taller buildings, up to six storeys  are to be located in the centre of the  site. The maximum building height of  buildings will transition to four storeys along Waterloo Road and Norfolk Reserve boundary; and to two storeys along southern boundary. | Stage 1 and 2 plans provide for the ‘taller’ buildings to be located in the centre of the site with a transition in height as you near the site’s boundaries | Yes |
|  | **C5** Buildings which interface with low  density properties to the south must be designed to:  (a) Maximise street activity through front gardens, terraces and the façade of the building.  (b) Be directly accessible from the new internal street.  (c) Minimise overlooking into the  private open space of adjoining  residential properties to the south. | The two storey apartments that present to the internal access road (referred to as Norfolk Lane) satisfy this control | Yes |
|  | **C6** Buildings along eastern boundary  are designed to overlook Norfolk  Reserve providing passive surveillance to the reserve and the informal pedestrian access point in the south east corner and the formal pedestrian access point in the north east corner (Watergum Way). | Overlooking the adjoining Norfolk Reserve is available from a number of the east facing residential apartments | Yes |
|  | **C7** Building sections shall be provided  with any Development Application  describing the relationship of the  proposal to neighbours. These shall  show boundary walls between sites,  built form on the site and neighbouring open spaces and buildings with windows facing the site. | Detailed sectional drawings have been provided | Yes |
| **3.4 Built form** | **3.4.1 Storey limit**  **C1** Development must not exceed the  building storey limit that corresponds  with the maximum building height  shown for the site on the Height of  Building Map and detailed in Table 1:  Relevantly the controls refer to the following;  9 metres – 2 storeys (plus attic)  11 metres – 3 storeys (plus attic)  14 metres – 4 storeys (plus attic)  20 metres – 6 storeys (plus attic) | The development does not comply with the maximum permissible building height shown for the site on the Height of Building Map.  The development does not exceed the building storey limits. | No |
|  | **C2** Development must comply with the maximum building height shown for the site on the Height of Building Map in the Local Environmental Plan. | As indicated earlier in the report, the development doesn’t comply with the maximum permitted building height standards as contained in Clause 6.14 of the LEP. | No |
|  | **C3** The minimum floor to floor height  for commercial development is 4.5m.  Further increases may be required for  servicing, removalist and waste truck  clearance levels. | According to the applicant, the floor to ceiling height within the existing shopping centre is 3.55 metres. The floor to floor height of the new retail (Aldi supermarket) and loading dock will be a minimum 4.56m. | Yes |
| **3.4.2 Setbacks** | **Setbacks to Waterloo Road**  **C4** An 8m minimum front setback shall be provided from Waterloo Road to the development for a provision of  landscape buffer along Waterloo Road | The Stage 2 Concept plan proposes a front setback to Waterloo Road in excess of 8 metres. | Yes |
|  | **Setbacks to Zone R2 Low Density**  **Residential on the south**  **C5** A 10m minimum setback shall be  provided to the rear boundary of  properties facing Norfolk Road and to  the northern side boundary of the  property at No. 351 Waterloo Road. | Stage 1 – a minimum 10 metre building setback is proposed to 81-105 Norfolk Road with a minimum 8.59 metre setback proposed to the fence that encloses the proposed external area nominated for the child care centre use.  The Stage 2 Concept plan proposes a minimum 10 metre setback to the northern side boundary of 351 Waterloo Road. A minimum 9.49 metre setback is proposed to 81-105 Norfolk Road for an element of the building however it is unclear what this setback is demonstrating. | Further details are required as to whether it complies |
|  | **C6** A 4m minimum setback shall be  provided to the rear boundary of the  properties at Nos. 349 and 351  Waterloo Road. | The Stage 2 Concept plan provides for a setback in excess of 4 metres to the rear boundary of Nos 349 and 351 Waterloo Road | Yes |
|  | **Setbacks to Zone SP2 Infrastructure**  **to the north**  **C7** For commercial uses, a nil setback  is permitted to the Zone SP2  Infrastructure boundary for ground and first storey. Commercial uses on  second, third and fourth storeys must  be setback a minimum of 6m from the  boundary. Commercial uses on fifth  and sixth storeys must be setback a  minimum of 10m from the boundary. | N/A | N/A |
|  | **C8** For residential uses, a minimum of  10m setback is required to the Zone  SP2 boundary for up to four storeys  and a minimum of 13m setback is  required for fifth and sixth storeys from Zone SP2 boundary. Setbacks to  adjacent properties must be compliant with SEPP 65 separation distances | N/A | N/A |
|  | **Setback to the eastern boundary**  **along Norfolk Reserve**  **C9** Development must incorporate a  minimum setback (buffer zone) of 15  metres along the eastern boundary of  the site. Within this setback, a  minimum 6m wide deep soil zone is  required along the reserve. | While the minimum 15 metre setback has been satisfied the minimum 6 metre wide deep soil zone has not been provided in totality. The applicant argues;  *The new mixed use building will be setback 15m from the eastern boundary and will comply with this requirement. There is an existing hardstand area between the shopping centre and the eastern boundary. This hardstand will be retained to facilitate*  *accessibility for larger vehicles accessing the loading dock within the south-eastern part of the site. Where this hardstand terminates, adjacent to the childcare centre, a 6m deep soil and landscape zone will be established.*  *The whole of site Master Plan accompanying this DA shows how this requirement will be satisfied as part of future Stages of the redevelopment of the site. In this preliminary stage of the site’s development it cannot be implemented without adversely disrupting the ongoing operation of the existing shopping centre, which is recognised in the BDCP as being an important consideration in the staged redevelopment of the centre.*  This issue was discussed having regard to the provisions contained in Clause 6.14 of the LEP and Council’s position remains the same. | No |
|  | **C10** Despite clause C10 of section  3.4.1 of this DCP which requires a  minimum setback of 15 metres,  Council may require a setback greater  than 15 metres at certain parts of the  site along the eastern boundary if  considered appropriate by a suitably  qualified ecologist in order to avoid  adverse impacts of overshadowing to  the Ecologically Endangered  Communities (EECs) within the reserve. | Council’s Environmental Planner had no objection to the extent of overshadowing caused over the adjoining reserve hence an additional setback is not deemed necessary. | Yes |
| **3.5 Architectural diversity and articulation** | **C1** The building length should not  exceed 45m. | The building length exceeds 45 metres by 12 metres for Stage 1 and 25 metres for Stage 2 | No |
|  | **C2** If unavoidable and the building  length exceeds 45m, it should be  broken into two or more components, so no length is longer than 45m, before which a:  (a) Minimum 3x3m inset is to be  provided at all levels up to four storeys. The inset must incorporate a green wall  (b) Minimum 9m separation is to be  provided for all levels above four  storeys. | Council does not support the arguments presented by the applicant that the building length should not exceed 45m. | No |
|  | **C3** Each component of a building  should have a different architectural  character to the street or public domain and be articulated into smaller components at a scale or grain that reflects the interior and exterior uses and circulation of the building and site. | The proposal does not provide sufficient building diversity to the public domain consistent with the indicative structure plan. | No |
| **3.6 Façade design, streetscape presentation and passive surveillance** | **C1** Buildings are to be designed with a  high level of architectural detail and  articulation consisting of a variety of  materials for an architectural response that creates a sense of depth and visual diversity. | The proposed mixed use development fails to provide for a high level of architectural detail. | No |
|  | **C2** Facade treatments are to provide a high–quality visual outlook from  adjacent residential neighbours, the  school and the public domain,  including Norfolk Reserve | The proposal fails to provide a high-quality façade treatment as viewed from the public domain. | No |
|  | **C3** Active ground level frontages are to be provided and focused along High Street and facing the Central Civic Plaza. Active frontages are to be  designed with fine grained detailing,  and provide for commercial, retail or  other non– residential uses at ground  level. | Insufficient detail has been provided to demonstrate compliance with this control. | No |
|  | **C4** The design of street frontages must ensure that:  (a) the ground floor is at the same  general level as the footpath and  accessible directly from the street; and  (b) the ground floor provides a positive street address in the form of entries, lobbies and clear glazing, which positively contribute to street activity and promote passive surveillance. The ground floor facade must be designed to minimise large expanses of blank walls | The proposal incorporates significant level changes across the site whilst the entrances to the residential developments are not cohesive or appealing in contributing to a positive street address. | No |
|  | **C5** Large expanses of blank walls are  not permitted where visible from the  public domain (i.e. public street or  public open space). In circumstances  where walls are provided with minimal or no openings (i.e. windows, glazed doors and balconies), such walls are to be treated with an appropriate level of design detail and visual articulation to create visual interest, including public art | Stage 2 incorporates a façade treatment to Waterloo Road that provides poor visual interest. | No |
|  | **C6** Continuous awnings are to be  provided to all development with a non– residential ground level frontage for the shading and shelter of the adjacent street or civic spaces. | This particular control is not relevant in the absence of a non-residential ground level frontage | N/A |
|  | **C7** Private residential entries are to be  designed to positively contribute to the adjacent residential streetscape  character and where possible, to  provide activation and passive  surveillance to the adjacent public  domain | Private residential entries proposed off ‘Norfolk Lane’ fail to provide activation and passive surveillance to the public domain due to their depth and tunnel like appearance. | No |
|  | **C8** All development is to be designed  to maximise passive surveillance of  streets and public places (including  new open spaces, the civic space/s  and Norfolk Reserve) by orienting  buildings to promote overlooking of  these spaces from windows, glazed  doors and balconies | The proposed development fails to maximise passive surveillance of the public domain as portions of the public domain are provided on the access road. | No |
|  | **C9** A public art and signage strategy is  to be prepared and submitted as part  of the indicative concept plan with the first development application to  indicate potential locations and general information on the public art and signage (such as signage relating to way finding, heritage interpretation of the site, retail plaza) to be proposed within the site. This should include consideration of works by local artists and Aboriginal and Torres Strait Islander artists.  The public art and signage strategy  needs to be consistent with Council’s  Creative City Strategic Plan 2019–  2029 and is updated at each stage of  the development application with details such as location, size and  materials to be used for the proposed  public art/signage where applicable | Accompanying the DA was a ‘Public Art Plan’. The Plan identifies three (3) possible locations within the site where ‘public art’ could be provided.  The most appropriate form of public art has not been resolved as part of this DA. | To be considered at a later date |
| **3.7 Landscaping and public domain** | **C1** Provide a green corridor through  the site from Norfolk Reserve to  Waterloo Road including substantial  planted trees over 5m in mature  height. This can be provided through  street planting. | While a ‘green corridor’ has been identified, interspersed within the corridor is an access road with car parking. The new crossing off Waterloo Road in Stage 2 will result in this corridor being severely compromised.  Furthermore, a swept path diagram (within the Traffic Report) suggests access to the rear loading docks will result in the green corridor being lost | No |
|  | **C2** Provide a minimum mature tree  canopy coverage of 25% across the  site. The indicative concept plan at the lodgement of the first development application would need to demonstrate, through a landscape plan prepared by a landscape architect, progressively increasing mature tree canopy cover across the site as the redevelopment takes place | As indicated earlier in the report, Council’s Landscape Architect seeks the lodgement of a revised Landscape Plan. | No |
|  | **C3** Deep soil zones shall consist of 7%  of site area and have a minimum width of 6 metres. | The applicant is relying on the deep soil areas provided in No 87 Norfolk Road to satisfy the ADG requirements for the development of No 353-355 Waterloo Road. | No |
|  | **C4** Proposed landscaping within the  public domain and the mixed used  development must consider Water  Sensitive Urban Design (WSUD)  principles and features. | This matter needs to be revisited by the applicant in the revised Landscape Plan | No |
|  | **C5** The first application for the  development of any land within the site for residential or commercial uses  should be accompanied by an  indicative Landscape Plan for the  indicative concept plan (applying to the site), which demonstrates how  planting, outdoor structures, furniture and lighting will enhance the design and character of the development.  The development application for each  stage will provide detailed information and demonstrate that the proposed landscape plan is consistent with the indicative landscape plan. Where relevant applicant may seek changes to the indicative landscape plan (applying to the entire site) at various stages of the development consistent with the requirements of this DCP. | This matter needs to be revisited by the applicant in the revised Landscape Plan | No |
|  | **C6** Plant maintenance. The planted  vegetation should be regularly  maintained and watered for 12 months following planting. Should any plant loss occur during the maintenance period the plants should be replaced by the same plant species. Tree planting shall use advanced and established local native trees with a minimum plant container pot size of 100 litres, or greater for local native tree species which are commercially available. Other local native tree species which are not commercially available may be sourced as juvenile sized trees or pre–grown from provenance seed. | Maintenance schedules are able to be conditioned should the development be approved however the applicant is firstly required to provide a revised Landscape Plan | No |
|  | **C7** Careful consideration should be  given to the species of vegetation and  planting locations to ensure that the  vegetation does not adversely impact  on safety by reducing sight lines.  Species with invasive roots should also be avoided to circumvent impacts to utilities and lifting footpath pavement which can lead to trips and obstructions to people who use a wheelchair or people with prams. | As indicated earlier in the report, Council’s Landscape Architect seeks the lodgement of a revised Landscape Plan. | No |
| **3.8 Heritage** | **C1** Future development is to be  undertaken in accordance with the  recommendations of a heritage impact statement prepared by an  appropriately qualified specialist.  Considerations of the heritage impact  statement must include the following:  (a) Necessary permitting for  excavation: Prior to any excavation  work commencing, an application must be made to the NSW Heritage Office for an application permit under the terms of the Heritage Act 1977.  (b) Geotechnical investigations: Prior  to any excavation works commencing,  geotechnical investigations of areas of archaeological sensitivity should be  undertaken by a suitably qualified geotechnical engineer.  (c) Monitoring: Any excavation works  undertaken as part of the future  development of the site should be  monitored and recorded by an  appropriately qualified archaeologist.  (d) Unexpected finds: Should any  unexpected relics be uncovered during the works, all work must stop,  appropriate conservation and  protection measures be implemented  by a qualified archaeologist and the  Heritage Division be notified.  (e) Salvage: Prior to and during the  undertaking of any future excavation  works, brick and tile debris should be  salvaged throughout the subject site  and incorporated in the future design  and display as part of heritage  interpretation. Removal of any items to be carried out in accordance with  specific salvage methodologies.  (f) Heritage Interpretation Plan: The  heritage interpretation plan is to reflect interpretation opportunities relating to the former use of the site (i.e. Liebentritt's Pottery/ Chullora Drive–in) and incorporate interpretation media where possible. | Council’s Heritage Advisor has reviewed the applicant’s Heritage Impact Statement (HIS) and is of the view that an Archaeological Assessment Report, that’s been prepared by a suitably qualified archaeologist, is required. | No |
|  | **C2** An archaeologist or heritage  specialist is to develop a Heritage  Interpretation Plan in accordance with the Heritage Division of the NSW  Office of Environment & Heritage  publications, Interpreting Heritage  Places and Items (2005) and Heritage  Interpretation Policy (2005). This Plan  is to be submitted with the first DA of  every stage of development.  Examples of interpretation  opportunities include:  (a) Establishment of Heritage & Visitor Information Centre Space or installation to celebrate history and  heritage of the site and display  materials unearthed during excavation;  (b) naming of the new pedestrianoriented street and civic space(s) including use of art installations;  (c) the use of discovered brick and tile  as a building material;  (d) incorporation of found artefacts and debris of historical relevance into new mixed use development, the Central Civic Plaza, publicly accessible open spaces, landscaping and public art; and  (e) an installation which reflects the  former location of the drive-in movie  screen. | Refer to the comments provided immediately above | No |
| **3.9 Rooftop solar features and lighting** | **C1** The development will include the  installation of a solar photovoltaic (PV) system to supply energy to the  common areas of buildings, communal open space including outdoor lighting and any other parts of the development. | The development includes a solar photovoltaic (PV) system. | Yes |
|  | **C2** The development application must  provide a roof plan showing the area(s) allocated to PVs, necessary access requirements for cleaning and  maintenance, other plant and  equipment that may include solar  water heater storage tanks, ventilators, wind generators, air conditioning units and satellite dishes and antennae.  Details including connections to battery storage within individual apartments are to be provided within DA plans. | The applicant has provided a roof plan showing the location of ‘mini major A/C units’, solar panels, mechanical services, hot water plant and roof-mounted A/C units and plant on the uppermost roof of the development. | Yes |
|  | **C3** The solar panels must not  adversely affect the architectural  presentation of the building or view  from the streetscape | Further details are required in relation to the specifications of the solar panels so as to determine their height above the roof level and therefore their visibility | Further clarification required |
|  | **C4** The use, location and placement of  photovoltaic solar panels is to take into account surrounding built forms and the likely permissible built form on adjacent properties. | Given the location of the solar panels on the roof of the 6 storey RFB, and the remaining available GFA on the site, it is unlikely that they’ll be impacted by the development of Stages 3 and 4 and the surrounding built forms | Yes |
|  | **C5** The development is to minimise  light spill into the adjacent residential  areas | The introduction of a road off Norfolk Road (not envisaged by the Master Plan) is not seen as achieving the objective of the development minimising light spill into the adjacent residential areas. | No |

***Section 4.15(1)(a)(iiia) Planning agreements***

A planning agreement has been entered into under Section 7.4 of the *Environmental Planning and Assessment Act 1979.* It was executed on 21 September 2021 and it was prepared in association with the Planning Proposal (PP-2020-358) for the site.

Of some relevance are the following clauses;

* Part 2 Clause 11.2 requires that any Development Application submitted in accordance with Clause 11.1 (being a DA foreshadowed by this Agreement and facilitated by the Planning Proposal), preliminary design plans are to be provided to Council for comment. The Agreement stated that the developer shall allow Council at least 28 days within which to provide comments and the developer is to adopt such comments when lodging the application to the extent such comments are in accordance with the relevant Council or Service Provider specifications. Preliminary design plans were not provided to Council as required by Clause 11.2 of the Agreement.
* Part 1 Clause G of the Planning Agreement states, in part, *“The Development Contributions that the Developer has agreed to make pursuant to this Agreement will be made when the benefit of the LEP amendments with respect to the Land is taken up by the developer/owner of the Land. The making of the Development Contributions will be dependant upon the Developer ultimately obtaining Development Consent for a building with a height of greater than 11 metres.”*

While the DA proposes a building with a height greater than 11 metres, it is the recommendation of this assessment report that the development be refused hence the Development Contributions that the Developer has agreed to make, will not be triggered.

***Section 4.15(1)(a)(iv) The regulations [section 79C(1)(a)(iv)]***

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation 2021.

***Section 4.15 (1) (b) – The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality***

*Environmental impacts on the natural environment*

* The applicant seeks the removal of vegetation from the site. In response, the proposed ‘green corridor’, the communal open space areas and the deep soil zones were found to be unsatisfactory.
* The absence of a 6 metre wide deep soil zone along the sites eastern boundary, will have an adverse impact on the adjoining Norfolk Reserve.
* In the absence of on-site detention, concern is raised with respect to the occurrence of increased flooding downstream.

*Environmental impacts on the built environment*

* The assessment report identifies the numerous departures sought to the applicable built form controls. These departures result in the development failing to respond to the context of the area that is existing, that is emerging and that is envisaged through the Planning Proposal.

*Social impacts on the locality*

* The development provides for a variety of land uses that will, no doubt, serve the needs of the local community and those within the broader locality.
* The development will result in detrimental social impacts to adjoining residential properties to the south, particularly those adjoining the proposed Norfolk Lane with an overall reduction in amenity.
* The environmental and built environment impacts discussed in this report have significant social impacts on the liveability of both this proposal and adjoining residential properties.

*Economic impacts on the locality*

* The development will provide numerous employment opportunities given the wide and varied land uses proposed in addition to the opportunities provided at the construction stage.

***Section 4.15 (1) (c) The suitability of the site***

The site is considered suitable for a development that complies with the site specific controls that are contained within Clause 6.14 of the BLEP 2015 and Part A3 of the Bankstown Development Control Plan 2015 and where potential impacts have been well managed. These controls are not old nor outdated and reflect Council’s, and the community’s, vision for this site. The site is suitable for a development that fully complies with these controls, not a development that seeks a departure particularly where these departures are unable to fully justified and where they provide for a reduced amenity for both the occupiers of the development and the adjoining land users. In many instances, there are unresolved conflicts associated with the existing development such as the need for loading dock access and manoeuvring that will conflict with elements required by the redevelopment (such as deep soil), therefore meaning that the overall resolution of the development is poor and not cohesive.

***Section 4.15 (1) (d) – Any submissions made in accordance with this Act or the Regulations***

The application was neighbour notified and advertised from 7 March 2023 to 28 March 2023 and 16 March 2023 to 6 April 2023 in accordance with Council’s Community Participation Plan. At the time of preparing this report, Council is in receipt of a total of twenty-three (23) submissions by sixteen (16) households, all of which were in objection to the development proceeding.

The issues raised in the submissions are summarised as follows;

* The development will result in further impacts to/along Waterloo Road, Norfolk Road and the surrounding street network.
* The existing road network is currently experiencing significant congestion and further delays at peak times in the AM and PM, the introduction of the residential units and childcare centre will further exacerbate the existing traffic issues in and around the site.
* Safety concerns for both pedestrians and motorists in and around the site given the traffic congestion that exists in the area and surrounding streets
* The introduction of Norfolk Lane at 87 Norfolk Road will result in increased traffic directed onto Norfolk Road.
* The new access within the development on Norfolk Road, will make access into the adjoining properties difficult and cause safety issues for motorists.
* The introduction of ‘Norfolk Lane’ will cause noise issues to residents who live on the adjoining sites along Norfolk Road from a result of traffic flow.
* The introduction of ‘Norfolk Lane’ will have both visual and acoustic privacy implications for the residents adjoining the lot and will result in a loss of amenity.
* Residents who adjoining the new access road and development will experience longer periods of impact as a result of the redevelopment.
* The introduction of the access from Norfolk Road will cause negative impacts to residents who live adjoining the access by way of noise, pollution, privacy and general amenity.
* The new access road will detrimentally impact the properties adjoining the new road and access
* 87 Norfolk Road should not be used for access and should remain a residential house/development.
* The additional access points on Waterloo Road will have significant impacts on traffic and traffic flows
* The traffic implications from future stages 3 and 4 will further amplify the traffic impacts
* Safety concerns for both pedestrians and motorists in and around the site given the traffic congestion that exists in the area and surrounding streets brought by stage 1 and 2
* The additional access onto Waterloo Road and future plans to relocate the vehicle access adjoining the School (MFIS) access will cause considerable safety and traffic conflicts for both vehicles and pedestrians.
* The traffic report has not adequately addressed concerns in relation to traffic generation from the proposal and likely implications from all four stages of the development.
* The southern boundary and the east and west boundaries of the new lane must be appropriately landscaped to ensure solar access is maintained midwinter, but privacy is achieved. It must also not compromise the ability of adjoining properties to develop as a result of the vegetation selected.
* A childcare centre is already operating on Norfolk Road a further 130 place childcare centre will cause further traffic issues.
* The size and scale of the development will reduce privacy to the residents who adjoin the site.
* The loss of use of the private open space in the rear yards due to loss of privacy and sun light (properties along the southern boundary of the site).
* Overshadowing of the residential properties adjoining the site and the private open space areas.
* The size and scale of the 6 storey development will result in impacts of overlooking from the development into the residential spaces and result in a loss of privacy for residents and children.
* The proposal will result in a loss of property values to the homes adjoining the new access road.
* The impacts have not given regard to the surrounding R2 low density zone.
* The development will impact residents physical and mental health due to increase traffic, noise and the additional time that residents will be exposed to the additional traffic noise, congestion, loss of privacy, overshadowing and overdevelopment.

The proposal fails to satisfactorily address all of the issues raised in submissions.

***Section 4.15(1)(e) ­ The public interest***

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and environment are avoided. The departures identified, and the impacts specifically caused by these departures, are concerning for the following reason.

Clause 6.14 of BLEP 2015 came into effect as recently as November 2021. To bring this clause into existence, considerable consultation occurred between the applicant, Council officers across various disciplines, state government agencies and the community so as to determine the most appropriate built form outcomes for this site. The documentation accompanying the application fails to identify any site constraints that would give rise to support the development where it fails to comply with the provisions contained within Clause 6.14 of the LEP and the supporting controls contained in Part A3 of BDCP 2015. The departures are largely arrived at in response to poor site planning. As such, approval of this development would not be in the broader public interest.

**CONCLUSION**

The development application has been assessed, amongst other things, having regard to the matters for consideration contained in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

The Chullora Marketplace site has an extensive road frontage to Waterloo Road, is essentially devoid of any vegetation that is worthy of being retained, is adjoined to the north by a large school, is not impacted by any easements or restrictions, has a gentle slope to the street and is not constrained in shape or configuration such that it couldn’t be developed as per the controls contained within the various layers of planning legislation that apply.

**RECOMMENDATION**

It is recommended that the application be refused for the reasons listed in this report and the following:

1. The application fails to comply with the requirements of Section 6, State Environmental Planning Policy (Building Sustainability Index: Basix) 2004 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979]*;
2. The application fails to comply with the requirements of Chapter 4, State Environmental Planning Policy (Resilience and Hazards) 2021 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979]*;
3. The application fails to comply with the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979]*;
4. The application fails to comply with the requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979]*;
5. The application fails to comply with the requirements of the Bankstown Local Environmental Plan 2015 [*Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979]*;
6. The application fails to comply with the requirements of the Draft Canterbury Bankstown Local Environmental Plan 2023 [*Pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979]*;
7. The application fails to comply with the requirements of the Bankstown Development Control Plan 2015 [*Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979]*;
8. The application fails to satisfy the requirements of Section 7.4 of the Environmental Planning and Assessment Act 1979 [*Pursuant to Section 4.15(1)(a)(iiia) of the Environmental Planning and Assessment Act 1979]*;
9. The proposed development is likely to result in adverse impacts on the locality [*Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979*];
10. The site is considered unsuitable for the proposed development. [*Pursuant to Section 4.15(1)(c) of the Environmental Planning & Assessment Act, 1979*]; and;
11. For the reasons stated above, it is considered that the development is not in the public interest [*Pursuant to S4.15(1)(e) of the Environmental Planning & Assessment Act 1979*].