

ITEM **10 Nelson Short Street, POTTS HILL NSW 2143**

Remediation of the site, Construction of a Seniors Living Development comprising of five (5) buildings with a total of 197 dwellings and ancillary uses including a medical centre, café, neighbourhood shop, restaurant/lounge, outdoor swimming pool, with communal landscaped areas and basement car-parking

This application, having a Capital Investment Value greater than \$30m, will be determined by the Sydney South Planning Panel on behalf of Council

FILE **DA-152/2021 - Bass Hill Ward**

ZONING **B7 Business Park**

DATE OF LODGEMENT **12 March 2021**

APPLICANT **Potts Hill Group Pty Ltd**

OWNERS **Potts Hill Group Pty Limited**

ESTIMATED VALUE **\$61,640,894**

AUTHOR **Aidan Harrington**

SUMMARY REPORT

This matter is reported to the Sydney South Planning Panel in accordance with the provisions of State Environmental Planning Policy (State and Regional Development) 2011. The proposed development has an estimated capital investment value that exceeds the threshold of \$30 million for 'General Development' (Schedule 7, Cl 2).

Development Application No. DA-152/2021 proposes remediation of the site, construction of a Seniors Living Development comprising of five (5) buildings with a total of 197 dwellings and ancillary uses including a medical centre, café, neighbourhood shop, restaurant/lounge, outdoor swimming pool, with communal landscaped areas and basement car-parking.

DA-152/2021 has been assessed against the relevant provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, State Environmental Planning Policy No 55—Remediation of Land, State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007, , State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Bankstown

Local Environmental Plan 2015, Draft Canterbury Bankstown Local Environmental Plan and Bankstown Development Control Plan 2015.

The application was advertised for a period of twenty-eight (28) days in accordance with the Canterbury Bankstown Community Participation Plan. No submissions were received.

POLICY IMPACT

The matter being reported has no direct policy implications.

FINANCIAL IMPACT

There are no direct financial impacts as a result of the proposed development.

RECOMMENDATION

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

DA-152/2021 ASSESSMENT REPORT

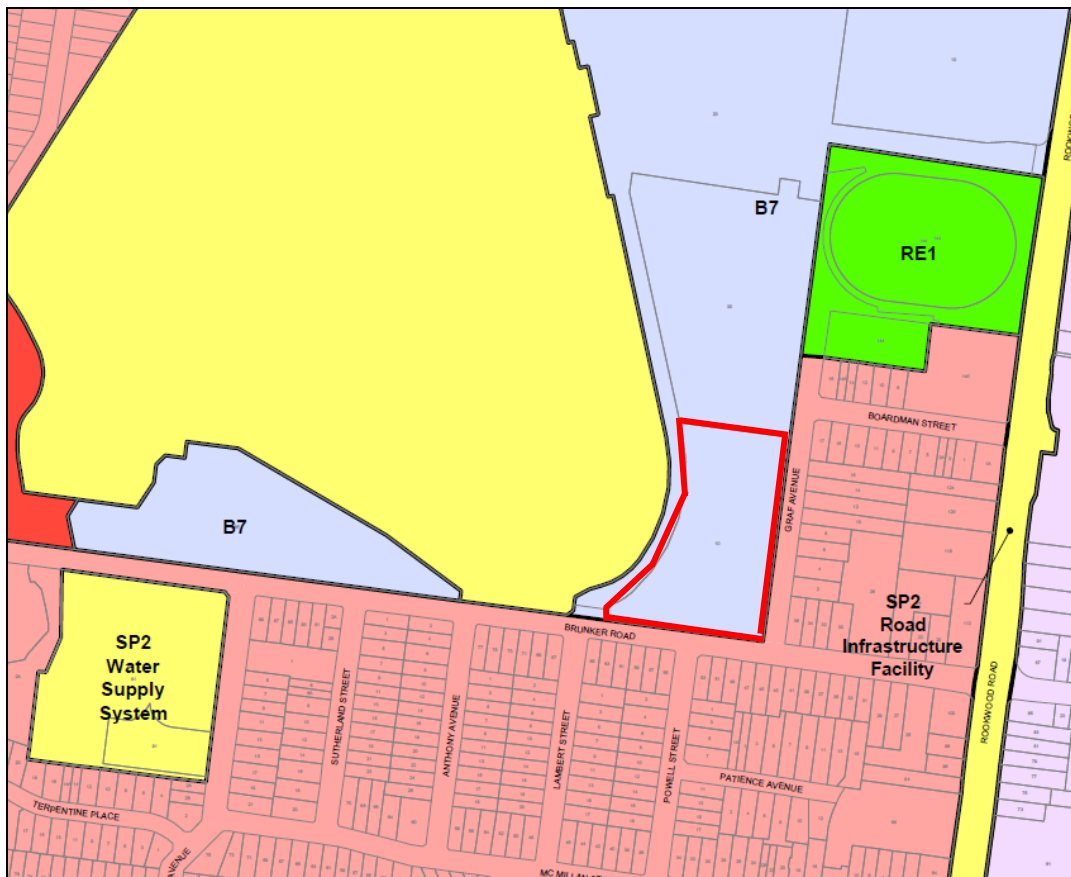
SITE & LOCALITY DESCRIPTION

The subject site is legally described as Lot 104 in Deposited Plan 1149790, known as 10 Nelson Short Street, Potts Hill. The site is located on the northern side of Brunker Road, bounded by Graf Avenue (to the east) and Nelson Short Street (to the west).

The site is irregular in shape with a curved frontage of approximately 183 metres to Nelson Short Street, 140 metres to Brunker Road, 184 metres to Graf Avenue and a total site area of 18,920m². The site is currently vacant with vegetation, in the most part, confined to along the site's frontages to Brunker Road and Graf Avenue.

While the site is relatively flat, embankments approximately 5 and 7 metres high are provided along the Brunker Road and Graf Avenue frontages respectively.

The site is zoned 'B7 Business Park' under the Bankstown Local Environmental Plan 2015. The adjoining sites to the north are similarly zoned 'B7 Business Park' while sites to the east and south, along both Graf and Brunker Road, are zoned 'R2 Low Density Residential'. To the west, on the opposite side of Nelson Short Street, is the Potts Hill Reservoir Site which is zoned 'SP2 Infrastructure (Water Supply System)'. The zoning map below provides details relating to the site and those adjoining.



Occupying the site to the north (on No 30 William Holmes Street) are three separate NSW Police buildings. To the south and east, on the opposite side of Brunker Road and Graf Avenue respectively, sites are occupied by a number of single and two storey detached dwellings whilst west of the site is the Potts Hill Reservoir.

Traffic lights are provided at the intersection of Brunker Road and Nelson Short Street, while the intersection treatment provided at Brunker Road and Graf Avenue restricts access into Graf Avenue to motorists travelling in an easterly direction along Brunker Road while egressing Graf Avenue motorists are confined to a left turn movement only due to a central median being provided in Brunker Road.

Street tree plantings are provided at regular intervals along both the Graf Avenue and Nelson Short Street road reserves.

Below is an aerial photo of the site and its immediate surrounds.



PROPOSED DEVELOPMENT

The Development Application proposes remediation of the site, construction of a Seniors Living Development comprising of five (5) buildings with a total of 197 dwellings and ancillary uses including a medical centre, café, neighbourhood shop, restaurant/lounge, outdoor swimming pool, with communal landscaped areas and basement car-parking for 216 vehicles.

It is worth noting that a similar development was approved on the site by the SSPP under DA-845/2017 in December 2018, which comprised of six (6) buildings. The most notable of changes between the former and current DA is that 'Building B' has been deleted, a storey of Building A has been deleted with a portion of the deleted buildings GFA redistributed to the additional 2 storeys on Building E.

The development consists of two types of seniors living, being a Residential Care facility and Self Contained Dwellings. The residential care facility is located to the northern end of the site and contained within buildings A & F, with the self-contained dwellings located throughout the centre and southern portions of the site within Buildings C, D and E.

Residential Care Facility

Building A is a two (2) storey building located at the north-eastern corner of the site, comprising of thirty (30) residential care facility beds. The ground floor provides offices, lounge, medical centre and servery. The first storey comprises of residential care facility beds, with lounge and dining areas provided as well as further patient support services. On top of the first storey is a roof top terrace/garden area that is designed to be used by patients of the residential care facility as a sensory stimulation area.

Building F is a three (3) storey building located at the north western corner of the site, comprising of thirty-eight (38) residential care facility beds. The ground floor provides offices, lounge and dining areas, associated patient support services and an external courtyard area fronting Nelson Short Street. The upper storeys comprise of residential care facility beds, with lounge and dining areas provided on each floor as well as further patient support services.

Buildings A and F are designed to operate as one facility for a total of sixty-eight (68) beds, being connected by walkways at each floor, thereby able to share services and share the communal courtyard between the two buildings and the rooftop garden. The facility is separated from the remainder of the site with entry/exit provided via Building F to Nelson Short Street or via two (2) lifts to the basement within each building. Forward of the pedestrian entry to Building F is a vehicular pick up and drop off point (port cochere) for the facility.

Self-Contained Dwellings

Building C is a four (4) storey building located to the south-eastern corner of the site, comprising thirty-three (33) seniors housing units, being seventeen (17) x one (1) bedroom units and 16 x two (2) bedroom units. Pedestrian access is provided along a communal walk way within the communal open space from Nelson Short Street, between Buildings D & E to a west facing building entry. There are also two lifts that provide access from the basement to the building.

Building D is a four (4) storey building located to the south-western corner of the site comprising of a neighbourhood shop and medical centre at the ground floor and thirty-three (33) seniors housing units, being seven (7) x one (1) bedroom units, twenty-two (22) x two (2) bedroom units and four (4) x three (3) bedroom units.

Pedestrian entry to the building is provided at the ground floor on the northern side from the communal open space area leading from the main site entry. To the western end of the building. Access to the basement is provided from two lifts within the building, with the medical centre having a dedicated 3rd lift.

Building E is a six (6) storey building located to the centre of the site along the western boundary comprising of a cafe, gym, administration offices, lobbies, outdoor seating area, associated facilities and sixty-three (63) seniors living units being four (4) x one (1) bedroom units, fifty-one (51) x two (2) bedroom units and eight (8) x three bedroom units. Pedestrian entry to the building is via the southern end of the building from the communal open space area, with a port cochere providing vehicular pick up / drop off for Buildings C, D & E. Access to the basement is provided from three (3) lifts within the building.

Basement

Two separate basements are provided for the development, with a single level basement servicing the Residential Care Facility (Building A & F) which contains thirty-five (35) car parking spaces, laundry, kitchen, café, waste storage areas and associated services. A separate two-level basement services the self contained dwellings, with the first level of basement containing eighty-four (84) car parking spaces, waste storage areas and associated services and the second level of basement containing ninety-seven (97) car parking spaces, storage and associated services.

Undercroft

The proposed development contains a 'wellness undercroft' which is situated under Building E, that provides a swimming pool and covered undercroft area for activities such as yoga and meditation and similar forms of recreation.

Statutory Considerations

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, development control plans, codes and policies are relevant:

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017
- Bankstown Local Environmental Plan 2015
- Draft Canterbury Bankstown Local Environmental Plan
- Bankstown Development Control Plan 2015

SECTION 4.15 ASSESSMENT

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

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

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The following clauses of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 were taken into consideration:

Chapter 1 Preliminary

- 2 Aims of Policy
- 4 Land to which Policy applies
- 5 Relationship to other environmental planning instruments
- 7 Suspension of certain agreements and covenants

Chapter 2 Key concepts

- 8 Seniors
- 9 People with a disability
- 10 Seniors housing
- 11 Residential care facilities
- 13 Self-contained dwellings

Chapter 3 Development for seniors housing

- 14 Objective of Chapter
- 15 What Chapter does
- 16 Development consent required
- 18 Restrictions on occupation of seniors housing allowed under this Chapter
- 19 Use of seniors housing in commercial zones
- 26 Location and access to facilities
- 28 Water and sewer
- 29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply
- 30 Site analysis
- 32 Design of residential development
- 33 Neighbourhood amenity and streetscape
- 34 Visual and acoustic privacy
- 35 Solar access and design for climate
- 36 Stormwater
- 37 Crime prevention
- 38 Accessibility
- 39 Waste management
- 40 Development standards – minimum sizes and building height
- 41 Standards for hostels and self-contained dwellings
- 46 Inter-relationship of Part with design principles in Part 3
- 48 Standards that cannot be used to refuse development consent for residential care facilities

- 50 Standards that cannot be used to refuse development consent for self-contained dwellings
- Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings

The following table provides a summary of the development application against the primary numerical controls contained within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004:

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Use of ground floor of buildings fronting the street	No part of the ground floor of a building that fronts a street may be used for residential purposes	No part of the ground floor of a building fronting Nelson Short Street is to be used for residential purposes.	Yes – see below
Location and access to facilities	The site must be located with access to certain services	The site relies on public transport for access to the required services	Yes – see below
Site Area	Min. 1000m ²	18,920m ²	Yes
Site frontage	Min. 20m	140m	Yes
Accessibility standards	Requirements set out in Schedule 3	Capable of complying	Yes
Residential care facilities			
Building height	Must not refuse under 8m	Building A – 10.68m Building F – 10.88m	N/A – see below
Density and scale	Must not refuse under 1:1	0.94:1 FSR	N/A
Landscaped area	Must not refuse if a minimum of 25m ² per care facility bed is provided	47.10m ² per care facility bed is provided	N/A
Parking for residents and visitors	Must not refuse if 17 car spaces (7 resident spaces/visitor spaces and 10 staff spaces) are provided	17 car spaces out of the 216 provided for the development are allocated for this standard.	N/A
Self-contained dwellings			
Building height	Must not refuse under 8m	Building C – 15.95m Building D – 15.93m Building E – 20.51m	N/A – see below
Density and scale	Must not refuse if under 0.5:1	1.17:1 FSR	N/A – see below
Landscaped area	Must not refuse if a minimum of 4,188.3m ² (30%) of the site area is landscaped	9,105.6m ² (65%)	N/A
Deep soil	Must not refuse if a minimum of 2,094.15m ² (15%) is provided	4,174.6m ² (29.9%)	N/A
Solar access	Must not refuse if a	2 hours solar access is	N/A – see below

	minimum of 3 hours solar access between 9:00am and 3:00pm to 70% of units	achieved between 9:00am and 3:00pm to 70% of units	
Parking for residents and visitors	0.5 spaces per bedroom 1 Bedroom Apartments (28) 2 Bedroom Apartments (89) 3 Bedroom Apartments (12) Total 129 spaces	129 of the 216 car spaces in the development can be allocated for this standard.	N/A

Permissibility

Clause 4 identifies that the Seniors Living SEPP applies to land zoned primarily for urban purposes but only if dwelling houses, residential flat buildings or hospitals are permitted. The site is located within the B7 Business Park Zone under BLEP 2015 and is therefore zoned primarily for urban purposes. Within the zone, health services facilities, which includes hospitals, are permitted with development consent. Therefore, the SEPP applies to the site.

Clause 15 of the Seniors Living SEPP permits development for the purpose of seniors housing on land zoned primarily for urban purposes, despite the provisions of any other environmental planning instrument. Therefore, the proposed development is permissible with development consent.

Use of seniors housing in commercial zones

Clause 19 of the Seniors Living SEPP states that no part of the ground floor of a building on the site that fronts a street may be used for residential purposes. The proposed development satisfies the requirements of this clause, with the portions of the ground floor of Buildings D, E and F fronting Nelson Short Street not being used for residential accommodation.

Whilst the site technically has three street frontages, being Graf Avenue (east), Brunker Road (south) and Nelson Short Street (west), it is not considered that the development fronts Graf Avenue and Brunker Road. This is due to the significant level change of approximately 7.87m from the eastern side boundary to the ground floor of Building C and between 4.51 metres and 8.28 metres from the southern boundary to the ground levels of Buildings C and D. Additionally, it is noted that the development also adopts significant setbacks from the both the eastern and southern boundaries (20 metres and 10 metres) and no vehicular access is provided to either street from the development. As such, the proposed development is considered to satisfy the provisions of Clause 19 of the SEPP.

Access to facilities

The site is located within 400m of a bus service (Bus Service 908) going to and from

Bankstown Central at least once hourly between 8:00am and 12:00pm and 12:00pm and 6:00pm Monday to Friday. A suitable access pathway is provided to the bus stops. Bankstown Central provides shops, bank services, community services and recreation facilities. Additionally, a number of medical centres (I-Care Medical Centre, Bankstown Medical Centre, Blooms Medical Centre, & MedClinic Bankstown are located within Bankstown Central). Therefore the proposed development satisfies the location and access to facilities requirements under Clause 26 of the Seniors Living SEPP.

Density and scale

Clause 48(b) of the Seniors Living SEPP states that the consent authority must not refuse consent for a “*residential care facility*” if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less. The floor space ratio for the residential care facility part of the proposed development, when expressed as a ratio of the site area it occupies (i.e. the northern portion of the site, being 5,000m²) is 0.94:1.

Clause 50(b) of the Seniors Living SEPP states that the consent authority must not refuse consent for “*self-contained dwellings*” if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. The floor space ratio for the self-contained dwellings part of the proposed development, when expressed as a ratio of the site area it occupies (i.e. the southern portion of the site, being 13,920m²) is 1.17:1.

It is noted that the floor space ratio figures expressed above are based on the definition of gross floor area in the Seniors Living SEPP, which reads as follows:

gross floor area means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1,400 millimetres above each floor level):

- (a) excluding columns, fin walls, sun control devices and any elements, projections or works outside the general lines of the outer face of the external wall, and
- (b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and
- (c) excluding car parking needed to meet any requirements of this Policy or the council of the local government area concerned and any internal access to such parking, and
- (d) including in the case of in-fill self-care housing any car parking (other than for visitors) in excess of 1 per dwelling that is provided at ground level, and
- (e) excluding space for the loading and unloading of goods, and
- (f) in the case of a residential care facility—excluding any floor space below ground level that is used for service activities provided by the facility.

Both Clauses 48(b) and 50(b) of the Seniors Living SEPP are expressed as amounts which, if complied with, the consent authority cannot use to refuse an application on the grounds of floor space ratio. If the floor space ratio exceeds these numbers, then the consent authority can either approve or refuse the application on floor space ratio grounds.

In determining whether or not to support the density and scale of the development, when expressed as floor space ratios as calculated under the SEPP, it is considered relevant to consider the overall floor space ratio of the development when calculated under the definition of gross floor area in the Bankstown Local Environmental Plan 2015, which reads as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Clause 4.4 of the Bankstown Local Environmental Plan 2015 provides a maximum floor space ratio for development on the site of 1:1. When calculated in accordance with the definition above, the entirety of the proposed development complies with this requirement, the floor space ratio being 1:1.

When considering whether the density and scale of the development is appropriate, it is **also** relevant to consider other permissible uses that could be proposed on the subject site. Under the B7 - Business Park zoning, 'office premises' is a permissible land use. A development proposing 18,920m² of office premises could be proposed under the BLEP 2015, and could very likely present as a similar built form as that proposed under the current application, albeit one more commercial in appearance. It is worth noting that an office premises development of 18,920m² would generate a demand for 473 parking spaces at a rate of 1 per 40m² under Part B5 (Parking) of

Council's BDCP 2015, more than double the number required to be provided for the development proposed under the Seniors Living SEPP. It is considered that the intensification of the use of the site if developed as office premises would be significantly greater than that currently proposed, especially in terms of traffic generation. The number of vehicle movements associated with 473 parking spaces for office premises would be significantly greater, especially in the morning and evening peak periods, than the number of vehicle movements associated with the 216 parking spaces required for the proposed uses on the site. The subject development is considered to be less intensive than a development of similar scale for office premises, which would otherwise be permitted on the site under the BLEP.

Given that the development complies with the maximum floor space ratio of 1:1 permitted under the BLEP 2015 and is considered to be of a lower level of intensity than other forms of development that are permitted in the zone, it is considered that the density and scale of the proposed development remains appropriate, despite exceeding the threshold at which the consent authority cannot refuse under Clause 50(b) of the Seniors Living SEPP.

Building height

Clause 48(a) of the Seniors Living SEPP states that the consent authority must not refuse consent for a '*residential care facility*' if the building height is less than 8 metres.

Building A – 10.68m

Building F – 10.88m

Clause 50(a) of the Seniors Living SEPP states that the consent authority must not refuse consent for '*self-contained dwellings*' if the building height is less than 8 metres.

Building C – 15.95m

Building D – 15.93m

Building E – 20.51m

It is noted that the building height figures expressed above are based on the definition of height in the Seniors Living SEPP, which reads as follows:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

Both Clauses 48(a) and 50(a) of the Seniors Living SEPP are expressed as amounts which, if complied with, the consent authority cannot use to refuse an application on the grounds of building height. If the building height exceeds these numbers, then the consent authority can either approve or refuse the application on the grounds of building height.

In determining whether or not to support the height of the buildings in the development, when expressed as heights calculated under the SEPP, it is considered relevant to consider the provisions associated with building height as contained in the Bankstown Local Environmental Plan 2015. The definition of building height in the BLEP 2015 reads as follows:

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.

It is noted that the BLEP 2015 does not prescribe a maximum height for the subject site. Height is controlled via the Bankstown Development Control Plan 2015, which sets a maximum height of 16m when measured under the definition of building height in the BLEP 2015. This control was created under an approval under Part 3A of the *Environmental Planning and Assessment Act, 1979* across the old Potts Hill reservoir site; the Potts Hill Design Guidelines which formed part of the Part 3A approval becoming part of the DCP controls applicable to the site. This height control is considered to be the most relevant control to compare the development to, when considering whether to approve or refuse the application under Clauses 48(a) and 50(a) of the Seniors Living SEPP.

When measured under the definition in the BLEP 2015, building heights are as follows:

Building A – 11.44m
Building F – 11.82m

Building C – 16.65m
Building D – 16.63m
Building E – 21.95m

The non-compliances with buildings C & D are minor point encroachments, that are isolated to the clerestory windows. While compliance could be achieved by removing these elements of the building, the clerestory windows allow for both solar access and cross ventilation to be achieved to the units they are provided to. Given these elements are located central to the roof form, result in no additional overshadowing of adjoining properties or other amenity impacts, they are considered worthy of support.

Building E proposes a 5.95m variation to the maximum 16m height limit for the site imposed under the Bankstown Development Control Plan 2015 and the Potts Hill Design Guidelines. While this is a large variation, it has been proposed as a result of the deletion of 'Building B' of the original proposal and the redistribution of this buildings floor area to Building E. This was done to improve the communal open space (COS), which is not only much larger, but is also a very functional and purpose designed area. Rather than the COS being made up of the area between buildings on the site, the principal COS consists of a number of terraced activity nodes that lead to a garden and wellness undercroft. It is considered that this design affords a higher level of amenity compared to the original proposal to the future occupants of the development and is worthy of support taking into account the positive planning outcomes.

The additional storeys of Building E also do not result in additional overshadowing of the residential properties on Graf Avenue to the east of the development, or Brunker Road to the south of the development. Further, the applicant has ensured the additional two (2) storeys incorporate design features and finishes that result in the appearance that the storeys are recessed further into the site and are not visually dominant. The applicant has also provided views of the development from positions on Nelson Short Street, Brunker Road and Rookwood Road that show the additional storeys are not visually prominent, and do not result in a built form that would dominate local views or streetscapes. The views of the development are included below:





VIEW FROM END OF NELSON SHORT ST



VIEW FROM INTERSECTION OF ROOKWOOD RD
AND BOARDMAN ST





VIEW FROM INTERSECTION OF BRUNKER RD
AND ROOKWOOD RD



VIEW FROM BUS STOP (BRUNKER RD AT SUTHERLAND ST)



Based on the above, it is considered that the building height of the proposed development remains appropriate, despite exceeding the threshold at which the consent authority can refuse under Clauses 48(a) and 50(a) of the Seniors Living SEPP.

Solar access – self-contained dwellings

Clause 50(e) of the Seniors Living SEPP states that the consent authority must not refuse consent for self-contained dwellings if a minimum of 70% of the living areas and private open spaces of those dwellings receive solar access between 9:00am and 3:00pm in mid-winter. The ADG requirement under SEPP 65 is that 70% of dwellings receive 2 hours solar access between 9:00am and 3:00pm at mid-winter. The ADG has been relied upon for assessment of solar access for the self-contained dwellings and the development satisfies that requirement.

State Environmental Planning Policy No. 55 – Remediation of Land

A Stage 1 Preliminary Site Investigation (PSI) prepared by Consulting Earth Scientists Pty Ltd was submitted in support of the development application. The PSI revealed that one sample (BH12-0.5-0.6) exceeded the site acceptance criteria for Polycyclic Aromatic Hydrocarbons (PAH). Reference was also made to an Environmental Management Plan applying to the site which stated that existing fill materials were contaminated with PAH. Parts of the site were remediated with respect to commercial/industrial land use assessment criteria however, other parts of the site were considered to remain contaminated.

The applicant has further submitted a Remedial Action Plan and a Site Audit Statement. Council's Environmental Health Unit were satisfied that the site will be suitable for the proposed use provided that the site is remediated in accordance with the Remedial Action Plan and the Site Audit Statement.

The development consent has been staged requiring two Construction Certificates, one being for the excavation and basement works and one for the remaining building works. A Validation Report is to be prepared and submitted to Council certifying the sites suitability after remediation has occurred and prior to the issue of a Construction Certificate for the building works. The Validation Report is required to be audited by a NSW EPA Accredited Site Auditor. Should the Remedial Action Plan or the Validation Report require the implementation of an Environmental Management Plan, this will form part of the development consent and also must be submitted to Council prior to the issue of the Construction Certificate for the building works. The staging of the development consent will ensure that the site is suitable for the proposed change of use and as such, the provisions of Clause 7 of SEPP 55 have been satisfied.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65), and the Apartment Design Guide (ADG)

An assessment against the Design Quality Principles in SEPP 65 and the accompanying Apartment Design Guide (ADG) has been carried out in relation to the self-contained dwellings within Buildings C – E.

The proposed development is considered to be consistent with the objectives and Design Quality Principles contained in the SEPP and ADG, and responds appropriately to the site's context. Moreover, the application generally conforms with the key 'design criteria' contained in the Apartment Design Guide, as illustrated in the table below, with the exception of natural cross ventilation, unit performance, and storage.

'DESIGN CRITERIA'	PROPOSED	COMPLIES?
<p>3D-1 Communal open space</p> <p>25% of the site area is to be communal open space (4730m²) and 50% of the communal open space must receive at least 2 hours direct sunlight between 9am-3pm on 21 June.</p>	<p>5299m² (28%) of the site is to be used as communal open space. At least 50% of the COS is able to achieve at least 2 hours direct sunlight between 9am-3pm on 21 June.</p>	<p>Yes</p>
<p>3E-1 Deep soil zones</p> <p>7% of the site area is to be deep soil zone (1,324.40m²)</p>	<p>5854m² (32%) of the site is deep soil zone.</p>	<p>Yes</p>
<p>3F-1 Visual Privacy (Building separation)</p> <p>6m setback up to 4 storeys (3m to non-habitable rooms) from side and rear boundaries.</p> <p>12m separation up to 4 storeys (6m to non-habitable rooms) between buildings within the site.</p> <p>9m setbacks 5 to 8 storeys (4.5m to non-habitable rooms) from side and rear boundaries.</p> <p>18m separation 5 to 8 storeys (9m to non-habitable rooms) between buildings within the site</p> <p>0m to blank walls</p>	<p>Building C <u>North (Separation to Building A)</u> All storeys – 80m</p> <p><u>West (Separation to Building D)</u> Ground Floor 3.5m setback from the blank wall of Building C and 11.7m from habitable rooms to balcony.</p> <p>2 – 3 storeys 3.5m setback from the blank wall of Building C and 13.5m from habitable rooms and balconies</p> <p>4th Storey 13.5m setback from habitable room to Building D.</p> <p>Building D <u>North (Separation to Building E)</u> 1st Storey - 50.9m</p>	<p>Yes</p> <p>No – Condition balcony reduced in depth of Unit C.00.01 & C.00.02 to achieve compliance.</p> <p>Yes</p> <p>Yes</p>

	<p>2nd – 4th storey 17m</p> <p><u>East (Separation to Building C)</u></p> <p>Ground Floor 3.5m setback from the blank wall of Building C and 11.7m from habitable rooms to balcony.</p> <p>2 – 3 storeys 3.5m setback from the blank wall of Building C and 13.5m from habitable rooms and balconies</p> <p>4th Storey 13.5m setback from habitable room to Building D.</p> <p>Building E</p> <p><u>South (Separation to building D)</u></p> <p>1st Storey - 50.9m 2nd – 4th storey 17m 5th – 6th storey no other building at same height</p>	<p>Yes</p> <p>No – Condition balcony reduced in depth of Unit C.00.01 & C.00.02 to achieve compliance.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>4A-1 Solar access</p> <p>70% of units should receive 2hrs solar access between 9am – 3pm midwinter</p>	<p>104 of 129 (80.6%) units receive 2hrs direct solar access between 9am – 3pm midwinter.</p>	<p>Yes</p>
<p>4A-3 Solar access</p> <p>A maximum 15% of apartments receive no direct sunlight between 9am and 3pm mid-winter</p>	<p>10 of 129 (7.6%) units receive no direct sunlight at the relevant time.</p>	<p>Yes</p>
<p>4B-3 Natural cross-ventilation</p> <p>60% of units to be naturally cross-ventilated</p>	<p>77 of 129 (55%) of units are naturally cross-ventilated.</p>	<p>No - Condition E.00.03 & E.01.07, E.02.07, E.03.07, E.04.07 & E.05.07 add a bathroom window and sliding cavity door to bedrooms. This results in 60% of apartments achieving</p>

		compliance with cross ventilation.
4C-1 Ceiling heights Min. 2.7m for habitable rooms.	Floor-to-ceiling heights are greater than 2.7m to habitable rooms.	Yes
4D-1 Unit size 1 bed – min. 50m ² 2 bed – min. 70m ² 3 bed – min. 90m ² Add 5m ² for each additional bathroom/WC Every habitable room must have a window in an external wall	1 bed – min. 58m ² 2-bed, 1 bath – min 72m ² 2-bed, 2 bath – min 75m ² 3-bed, 2 bath – min. 100m ² All habitable rooms have a window in an external wall.	Yes Yes
4D-2 Unit Performance maximised Habitable room depths are limited to a maximum of 6.75m. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	All the units meet the habitable room depth requirements except for D.00.01 which exceeds 8m for an open plan layout.	No – Condition of consent included which requires a window to be proposed on the west facing wall of the living area of Unit D.00.01 to achieve compliance.
4D-3 Apartment layouts <ul style="list-style-type: none"> • Master Beds: 10m² min • Other beds: 9m² min • Bedrooms min dimension of 3m • Living room minimum width 4m for 2 and 3 bedroom apartments 	All units achieve the minimum apartment size, dimensions for bedrooms and living areas.	Yes
4E-1 Private Open Space 1-bed: Min 8m ² , 2m depth 2-bed: Min. 10m ² , 2m depth 3-bed: Min 12m ² , 2.4m depth to primary balconies. Ground level units: Min 15m ² , 3m depth	All units achieve compliance with POS requirements	Yes

4F-1 Internal circulation Max. 12 units accessed from a single corridor.	No more than 12 units accessed from a single corridor.	Yes
4G-1 Storage 1 beds: 6m ³ , 2 beds: 8m ³ , 3 beds: 10m ³ (At least half to be provided within the unit)	E 00.03, 01.07, 02.07, 03.06, 03.07, 04.06, 04.07, 05.07 fail to provide minimum storage with at least 50% in unit	No Condition that compliance is achieved prior to the issue of a construction certificate for the buildings.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of SEPP (Infrastructure) 2007 identifies certain development types at a relevant size or capacity for which the Transport for New South Wales (TfNSW) is to be notified as the development is considered to be traffic generating, with comments received to be taken into consideration when assessing the application. In correspondence dated 9 April 2021, TfNSW provided a number of advisory comments for Council to consider during its assessment of the proposed development. These comments were provided to Council's Traffic Management team to consider during their assessment of the proposed development. The traffic team concluded that subject to conditions, the proposed development was worthy of support.

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

A valid BASIX Certificate accompanied the Development Application. The Certificate details the required thermal comfort, energy and water commitments. The proposal satisfies the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 in this instance.

State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017

The proposed tree removal has been assessed against the relevant provisions of State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017. Council's Tree Management Team undertook an assessment of the proposed tree removal, and concluded that subject to the replanting noted in the supporting landscape plan, that the proposal was worthy of support.

Bankstown Local Environmental Plan 2015

Having regards to the aims of the Seniors Living SEPP, the following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

- Aims of Plan
- Maps
- 1.9A Suspension of covenants, agreements and instruments
- 2.1 Land use zones
- 2.2 Zoning of land to which Plan applies
- 2.3 Zone objectives and Land Use Table
- 2.7 Demolition requires development consent
- Zone B7 Business Park
- 4.4 Floor space ratio
- 4.5 Calculation of floor space ratio and site area
- 5.4 Controls relating to miscellaneous permissible uses
- 5.10 Heritage conservation
- 6.2 Earthworks

The following table provides a summary of the development application against the primary numerical controls contained within BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Floor space ratio max	1:1	18,904.60sqm GFA 18,920.0sqm Site Area 1:1	Yes
Neighbourhood shop	Maximum floor area 90m ²	44m ²	Yes

Heritage

'Potts Hill Reservoirs 1 and 2 and site', on the opposite side of Nelson Short Street, is identified in Schedule 5 of the BLEP as having 'state' heritage significance. In the event that the development site is in the immediate vicinity of the item, an assessment has been undertaken having to Clauses 5.10(4) and 5.10(5) of the Bankstown Local Environmental Plan 2015 which read as follows:

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

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

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

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

Council's Heritage Advisor has provided the following response;

The site is however in the vicinity of a listed heritage item known as Potts Hill Reservoir 1 and 2, which is of State Significance (Item No. 01333).

The significance of the item is below:

The Potts Hill Water Supply Reservoirs were an integral part of the Upper Nepean Water Supply Scheme, which was crucial to the development and growth of Sydney from the late nineteenth century. The expansion of the complex, including the construction of Reservoir No. 2, demonstrates the growth of the City of Sydney and surrounding suburbs for more than a century. The construction of the Reservoirs was a major achievement in hydraulic technology and associated construction methods for the time and today, the site continues to feature substantial physical evidence of these achievements, including extensive areas of subsurface water reticulation. The complex includes the inlet for an early twentieth-century high pressure tunnel, which was an outstanding engineering feat and was the third largest water supply tunnel in the world for its time. The Reservoirs continue in an important functional role as a distribution centre for Sydney's water supply.

The Potts Hill Reservoirs are situated within a distinctive and attractive cultural landscape, combining functional industrial design, typical turn-of-the-century built features and both natural and exotic plantings. The two reservoirs in combination are rare because of their size, method of construction and proximity. The Potts Hill Reservoirs are an important element in the history of Sydney Water and the site continues to be held in affection and esteem by many generations of Water Board workers. The components of the site which are the most important in terms of the heritage values of the site are: The Carrier Canal and Associated items; Reservoir No.1 and associated items; The telescopic valve tower on the 1200mm Eastern Crossover; Pressure Tunnel Inlet; Pressure Tunnel Access Shaft Building; Suction Well; Surge Tank and Reflux Valve on No.1 Main; No.1 Supply Main Pipeline; No.2 Supply Main pipeline; the Pressure Tunnel; and Landscape Elements.

<https://apps.environment.nsw.gov.au/dpcheritageapp/ViewHeritageItemDetails.aspx?ID=5051434>

Council's Heritage officer advised that the proposal did not appear to impact on the significance of the item, however given it is a state item, recommended referring the application to the Office of Environment and Heritage (OEH). As there was no legislative trigger to formally refer the application, the architectural plans and relevant supporting documents were forwarded to OEH for comment on 9 April 2021 via email. No response was received and it was determined that OEH did not wish to comment on the proposal, notwithstanding there was no legislative requirement for them to do so.

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

The following table provides a summary of the development application against the controls contained in Parts B5 and B6 of Bankstown Development Control Plan 2015 and Part B3.1 of the Potts Hill Concept Plan: Business Park Design Guidelines

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Storeys max	2	6	No – see below
Landscape buffer zone along primary and secondary frontages	5m min	10m and 20m	Yes
Side and rear setback	6m min	6m	Yes
Floor space ratio	1:1 max	1:1	Yes
Site coverage	70% max	36%	Yes
Building height	16m max	Building A – 11.44m Building C – 16.65m Building D – 16.63m Building E – 21.95m Building F – 11.82m	No – see previous discussion in report
Setbacks	20m – eastern boundary 6m – northern and western boundaries 10m – southern boundary	20m – eastern boundary 6m – northern and western boundaries 10m – southern boundary	Yes
Vehicular access	From Brunker Road	From Nelson Short Street	No – see below
Car Parking	Retail: 1 per 40m ² Medical Centre: 1 per 25m ² Restaurant: 0.15 per m ²	1 (44m ²) 5 (115m ²) 49 (328m ²) 201 car spaces are required for the development based on	Yes

		the applicable legislation – 216 provided in total.	
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Storeys

Clause 6.1 of Section 6 of Part B1 of BDCP 2015 limits development to a maximum of 2 storeys. This requirement is inconsistent with the 16 metre height limit imposed under the Potts Hill Concept Plan: Business Park Design Guidelines. It would be unreasonable to refuse the application based on an exceedance to the maximum number of storeys when the development generally complies with the maximum height limit across the site except for minor variations to Building C & D and the additional storeys that have been previously justified to Building E.

Vehicular access

Due to the steep embankment along the southern boundary, it is not practicable to provide vehicular access from Brunner Road to the site. As an alternative, vehicular access is to be provided from Nelson Short Street, without the need for extensive earthworks. Despite the inconsistency with the control, the proposed vehicular access is considered to be the most appropriate solution for the site.

Planning Agreements [section 4.15(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

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

The proposed development is not inconsistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

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

The likely impacts of the proposal have been managed through the design of the development which is compliant with Council's planning controls, with the exception of the variations which have been addressed previously within this report.

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

The proposed development is permissible with consent on the subject site, and represents a built form that is commensurate with the development type. As such, it is considered that the proposed development is suitable for the site.

Submissions [section 4.15(1)(d)]

The application was advertised for a period of twenty-eight (28) in accordance with the Canterbury Bankstown Community Participation Plan. No submissions were received.

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

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by the consent authority

ensuring that any adverse impacts on the surrounding area and the environment are avoided. Allowing for the variations, such as those proposed through this application, would not go to undermining the integrity of these particular controls. As a result approval for this development would be in the public interest.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, and the relevant planning controls, in particular the provisions of SEPP (Housing for Seniors or People with a Disability) 2004. The proposed development generally complies with all applicable planning controls. The development exceeds the threshold of clauses which the consent authority cannot refuse an application if the thresholds are not exceeded, in relation to density and scale, and also building height. However, it is considered that the development remains consistent with the envisaged character of the area and also complies with the controls that would relevantly apply if an application was lodged for a development that the Senior Living SEPP did not apply. Where variations occur, it is considered that those variations are acceptable, as discussed in this report and can be supported.

Overall the proposed development is permitted on the subject site under the zoning, and is considered to be appropriate in the context of surrounding land uses.

RECOMMENDATION

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

Aidan Harrington

Development Assessment Officer