

**ITEM 5.2**                      **20-21 Boorea Avenue, Lakemba - Planning Proposal to Amend Canterbury LEP 2012 to allow use of Residential Care Facility on Light Industrial Land and Change Development Standards.**

**AUTHOR**                      **Planning**

### **PURPOSE AND BACKGROUND**

In June 2016, Council received a planning proposal from the Lebanese Muslim Association to allow the use of a Residential Care Facility on land at 20-21 Boorea Avenue, Lakemba and alter development standards on 21 Boorea Avenue by increasing Floor Space Ratio (FSR) from 1:1 to 2:1. The proposal, if implemented would allow the lodgement of a development application for a four-storey Residential Care Facility, providing up to 112 beds, including 28 dementia-specific beds.

The matter was considered by the Canterbury-Bankstown IHAP on 3 December, 2017, which recommended that the planning proposal not be supported due to conflicts with Council and State Government policy.

### **ISSUE**

In accordance with the Environmental Planning and Assessment Act 1979, Council is requested to resolve whether a planning proposal for the site at 20-21 Boorea Avenue, Lakemba should proceed to Gateway.

### **RECOMMENDATION**

That the planning proposal seeking to add “Residential Care Facility” as an additional permitted use for the subject land in the IN2 Light Industrial Zone under Canterbury Local Environmental Plan 2012 and to increase Floor Space Ratio controls applying to the subject site not be supported for the reasons outlined in the attached report.

### **ATTACHMENTS**

- A. IHAP Report 5 December 2017
- B. Planning Proposal Report (applicant)
- C. Concept Master Plan (applicant)
- D. Proposed Mapping (applicant)
- E. Proposed Timeframe (applicant)
- F. s117 Directions (applicant)
- G. Aged Care Demographic Study

- H. Flood Impact Report (applicant)
- I. Geotechnical Investigation (applicant)
- J. Noise Impact Assessment (applicant)
- K. Survey Plan (applicant)
- L. Traffic & Parking Impact Assessment (applicant)
- M. Waste Classification Report (applicant)
- N. Workforce Supply Study (applicant)
- O. Lakemba Care Facility Peer Review (SGS Economics & Planning)

## **POLICY IMPACT**

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The planning proposal is inconsistent with State Government policies including:

- Draft Greater Sydney Region Plan;
- The Revised Draft Sydney South District Plan; and
- SEPP (Housing for Seniors and People with a Disability) 2004.

The proposal is also inconsistent with the Council Strategy Towards 2032 – Canterbury Economic Development and Employment Strategy (2009).

## **FINANCIAL IMPACT**

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The recommendation has no financial impact on Council.

## **COMMUNITY IMPACT**

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The planning proposal seeks to facilitate a new Residential Care Facility. Although it is acknowledged residential care facilities are necessary to cater for an aging population, given the environmental constraints on the site, its physical context which includes industrial uses, and the planning policy framework, which does not support conversion of existing industrial/employment related uses; the proposal is not considered suitable for this location.

Economic, flooding, urban design, and other matters would need to be further considered and addressed should Council choose to proceed with the proposal. More specific details are outlined further in this report.

Opportunities remain across the city for a use of this nature on land already zoned to enable this type of development, consistent with relevant planning policies and instruments.

The proposal has potential to impact on flooding in Coxs Creek, as it would potentially alter the flood storage characteristics on the subject site, which may in turn further impact upstream and downstream properties. Detailed (site specific) modelling would be required to address this; should Council choose to proceed with the proposal.

## DETAILED INFORMATION

Council is in receipt of an application requesting the following amendment to the Canterbury Local Environmental Plan 2012:

1. add “Residential Care Facility” as an additional permitted use for the land at 20-21 Boorea Avenue, Lakemba.
2. Amend the Floor Space Ratio Map to increase FSR controls from 1:1 to 2:1 on the subject land at 21 Boorea Avenue, Lakemba.

### Site Details

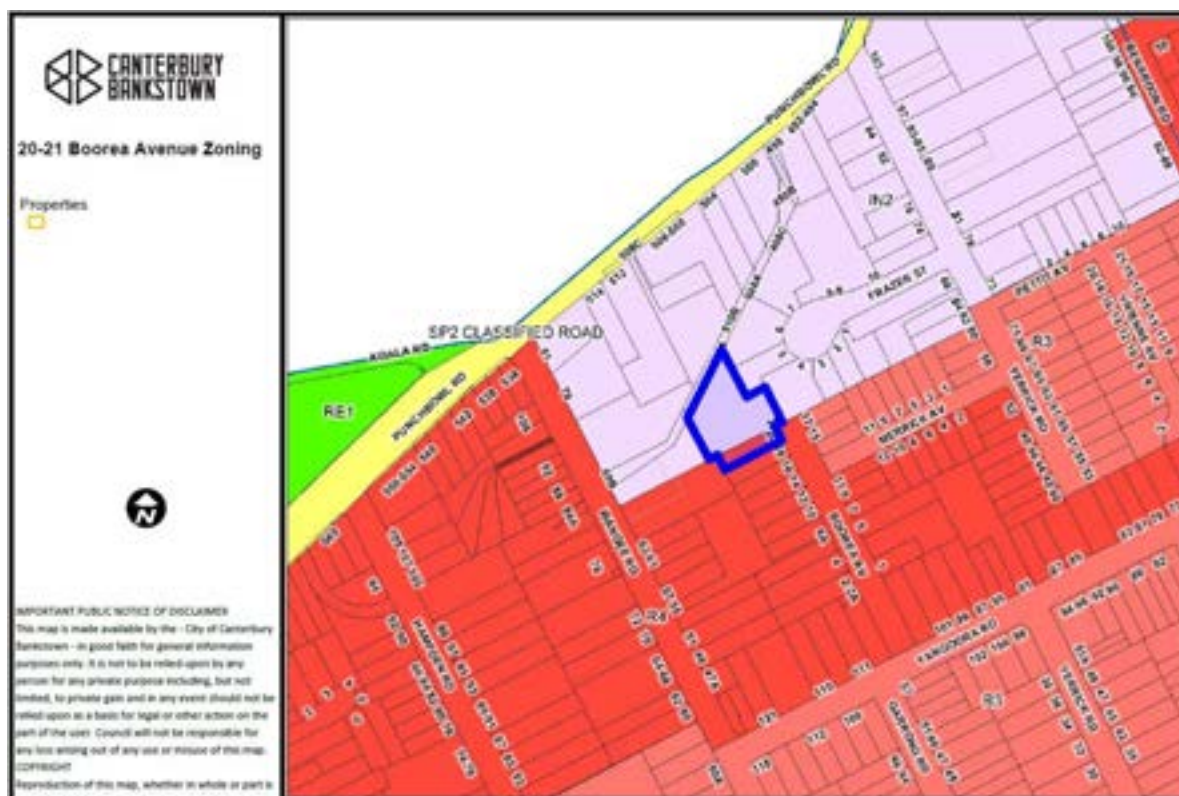
The site is situated at the end of Boorea Avenue on the northern and eastern sides. It has a total combined area of 3136.4m<sup>2</sup>. 20 Boorea Avenue is a regular dwelling lot with frontage to Boorea Avenue of 12.19m. 21 Boorea Avenue is a site with an irregular shape at the end of the Boorea Avenue cul-de-sac, with a frontage of approximately 6.3m. The site comprises two allotments in a single ownership. Existing land uses are detailed below.

Table 1: Site details

Property Address	Property Description	Existing Use	Site Area
20 Boorea Avenue, Lakemba	Lot 25 in DP 13586	Single storey dwelling house	556.4m <sup>2</sup>
21 Boorea Avenue, Lakemba	Lot X in DP 377169	Stone masons yard	2580 m <sup>2</sup>



Map 1: Location



**Map 2: Zoning Map**

## Description of Proposal

The following amendments to Canterbury Local Environmental Plan 2012 are proposed in relation to the site at 20-21 Boorea Avenue, Lakemba:

	<b>20 Boorea Avenue, Lakemba</b>	
	<b>Existing</b>	<b>Proposed</b>
Land Use zone	R4	No change*
FSR	0.75:1	No change*
Height	8.5m	No change*
	<i>* Property to be used for access purposes only</i>	
	<b>21 Boorea Avenue, Lakemba</b>	
	<b>Existing</b>	<b>Proposed</b>
Land Use zone	IN2	No change
FSR	1:1	2:1
Height	No CLEP height control (height is controlled by DCP)	No height control proposed

The planning proposal would enable lodgement of a development application for a four-storey Residential Care Facility with a capacity of 112 beds, of which 28 are intended to be designated for dementia patients. The concept design also includes underground parking and servicing in a two-level basement. The proposed building will be entirely located on 21 Boorea Avenue, with 20 Boorea Avenue being used only for access to the proposed building basement. As such no changes to development standards are proposed for 20 Boorea Avenue.

Under State Environmental Planning Policy (Housing for Seniors and People with a Disability), Residential Care Facilities are included in the definition of Seniors Housing. Specifically, they are defined as:

*In this Policy, a **residential care facility** is residential accommodation for seniors or people with a disability that includes:*

- a) meals and cleaning services, and*
- b) personal care or nursing care, or both, and*
- c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.*

They can also be subject to specific provisions of the Commonwealth Aged Care Act 1997 (with respect to the provision of Affordable Care places).

### **Considerations**

Based on the Environmental Planning and Assessment Act 1979 and the Department of Planning and Environment's guidelines, the following key planning policies are relevant:

- Metropolitan Plan (*A Plan for Growing Sydney*) (2014)
- Draft Greater Sydney Region Plan.
- Revised Draft South District Plan (2017)
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004
- Canterbury Economic Development and Employment Strategy (2009)
- Department of Planning and Environment's publications: A Guide to Preparing Local Environmental Plans and A Guide to Preparing Planning Proposals (August 2016).

### **Strategic Merit Test**

In August 2016, the Department of Planning and Environment introduced the Strategic Merit Test to determine whether a proposal demonstrates strategic and site specific merit to proceed to Gateway. A proposal that seeks to amend controls that are less than five years old will only be considered where it clearly meets the Strategic Merit Test. The Strategic Merit Test contains two components – assessment of Strategic Merit, and should the proposal pass this component, the second component of Site-Specific Merit, which considers the suitability of the site for the proposed use.

Council commissioned advice from SGS Economics and Planning to independently assess the consistency of the planning proposal against the Strategic Merit Test. A full assessment of the Strategic Merit Test is included in the Attached IHAP Report. In summary, SGS found:

- *Two supporting documents for the proposed development of a residential care facility at 20 – 21 Boorea Avenue, Lakemba, "Key Aged Care Demographic Analysis" "Workforce Supply Analysis" for Western Sydney.*

- *Broadly, given the data focus of these reports, SGS has no major concerns with the data provided as much of it is directly sourced from government data sources such as the 2011 census and aged care service lists. However, some methodological concerns are raised:*
  - *Inconsistency of catchment definitions used in the studies.*
  - *Lack of justification for the very large catchment used for much of the analysis given planning policy goals for aging in place and allowing people to live close to their place of work.*
  - *Lack of clarity around relevance of some report sections and no clear link between reports and the planning application.*
  - *Lack of justification for high growth rates applied to forecasting the Muslim population.*
- *With respect to the bigger issue in question here – whether there is sufficient evidence to justify introducing a non-industrial use into an industrial precinct, SGS has identified gaps in the information provided in relation to the proposed use. Although the reports provide evidence of demand for a Muslim specific residential aged care facility, they do not provide:*
  - *Justification for the proposed use with regards to conflict with strategic policy objectives to protect industrial land.*
  - *An understanding of whether the Canterbury Bankstown LGA has sufficient industrial land supply to meet future demand and so demonstrate that the site under its current use could be surplus to requirements*
  - *Comparison between the wider social benefits of the proposed use over the existing industrial use on site.*
  - *Consideration of alternative sites and why this site is required.*
- *In conclusion SGS recommends that a clearer understanding of the impact that the introduction of a non-industrial use on this site be presented, by comparing the benefits of the proposed use over the current use.*
- *As the two reports by Premier Consulting currently stand, SGS finds that there is insufficient justification to warrant rezoning or change of use on site.*

If this proposal was to proceed then a new economic analysis of the impact of the planning proposal on the loss of employment lands would need to be provided by the applicant, including responses to the matters detailed in the attached report by SGS Economics and Planning.

#### Strategic Merit

- The planning proposal needs to demonstrate consistency with the relevant State Government Plans (including publicly released draft versions). These relevant plans are:
  - the Draft Greater Sydney Region Plan; and
  - the Revised Draft South District Plan.

The relevant policies in the Revised Draft South District Plan are:

*Planning Priority S10- Protecting and managing industrial and urban services land, under Action 38- Manage industrial land in the South District by protecting all industrial zoned land from conversion to residential development, including conversion to mixed-use zones.*

- Both Plans contain provisions to protect all industrial land in the Eastern Harbour City (which includes Canterbury-Bankstown) from conversion to residential development. Enabling a Residential Care Facility on industrial zoned land, would be in contradiction to the strategic intent of both plans. The policy does not allow for flexibility in its operation.

**SGS Conclusion** -*In accordance with the policy direction of the Draft Greater Sydney Region Plan, the loss of industrial land at this site would not be supported. Based on a review of the information provided, the proposed development for a residential aged care facility use does not meet the planning priority within the Revised Draft South District Plan.*

- The next component of the Strategic Merit Test requires consistency with local planning strategies endorsed by the Department of Planning and Environment.
  - The Canterbury Economic Development and Employment Strategy prepared by Council identified that the industrial component of the subject land should be retained for industrial purposes consistent with the objectives of the zone.
- The third component of the Strategic Merit Test is whether the proposal is responding to a change of circumstances not recognised by the current planning controls.
  - Although the requirements for ageing in place is important and a growing demographic trend, Residential Care Facilities and other forms of retirement living are catered for in existing residential zones under Canterbury LEP 2012 and Bankstown LEP 2015 through the provisions of the State Environmental Planning Policy (Housing for Seniors and People with a Disability), which directs this type of use to more appropriate zones, and therefore locations.
  - To justify rezoning of non-residential land for this purpose, it would be necessary to demonstrate that it would be difficult or unfeasible to provide a facility in an alternative location that could serve the same need within the existing policy framework. A facility of this kind could be delivered within the current planning framework on land currently zoned R4 High Density, that permits the use of Residential Care Facility without the need for rezoning.
  - On this basis the supporting information with the planning proposal does not demonstrably establish that the need for rezoning land currently exists.

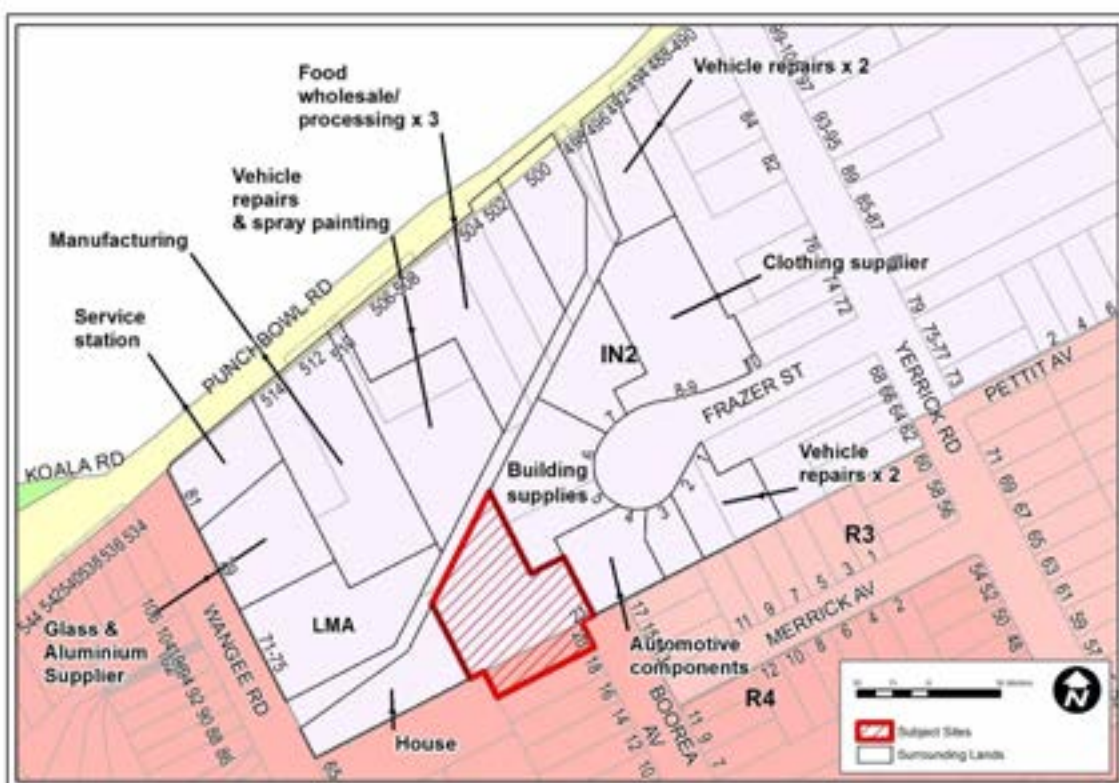
#### Site-Specific Merit

The site does not meet the attributes for a Residential Care Facility of this nature, due to the flood hazard of the adjoining Cox's Creek and the nature of the adjoining industrial uses. The SEPP (Housing for Seniors and People with a Disability) 2004 contains a number of site-based



requirements for Seniors Housing (which includes Residential Care Facilities). The SEPP identifies land as high flooding hazard as “*Environmentally Sensitive Land*” and the accompanying guide which indicates that development should be in accordance with the NSW Flood Manual. Based on the evidence presented to date, Councils flood engineers are not satisfied that the land is suitable for a Residential Care Facility.

The site is mostly within the IN2 light industrial zone, and forms part of a larger precinct of industrial land which is predominantly used for employment related purposes, including automotive services, building supplies, warehousing and manufacturing. The introduction of a high-density, sensitive land use will create a land use conflict where the amenity of the proposed residents would be impacted by the ordinary and permitted uses of adjoining sites. Map 3 below shows surrounding uses. Although a land use conflict currently exists, this is limited to a small amount of established homes. As a general planning principle, Council should seek to avoid exacerbating conflicting land uses. On this basis the proposal cannot be considered to have regard to the existing, approved and likely future use of land in the vicinity of the proposal.



**Map 3: Surrounding Uses**

Council referred this planning proposal to its Independent Hearing and Assessment Panel (IHAP) for consideration. The matter was heard by at the IHAP at its meeting of 5 December 2017, with representatives of the LMA and their planning consultants speaking on behalf of the proposal. The IHAP assessment and decision are reproduced below:

#### ***IHAP Assessment***

*The Panel considered carefully the submissions made by the applicant and the detailed reports put forward by the proponent.*

*In summary, the Panel agrees with the Council's recommendation that the proposed zoning change (for additional permitted use) not be supported.*

*The Panel notes that the proponent owns a number of sites around the proposed rezoning site and the Panel appreciates that the consolidation of the number of uses on the site would be to the advantage of the community and synergise with the Mosque use on the adjoining land.*

*The Panel was concerned about the intrusion of a residential use into the industrial zone with the potential to create land use conflicts that could potentially diminish the future viability of the adjoining industrial lands.*

*Against the proponent's arguments is the strong strategic policies adopted by the Council and the State Government to preserve industrial zoned land especially in this District. This is further reinforced by the recent planning documents issued by the Greater Sydney Commission.*

*On balance the Panel is of the opinion that these broader strategic matters outweigh the specific locational and socially desirable benefits of the proposal to the proponent.*

*The Panel notes, as did the applicant, that it is open to the applicant to source other appropriately zoned sites to address the residential care needs of its community in the local area.*

#### ***IHAP Recommendation***

*The Panel adopts the recommendation in the Council Staff report that the planning proposal to add "Residential Care Facility" as an additional permitted use for the subject land in the IN2 Light Industrial Zone under Canterbury Local Environmental Plan 2012 and to increase Floor Space Ratio controls not be supported for the reasons outlined in the report.*

#### **Further information requirements**

Should Council wish to proceed with a planning proposal for this site, there are a number of matters that would need to be further addressed by the applicant. This information has not been requested to date, due to the views of Council Staff and the IHAP that the planning proposal not be supported. The following additional information would need to be required by a condition of any Gateway Determination and provided prior to exhibition:

- New economic analysis of the impact of the planning proposal on the loss of employment lands, including responses to the matters detailed in the attached report by SGS Economics and Planning. The material as submitted by the applicant has been assessed as insufficient to properly address the Greater Sydney Regional Plan and the Revised Draft Sydney South District Plan.
- Expanded flood modelling that assesses upstream and downstream impacts of making changes to the site, demonstrates site suitability and recommends mitigation strategies based on the requirements of the NSW Flood Manual. The material submitted by the applicant is insufficient to address these matters.

- A Phase 1 Site Contamination Assessment is required. A report was not submitted by the applicant (the Geotechnical Investigation included in the submission did not address contamination). The report will need to be sufficient to meet the requirements of SEPP 55, and Council must be satisfied that remediation can occur to make the site suitable for the proposed use.
- Setting an appropriate density and height control for the subject site. The proposed Floor Space Ratio of has not been tested to determine its appropriateness and whether this level of density and associated impacts reasonably accommodated within this locality. 21 Boorea Avenue currently has no maximum building height control and the introduction of such a control has not been proposed as part of this planning proposal. While the applicant is proposing a four-storey building the appropriateness of this height has not been assessed and the absence of a height control means that this height could be varied as part of a future development application. It will be necessary to have a density and height control to ensure that any future development is compatible with the surrounding nature of the area. This would be appropriately subject to an urban design assessment and made available prior to exhibition.

## Conclusion

Council received a Planning Proposal that seeks to allow redevelopment of the sites into a residential care facility. This involves the rezoning of land to add a residential care facility as an additional permitted use to be accommodated on this site.

Council has undertaken a detailed assessment of the proposal and sought specialist economic advice regarding the need for the facility and how it aligns with the *Revised Draft South District Plan*. The results of this assessment indicate that the proposal is inconsistent with the Revised Draft South District Plan, and should not be supported on this basis. This view is consistent with that of the IHAP.

The assessment also considered whether there was an overriding need for a residential care facility in this particular location, and concluded that whilst there is a need for a Residential Care facility to meet the needs of people of Muslim faith and an aging population more generally, there were no specific, compelling reasons why this land was needed for this purpose, as there was sufficient land potentially available within more suitable zones, that could be developed for this purpose under *SEPP (Housing For Seniors and People With A Disability) 2004*, without the need for further rezoning.

Finally, the site was deemed unsuitable for a facility of this nature (a 'vertical village' as defined in the relevant SEPP), owing to its susceptibility to flooding, the interface with existing industrial areas adjoining the site and the scale and density sought being out of character with the surrounding area (being more than double that of adjoining uses).

Based on the matters raised above and the concurrent view of the IHAP, it is recommended that the planning proposal not be supported.