

Report to Sydney West Joint Regional Planning Panel

JRPP No.	2015SYW086
DA No:	JRPP-15-00948
Proposed Development:	Mixed use development
Development Type:	Capital Investment Value > \$20 million
Lodgement Date:	30 April 2015
Land/Address:	Lot 1 DP 706452, 125 Main Street, Blacktown
Land Zoning:	3(b) Special Business pursuant to Blacktown Local Environmental Plan 1988
Capital Investment Value of Development:	\$43,967,616
Applicant:	Bermark Pty Ltd
Landowner:	Bermark Pty Ltd
Report Author:	Holly Palmer, Senior Town Planner
Instructing Officers:	Judith Portelli, Manager Development Assessment Glennys James, Director Design and Development
Date Submitted to JRPP:	14 September 2016
Date Considered by JRPP:	To be considered electronically



Figure 1 Photomontage (Brooks Projects Architects)

Assessment Report

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Attachment 2	–	Photomontage of development
Attachment 3	–	Development application plans
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Attachment 5	–	Assessment of compliance with SEPP 65 design principles and the Residential Flat Design Code
Attachment 6	–	Assessment of compliance with Blacktown Local Environmental Plan 1988 and Blacktown Development Control Plan 2006

1. Summary

- 1.1 Blacktown City Council is in receipt of a Development Application (DA) from Bermark Pty Ltd. The DA seeks approval for the demolition of existing structures and the construction of an 11 storey mixed use development comprising basement parking levels, commercial premises on the ground floor with an area of 1,220 sqm, 153 residential units above and associated landscaping at 125 Main Street, Blacktown.
- 1.2 The proposed development constitutes '*regional development*' requiring referral to the Joint Regional Planning Panel (JRPP) as it has a capital investment value of \$44 million. While Council is responsible for the assessment of the DA, the Sydney West JRPP is the consent authority.
- 1.3 The subject site is currently zoned B3 Commercial Core under Blacktown Local Environmental Plan (BLEP) 2015 (which commenced on 7 July 2015 following the lodgement of this DA), which sets a maximum building height of 32 metres. Commercial premises are permissible with consent, however residential accommodation is not permissible in this zoning. Subject to clause 1.8A 'Savings provision relating to development applications' within BLEP 2015, as this DA was lodged before the commencement of BLEP 2015 and was not determined before that commencement, the DA must be determined as if BLEP 2015 had not commenced.
- 1.4 This DA is being assessed under BLEP 1988, under which the site was zoned 3(b) Special Business. In this zone 'commercial premises' and 'residential flat buildings' were permissible with development consent. There were no height controls in BLEP 1988.
- 1.5 In view of the savings provision, a detailed assessment has been undertaken against the provisions of BLEP 1988 and Blacktown Development Control Plan 2006 (BDCP 2006). The proposed development is fully compliant with the numerical provisions of BLEP 1988 and is consistent with the relevant controls in BDCP 2006, Part D - Development in the Business Zones. The proposed building height is consistent with the existing and desired future character, being at the periphery of the Blacktown Central Business District (CBD).
- 1.6 As the proposal comprises residential uses, the relevant parts of BDCP 2006, Part C - Development in the Residential Zones are also applicable. The proposal does not strictly comply with the common open space requirement. The variation sought is considered acceptable as the proposal is carefully designed to provide a high level of amenity to the future residents and does not unreasonably impact on adjoining properties.
- 1.7 The proposal is consistent with the objectives of State Environmental Planning Policy No. 65 (SEPP No. 65) and satisfactorily achieves the 10 'design quality principles' listed under Part 2 of SEPP No. 65. The application has been assessed against the design guidelines provided within the Residential Flat Design Code (RFDC). As the DA was lodged on 30 April 2015, the proposal predates Amendment 3 of SEPP No. 65 which was published on 19 June 2015. Therefore, the proposal continues to be assessed under SEPP No. 65 before the amendment.
- 1.8 The development complies with all of the numerical recommendations of the RFDC, with the exception of building separation for the south-eastern portion of the development and the maximum number of units per single core/corridor. A departure from these controls is supported in this instance.
- 1.9 The proposed development was notified to property owners and occupiers within the locality between 19 January and 2 February 2016. The DA was also advertised in local newspapers and a sign was erected on site. No submissions were received.
- 1.10 Overall, the development is considered satisfactory with regard to relevant matters such as siting and design, bulk and scale, privacy, access, traffic impacts, parking and stormwater drainage. The proposed development has been assessed against the

relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, including the suitability of the site and the public interest, and is considered satisfactory.

- 1.11 It is recommended that the proposed development be approved subject to the conditions documented at **Attachment 1** to this report.

2. Location

- 2.1 The subject site adjoins the Blacktown CBD, being on the south-eastern periphery of the CBD, and in close proximity to public transport and services
- 2.2 The subject site is located at the intersection of Sunnyholt Road (along its western boundary) and Main Street (along its southern boundary) There are existing vehicular access points at the north-western and south-eastern corners of the site. Refer to **Figures 2 and 3** below.

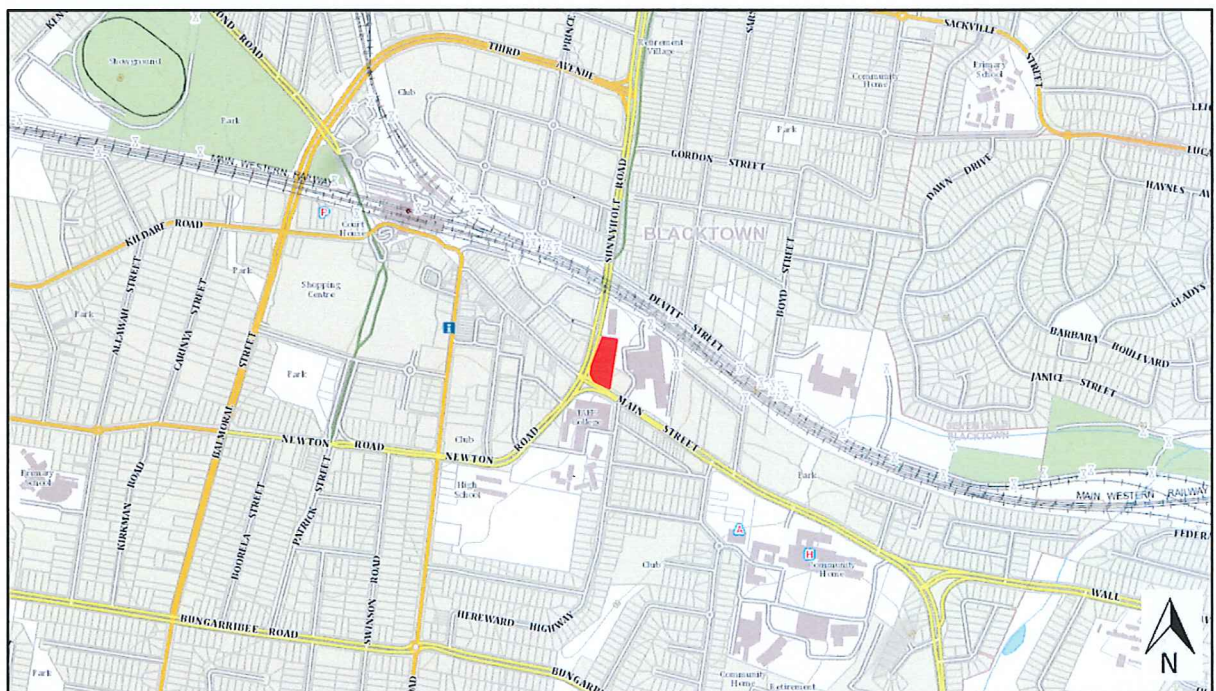


Figure 2 Location map (Six Maps, 2016)

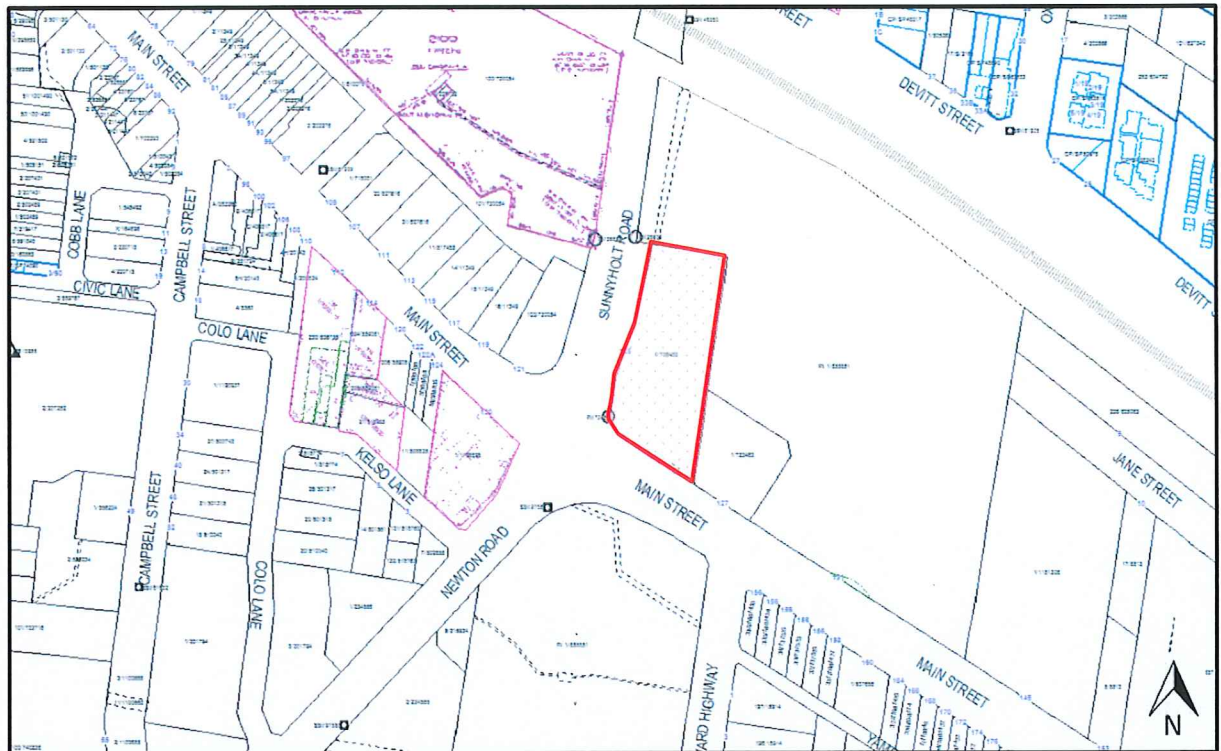


Figure 3 Location plan (BCC, 2016)

3. Site description

- 3.1 The subject site is legally described as Lot 1 in DP 706452, 125 Main Street, Blacktown. The existing improvements on the site consist of a commercial premises 3 storeys in height, and general landscaping along the perimeters of the site. The development comprises basement parking with vehicular ingress and egress via Sunnyholt Road. At-grade parking is also provided along the street setback areas, with vehicular ingress via Sunnyholt Road and egress only via Main Street.
- 3.2 The site is generally rectangular in shape and has a total area of 4,295 sqm. The site frontage along Sunnyholt Road to the west is approximately 89 m. The site frontage along Main Road to the south is approximately 53 m. The length of the site along the eastern boundary is 112.91 m. The length of the site along the northern boundary is 36.67 m.
- 3.3 The site adjoins TAFE's Western Sydney Institute to the north and east of the site, which consists of single and two storey buildings. The site also adjoins a single storey commercial premises / showroom to the east which has a nil setback to the Main Street boundary and at-grade car parking areas. This premises is not currently occupied.
- 3.4 An at-grade public carpark and two storey commercial offices are located immediately to the west of Sunnyholt Road.
- 3.5 A 14 storey mixed use development is located at 130 Main Street, which is to the south-west of the site. This building has recently been completed and occupied.
- 3.6 TAFE's Western Sydney Institute is also located on the southern side of Main Street and comprises two storey buildings.
- 3.7 The development site is zoned 3(b) Special Business under BLEP 1988 as shown in **Figure 4** below.

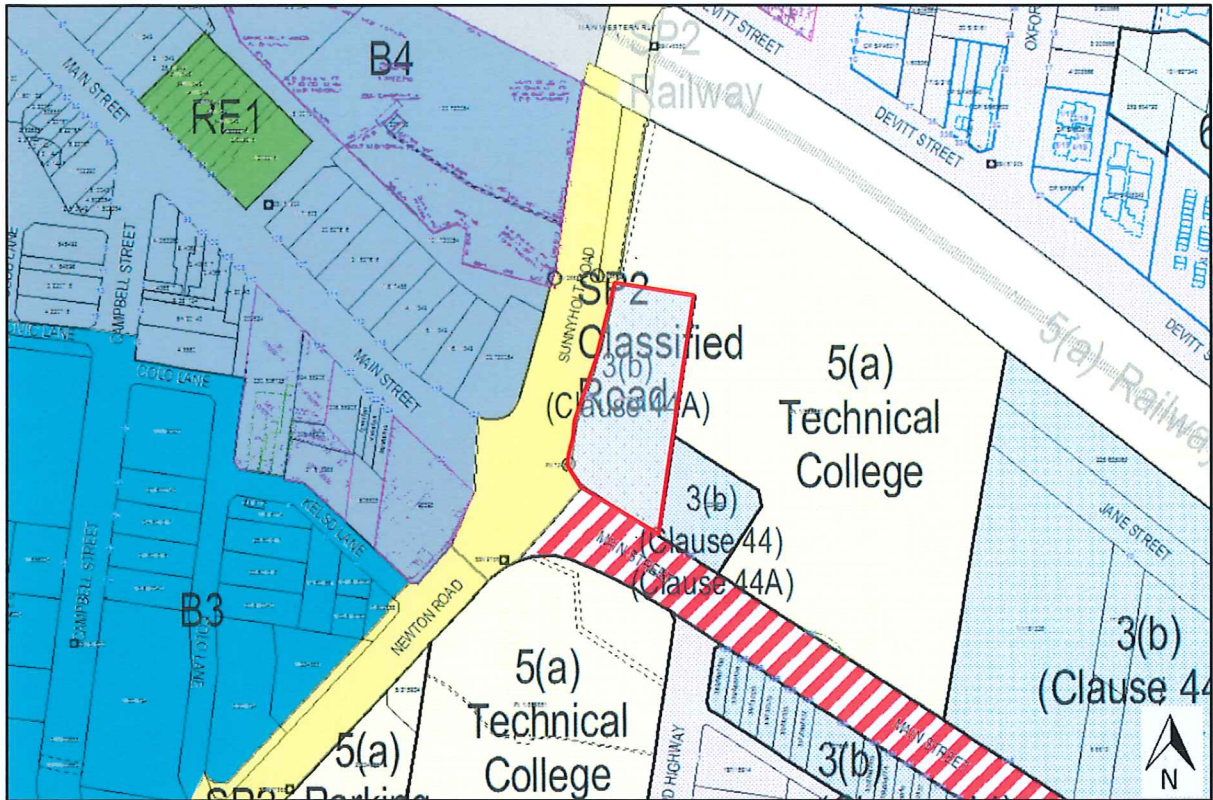


Figure 4 Zoning plan (BCC, 2016)

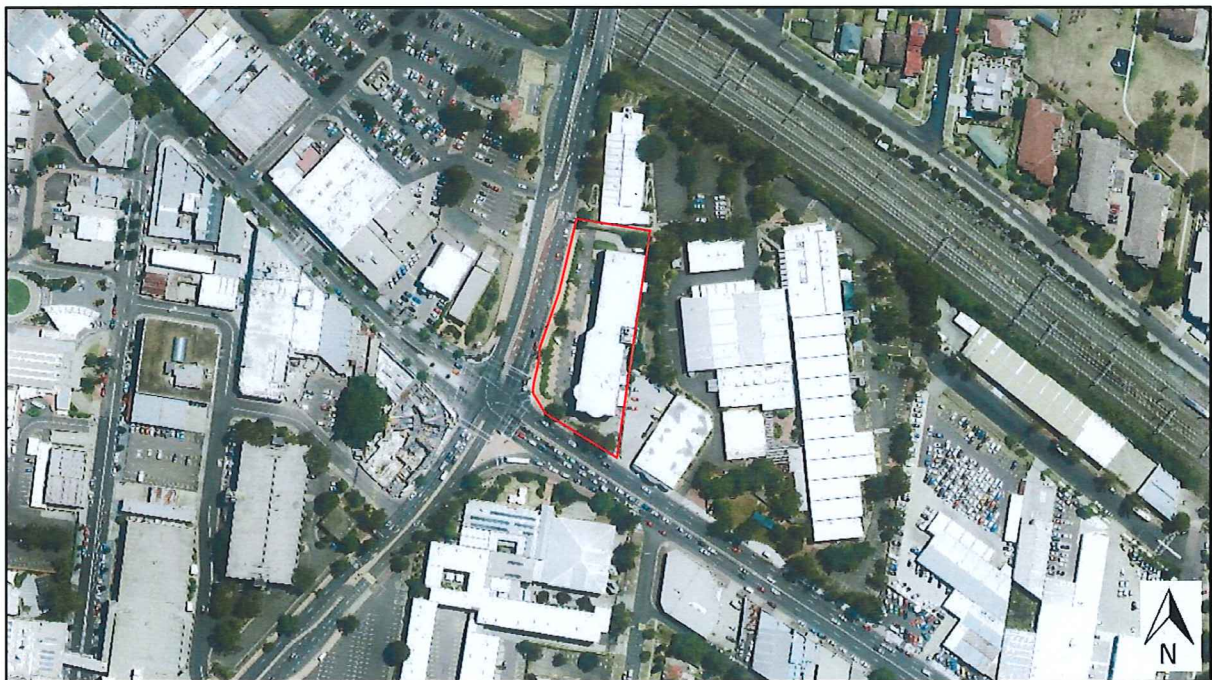


Figure 5 Aerial view (BCC, 2015)

4. Background

- 4.1 Since its development in approximately 1985, the subject site has been used for commercial purposes and associated car parking.
- 4.2 Pre-DA discussions were held with Council officers on 24 March 2015.
- 4.3 On 30 April 2015 the applicant lodged the subject DA.

5. The proposal

- 5.1 The DA seeks approval for the removal of all existing structures on the site and the construction of an 11 storey mixed use commercial and residential building.
- 5.2 The ground floor (Level 1) which principally fronts Sunnyholt Road comprises commercial floor space with an area of 1,220 sqm.
- 5.3 Levels 2 to 11 comprise a total of 153 residential units consisting of 36 x 1 bedroom units, 108 x 2 bedroom units and 9 x 3 bedroom units.
- 5.4 The majority of the building is 10 storeys and provides a building height of 31.8 m, which complies with the 32 m building height set in BLEP 2015. The design of the building comprises a corner building element to enhance the position of this building at the periphery of the Blacktown CBD, providing an 11 storey element at this location. The building exceeds the 32 m building height at this location, being 35.5 m to the roof line and 37.35 m to the architectural features.
- 5.5 The DA provides for 4 levels of at-grade and basement car parking, which are accessed via Main Street, with a total of 269 car parking spaces comprising:
 - 44 commercial car parking spaces
 - 163 resident car parking spaces
 - 62 visitor car parking spaces.

Each basement car space has been designed so that vehicles can enter and exit in a forward direction. Elevators will provide direct access from the basement carpark area to all levels. Visitor car parking spaces are located on Basement Level 1, separate from resident car parking spaces and storage areas.

- 5.6 There is a separate at-grade waste storage area and loading dock which is accessed via Sunnyholt Road. The development is capable of being serviced by Council.
- 5.7 The development provides for a communal open space area above the podium level and on the rooftop areas on Levels 8 and 10. These areas are embellished with landscaping, covered pergola areas and BBQs.
- 5.8 The proposed design is a podium and tower form in an L-shape which wraps around both the Sunnyholt Road and Main Street frontages. The commercial spaces front these public spaces and assist with fostering street activation. The residential units on Levels 2 to 11 reinforce this street corner feature, which is similar to the recently constructed mixed use development at 130 Main Street that is directly opposite the subject site, to create a 'Gateway' feature to the Blacktown CBD.
- 5.9 The overall presentation of the building comprises a mix of modulation and articulation, both vertically and horizontally. The building incorporates an architectural roof feature, variety of façade treatments to address factors including sun control, construction technology and apartment amenity. Principal finishes include face brick, Alucabond,

render and paint finishes. Photomontages which demonstrate the external colours and finishes are provided at **Attachment 2**.

- 5.10 A Design Verification Statement prepared by Peter Brooks of Brooks Projects Architects has been prepared for the development, in accordance with the requirements of SEPP No. 65. As the DA was lodged on 30 April 2015, the proposal predates Amendment 3 of SEPP No. 65 which was published on 19 June 2015. Therefore, the proposal continues to be subject to assessment under SEPP No. 65 before the amendment.

The Design Verification Statement identifies that the development has been designed to respond to the context of the site and enhance the streetscape quality for this transitioning locality. Council officer assessment of the design principles established within SEPP No. 65 is undertaken in **Section 6** below.

- 5.11 The Applicant has submitted a Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd. The report assesses the suitability of the proposed vehicle access and loading arrangements, the potential traffic implications of the proposal in terms of road network capacity, the adequacy of the proposed parking provision and the impact on the existing pedestrian and cycle pathway along Main Street.

The report identifies that the proposed development could generate 61 vehicle trips per hour during commuter peak periods, which is 44 peak hour vehicle trips less than the traffic generated by the existing development on the subject site and will therefore not have any unacceptable traffic implications in terms of road network capacity.

The level of pedestrian and bicycle activity observed on the footpath in the vicinity of the driveway via Main Street is relatively low, and is not sufficient to cause any undue delays to vehicular access to the subject site.

The proposed parking and loading facilities, including commercial vehicles up to and including heavy rigid vehicles, satisfy the relevant requirements specified in both the DCP as well as Australian Standards. The report concluded that the proposed development will not have any unacceptable parking or loading implications.

- 5.12 A copy of the development plans is included at **Attachment 3**.

6. Planning controls

- 6.1 The planning controls that relate to the proposed development are as follows:

(a) **Environmental Planning and Assessment Act 1979**

For an assessment against the Section 79C 'Heads of Consideration' refer to **Attachment 4**.

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

SEPP (State and Regional Development) 2011 confers 'Regional Development' as listed in Schedule 4A of the Environmental Planning and Assessment Act 1979 to the Joint Regional Planning Panel (JRPP) for determination. The proposed development constitutes 'Regional Development' requiring referral to a JRPP for determination, as the proposed development has a Capital Investment Value of more than \$20 million. While Council is responsible for the assessment of the DA, determination of the DA will be made by the Sydney West Joint Regional Planning Panel.

(c) **State Environmental Planning Policy (Infrastructure) 2007**

SEPP (Infrastructure) 2007 ensures that the RMS is made aware of and allowed to comment on development nominated as 'traffic generating development' listed

under Schedule 3 of the SEPP. As the proposal comprises access to Sunnyholt Road and Main Street, both of which are Classified and Arterial Roads, the DA was referred to the RMS under the SEPP. The RMS raised no objection to the DA subject to **conditions**. See Section 7 for further details.

(d) **State Environmental Planning Policy No. 55 – Remediation of Land**

State Environmental Planning Policy No. 55 – Remediation of Land aims to *'provide a State wide planning approach to the remediation of contaminated land'*. Where contamination is, or may be, present, the SEPP requires a proponent to investigate the site and provide the consent authority with information to carry out its planning functions. The DA is accompanied by a Stage 1 Preliminary Contamination Assessment undertaken by Coffey dated 28 April 2015, which concluded that the former use of the site as a petrol station and vehicle workshop may have resulted in impact to deeper soils and groundwater.

Therefore, a Stage 2 Preliminary Contamination Assessment was undertaken by Earth 2 Water Pty Ltd, which confirmed that all analysed soil samples reported concentrations below published contamination guidelines. This Assessment concluded that the site can be made suitable for the proposed use, subject to the implementation of an appropriate Stage 3 Contamination Investigation to be undertaken after site demolition works. This contamination testing is to assess the potential hydrocarbon contamination at depth and possible risk to the proposed deep levels of basement car parking.

The subject site is considered suitable for the proposed commercial and residential uses, subject to **conditions** of consent to ensure that the resulting recommendations of the Stage 3 Contamination Investigation are implemented and the site is suitably validated for residential uses prior to the release of any Building Construction Certificate (**Conditions 4.1 and 9.1**).

(e) **State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development**

State Environmental Planning Policy No. 65 (SEPP No. 65) – *Design Quality of Residential Flat Development* applies to the assessment of DAs for residential flat buildings 3 or more storeys in height and containing at least 4 dwellings. The State Government *Residential Flat Design Code* (RFDC) also applies. The SEPP primarily aims to improve the design quality of residential flat development and states that residential flat development is to *'have regard to the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002)'*.

As the DA was lodged on 30 April 2015, the proposal predates Amendment 3 of SEPP No. 65 which was published on 19 June 2015. Therefore, the proposal continues to be assessed under SEPP No. 65 and the RFDC before the amendment, in accordance with the savings provisions of the amendment.

As part of the submission requirements for any residential flat development, the DA must provide an explanation of the design in terms of the 10 'design quality principles'. In determining a DA, a consent authority must take into consideration the design quality of the residential flat development when evaluated in accordance with the 10 'design quality principles' set out in Part 2 of the SEPP. The proposal is considered satisfactory with regard to these 10 design principles, as considered in detail at **Attachment 5**.

(f) **Residential Flat Design Code (RFDC)**

In addition to the 10 'design quality principles' listed above, SEPP No. 65 requires that Council must have consideration for the design guidelines provided in the

Residential Flat Design Code (RFDC): Refer to **Attachment 5** and **Section 9** below which provide an assessment of the proposal in light of the numerical requirements of the RFDC.

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

Multi-dwelling BASIX Certificates were lodged as part of the Development Application, as well as a NatHERS (Nationwide House Energy Rating Scheme) Assessor Certificate. The BASIX Certificates identify that all buildings achieve the required water, thermal comfort and energy scores required. A suitable **condition** will be imposed on any development consent requiring compliance with the submitted BASIX Certificates (**Conditions 2.4 and 5.5**).

(h) **Blacktown Local Environmental Plan 2015 (BLEP 2015)**

The subject site is currently zoned B3 Commercial Core under Blacktown Local Environmental Plan (BLEP) 2015 (which commenced on 7 July 2015 following the lodgement of this DA), in which the proposed development is not permissible with development consent. Subject to clause 1.8A '*Savings provision relating to development applications*' within BLEP 2015, as this DA was lodged before the commencement of BLEP 2015 and was not determined before that commencement, the DA must be determined as if BLEP 2015 had not commenced.

It is noted that clause 4.3(2) of BLEP 2015 provides a development standard relating to maximum building height of 32 m. The proposed development has a maximum building height of 37.35 m, which exceeds the building height limitation for the subject site. Commercial premises are permissible with consent, however residential accommodation is not permissible in the B3 zoning. However, given the savings provision as detailed above, this application is subject to a merit assessment under BLEP 1988.

(i) **Blacktown Local Environmental Plan 1988 (BLEP 1988)**

This DA is being assessed under BLEP 1988, under which the site was zoned 3(b) Special Business. The proposed mixed use development is for the purposes of "commercial premises" and "residential flat buildings" under the definitions adopted by Clause 6 of BLEP 1988, which are both permissible with development consent.

The objectives of the zone are as follows:

- To ensure that identified centres are encouraged to grow to a level commensurate with the preferred hierarchy of centres for the City of Blacktown by providing sufficient land to cater for required commercial expansion and ancillary development.
- To support general retail development of land within Zone No 3 (a) in identified centres by providing land adjoining the centres for the purposes of bulky goods retail establishments.
- To support general retail and commercial development of land within Zone No 3 (a) in identified centres by providing land for additional commercial office development in proximity to those centres.
- To support general retail and commercial development of land within Zone No 3 (a) in identified centres by providing land for uses which service the needs of activities carried on in those centres.

The proposed development is consistent with the above objectives as it will provide for a variety of residential lifestyles and supporting retail and business uses, while consolidating the existing commercial centre.

(j) **Blacktown Development Control Plan**

Blacktown Development Control Plan (BDCP) 2015 was adopted on 15 July 2015. However, given that this DA was lodged prior to this occurring, this DA is assessed against the relevant components of BDCP 2006.

The relevant Parts of BDCP 2006 applicable to this application are:

- Part A - Introduction and General Guidelines
- Part C - Development in the Residential Zones
- Part D - Development in the Business Zones.

Part D of BDCP 2006 applies to development in the 3(b) Special Business zone, being land which adjoins the Blacktown CBD. Section 2.2 indicates that:

- The purpose of this zone is to cater specifically for the future expansion of the commercial centre by providing land on the fringe for support development.
- This zoning is flexible in that only totally incompatible uses are prohibited.
- Permitted land uses are not to compete directly with the adjoining retailing within the 3(a) General Business zone and are limited to shops which service the daily convenience needs of workers and residents of the area, and shops which specialise in the retailing of bulky goods.
- Applications are to be consistent with the zone objectives.

The Blacktown CBD is identified as a sub-regional centre in the hierarchy of business centres in the Blacktown LGA. Sections 4.12 and 5 in Part D indicate that:

- Residential development is seen as a desirable additional use in business zones, adding to their diversity and enlivening centres outside normal business hours.
- In larger centres, there exists an opportunity to incorporate residential units into retail/commercial developments.
- Residential development should comply with the residential flat building standards in Part C, while acknowledging that some of the requirements in Part C may not be applicable to the nature of residential development in business zones.
- As far as possible, a diversity of uses is encouraged in sub-regional centres, including the integration of residential accommodation.

The proposal is considered to be consistent with the objectives and general guidelines contained in Parts A, C and D of BDCP 2006.

The DA has been considered in light of the relevant provisions of the Blacktown DCP as detailed in **Attachment 6**, in particular Part D - Development in the Business Zones and the relevant controls of Part C - Development in the Residential Zones. The proposal is consistent with the relevant controls, with the exception of a variation to the common open space requirement. This variation is discussed in detail in Section 9 below.

7. External referrals

7.1 The DA was referred to the following external authorities as summarised in the table below:

Authority	Comments
Roads and Maritime Services (RMS)	RMS provided comments and raised no objection subject to a condition (Condition 3.6) .
Sydney Trains	Sydney Trains provided comments and raised no objection subject to a condition (Condition 3.5) .
Endeavour Energy	Endeavour Energy provided comments and raised no objection subject to a condition (Condition 3.7) .

8. Internal referrals

8.1 The DA was referred to internal sections of Council for comment as summarised in the table below:

Section	Comments
Engineering	No objection subject to conditions (Conditions 2.5, 6, 11 and 14.6).
Building	No objection subject to conditions (Conditions 5, 7, 8, 9 and 10).
Waste Services	No objection subject to conditions (Condition 14.11).
Environmental Health	No objection subject to conditions (Conditions 12 and 15.9).
Traffic	No objection, subject to concurrence from the RMS, which has been provided.
City Architect	No objection subject to a condition (Condition 3.10).
Open Space Policy and Tree Management	No objection subject to conditions (Conditions 1.5, 3.3, 14.7 and 14.8).
Strategic Planning	No objection to the proposal.

9. Key issues

9.1 An assessment of the key issues relating to the proposed development is presented below:

(a) Building height

At the date of lodgement, the applicable environmental planning instrument (BLEP 1988) did not comprise a building height control. However, at this time the Draft BLEP 2013 had been adopted by Council to progress to gazettal and was imminent and certain. Given that Draft BLEP 2013 proposed a building height development control of 32 m for this site, it was considered appropriate to apply this development control.

The majority of the building satisfies the 32 m building height in Draft BLEP 2013, and the new BLEP 2015 which came into effect on 7 July 2015 following the lodgement of this DA. The exception is the 11th 'pop-up' storey, being the bedrooms associated with a two storey unit that straddles the 10th and 11th floors.

This 11th storey is located at the south-western corner of the site and provides a building element which is intended to enhance the position of this building at the periphery of the Blacktown CBD. The building exceeds the 32 m building height in this location, being 35.5 m to the roof line, and 37.35 m to the architectural features.

The Applicant's justification for this minor element, which exceeds the height limit in BLEP 2015, is that it accentuates the corner of Main Street and Sunnyholt Road to achieve a desirable architectural and urban design outcome for the redevelopment of the land. The Applicant also identifies that the recently completed 14 storey mixed-use development at 130 Main Street, diagonally opposite the site at the Main Street / Sunnyholt Road intersection, represents a manifestation of the nature of development likely to occur as a result of the development standards under BLEP 2015. The development at 130 Main Street occurs within an area where the height allowance is 44 m.

When considered in light of this adjacent 14 storey building at 130 Main Street, the proposal emphasises this prominent CBD intersection by providing an 11 storey 'Gateway' building which steps down to 10 storeys and then 9 storeys.

It is noted that a compliant design would likely result in a building form which is 10 storeys in height throughout, which would present as a 'box' design and walled effect along the skyline. The proposed design is preferred as it offers some articulation and variation to the overall skyline of the Blacktown CBD. The result is a stepped building form, or a one storey 'offset', which effectively transfers part of the compliant built form to the corner element, to create a 'Gateway' feature.

Consideration of the departure from the BLEP 2015 development control is provided at **Attachment 6**.

The provisions of BDCP 2006, in particular Part D - Development in the Business Zones, sets out that a 2 storey height limit is suggested for buildings in small local shopping centres in areas adjacent to residential zones. However this control is applied to areas zoned 3(a) General Business only. This provision was not applicable to the subject site given it was zoned 3(b) Special Business and did not have a building height limit assigned to it.

As detailed above, the proposed height is considered on its merits and is considered satisfactory in this instance.

The proposed height is not considered unreasonable in the context of the Blacktown CBD, particularly given the scale of recently completed buildings nearby including the 14 storey mixed use development at 130 Main Street, and the new 32 m building height development standard adopted in BLEP 2015 for this site. Furthermore, the land immediately across the road on the western side of Sunnyholt Road permits a height of 44 m.

The subject site is ideally located at the periphery of the Blacktown CBD, in close proximity to public transport, services and community facilities. It is therefore considered that the proposed height is acceptable.

Overall, the building height is in keeping with the transitioning context of the Blacktown CBD and the merit of the proposed building height is supported in this instance.

(b) Permissibility

At the date of lodgement, the applicable environmental planning instrument (BLEP 1988) zoned the site 3(b) Special Business, which permitted commercial and residential land uses. The DA is being assessed under this instrument.

It is noted that, at this time, the Draft BLEP 2013 was imminent and certain of being gazetted. The Draft BLEP 2013 zoned this land B3 Commercial Core. This zoning was adopted under BLEP 2015 (which commenced on 7 July 2015 following the lodgement of this DA). Commercial premises are permissible with consent, however residential accommodation is not permissible in this zoning.

Subject to clause 1.8A 'Savings provision relating to development applications' within BLEP 2015, as this DA was lodged before the commencement of BLEP 2015 and was not determined before that commencement, the DA must be determined as if BLEP 2015 had not commenced.

The Applicant has demonstrated that the proposal is consistent with the zoning objectives of the 3(b) Special Business zoning and that the site is suitable for the proposed land uses. The proposed commercial and residential land uses are in keeping with the transitioning context of the Blacktown CBD and are supported in this instance.

(c) Blacktown Development Control Plan 2006

The proposal generally complies with the relevant provisions of Blacktown Development Control Plan (BDCP) 2006 as detailed in **Attachment 6**, with the exception of the following.

(i) Common open space

The DA has been assessed against the numerical controls contained within BDCP 2006, Part C - Development in the Residential Zones as these are called up by Part D of the DCP where residential development is proposed in a Business zone. The application seeks a departure from the numerical controls of Part C with regard to common open space (COS).

Under Part C, the proposal requires a minimum of 5,895 sqm of common open space (based on a rate of 30 sqm for each 1 bedroom unit (36 units), 40 sqm for each 2 bedroom unit (108 units) and 55 sqm for each 3 bedroom unit (9 units)). The proposal provides 3,671 sqm (representing 62%) of the required COS, located at the podium, Levels 8 and 10 and allowable provision within balconies.

Whilst the proposal fails to comply with this numerical control, Part D indicates that, in the sub-regional centre controls, COS for the use of all residents of the development shall be provided at the minimum rate of 42% of the total COS required by BDCP 2006 in Part C. Further, Section 4.12 of Part D states that, whilst residential development in a Business zone must comply with the residential standards outlined in Part C, it is acknowledged that, due to the unique nature of residential flat development in Business zones, some of the requirements may not be appropriate. In other words, a merit approach will be taken as to what level of compliance with the residential standards is desirable. This '42% rule' equates to a COS area of 2,475 sqm and the proposal satisfies this requirement. The application of this '42% rule' has been consistently applied to similar mixed use developments in Business zones throughout the CBDs of Blacktown and Mount Druitt, and this variation is considered acceptable in this instance.

(d) Building separation as required by the RFDC Guidelines

The proposal demonstrates compliance with the minimum required side and rear setback requirements of Part 5.3.1 of BDCP 2006 for mixed use developments in Sub-regional Centres, being zero for the podium levels and 6 m for the levels above. However, the proposal does not strictly satisfy the building separation requirements of the RFDC.

When considered in light of the existing commercial / bulky goods premises on the adjoining property to the south-east, being 127 Main Street, the building separation requirements are met.

However, should 127 Main Street also be redeveloped under the current controls (B3 Commercial Core with a permitted building height of 32 m), the shared obligation for building separation on the subject site is not achieved. This affects Levels 5 - 8 (7 - 9 m is provided, where 9 m is required) and Level 9 (7 - 9 m is provided where 12 m is required).

The adjoining site to the south, 127 Main Street, is currently zoned B3 Commercial Core under BLEP 2015. In this zone it is not capable of redevelopment for a residential land use. It is noted that Council resolved in July 2016 to significantly reduce the B3 Commercial Core zone in the Blacktown CBD. Although 127 Main Street is not included in the Planning Proposal, it is likely that Council will in the future consider and possibly support a rezoning request for 127 Main Street to be rezoned B4 Mixed Use.

The RFDC acknowledges that building separation controls may be varied in response to site and context constraints. Where a proposed development intends to provide less than the recommended distances apart, it must demonstrate that daylight access, urban form and visual and acoustic privacy have been satisfactorily achieved. The following is an assessment of these key parameters in light of the future redevelopment of the adjoining site to the east for a mixed use development.

(a) Daylight access

The adjoining site, 127 Main Street, is sited to the east of part of the subject site and benefits from favourable exposure to daylight. Therefore, the proposed building separation will not result in any adverse impact on any future commercial redevelopment of 127 Main Street in terms of daylight access.

(b) Urban form

The proposed development remains consistent with the urban form guidelines of the RFDC and provides for increasing building separation in proportion to increasing building height. The proposed development provides an urban form which reinforces the street edge of this Sub-regional Centre and is not considered to hinder the existing or potential future redevelopment of the commercial premises at 127 Main Street.

(c) Visual and acoustic privacy

Where the building separation requirements are not met, the visual and acoustic amenity of these units and 127 Main Street are protected, as the number and size of windows in this location are limited, and the balconies are orientated away from this boundary.

Based on the above assessment of solar access, urban form and visual and acoustic privacy, the proposal is considered to reasonably share the building separation obligations with the adjoining site at 127 Main Street. Therefore, a variation to the RFDC building separation requirement is considered reasonable.

In light of the above, the departure from the numerical requirements of the RFDC guidelines is considered acceptable in this instance.

(e) Internal circulation as required by the RFDC Guidelines

The RFDC states that, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to 8. The proposal exceeds this limit, with up to 17 units per floor. However the building differs to a standard double loaded corridor as it features an 'L-shaped' corridor with 2 centrally located lifts. This creates 2 separate 'corridors', with the number of units in each corridor ranging from 7 to 10.

The proposed variation is considered to be in keeping with the better design practice of the RFDC and to provide satisfactory amenity and safety as follows:

- Suitable corridor widths and circulation space is provided
- Natural lighting is available
- Corridor lengths are suitable
- Clear lines of sight are achieved and tight corners are avoided.

Therefore, the departure from this control is supported in this instance.

(f) Contamination

The Stage 2 Preliminary Contamination Assessment which accompanies this application confirms that all analysed soil samples reported concentrations below published contamination guidelines. This Assessment concluded that the site can be made suitable for the proposed use, subject to the implementation of an appropriate Stage 3 Contamination Investigation, to be undertaken after site demolition works and prior to the issue of any Construction Certificate. This contamination testing is to assess the potential hydrocarbon contamination at depth and possible risk to the proposed deep levels of basement car parking.

The subject site is considered suitable for the proposed commercial and residential use, subject to a condition of consent to ensure that the resulting recommendations of the Stage 3 Contamination Investigation are implemented (**Condition 9.1**).

A standard **condition** of consent is also recommended to be imposed requiring a Site Audit Statement to be issued prior to the issue of any Occupation Certificate (**Condition 4.1**).

(g) Section 94 contributions

The proposed development is subject to contributions under Contributions Plan No. 19 Blacktown Growth Precinct. A condition of consent will be imposed requiring Section 94 contributions to be paid prior to the release of any Construction Certificate, the value of which will be indexed on the date of final payment in accordance with the CPI (**Condition 4.2**).

10. Public comment

10.1 The DA was notified to adjoining and nearby property owners and occupants for a period of 14 days from 19 January to 2 February 2016. An advertisement was also placed in the local newspaper and a notification sign erected on site.

10.2 No submissions were received in response to the public notification.

11. Section 79C consideration

- 11.1 Consideration of the matters prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* is summarised in **Attachment 4**. The proposal is considered satisfactory with regard to the relevant planning instruments, environmental impacts on the natural and built environments, social and economic impacts in the locality, site suitability and the public interest.

12. Recommendation

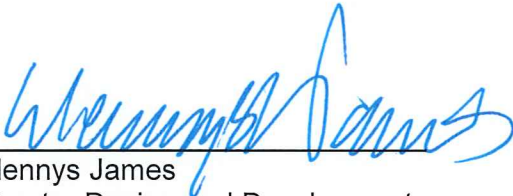
- 12.1 The Development Application be approved by the Sydney West Joint Regional Planning Panel subject to the conditions provided at **Attachment 1**.



Holly Palmer
Senior Town Planner



Judith Portelli
Manager Development Assessment



Glennys James
Director Design and Development