

Supplementary Report to Sydney West Joint Regional Planning Panel

JRPP No.	2015SYW194
DA No:	JRPP-15-2087
Proposed Development:	Shop top housing
Development Type:	Capital Investment Value > \$20 million
Lodgement Date:	18 September 2015
Land/Address:	Lot 2, DP 1214977 2 First Ave, Blacktown
Land Zoning:	B4 Mixed Use
Capital Investment Value:	\$54,230,000
Applicant:	Penrith Village Square Pty Limited
Report Author:	Rebecca Gordon, Senior Town Planner
Instructing Officers:	Judith Portelli, Manager Development Assessment David Apps, A/Director Design and Development
Date Submitted to JRPP:	11 July 2016
Date Considered by JRPP:	21 July 2016



Figure 1 Photomontage (HBO EMTB Architects Pty Ltd. 2015)

ASSESSMENT REPORT

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ATTACHMENTS

- Attachment 1 – Council Development Assessment Report as considered by the JRPP on 22 June 2016 including draft conditions and original DA plans
- Attachment 2 – Copy of Applicant's Clause 4.6 variation request in relation to the non-compliance with the floor space ratio standard in Blacktown Local Environmental Plan (BLEP) 2015.
- Attachment 3 – Perspective from the corner of Zolyomi and Humphries Lanes
- Attachment 4 – Amended architectural plans including new ground and first floor plans
- Attachment 5 – Gross floor area plans and section through the "ground level" waste rooms

1 Summary

- 1.1 On 22 June 2016 the Sydney West Joint Regional Planning Panel (JRPP) considered a development application (DA) for a “shop top housing” development at 2 First Avenue, Blacktown.
- 1.2 The Panel unanimously deferred its determination of the DA pending the submission of further justification for the non-compliance with the floor space ratio (FSR) standard of Blacktown Local Environmental Plan (BLEP) 2015, and amended plans to reduce the plant and service areas at the first floor level and activate the Zolyomi Lane street frontage at the ground floor level.
- 1.3 A copy of the town planning officer’s report and its attachments as considered at the 22 June 2016 meeting is provided at Attachment 1.
- 1.4 The applicant has now prepared a supplementary clause 4.6 submission to justify the non-compliance with the FSR standard in BLEP 2015. A copy of the applicant’s submission is at Attachment 2. Amended plans have also been submitted to address the concerns raised by the Panel. Accordingly, the application is referred back to the Sydney West JRPP for further consideration and determination.
- 1.5 Council officers have reviewed the applicant’s supplementary clause 4.6 submission and amended plans, and **recommend** that the amended proposal be **approved** subject to the draft conditions at Attachment 1 of the original JRPP report. It is recognised, however, that the “approved” plans and some of the section 94 contributions quoted in the draft conditions, will need to be updated to reflect the updated plans attached to this report and the increased business/retail floor space.

2 Background

- 2.1 The DA is for the construction of an 18 storey building comprising business and retail floor space at the first 2 levels, and 16 residential levels above. The development includes 160 residential units and 191 car parking spaces over 5 levels. All vehicular access is proposed from Humphries Lane.
- 2.2 The proposed development constitutes ‘regional development’ requiring referral to the Joint Regional Planning Panel (JRPP), as it has a capital investment value of \$56,230,000. While council is responsible for the assessment of the DA, the Sydney West JRPP is the consent authority.
- 2.3 A detailed report on the application was forwarded to the Sydney West Region JRPP for consideration at their meeting of 22 June 2016. The report concluded that the proposal is satisfactory in terms of bulk and scale, privacy, overshadowing, parking, traffic impacts, stormwater drainage and the like. The proposal was also considered consistent with the objectives of State Environmental Planning Policy (SEPP) 65 and was considered satisfactory in terms of the relevant matters for consideration pursuant to Section 79C of the Environmental Planning and Assessment (EP&A) Act 1979, and therefore was recommended for approval subject to conditions. A copy of Council’s Development Assessment Report, the Development Application plans and the original “draft” conditions of consent are included at Attachment 1 to this report.
- 2.4 After careful consideration, the JRPP resolved the following:
 - “1. *The application is deferred today because there is no sufficient written variation for the requirements for Clause 4.6 to justify the non-compliance with the Floor Space Ratio Standard of BLEP 2015. The Panel requires a detailed written variation request demonstrating compliance is unnecessary and unreasonable in the circumstances of this development on this site: demonstrating the environmental*

planning grounds for the variation of the standard and a written explanation to justify the variation on public interest grounds.

2. *Further, the Panel requires a full explanation of the extent of plant and services provided at Level 1 and the specific factors to this development generating the need.*
3. *The Panel requires a proper Gross Floor Area drawing in accordance with the definition of "Gross Floor Area" in BLEP 2015.*
4. *The Panel also requires consideration of the rearrangement of the ground floor area fronting Zolyomi Lane to promote a more active frontage which may require redesign of the proposed uses".*

3 Applicant's response

- 3.1 On 4 July 2016 the applicant submitted a supplementary clause 4.6 submission and amended plans responding to the concerns raised by the Panel. Various modifications have been made to the plans, the most significant being:
- A reduction in the plant and service areas at level 1
 - The provision of a new ground level business/retail tenancy (68 sqm) and undercroft terrace area on the corner of Zolyomi and Humphries Lanes. A perspective from the corner of Zolyomi and Humphries Lanes has been prepared to demonstrate the street activation and is included at Attachment 3.
 - The provision of a new first floor covered terrace area to further activate the Zolyomi Lane frontage
 - A larger resident-only gymnasium at the first floor level (i.e. from 45 sqm to 62 sqm)
 - The common open space area being enlarged (i.e. from 588 sqm to 659 sqm) and "split" over levels 1 and 2 to allow integration with the gymnasium area.
- 3.2 The amendments list above are supported by the following architectural plans:
- Basement Plan1 Drawing A103 – DA03 – 01/07/2016
 - Ground Floor Plan Drawing A104 – DA03 – 01/07/2016
 - Level 1 Plan Drawing A105 – DA03 – 01/07/2016
 - Level 2 Plan Drawing A106 – DA03 – 01/07/2016
 - Elevation Drawing A608 – DA03 – 01/07/2016
- These plans are included at Attachment 4.
- 3.3 The Panel also requested further information about the gross floor area (GFA) of the development. The GFA has been recalculated and is supported by the following plans:
- GFA – Ground Floor Drawing A604 – DA03 – 01/07/2016
 - GFA – Level 1 Drawing A605 – DA03 – 01/07/2016
 - GFA – Level 2 Drawing A606 – DA03 – 01/07/2016
 - GFA – Level 3 - 17 Drawing A607 – DA03 – 01/07/2016
 - Section Drawing A301 – DA03 – 01/07/2016
- These plans are included at Attachment 5.
- 3.4 The applicant's response to 4 issues listed in the Panel's resolution, together with a town planning response, is provided in the following table:

ISSUE	RESPONSE
Resolution of the JRPP 1. <i>The application is deferred today because there is no sufficient written variation for the requirements for Clause 4.6 to justify the non-compliance with the Floor Space Ratio (FSR) Standard of BLEP 2015.</i> <i>The Panel requires a detailed written variation request demonstrating compliance is unnecessary and unreasonable in the circumstances of this development on this site: demonstrating the environmental planning grounds for the variation of the standard and a written explanation to justify the variation on public interest grounds.</i>	Applicant's proposed amendments The development, as originally reported to the JRPP, had a gross floor area (GFA) of 14,271 sqm (i.e. FSR of 6.76:1) and exceeded the permitted GFA by 549.5 sqm. The proposed variation was 4%. Adjustments have now been made to the ground and first floor plans. These changes include a reduction in the plant and service areas at level 1, the provision of an additional business/retail tenancy on the corner of Zolyomi and Humphries Lanes, and a larger gymnasium at the first floor level. The plan amendments, together with a recalculation of the total floor area in line with the definition of "gross floor area" in BLEP 2015, have resulted in an amended GFA of 6.95:1. The proposed GFA exceeds the permitted GFA of 13,721.5 sqm by 949.21 sqm (i.e. the total floor is 14,670.71 sqm). The exceedance is 6.9% above the FSR development standard of 6.5:1. This calculation is based on a site area of 2,111 sqm. As requested by the JRPP, the applicant has prepared a supplementary clause 4.6 submission. The written variation request demonstrates that compliance with the FSR standard of BLEP 2015 is unnecessary in this instance and lists the environmental planning grounds and justification for the departure. A copy of the applicant's submission is included at Attachment 2 of this report. Justification for the additional 949.21 sqm of floor area is also provided below. Town planning response It is considered that the 6.9% variation to the FSR standard of BLEP 2015 should be supported for the following reasons: 1. Compliance with the development standard is considered unreasonable or unnecessary a. Blacktown City Council is currently reviewing the planning controls within BLEP 2015 and is considering the deletion of the FSR controls within the CBD precinct. It is also considering changes to allow residential flat buildings in the CBD. Currently, 'shop top housing' (i.e. mixed-use development) is permitted, but residential flat buildings are prohibited. While these changes are in their infancy, it is reflective of the changing strategic role of Blacktown CBD as a residential hub for the commercial centres of Parramatta and Penrith. In the circumstances of this strategic change by Council it is considered unreasonable to require strict compliance with the FSR

	control, which in the medium term is likely to be removed. b. Between lodging the DA and Council officers finalising our report to the JRPP, the area of the site was reduced from 2,214 sqm to 2,111 sqm (i.e. a reduction of 103 sqm). The reduction in site area arose from the dedication of additional road widening along Humphries Lane free of cost to Council. The land formed part of the original DA plans but was excluded when the final plan of subdivision was registered with Land Property Information (LPI). The JRPP assessment report was therefore amended late in the process to exclude the area of the road (103 sqm) and reflect the site area as shown on the registered linen plan. No credit, however, was given to the GFA. Based on a site area of 2,214 sqm, the permitted floor area would have been 14,391 sqm. The revised development has a total GFA of 14,670.71 sqm and therefore would have exceeded the permitted FSR by only 279.91 sqm (i.e. a 1.9% variation). Instead the calculations have been based on the final site area of 2,111 sqm and this has resulted in an exceedance of 949.21 sqm (i.e. a 6.9% variation). The late exclusion of the site area accounts for 70% of the non-compliance of the FSR standard. If the area of the road widening was credited to the application, an additional 669.3 sqm of GFA could be achieved. Compliance with the development standard is considered unreasonable given the site has been subject to Council road widening in the meantime. 2. There are sufficient environmental planning grounds to justify the variation a. Shop top housing is defined as “one or more dwellings located above ground floor retail premises or business premises.” The definition prescribes a single level of retail or business. Clause 7.12(3) of BLEP 2015, however, requires “... that the ground floor and first floor of the building will be used for a purpose other than residential accommodation” and therefore mandates a 2 level podium. The applicant considers that the need for a second level of retail or business is onerous. Council is also currently reviewing BLEP 2015 with a view of deleting the requirement for a 2 storey business/retail podium in the CBD. A 2 level podium has presented significant design challenges for the applicant, especially given the site has 3 street frontages. The need to activate the first floor level along at least 2 of these street frontages (i.e. First Ave and Zolyomi Lane) resulted in additional GFA being provided. b. While the road widening accounts for 669.3 sqm of the 949.21 sqm exceedance, the development still exceeds the permitted GFA by an additional 279.91 sqm. The
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	“gross floor area” definition under BLEP 2015 excludes certain items such lifts and stairs, plant rooms and car parking. Storage and garbage and service areas are also excluded, but only if they are located in a basement. FSR controls are applied to ensure that the size of a building is appropriate for the land size and compatible with the surrounding neighbourhood. Although the GFA definition does not permit the exclusion of such things as ground level garbage areas, the location of these facilities (be it at ground level or in the basement) has no impact on the overall size of the building. In this instance, the FSR standard has been exceeded in part because of the restrictive ‘gross floor area’ definition. The applicant has identified 300 sqm of “service areas” that are required to be included in the GFA calculation, but that no impact on the size or scale of the development. This 300 sqm accounts for the balance of the exceedance/variation sought and includes: • Waste/garbage room at the ground floor level: The proposed waste rooms occupy 111 sqm of GFA. While the waste areas have been included in the calculation of GFA as required by definition, these areas are located 1800mm below the external street levels in a ‘Lower Ground Floor Level’. This is shown on plan A301 at Attachment 5. It is recognised that if the waste room was relocated to the level 1 basement, and if some of the basement car parking spaces were relocated to the ground floor level, that this 111 sqm would be excluded from the FSR calculation. It is considered, however, that the proposed location and design of the waste collection area is far superior at the ground level and should not be relocated. • Fire isolated egress paths at the first floor level: There is 63 sqm of GFA allocated to fire corridors linking the fire egress stairs proposed in the northwest corner of the podium. An additional 24 sqm of GFA is allocated to the fire corridors linking the fire egress stairs located on the south-eastern side of the podium. These corridors are an extension of the ‘fire stairs’ and are not able to be used for net lettable purposes. The corridors also do not impact on the size or design of the building. • The ground level residential lobby and mail room: The residential lobby area (34 sqm) has been extended to achieve better outcomes based on the principles of crime prevention through environmental design (CPTED). An enclosed mail room has also been provided off the residential lobby (12 sqm) to address the NSW Police concerns regarding mail and identity theft. The residential lobby and mail room could be provided as part of the building undercroft and therefore would not be included as part of the overall GFA. The enclosure of the residential entry and mail room, however, provides
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	improved safety and surveillance for residents. • Access to the common open space: A dedicated residential lift lobby and access corridor (56 sqm) is located on level 1. The purpose of these facilities is to provide a secure access corridor for residents to the resident gymnasium facility located adjacent to the proposed common open space area. The corridor cannot be used for net lettable purposes and does not impact on the size or design of the building. The 669.3 sqm lost because of the required road widening and the 300 sqm of service areas and corridors, account for a total of 969.3 sqm of GFA. This is more than the 949.21 sqm exceedance sought. c. The increase in GFA is also, in part, due to the improved design changes requested by the Panel. The changes include the provision of an additional business/retail tenancy (68 sqm) on the corner of Zolyomi and Humphries Lanes and a larger gymnasium at the first floor level. The additional business/retail tenancy has displaced “plant” in favour of a potential café/shop and open terrace. Although the new tenancy adds additional floor area, it is considered that the amended design is superior to the original design as it will result in activation of the ground level street frontage and will provide passive surveillance of the laneways. The area also gives opportunity for adjacent sites to provide similar areas to add vitality to the laneway system in this locality. The proposed gymnasium area on level 1 (62 sqm) has also been enlarged by 17 sqm. This area could remain as an open, undercroft area and therefore be excluded from the GFA calculations. Enclosure of the gymnasium by sliding stackable doors provides a flexible “indoor/outdoor” space adjoining the common open space podium area and improved amenity for the future residents of the development. 3. The variation is in the public interest The FSR is considered to be acceptable and in the public interest for the following reasons: • The development is permissible with consent and complies with the relevant objectives and controls of both BLEP 2015 and BDCP 2015. • The development is consistent with the objectives of the zone and the development standard. • The development will provide a vital and economic viable mixed use development
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	where the business and retail uses proposed can be commercially sustainable. - The revised proposal will provide a superior street activation solution, creating the opportunity for further innovation in future development solutions on the adjoining land to all 3 frontages of the subject site. - Features of the design contributing to the additional GFA will provide a safe living environment for the future residents of the apartments from a CPTED and passive surveillance perspective.
Resolution of the JRPP	Applicant's proposed amendments
2. Further, the Panel requires a full explanation of the extent of plant and services provided at Level 1 and the specific factors to this development generating the need.	The plant rooms and service areas at the first floor level have been reviewed and significantly reduced in area. The services areas have now been rationalised and consolidated resulting in a plant area that is of a reasonable size for a building of this scale. The plant area will include on-site detention tanks, sprinkler water tanks, air conditioning and other mechanical plant. The revised first floor plan (drawing A105 Revision DA03) is included at Attachment 4. Town planning response While finalising our original report to the JRPP, Council officers noted that the area of the site had been reduced from 2,214 sqm to 2,111 sqm (i.e. a reduction of 103 sqm). The reduction in site area arose from the dedication of additional road widening along Humphries Lane free of cost to Council. The JRPP assessment report and architectural plans were therefore amended late in the process to reflect the site area as shown on the registered linen plan and the revised FSR requirements. This resulted in the business/retail floor area at the first floor level being reduced in size and the plant and services being enlarged unnecessarily. The revised plans now provide well designed business/retail areas, and services and plant areas that are reasonable for a building of this size.
Resolution of the JRPP	Applicant's proposed amendments
3. The Panel requires a proper Gross Floor Area drawing in accordance with the definition of "Gross Floor Area" in BLEP 2015.	The gross floor area drawings have been updated to comply with the GFA definition contained in BLEP 2015. The plans clearly show what areas have been included and excluded from the GFA calculation of 14,670.71 sqm. Town planning response The gross floor area drawings now comply with definition contained within BLEP 2015 and

	include the waste/garbage areas at the ground floor area. The previous storage areas have also been deleted from the ground floor level and the services/plant areas have been rationalised. The proposed GFA exceeds the permitted GFA (13,721.50m ²) by 949.21 sqm. Justification for the variation is provided above.
Resolution of the JRPP	Applicant's proposed amendments
4. <i>The Panel also requires consideration of the rearrangement of the ground floor area fronting Zolyomi Lane to promote a more active frontage which may require redesign of the proposed uses.</i>	The suggestion of the Panel has been embraced, resulting in the rearrangement of both the ground and first floor levels to create an active frontage at the corner of Zolyomi and Humphries Lanes. A new business/retail tenancy (i.e. potential café/shop) and undercroft terrace area have been provided at the ground level on the corner of Zolyomi and Humphries Lanes. At the first floor level a new covered terrace area also provides better opportunities for casual surveillance and activity along Zolyomi Lane. The expansion and terracing of the common open space across levels 1 and 2, as well as the first floor covered terrace area at the south-east corner of the building, also helps to provide passive surveillance opportunities and activity along the Humphries Lane elevation. A perspective from the corner of Zolyomi and Humphries Lanes has been prepared to demonstrate the street activation and is included at Attachment 3. Town planning response The new business/retail tenancy on the corner of Zolyomi and Humphries Lanes promotes an active street frontage and is considered to be a positive addition to the building design. The proposed change also responds more clearly to the potential future uses on the adjacent properties. As part of the review, the opportunity was also taken to redesign the Humphries Lane elevation. As a result of rearranging and rationalising the plant rooms, an opportunity became available to provide a split-level common open space area over levels 1 and 2. This change has allowed the integration of the resident-only gymnasium with the common open space area. The redesigned "split level" common open space area is linked via new stairs. The active portions of the open space area, including the BBQ, have also been relocated to the lower level adjacent to the first floor gymnasium away from the residential areas. This will result in better privacy and amenity of the future occupants of the residential units. The redesigned common open space has resulted in the opening up and "greening" of the Humphries Lane elevation. The common open space area has also been increased from 588 sqm to 659 sqm (an increase of 71 sqm), and the gymnasium has been increased in area from 45 sqm to 62 sqm.

	While the additional retail/business tenancy (68 sqm) on the corner of Zolyomi and Humphries Lane, and enlarged gymnasium, add additional floor space to the development, these are considered positive changes that will improve the amenity of the future occupants of the building.
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4 Conclusion

- 4.1 Council officers have reviewed the applicant's supplementary clause 4.6 submission and the amended plans. While the proposal exceeds the development FSR in BLEP 2015 by 6.9%, we are satisfied that sufficient justification has been provided to demonstrate that compliance is unnecessary in this instance. The applicant has also demonstrated that there are sufficient grounds for the variation, that increased FSR does not impact on the overall size of the building, and that the development is in the public interest.

5 Recommendation

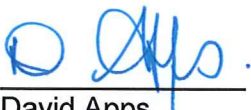
- 5.1 The DA be approved by the Sydney West Joint Regional Planning Panel subject to the draft conditions at Attachment 1 of the original JRPP report. The "approved" plans and section 94 contributions quoted in the draft conditions be updated to reflect the updated plans attached to this report and the increased business/retail floor space.
- 5.2 The applicant and objectors be advised of the Sydney West Joint Regional Planning Panel's decision.



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