

Blacktown City Council assessment report Sydney West Central Planning Panel

Panel reference	2015SYW217 DA
DA number	JRPP-15-02533
LGA	Blacktown City Council
Proposed development	Shop top housing
Street address	16 Second Avenue, Blacktown
Applicant and owner	Applicant: R and K Wilson Owner: R and K Wilson
Date of DA lodgement	18 December 2015
Land zoning	B4 Mixed Use
Capital investment value	\$26,805,000
Regional development criteria (Schedule 4A of the EP&A Act)	Capital investment value over \$20 million
Number of submissions	0
Recommendation	Approval subject to conditions
Relevant s79C(1)(a) matters	- State Environmental Planning Policy (State and Regional Development) 2011 - 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 - Blacktown Local Environmental Plan 2015 - Blacktown Development Control Plan 2015
Documents submitted with this report for the Panel's consideration	Council officer assessment report
Report prepared by	Melissa Parnis, Assistant Team Leader Projects, Blacktown City Council
Report date	23 March 2017
Date to be considered by Panel	Electronically

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (Clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

No

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Assessment Report

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1 Executive summary

- 1.1 Blacktown City received a development application (DA) from R and K Wilson for a 'shop top housing' development at 16 Second Avenue, Blacktown. The DA seeks approval for the construction of a part 18 storey and part 19 storey building, comprising a 3 level podium containing business and retail floor spaces as well as car parking and 16 residential levels. The development includes 106 residential units and 129 car parking spaces over 6 levels. The DA proposes vehicle access from Second Avenue and Prince Street.
- 1.2 The proposed development constitutes 'regional development' requiring referral to the Sydney Planning Panel (SPP), as it has a capital investment value of \$26,805,000. While Council is responsible for the assessment of the DA, the SPP is the consent authority.
- 1.3 The site is zoned B4 Mixed Use under Blacktown Local Environmental Plan (BLEP) 2015. Shop top housing, defined as one or more dwellings located above ground floor retail premises or business premises, is permissible in the B4 zone with development consent. The DA is also consistent with the overarching priorities outlined in the Draft West Central District Plan.
- 1.4 A detailed assessment has been undertaken against the provisions of BLEP 2015 and Blacktown Development Control Plan (BDCP) 2015. The development complies with the development standards contained within the LEP with the exception of building height and FSR. The development complies with the development controls within the DCP with the exception of common open space, balcony dimensions and car parking.
- 1.5 The applicant has lodged a request under Clause 4.6 for variations to the development standards under BLEP 2015. The building height is varied by up to 5.8 m above the permissible height limit, which is a 10.4 % variation to the development standard. The variation is considered acceptable as the additional height is partly as a result of the lift overrun and roof terrace. A small portion of the top floor of the development exceeds the maximum height limit by 770 mm (1.3 % variation to the development standard) as a result of the topography of the land. The lift overrun and increased podium height have a negligible shadow and amenity impact on surrounding properties. The height variation does not result in additional floor levels.
- 1.6 The DA also seeks a Clause 4.6 variation to the floor space ratio. The permissible FSR is 6.5:1, whereas the development proposes an FSR of 7.64:1. The development has a gross floor area of 1,291 sqm over the maximum permissible FSR, which is a 17.5 % variation to the development standard. The variation of 1.14:1 is considered acceptable as the bulk and scale of the development is not considered to be compromised, with suitable setbacks and variation to the streetscape to reduce the impact. The variation results in an additional 71.7 sqm of floor space per level. Whilst this is additional floor space, the development (being part 19 and 18 storeys) in height is of the same scale as other developments in the Blacktown CBD with a 56 m height limit. Further, the site is a corner lot. This enables the development to benefit from a zero setback for the entire length of Prince Street, rather than the usual building separation to an adjoining development site. So the site enjoys building separation via the road reserve rather than setbacks. This in turn results in greater floor space achieved on the site, despite the development's general compliance with the building height control. The scale of the development is considered reasonable within the Blacktown CBD context, given the site's proximity to the Blacktown train station, bus interchange and major arterial road network.
- 1.7 BDCP 2015 requires CBD residential developments to provide a minimum of 42% of the rate for common open space for a residential flat building in the R4 zone under BLEP 2015. This equates to 2,192 sqm of common open space for this site, of which 30% (658 sqm) can be provided on private balconies and terraces. The development provides 658

sqm on the balconies (as the 30% allowance) and a further 530 sqm on the roof terrace and above the podium. This represents 54% of the area required by the BDCP control.

- 1.8 Under the requirements of the Apartment Design Guide (ADG), however, the development is only required to provide a common open space area equivalent to 25% of the site area (i.e. 284 sqm). Therefore, the proposal complies with the state-wide accepted industry standard and insistence on a higher level of provision will not be sustainable if the DA is appealed in the Land and Environment Court. The Apartment Design Guide was adopted by the NSW Government in July 2015 and it is relied upon by developers as stipulating the state-wide design parameters for apartment buildings. Our design standards have been in place for 20 years and do not reflect current design practice. It has been separately recommended to Council that we review our DCP so that it aligns to the standards in the state-wide guidelines.
- 1.9 Clause 6A of State Environmental Planning Policy No. 65 (SEPP 65) – *Design Quality of Residential Apartment Development* states that the private open space and balcony requirements of the ADG prevail over any inconsistent DCP control. BDCP 2015 states that the balconies must measure at least 2.5 m x 3.0 m, while under the ADG balconies are only required to measure 2.0 m x 3.0 m. The development complies with the ADG requirement and this is considered acceptable as it meets the state-wide control.
- 1.10 The Blacktown Parking Management Plan (BPMP) adopted by Council on 22 April 2015 requires that the development be provided with 106 residential and 22 resident visitor car parking spaces, and 11 retail spaces. The development provides a total of 129 car spaces, being 103 residential, 15 residential visitor and 11 retail spaces, and therefore does not comply with the adopted BPMP. Clause 30 of SEPP 65 states, however, that a DA cannot be refused on the grounds of parking if the development satisfies the minimum RMS car parking requirements set out in the 'Guide to Traffic Generating Developments'. The development provides a surplus of 30 spaces when assessed against the RMS rates and therefore must be considered acceptable.
- 1.11 The proposal is consistent with the objectives of SEPP 65 and satisfactorily achieves the 9 'design quality principles' listed under Schedule 1. Our officers have assessed the application against the requirements within the Apartment Design Guide (ADG). The development complies with the numerical recommendations of the ADG, with the exception of building separation.
- 1.12 The proposed development does not provide 9 m – 12 m setbacks at levels 4 and above as identified under the ADG. Instead, the proposal provides 6 m side and rear setbacks in line with Council's DCP. Similar developments have been approved in the Northern Precinct of the CBD with 6 m setbacks. This development is therefore consistent with other approved buildings in the area. The reduced setbacks also have no impact on solar access or visual and acoustic privacy and are therefore considered satisfactory. The ADG is a guide only for the element of building separation and does allow some variation where the building meets certain design criteria. Non-compliance with the ADG does not warrant refusal of the application.
- 1.13 The proposed development was notified to property owners and occupiers within the locality between 16 and 30 March 2016. No submissions were received.
- 1.14 The development is considered satisfactory with regard to relevant matters such as siting and design, bulk and scale, privacy, overshadowing, 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.
- 1.15 It is recommended that the proposed development be approved subject to the conditions at Attachment 1.

2 Location

- 2.1 The site is located within the Blacktown Central Business District (CBD) on the northern side of the railway line. The site is located approximately 250 m north-east of the train station and 130 m west of Sunnyholt Road, and is within easy walking distance of the main shopping area.
- 2.2 The Northern Precinct of the CBD is characterised by a mix of low rise residential flat buildings and commercial / light industrial development.

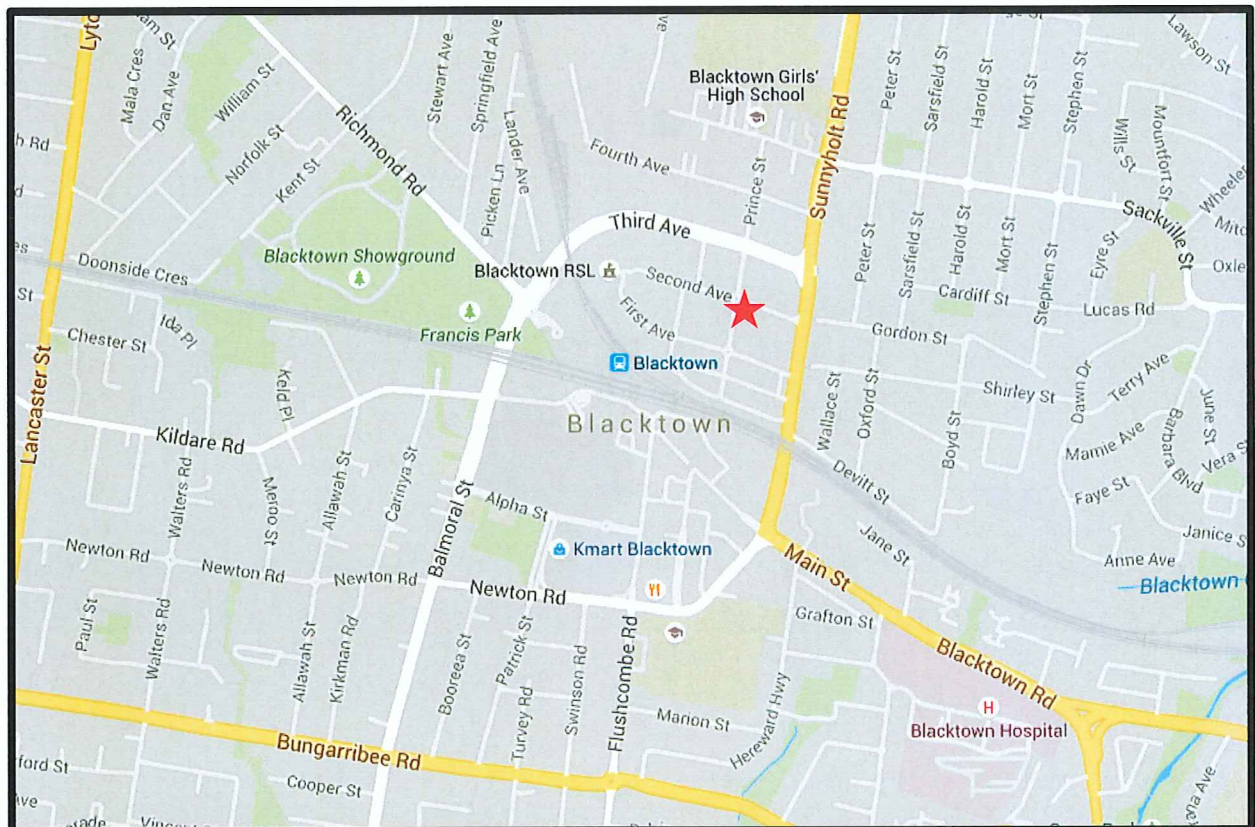


Figure 1 Location map (Source: Google maps 2016)

3 Site description

- 3.1 The subject site is known as Lot 75 DP 11157, 16 Second Avenue, Blacktown. The site is a corner lot and has a frontage of 19.95 m to Second Avenue and a 53.64 m frontage to Prince Street. The total site area is 1,132 sqm.
- 3.2 The site is currently vacant land and has 2 small shrubs on the site.
- 3.3 To the east of the site is an existing 2 storey building with zero setback and at-grade parking within the front setback. The site currently has a commercial tenancy and is used by Tradelink.
- 3.4 To the south of the site, adjoining the rear property boundary, is an existing community centre building. It is single storey.
- 3.5 To the west of the site on the opposite side of Prince Street is an existing 2 storey commercial building.
- 3.6 The site to the north, and across the road from the development site, is vacant. Council has received a DA for the construction of 2 x 18 storey mixed use buildings on this site, which is currently under assessment.

3.7 The site and surrounding land are zoned B4 Mixed Use under Blacktown Local Environmental Plan (BLEP) 2015.



Figure 2 Aerial image as of 15 July 2016 (Source: Nearmap)

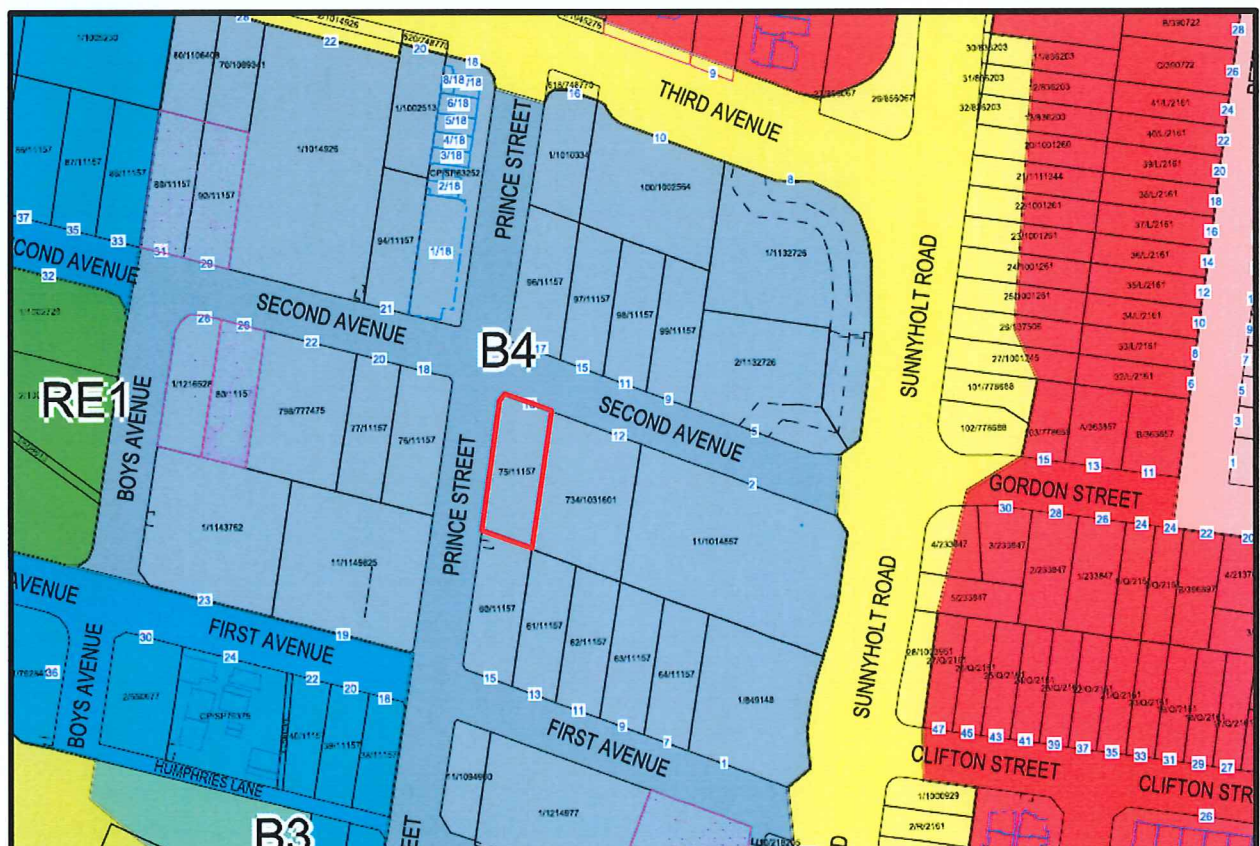


Figure 3 Zoning extract (Source: BCC 2016)

4 The proposal

- 4.1 The proposal is for the construction of a 19 storey building comprising a 3 level podium, including retail spaces and car parking, and 16 residential levels above.
- 4.2 The development provides 330 sqm of retail space, with 182 sqm at ground level and a 148 sqm tenancy split over the ground level and part of the first floor level.
- 4.3 A total of 106 residential apartments are proposed above level 3. The unit mix includes 20 x 1 bedroom units, 80 x 2 bedroom units and 6 x 3 bedroom units. 11 of the units will be adaptable.
- 4.4 The development provides 530 sqm of communal open space, comprising of both areas on the podium level and a rooftop terrace. The outdoor communal open space area will be embellished with paving, timber decking, covered outdoor area, synthetic grass and suitable trees and shrubs within planter boxes. Communal bench seating, tables and a barbeque are also proposed.
- 4.5 The 3 storey podium will be built to the property boundaries. The 16 storey residential tower above provides a zero setback to the Prince Street boundary. A 5.3 m to 6 m setback is proposed to Second Avenue. A 6 m setback is provided to main walls on the eastern boundary, with encroachments of the stairwell and balcony for 1 unit only on the 4th level. A 5.2 m to 6 m setback is also proposed to the southern property boundary.
- 4.6 A total of 129 car parking spaces are proposed across 6 levels (i.e. in 2 levels of the podium and 4 basement levels). In accordance with Council's DCP requirements, 11 car parking spaces are proposed for use by the retail tenancies. The development then exceeds the RMS Guide for Traffic Generating Development rates for the residential component called up by the ADG, providing for 103 residential spaces and 15 residential visitor car parking spaces.
- 4.7 The development proposes 2 vehicle access points:
 - Vehicular access to the basement levels is proposed from Second Avenue
 - Vehicle access for service vehicles and access to first and second level car parking is proposed from Prince Street.
- 4.8 The maximum building height of the development is 61.8 m (or 56.77 m to the ceiling of the top level). This represents a 5.8 m departure from the 56 m maximum height limit under BLEP 2015. This is a 10.4% variation to the development standard.
- 4.9 The majority of the departure can be attributed to the roof terrace, including the parapet, lift overrun and plant and equipment. A small portion of the upper level of the development exceeds the maximum height limit by 770 mm as a result of the topography of the land. The applicant has lodged a Clause 4.6 request to vary the development standard. The applicant's Clause 4.6 request is at Attachment 2. Council's assessment of this variation is undertaken in Section 6.
- 4.10 The proposal has an FSR of 7.64:1, which exceeds the maximum FSR of 6.5:1 for the site. This is a 14.9% variation. The applicant has also lodged a Clause 4.6 request to vary this development standard. The applicant's Clause 4.6 request is at Attachment 2. Council's assessment of the variation is undertaken in Section 6.
- 4.11 The proposed building provides an activated streetscape within a 3 storey podium design with a 16 storey tower on top. The retail tenancies provide an active street frontage. The podium is treated with a metal mesh screen to add visual interest. At street level, the proposal provides an awning that wraps around the corner location of the site. The 3 storey podium level is clearly distinguished from the tower, as the latter element is recessed back. The residential tower provides a change in materials and includes strong

horizontal elements that are balanced with vertically recessed contrasting coloured circular impressions that are on each façade. The tower presents a predominantly painted concrete and render finish, however, aluminium framing, aluminium louvres and glass balustrades are incorporated into the façade design. Further, the render finish is in contrast to the aluminium perforated finish of the 3 storey podium. Photomontages showing the patterns, colours and finishes are at Attachment 3 and the development plans are at Attachment 4.

- 4.12 A Design Verification Statement prepared by Tony Owens of Tony Owens Partners has been prepared for the development, in accordance with the requirements of SEPP 65. The Design Verification Statement identifies that the building has been arranged on the site in a response to the site controls and surrounding context. The building has been designed to activate the streetscape, particularly the corner. The building has also been designed to be a slender elegant tower on top of a streetscape defining podium.
- 4.13 The applicant has submitted a Traffic Impact Assessment prepared by Traffix. The report undertakes an assessment of the surrounding road network and assesses the traffic implications of the development proposal in terms of road network capacity.
- 4.14 The report identifies that, in accordance with the Roads and Maritime Services publication Guide to Traffic Generating Developments, Section 3 – Land use Traffic Generation dated October 2002, the traffic generation arising from the proposed development results in an increase of 23 vehicles per hour during the morning peak periods and 19 vehicles per hour during afternoon peak periods. These trips will be distributed into both directions and can be readily accommodated with minimal impacts on the surrounding road system.
- 4.15 The report identifies that car parking and loading areas are in accordance with relevant Australian Standards and car parking requirements meet SEPP 65 for residential parking rates and the Blacktown Integrated Transport Management Plan 2013 for retail parking spaces.
- 4.16 The report identifies that the car parking layout will operate under signal control. The signal operation has been reviewed by a specialist signal consultant, resulting in an advanced system which monitors vehicles within the ramp system. In addition, worst case queuing theory analysis has been undertaken which demonstrates that sufficient internal queuing space will be provided during peak periods and is therefore considered satisfactory.

5 Planning controls

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

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

The development satisfies the matters for consideration under Section 79C of the EP&A Act 1979. For an assessment against Section 79C, refer to Section 10.

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

The Sydney Planning Panel (SPP) is the consent authority for all development with a capital investment value (CIV) of over \$20 million. The DA has a CIV of \$26,805,000. While our officers are responsible for the assessment of the DA, determination of the application is to be made by the SPP.

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

- (i) *Clause 104 Traffic generating development*

SEPP (Infrastructure) 2007 ensures that the Roads and Maritime Services (RMS) is given the opportunity to comment on development nominated as 'traffic generating development' under Schedule 3 of the SEPP.

The proposed development does not have more than 300 dwellings and does not have access within 90 m of a classified road. Therefore, the development is not classified as development that needs to be referred to the RMS under the SEPP.

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

(ii) Clause 7 Contamination and remediation to be considered in determining development application

SEPP 55 aims to 'provide a State wide planning approach to the remediation of contaminated land'. Clause 7 requires a consent authority to consider whether the land is contaminated and if it is suitable or can be remediated to be made suitable for the proposed development, prior to granting of development consent.

As part of the DA, the applicant submitted a Preliminary Site Investigation report prepared by Environmental Investigations Australia. The report concluded that the site has a low risk of widespread contamination and can be made suitable for the proposed development, subject to recommendations including:

- Should there be any site soils retained on-site as deep soil landscape areas, further assessment will be needed to derive site-specific ecological criteria and clarify potential ecological risk.
- The area of the previously demolished garage and house is to be assessed for potential asbestos impact to the shallow soils and addressed in accordance with Asbestos Management in Blacktown City (2014).
- Any material to be removed from the site must be classified for off-site disposal in accordance with the EPA (2014) Waste Classification Guidelines. This will include any fill material identified during bulk excavation for the construction of the basement carpark.
- Any material imported to the site should be assessed for potential contamination in accordance with NSW EPA guidelines as being suitable for the intended use or be classified as VENM or ENM.

To ensure these works are undertaken prior to the release of a Construction Certificate for the site, suitable conditions will be imposed. The conditions will require that the validation ensure that the site is made suitable for residential development without any limitations under the National Environmental Protection (Assessment of Site Contamination) Measure (NEPM) 1999, as amended 2013.

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

State Environmental Planning Policy No. 65 (SEPP 65) – *Design Quality of Residential Apartment Development* applies to the assessment of DAs for residential flat buildings 3 or more storeys in height and containing at least 4 dwellings.

(i) *Clause 28 Determination of development applications*

Clause 28 of SEPP 65 requires a consent authority to take into consideration:

- The advice (if any) obtained from the design review panel
- The design quality of the development when evaluated in accordance with the design quality principles
- The Apartment Design Guide.

Blacktown City does not have a design review panel. However, our assessing officer's comments in relation to the 9 design quality principles and assessment against the relevant design concepts of the ADG are held at Attachment 5. The development is considered to comply with the 9 design principles and the ADG.

As part of the submission requirements, the DA must provide a design statement addressing the 9 'design quality principles' prescribed by the SEPP. Our assessing officer's comments in relation to the submission are also provided at Attachment 5.

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

A BASIX certificate has been lodged as part of the DA, as well as a NatHERS (Nationwide House Energy Rating Scheme) assessor certificate. The BASIX certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores. A suitable condition will be imposed on the consent requiring compliance with the submitted BASIX certificate.

(g) **Draft West Central District Plan**

Whilst the Environmental Planning and Assessment Act 1979 does not require consideration of District Plans in the assessment of development applications, an assessment of the relevant provisions of the Draft West Central District Plan has been undertaken. Outlined below is where the development application is consistent with the overarching priorities outlined in the Draft Plan:

Productivity

- Driving the growth of the Central City
- Delivering job targets in strategic and district centres
- Improving access to a greater number of jobs and centres within 30 minutes.

Liveability

- Improving housing choice
- Improving housing diversity and affordability
- Creating great places.

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

The site is zoned B4 Mixed Use under BLEP 2015. Shop top housing is permissible within the zone with consent. Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

Attachment 6 provides an assessment of the proposal against the requirements of BLEP 2015. The development complies with the development standards contained within BLEP 2015 with the exception of building height and FSR.

The applicant is seeking an exemption under Clause 4.6 to these development standards. A copy of the applicant's Clause 4.6 variation request is provided at Attachment 2, while an assessment against the development standards is discussed in detail in Section 6.

(i) Blacktown Development Control Plan (BDCP) 2015

BDCP 2015 applies to the site. Attachment 7 provides a table that outlines the proposal's compliance with BDCP. The development complies with the development controls with the exception of common open space, private balcony dimensions and car parking. The variations are discussed in detail in Section 6 of this report. The DA cannot be refused on the grounds of parking if the development satisfies the minimum RMS car parking requirements set out in the 'Guide to Traffic Generating Developments'. The RMS Guide requires 99 car parking spaces and the proposal provides 129. Therefore, the development will provide a surplus of 30 spaces when assessed against the RMS rate and is therefore considered acceptable. The common and private open space provisions are also considered acceptable given the CBD context and that they comply with the requirements of the ADG.

6 Assessment

6.1 Variations to BLEP 2015 development standards

Following is a summary of the principal development standards under BLEP 2015 and how the proposal responds to those standards.

BLEP 2015	Required	Proposed	Compliance
Clause 4.3 Height	56 m	61.8 m (with 56.77 m to the ceiling of the top level)	No – Clause 4.6 variation submitted. See assessment below
Clause 4.4 Floor space ratio (FSR)	6.5:1	7.64:1	No – Clause 4.6 variation submitted. See assessment below

(a) Building height variation

The maximum height on the site permissible under BLEP 2015 is 56 m. The proposal seeks a variation of 770 mm for the roof parapet and 5.8 m for the lift overrun and plant and equipment. This represents a variation to the development standard of 1.4 % for the roof parapet and 10.4% for lift overrun and plant and equipment.

The additional height does not result in any additional yield and does not result in an additional storey. The building presents to the street as an 18 storey building, which is consistent with other shop top housing developments proposed in the 56 m height limit area (e.g. JRPP-15-467 at 16 Third Avenue, JRPP-15-1263 at 2 Second Avenue and JRPP-15-2087 at 2-10 First Avenue).

If the applicant is made to comply with the maximum height limit under BLEP, the building will be provided with a 'squashed' podium with difficult access / ramping into the commercial tenancies. This would not be a good design outcome. Any reduction to the height of the building would also compromise the design of the building or would require less preferred construction methods.

Given that the additional height does not result in any commercial gain for the developer (in terms of yield or number of storeys) and will result in a better designed building, it is considered that the proposed variation to the height standard

should be supported in this instance. Further, in July 2016, Council resolved to proceed to increase the maximum building height on the site to 80 m, although this is a proposal only at this stage and has not proceeded to public exhibition.

(b) Floor space ratio (FSR) variation

The permitted gross floor area (GFA) for the site is 6.5:1 (i.e. 7,377 sqm). The proposal has a GFA of 7.64:1 (i.e. 8,668 sqm) and exceeds the permitted GFA by 1,291 sqm. The proposed variation is 14.9%.

The additional floor space is a result of the specific characteristics of the site, being a corner site but small in site area. The development benefits from 2 street frontages, allowing for zero setbacks to the street instead of required 6 m setbacks when directly adjoining another development site. The floor space has therefore been dispersed across the part 18 and 19 levels of the building, resulting in an additional 71.7 sqm per level.

The objectives of the development standard are considered to be achieved as the development is not considered bulky and the density is not excessive. The building design, which uses feature architectural elements and variation in colours and materials, ensures the massing of the building is satisfactory.

Given the site's location within the CBD and proximity to public transport, the minor variation in floor space is considered acceptable in this circumstance. Other variations to the FSR development standard have been supported in the CBD. Further, in July 2016, Council resolved to proceed to delete the FSR control from the Blacktown CBD planning controls, however this has not yet been placed on public exhibition.

(c) Clause 4.6 – variations to development standards

The applicant has submitted a request for variations to the abovementioned 2 development standards pursuant to Clause 4.6 of BLEP 2015. The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from the development by allowing flexibility in particular circumstances.

Clause 4.6 requires consideration of the following:

1. *Has the applicant submitted a written request that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *That there are sufficient environmental planning grounds to justify contravening the development standard?*
2. *Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?*
3. *Has the concurrence of the Director-General been obtained?*

The applicant's written request has adequately justified that compliance with the height and FSR development standards is unreasonable and unnecessary in this instance.

There are sufficient environmental planning grounds to justify varying the development standards. A copy of the applicant's written request is held at Attachment 2.

The variations will not have unreasonable impacts on neighbouring properties or the character of the area. The proposal is also consistent with the objectives of the development standards and the B4 Mixed Use zone.

In accordance with Clause 64 of the Environmental Planning and Assessment Regulation 2000, a consent authority, in this case the SPP, has 'assumed concurrence' from the Secretary (formerly the Director-General) of the Department of Planning and Environment to determine the Clause 4.6 request.

(d) Justification for the variations

The Land and Environment Court has established the following 5-part test for a consent authority to take into consideration when deciding whether to grant concurrence to a variation to a development standard:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard

- Height

The objectives of Clause 4.3 Height of buildings are as follows:

- (a) *To establish maximum height controls for buildings as a means of controlling the density and scale of buildings*
- (b) *To nominate heights that will provide a transition in built form and land use intensity*
- (c) *To define focal points by way of nominating greater building heights in certain locations*
- (d) *To provide sufficient space for development for the purposes of retail premises, commercial premises and residential accommodation*
- (e) *To allow sun access to the public domain and ensure that specific areas are not overshadowed*
- (f) *To ensure that buildings and public areas continue to receive satisfactory exposure to the sky and sunlight*
- (g) *To minimise any visual impact on, or loss of solar access to, land in the vicinity of proposed development as a result of that development*
- (h) *To minimise any loss of privacy to residential land as a result of proposed development*
- (i) *To ensure that there is an appropriate interface between commercial centres and land in any adjoining residential zone or in any adjoining public land.*

- Maximum height

The maximum height limit on the site is 56 m. Although the development exceeds the permissible height by 5.8 m at the plant and equipment points only, the development does not achieve an additional residential level. The increase in height therefore does not impact on the density or floor area of the development. The increased height also has no impact on the scale of the development, as it is point encroachments of plant and equipment. The additional height is simply the result of the commercial on ground and first floor housing having a higher floor to

ceiling height of 4.1 m, which improves the overall look and design of the development.

- **Solar access to buildings and open space of adjoining development and land**

The additional shadow impacts are negligible. The majority of the overshadowing caused by the non-compliance is due to the lift overrun and rooftop plant and equipment, which are captured within the roof space itself.

- **Range of building heights in appropriate locations**

The site is considered suitable for the development given its proximity to the Blacktown railway station and the Blacktown CBD. The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys, being part 18 and 19 in total, is consistent with other shop top housing developments proposed in the 56 m height limit area (e.g. JRPP-15-467 at 16 Third Avenue, JRPP-15-1263 at 2 Second Avenue and JRPP-15-2087 at 2-10 First Avenue). A reduction in the height of the building would compromise the design of the building, reducing the floor to ceiling height of 4.1 m of the commercial level or lowering the building below street level with ramping.

- **Privacy impacts**

The building height variation does not result in any additional privacy impacts on adjoining properties. The rooftop area will not be used for open space purposes.

FSR

The objectives of Clause 4.4 Floor space ratio are:

- (a) *To establish maximum floor space ratios as a means of controlling the density, bulk and scale of buildings.*
- (b) *To establish the maximum floor space for development for the purpose of commercial premises, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic.*
- (c) *To concentrate intensive land uses in locations that are most accessible to transport or are on key gateway sites.*

The objectives of the development standard are achieved as the development is not considered bulky and the density is not excessive. The podium and tower design ensures that sufficient setbacks are provided to northern, eastern and southern boundaries. Whilst a zero setback is provided for the length of the Prince Street setback, use of aluminium mesh screening on the podium, and design of the tower with horizontal and feature elements, ensures the massing of the building is satisfactory.

The proposal is for a mixed use building, incorporating business and residential purposes. Objective (b) identifies that the development control is to establish a maximum floor space for commercial purposes. The development proposes 330.7 sqm of retail premises, which is equivalent to an FSR of 0.3:1 on the site. The commercial premises within the development provide for an active street frontage, meet the car parking requirements of the Blacktown

Development Control Plan and is of a scale that contributes to Blacktown as a Strategic Centre within the Sydney Metropolitan Area. Objective (b) of the development standard is considered to have been satisfied.

The DA is consistent with objective (c) as the land use is approximately 400 m east of the Blacktown railway station and bus interchange. Given the site's proximity to public transport, the minor variation in floor space is considered acceptable in this circumstance.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The purpose of the standards is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered unreasonable.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The purpose of the development standards would not be defeated if compliance was required. However, 100% compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standards, as outlined above, will still be achieved despite the variations.

4. The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Minor variations to the height and FSR development standards have been previously supported in the CBD. Council officers have also consistently allowed the lift overruns and rooftop area to encroach above the permissible height limit.

Developments of a similar scale to this DA have been approved within the northern precinct of the CBD with variations to the height and FSR, including the development at 28 Second Avenue (JRPP-14-2593) and the development at 2-10 First Avenue (JRPP-15-2087).

5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

The development site is currently vacant. Full compliance with the development controls can therefore be achieved. The variations, however, do not increase residential density. Given the site's context within the Blacktown CBD and the limited site area, variations in order to create usable space for the benefit of future residents and a better designed building are considered acceptable.

In addition, in July 2016 Blacktown City Council resolved to review the planning controls within BLEP 2015 in the Blacktown CBD. For the subject site, the Council resolved to support the deletion of the FSR controls within the CBD precinct and increase the maximum building height to 80 m. While the changes are still in their infancy, the recommendations have been forwarded to the Department of Planning and Environment for their

consideration. In the circumstances of this strategic change by Council, it is considered unreasonable to require strict compliance with the FSR or building height controls, which in the medium term is likely to be removed.

Based on the above assessment, the requested variations under Clause 4.6 are considered reasonable, well founded and are recommended for support.

6.2 Variations to the BDCP 2015 requirements

The provisions of Blacktown Development Control Plan 2015 (BDCP), in particular Part D – Development in the Business zones, apply. The table at Attachment 7 demonstrates that the proposal is compliant with the DCP with the exception of car parking and open space as outlined below.

(a) Parking

Following is a summary of the car parking requirements that apply to the development:

	Retail / business component (being 330 sqm)	Residential component (being 106 units - 20 x 1 bed, 80 x 2 bed and 6 x 3 bed)	Visitor parking (for 106 units)	Total required
Requirement under Council's DCP	1 space / 30 sqm GFA = 11 spaces	1 space per 1, 2 or 3 bed = 106 spaces	1 space per 5 units = 21.2 spaces	139
Requirement under the RMS guideline	N/A for this development. Council's DCP rate is therefore to be applied = 11 spaces	0.4 spaces per 1 bed, 0.7 spaces per 2 bed and 1.2 spaces per 3 bed = 72 spaces	1 space per 7 units = 15.1 spaces	99

Based on the Blacktown Parking Management Plan parking rates in the DCP, the proposed development requires 139 off-street car parking spaces. The proposed development provides 129 car parking spaces and therefore does not comply with the car parking requirements under the DCP.

Clause 30 of SEPP 65 states, however, that car parking for the residential component of the development only needs to comply with the minimum parking requirements specified in the RMS 'Guide to Traffic Generating Developments', which is significantly less than Council's DCP requirement. If the number of car spaces complies with the RMS rate, then the development cannot be refused on the grounds of parking.

The Blacktown CBD is defined as a 'metropolitan regional centre'. Therefore, the RMS parking rates of 0.4 spaces per 1 bedroom unit, 0.7 spaces per 2 bedroom unit, 1.2 spaces per 3 bedroom unit and 1 visitor car space for every 7 units apply to this development.

Based on the RMS parking rates, the residential component of the development requires 88 off-street car parking spaces. Together with the required 11 commercial / retail spaces, the development requires a total of 99 car spaces.

The development proposes 129 car parking spaces across 5 levels (i.e. first and second podium levels and 4 basement levels). The development therefore provides a surplus of 30 spaces.

SEPP 65 identifies that where car parking complies with the RMS Guide to Traffic Generating development, car parking cannot be used as a reason for refusal.

(b) Common open space

In accordance with the DCP, common open space for the use of all residents is to be provided at the minimum rate of 42% of the sum of the following:

- 30 sqm for each 1 bedroom dwelling
- 40 sqm for each 2 bedroom dwelling
- 70 sqm for each 3 bedroom dwelling.

There is no science to the 42% rule. It evolved over time following a number of reports to Council over the last 15 years where Council gave variations depending on the scale of the development and its location.

Based on these rates, the proposed development requires 2,192 sqm of common open space, of which 30% (658 sqm) can be provided on private balconies / terraces. This is more than the area of the site (i.e. 1,132 sqm) and is considered a significant amount of common open space in a CBD context.

The development provides 658 sqm on the balconies (as the 30% allowance) and 530 sqm, being an open area at the podium level and a rooftop terrace. This represents 54% of the BDCP control. The outdoor open space area will be embellished with paving, timber decking, synthetic grass and suitable trees and shrubs within planter boxes. Communal bench seating, tables and a barbeque are also proposed.

The amount of common open space provided does not comply with the DCP, but does comply with the Apartment Design Guide (ADG) requirement and is considered acceptable for a high rise development located within the CBD. Under the requirements of the ADG, the development is only required to provide a common open space area equivalent to 25% of the site area (i.e. 283 sqm). This is significantly different to our DCP requirement. The development complies with the ADG requirement, providing common open space equivalent to 47% of the site area.

The proposal complies with the state-wide accepted industry standard and insistence on a higher level of provision will not be sustainable if the DA is appealed in the Land and Environment Court. The Apartment Design Guide was adopted by the NSW Government in July 2015 and is relied upon by developers as the state-wide design parameters for apartment buildings. Our design standards have been in place for 20 years and do not reflect current design practice. It has been recommended to Council that we review our DCP so that it aligns to the standards in the state-wide guidelines.

(c) Private open space

Clause 6A of SEPP 65 states that the private open space and balcony requirements of the ADG prevail over any inconsistent DCP control.

BDCP 2015 does not include a clear minimum private open space requirement. Instead it states that in order to provide usable open space for individual dwellings, private balconies / terraces may make up 30% of the common open space requirement.

The DCP states that the balconies must measure at least 2.5 m x 3.0 m, while under the ADG balconies are only required to measure 2.0 m x 3.0 m. As the ADG legally prevails, the proposal complies.

Given that the proposed development provides common open space, private open space and balcony areas all in accordance with the requirements of the ADG, it is considered that the proposed development has been appropriately designed and that the residents will be provided with a suitable level of amenity.

6.3 Variations to the Apartment Design Guide

SEPP 65 requires that, when assessing an application, consideration must be given to the requirements of the Apartment Design Guide (ADG). Council's officer's assessment against the relevant design concepts and numerical guidelines of the ADG is held at Attachment 5. The development complies with the ADG with the exception of proposed building separation as discussed below.

(a) Building separation

Under the ADG, the building separation controls increase as the height of the development increases, as follows:

- (i) Up to 4 storeys/12 metres
 - 12 m between habitable rooms / balconies
 - 9 m between habitable / balconies and non-habitable rooms
 - 6 m between non-habitable rooms.
- (ii) 5 to 8 storeys/up to 25 metres
 - 18 m between habitable rooms / balconies
 - 13 m between habitable / balconies and non-habitable rooms
 - 9 m between non-habitable rooms.
- (iii) 9 storeys and above/over 25 metres
 - 24 m between habitable rooms / balconies.
- (iv) 18 m between habitable / balconies and non-habitable rooms
 - 12 m between non-habitable rooms.

Above the 3 storey podium level the proposed development provides:

- (i) A zero setback to the front western boundary. The width of the road (Prince Street) ensures that the building separation requirements to any future development on the opposite side of the road can be met
- (ii) A minimum 6 m setback to the Second Avenue (southern boundary), northern and eastern boundaries.

The proposed development does not provide 9 m – 12 m setbacks at levels 4 and above and therefore does not comply with the suggested building separation for its intended height.

The ADG, however, is a guide only and allows building separation controls to be varied in response to site and context constraints. Where a proposed development intends to provide less than the recommended distance separation, it must demonstrate that daylight access, urban form and visual and acoustic privacy has been satisfactorily achieved.

As this proposal does seek to vary the building separation, these key parameters are each considered below for compliance.

(i) Daylight access

The proposed development complies with the minimum solar access requirement that 75% of the units receive a minimum 2 hours direct sunlight between 9 am and 3 pm in midwinter. Solar access drawings for the proposal are held at Attachment 4. Given the north-south orientation of the site, adjoining properties are not overshadowed by the development for at least 3 hours a day. The building separation is therefore considered satisfactory as the proposal and adjoining sites will receive adequate solar access.

(ii) Urban form

In considering the existing urban form, consideration should be given to other DAs approved in the Northern Precinct of the CBD, which similarly have side and rear reduced setbacks. The table below compares the subject development with other approvals in the area.

Address	Development	Side Setbacks (above podium)	Determination
20 Second Avenue	DA-02-5551 11 storeys mixed-use	1 m - 5.7 m (average 3.3 m)	Approved 24/10/04
29 - 31 Second Avenue	JRPP-09-1574 20 storeys mixed-use	6 m – 16 m (point encroachments to 5 m)	Approved 26/08/10
26 Second Avenue	DA-13-1143 9 storeys mixed-use	6 m (point encroachments to 3.5 m)	Approved 15/9/14
28 Second Avenue	JRPP-14-2593 24 storey mixed-use	6 m (point encroachments to 4 m)	Approved 23/6/15
2-10 First Avenue	JRPP-15-2087 18 storeys mixed-use	Minimum 6 m with no point encroachments	Approved 26/7/16
16 Third Avenue	DA-15-00467 18 storeys mixed-use	3 m – 8 m	Under assessment
16 Second Avenue	JRPP-15-02533 19 storeys mixed-use	Minimum 6 m with no point encroachments	This DA

It can be seen from the table that the proposed development is consistent with the setbacks established by previous approvals in the area. Further, the quality and character of the development is consistent with the objectives of the B4 zone, being:

To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The design of the development encourages an active street frontage and achieves a high design quality, with suitable bulk and scale that considers the restrictions of the site.

Part D of BDCP 2015 establishes the development controls which shape the desired urban form of the Blacktown CBD. The BDCP establishes setback requirements, enabling a building within the CBD to be 20 storeys in height

and have a setback of 6 m, with balcony encroachments to be considered on merit. A minimum 12 m building separation can be achieved between this development and any future development on the adjoining sites. A 12 m separation is consistent with the provisions of Council's DCP.

Therefore, based on the urban form established by previous approvals in the area, as well as compliance with BDCP 2015, the development is considered to be consistent with the surrounding and future urban form.

(iii) Visual and acoustic privacy

The proposed balconies are predominantly oriented towards the street (Second Avenue and Prince Street). Balconies orientated towards side boundaries are setback 6 m and are provided with solid concrete balustrades to ensure acoustic privacy is met. In addition, aluminium louvres are provided to the balconies to address any potential visual privacy concerns between apartments.

Based on the above assessment of solar access, urban form and visual and acoustic privacy, the proposed building separation of the development is considered satisfactory, and therefore a variation to the suggested building separation requirement is considered reasonable in this circumstance. It is also noted that the numerical standards in the ADG are guidelines only and that variations should not necessarily warrant refusal of the application.

7 Internal referrals

7.1 The DA was referred to the internal sections of Council as summarised below:

Section	Comments
Engineering	No objection subject to conditions.
Building	No objection subject to conditions.
City Architect	Council's City Architect raised a number of concerns with the original DA plans with regard to: • Structural confirmation of floor to ceiling height • Building design in comparison to 28 Second Ave, Blacktown • Corridor width design. In response to these concerns, the applicant submitted amended plans which satisfactorily resolve these concerns and no objection is now raised by the City Architect.
Tree management	No objection subject to conditions.
Traffic Management Services (TMS)	No objection subject to conditions.
Waste Services	No objection subject to conditions.
Environmental Health Section	No objection subject to conditions.

8 External referrals

8.1 The DA was referred to NSW Police as summarised below:

Section	Comments
NSW Police	The applicant's completed Crime Prevention Through Environmental Design (CPTED) checklist was forwarded to the Blacktown Local Area Command (LAC) for review. Local Police have raised no objection to the development subject to standard conditions being imposed on any consent to ensure compliance with identified CPTED items.

9 Public comment

9.1 The DA was notified to adjoining and nearby property owners and occupants from 16 to 30 March 2016. An advertisement was also placed in the local newspaper and a notification sign was displayed on site.

9.2 In response to the public notification, no submissions were received.

10 Section 79C consideration

10.1 Consideration of the matters prescribed under Section 79C of the Environmental Planning and Assessment Act 1979 are summarised below:

Heads of Consideration 79C	Comment	Complies
a. The provisions of : (i) any environmental planning instrument (EPI) (ii) any development control plan (DCP) (iii) the regulations	The provisions of the relevant EPIs relating to the proposed development are summarised under Section 5 of this report. The proposal is considered to be consistent with the relevant EPIs, including BLEP 2015, SEPP (Infrastructure) 2007 and the 9 'design quality principles' of SEPP 65. The proposed development is a permissible land use within the B4 Mixed Use zone and satisfies the zone objectives outlined under BLEP 2015. The proposal does seek to vary the principal development standards under BLEP 2015. The applicant has submitted a request to vary 2 development standards pursuant to Clause 4.6 of BLEP 2015. The height control is varied by up to 5.8 m for rooftop plant and the FSR control is varied by 1.14:1. The proposed variations are discussed in detail in Section 6 and are considered satisfactory. BDGP 2015 applies to the site. The proposed development is compliant with the numerical controls established under the DCP, with the exception of common open space, private open space and car parking. The variations are discussed in detail in Section 6 and are considered acceptable. Given that the open space provision complies with the requirements of the ADG, it is recommended that the development be supported in its current form. Clause 30 of SEPP 65 also states that if the number of car spaces complies with the RMS rate (which is significantly less than Council's DCP requirement) then the development cannot be refused on the grounds of parking. The proposal provides a surplus of 19 spaces when assessed against the RMS rate and is therefore considered satisfactory.	Yes

Heads of Consideration 79C	Comment	Complies
b. The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality	It is considered that the likely impacts of the development, including traffic, noise, parking and access, bulk and scale, overshadowing, privacy, waste management and the like, have been satisfactorily addressed. A site analysis was undertaken to ensure that the proposed development will have minimal impacts on surrounding properties. In view of the above it is believed that the proposed development will not have any unfavourable social, economic or environmental impacts.	Yes
c. The suitability of the site for the development	The subject site is zoned B4 Mixed Use with a 56 m building height limit under BLEP 2015. Shop top housing is permissible on the site with development consent. The site has an area and configuration that is suited to this form of development. The design solution is based on sound site analysis and responds positively to the different types of land uses adjoining the site. The site is located within close proximity to the Blacktown train station, Blacktown bus interchange and Blacktown shopping precinct. The site is also located near services, facilities and a major arterial road network, making it suitable for higher residential densities.	Yes
d. Any submissions made in accordance with this Act, or the regulations	No submissions were received from notification of the DA.	Yes
e. The public interest	It is considered that no adverse matters relating to the public interest arise from the proposal. The proposal provides high quality housing stock and provides for a wider range of housing diversity within the Blacktown City area.	Yes

11 Concluding comments

- 12.1 The proposed development has been assessed against the matters for consideration listed in Section 79C of the Environmental Planning and Assessment Act 1979 and is considered to be satisfactory. It is considered that the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. Further, the site is considered suitable for the proposed development.
- 12.2 The proposal is consistent with the objectives of Blacktown Local Environmental Plan 2015 and the B4 Mixed Use zone and is permissible in the zone with development consent. The development addresses the main requirements of Blacktown Development Control Plan 2015, and is considered satisfactory with regard to relevant matters such as built form, access, stormwater drainage, site contamination and economic impacts and the like, subject to the imposition of suitable conditions of consent to satisfactorily control the development.
- 12.3 The proposed variations to the principal development standards (height and FSR) under BLEP 2015 will not result in any commercial gain for the developer (in terms of yield or number of storeys) and will result in a better designed building. The requested variations under Clause 4.6 are considered reasonable, well founded and are recommended for support.

12.4 The variations to the building separation, common open space and private open space requirements are also considered satisfactory based on their merits and will have negligible impacts on amenity (e.g. in terms of solar access, privacy, access to recreation areas) of the future occupants of the building or the adjacent properties.

12 Recommendation

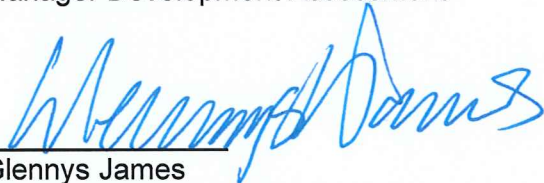
12.1 The DA be approved by the Sydney Planning Panel subject to the conditions held at Attachment 1.



Melissa Parnis
Assistant Team Leader Projects



Judith Portelli
Manager Development Assessment



Glennys James
Director Design and Development