

## Blacktown City Council assessment report Sydney West Central Planning Panel

Panel reference	2016SYW018 DA
DA number	JRPP-15-2701
LGA	Blacktown City Council
Proposed development	Stage 1 Concept Plan for site and road layout, 9 building envelopes and an area nominated for future public park
Street address	96 Cudgegong and 88-104 Rouse Roads, Rouse Hill
Applicant and owner	Applicant: Sutherland Planning and Associates Pty Ltd Owner: Tian Tong (Australia) Pty Ltd
Date of DA lodgement	17 December 2015
Land zoning:	R3 Medium Density Residential RE1 Public Recreation
Capital investment value:	\$200,500,000
Regional development criteria (Schedule 4A of the EP&A Act)	Capital investment value over \$20 million
Number of submissions	2
Recommendation	Approval subject to conditions
Relevant s79C(1)(a) matters	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Sydney Region Growth Centres) 2006</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River</li> <li>Blacktown City Council Growth Centre Precincts Development Control Plan 2010</li> </ul>
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 January 2016
Date to be considered by Panel	8 February 2016

### 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 summarised, 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 Contribution conditions (S94EF)?

**Yes**

### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

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## ATTACHMENTS

Attachment 1	– Draft conditions of consent
Attachment 2	– Applicant's Clause 4.6 request for variation
Attachment 3	– Development Application plans
Attachment 4	– Assessment of compliance with SEPP 65 design principles and the Apartment Design Guide
Attachment 5	– Assessment of compliance with the Growth Centres SEPP 2006
Attachment 6	– Assessment of compliance with the Growth Centre Precincts Development Control Plan 2010



# 1 Executive summary

- 1.1 Blacktown City Council is in receipt of a Development Application (DA) from Sutherland Planning and Associates Pty Ltd. The DA seeks approval for a Stage 1 concept plan under Section 83B of the Environmental Planning and Assessment Act 1979. The concept plan seeks approval for the concept building and road layout, 9 x 4 storey residential building envelopes for a total of 691 apartments and an area nominated for a future public park. No building, preparatory or subdivision works are sought as part of this DA. A future staging breakdown of the works has been provided.
- 1.2 The proposed development constitutes 'regional development' requiring referral to the Sydney Planning Panel (SPP), as it has a capital investment value of \$200.5 million. While Council is responsible for the assessment of the DA, the SPP is the consent authority.
- 1.3 The site is zoned R3 Medium Density Residential and RE1 Public Recreation under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP). The site is within the Area 20 Precinct Plan. Residential flat buildings are permissible in the R3 zone with development consent.
- 1.4 An assessment of the concept plan has been undertaken against the provisions of the Growth Centres SEPP and the Blacktown City Council Growth Centre Precincts Development Control Plan (Growth Centre DCP) 2010. This includes assessment of building envelope compliance with building setbacks, floor space and building height. Based on the concept design, the development complies with the development standards contained within the SEPP and DCP with the exception of building height, road pattern and front setbacks. A further detailed assessment of the building design, to ensure compliance with the SEPP and DCP, will occur at the detailed Development Application stage.
- 1.5 The applicant has lodged a request under Clause 4.6 for variation to the development standard under the Growth Centres SEPP. The building height is varied by up to 2.3 m (parapet) and 3.4 m (plant and equipment) above the permissible height limit of 12 m on some parts of the buildings, representing a variation of up to 28 %. The variation is considered acceptable as it is a result of existing civil levels and new road construction required to meet the existing road levels. The majority of the variation is roof structure and rooftop plant and equipment, which is visually unnoticeable, does not result in excessive bulk and scale and does not result in adverse shadow or amenity impacts on surrounding properties, including Rouse Hill House. The height variation does not result in additional floor levels, with the development comprising a 4 storey building consistent with the 12 m height limit.
- 1.6 The proposal is consistent with the objectives of SEPP 65 and satisfactorily achieves the 9 'design quality principles' listed under Schedule 1. Detailed assessment of the individual design of the residential flat buildings will be undertaken at the detailed Development Application stage for the individual stages. We have assessed the concept design against the requirements within the Apartment Design Guide (ADG), including building height, building envelope massing and building separation. The development complies with the numerical recommendations of the ADG. The detailed design of the apartments will be required to comply with all design requirements of SEPP 65 and the ADG.
- 1.7 The applicant also seeks a road pattern variation by the deletion of an internal north-south road and the consolidation of the 2 east-west roads into 1 new east-west road. However, the applicant has introduced a new north-south road on the eastern property boundary. The variation results in an increase in developable area of 2.5%. The variation is considered acceptable as the consolidation of roads central to the development does not have an impact on adjoining properties and the road pattern is acceptable from a local



road network perspective by Council's Traffic Management Section. In addition, the variation does not result in a loss of on-street car parking.

- 1.8 The applicant seeks a variation to the DCP requirement for a 6 m front setback to the new local roads, as Council requested that they widen the local roads by 2 m. This DA predates the now adopted DCP amendment for local roads in the R3 zone that achieves 2 parking lanes instead of only 1. This variation is supported given the future traffic expected on this road network.
- 1.9 The proposed development was notified to property owners and occupiers within the locality between 31 August and 14 September 2016. The DA was also advertised in the local newspapers and a sign was erected on site. As a result of the notification process, 2 submissions were received.
- 1.10 The submissions raised concerns about the density proposed, consistency with the vision for the area, inconsistencies with zone objectives, impacts on the streetscape and bulk and scale, as well as civil construction methods for the road construction. The development has been assessed against the matters for consideration under Section 79C and has been found to be acceptable. Therefore, concerns raised within the submissions are not considered sufficient to warrant refusal of the application.
- 1.11 The proposal has been assessed against relevant clauses within the applicable environmental planning instruments. The development is considered to satisfy all relevant clauses. A detailed assessment is undertaken in Section 6 of this report.
- 1.12 The development is considered satisfactory with regard to relevant matters such as siting and design, bulk and scale, privacy, amenity, 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.
- 1.13 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 Area 20 Precinct within the North West Growth Centre as identified by the Growth Centres SEPP. It is located within the suburb of Rouse Hill.
- 2.2 The location of the site is shown in Figure 2 below. The land immediately to the north is zoned R2 Low Density Residential, with a building height limit of 9 m, however this area is at present being used as a school playing field. The land to the east of the site is zoned R3 Medium Density Residential, with a building height limit of 12 m. The adjoining land to the south is also zoned R3 Medium Density Residential, but has a building height limit of 16 m. The land on the opposite side of Cudgegong Road, to the west of this site, is zoned RE1 Public Recreation.
- 2.3 The site is located approximately 500 m to the north of the future Cudgegong Road train station of the Sydney Metro Northwest and future Cudgegong Road local centre.
- 2.4 The existing locality is currently characterised by a mix of old rural and new residential development and is currently undergoing transition with a number of residential subdivisions and dwellings approved now within the locality.



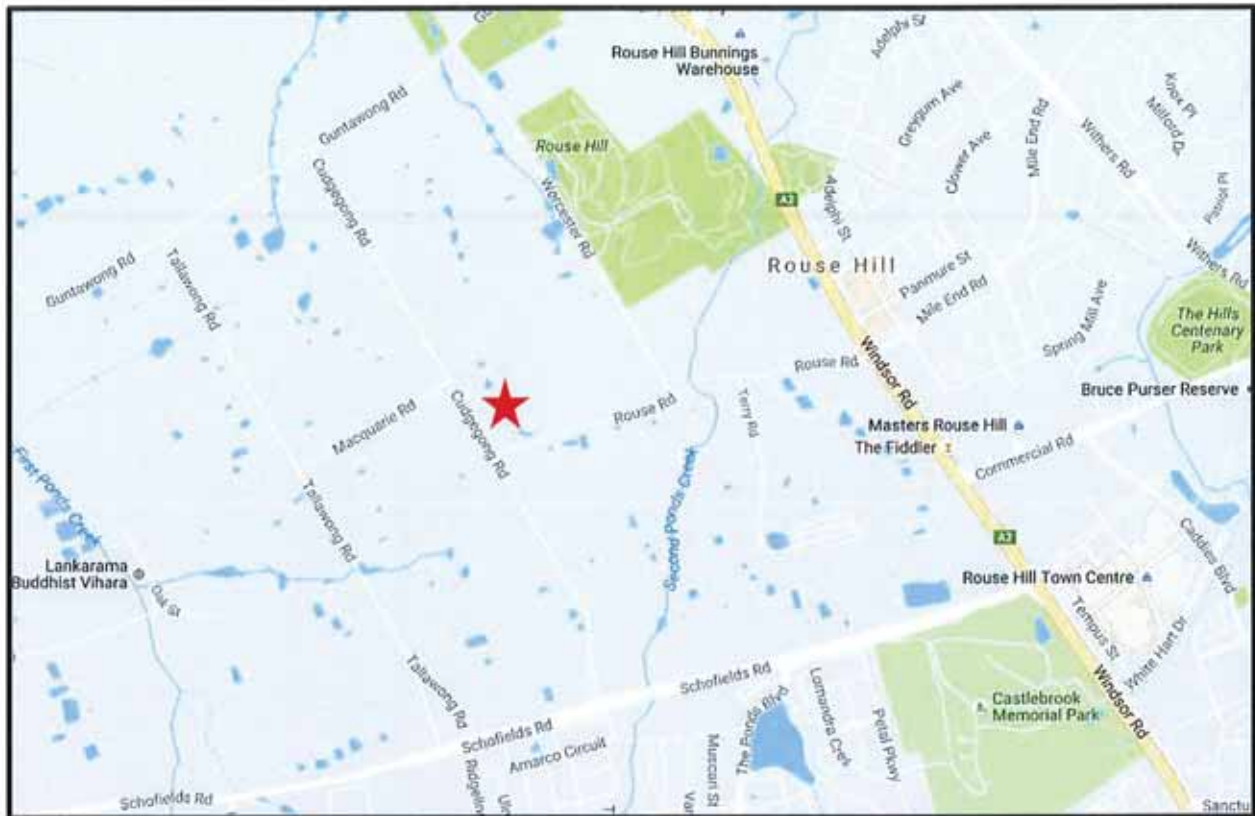


Figure 1 Location map (Source: Google maps 2016)



Figure 2 Extract from Area 20 Indicative Layout Plan (Source: Department of Planning 2012)



### 3 Site description

- 3.1 The site consists of 3 existing lots, known as Lots 1 and 2 DP 540894 and Lot 114 DP 208203, being H/Ns 88-104 Rouse Road and 96 Cudgegong Road, Rouse Hill.
- 3.2 The sites have an irregular configuration and a total site area of 6.071 hectares. The site has road frontages to the west and south, with Cudgegong Road to the west being a collector road and Rouse Road to the south also being a collector road.
- 3.3 The site boundary dimensions are 280.9 m along the northern boundary, 257.74 m on the eastern side, 155.39 m on the western boundary and 328.05 m on the southern boundary.
- 3.4 The site is heavily vegetated and is currently used for rural-residential purposes, with a dwelling house on each of the lots.



**Figure 3** Aerial image as of 18 July 2016 (Source: Nearmap 2016)





Figure 4 Zoning extract (Source: BCC 2016)

## 4 Background

- 4.1 On 21 October 2011, the subject site was rezoned to part R3 Medium Density Residential and part RE1 Public Recreation under the provisions of State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The site was rezoned from its previous 1(a) Rural zoning under Blacktown Local Environmental Plan 1988 to its current zoning as part of the Area 20 Precinct of the North West Growth Centre.
- 4.2 On 15 April 2015, Council approved DA-14-2354 for the subdivision of the land. This included 10 lots for future residential development, 1 lot for a future local park and construction of roads. A **condition** will be imposed on the consent of JRPP-15-02701 requiring DA-14-2354 to be surrendered as it is superseded by this new DA.

## 5 The proposal

- 5.1 The DA seeks approval for a Stage 1 concept plan under Section 83B of the Environmental Planning and Assessment Act 1979. The concept plan seeks approval for the concept site design and road layout, 9 x 4 storey residential building envelopes for a total of 691 apartments and an area nominated for a future public park. No physical, preparatory and subdivision works are sought as part of this DA.
- 5.2 The building envelopes provide for 691 residential units, including 189 x 1 bedroom units, 458 x 2 bedroom units and 44 x 3 bedroom units.
- 5.3 The concept plan proposes the following stage breakdown:

### Stage 1

- 3 x 4 storey buildings comprising 243 residential apartments, being 63 x 1 bedroom, 166 x 2 bedroom and 14 x 3 bedroom apartments

- New road construction and dedication
- Communal courtyards and common open space
- Basement car parking for 299 vehicles
- Residue subdivision.

### Stage 2

- 4 x 4 storey buildings comprising 285 residential apartments, being 84 x 1 bedroom, 182 x 2 bedroom and 19 x 3 bedroom apartments
- New road construction and dedication
- Communal courtyards and common open space
- Basement car parking for 352 vehicles
- Residue subdivision.

### Stage 3

- 2 x 4 storey buildings comprising 163 residential apartments, being 42 x 1 bedroom, 110 x 2 bedroom and 11 x 3 bedroom apartments
- New road construction and dedication
- Communal courtyards and common open space
- Basement car parking for 201 vehicles
- Subdivision to create a new local park.

- 5.4 Detailed floor plans of each apartment, which will be required to be compliant with the Apartment Design Guide, will be provided with each separate detailed application.
- 5.5 The maximum building height of the development is 15.4 m. The development seeks an exceedance of 2.3 m for parapets and 3.4 m for plant and equipment over limited portions of the buildings above the maximum height limit of 12 m under the Growth Centres SEPP. The maximum variation sought is equivalent to a 28 % variation to the development control. The applicant has lodged a Clause 4.6 variation to the development standard for consideration by the consent authority. The applicant's Clause 4.6 request and height limit diagram is held at **Attachment 2**. Council's assessment of the variation is undertaken in Section 7.
- 5.6 The proposal has an FSR of 1.175:1, which is compliant with the maximum FSR of 1.75:1 permissible on the site.
- 5.7 The proposal provides for 6 m setbacks to all existing public roads and 5 m setbacks to all new local public roads, as a wider road width is being provided than what was required by the Growth Centres DCP at the time. This DA was lodged prior to the adoption of wider road widths by Council within the R3 zone, however, the applicant chose to adopt the wider road widths which was publicly exhibited as part of the DCP amendment.
- 5.8 Each stage is compliant with the minimum car parking requirements, based on the unit breakdown and required visitor car parking spaces.
- 5.9 The basements in Stages 1 and 2 are provided with 2 access points, to ensure flow of traffic is reasonable given the scale of the development. A single access point is proposed for Stage 3, as car parking is provided for 201 cars only.



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 the residential levels. Each visitor car parking area is centrally located.

- 5.10 The concept plan identifies areas for central communal open space at ground level, internally shared amongst stages. Each building is provided with its own embellished common open space courtyard central to each building. A total area of 9,584 sqm of common open space has been provided, which is equivalent to 25 % of the site area. Each detailed application will be required to be supported with a detailed landscape plan that identifies common open space embellishment.
- 5.11 The buildings have been stepped down across the site in response to the slope of the site. The buildings have been modulated and articulated to reduce apparent bulk. Details of colours and finishes will be provided as part of the detailed application stages.
- 5.12 The concept plan has been designed in accordance with the requirements of SEPP 65 and the Apartment Design Guide. Each detailed application will be required to be accompanied by a Design Verification Statement prepared by a registered Architect in accordance with the requirements of the SEPP.

The building massing provided demonstrates building articulation in design and response to the site restraints and topography of the site. Building orientation of the building massing has been designed to ensure solar access and natural ventilation targets are met. This includes ensuring central common open space areas are provided with adequate solar access to ensure spaces are usable at different times of the day. Council officer assessment of the design principles established within SEPP 65 is undertaken in Section 6.

- 5.13 The applicant has submitted an assessment of traffic and parking implications prepared by Transport and Traffic Planning Associates. The report reviews the road network in the vicinity of the site and assesses the traffic implications of the development proposal in terms of road network capacity.

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 development proposal yields a traffic generation potential of approximately 221 vehicle trips per hour during commuter peak periods, which is reduced to 145 vehicle trips per hour during commuter periods once access to the rail services of the Sydney Metro Northwest are provided to the site. The new metro is expected to be open to customers in early 2019.

The report identifies that the projected increase in traffic activity as a consequence of the development proposal is consistent with the objectives of the rezoning of the local area and will not have any unacceptable traffic implications in terms of road network capacity.

The report has also undertaken an assessment of the required car parking for the proposal in light of the development controls established by the Growth Centre DCP and has identified the development as compliant with the DCP requirements. The report also concludes that the geometric design layout of the proposed car parking facilities have been designed to comply with the relevant requirements as specified in Australian Standard 2890.1, in respect of parking bay dimensions, ramp gradients and aisle widths.

The report concludes that the proposed road system within the site will be suitable and appropriate and that there will be no unsatisfactory traffic implications.

- 5.14 A full assessment of the proposal against the relevant planning controls is provided in Section 6, while 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**

The application has been lodged under Section 83B of the Act and meets the requirements of a concept masterplan by setting out concept proposals for the development of the site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent Development Applications.

The application is classified as 'Integrated Development' under Section 91 of the Act, as authorisation under Section 100B of the Rural Fires Act 1997 is required. The application was referred to the NSW Rural Fire Service which has provided conditions of consent.

An assessment against the Section 79C 'Heads of consideration' is provided in Section 11.

**(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 \$200.5 million. While we 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.

As the development proposes more than 200 dwellings, referral was made to the Sydney Regional Development Advisory Committee (SRDAC). RMS has raised no objections to the development and recommends no conditions of consent. It is noted that future detailed applications that exceed 200 dwellings will also require individual referral to RMS in accordance with the SEPP.

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

*i. 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 a development consent.

A Stage 2 Detailed Site Investigation for the site, prepared by SLR Global Environmental Solutions, has been submitted as part of the application. The assessment has undertaken a review to determine if the site is suitable for residential development by meeting the strict residential use criteria set out in the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999, as amended in 2013.

The assessment considered that the site could be made suitable from a contamination perspective for the proposed residential development subject to the removal of tar fragments at sampling points and asbestos materials.



The report recommends that the removal of the tar fragments and asbestos containing material should be validated by a recognised EPA accredited geoscientist.

To ensure these works are undertaken prior to the release of a Construction Certificate on any site for any proposed residential flat building, suitable **conditions** will be imposed. The conditions will require the validation to ensure that the site is made suitable for residential development without any limitations under the NEPM guidelines.

**(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 development applications 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:

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

Blacktown City Council does not have a design review panel. However, Council's assessing officer's comments in relation to the 9 design quality principles and assessment against the relevant design concepts of the ADG is held at **Attachment 4**. The development complies with the 9 design principles and the ADG at this concept design stage, with the detailed Development Applications also required to comply with SEPP 65 and the ADG requirements.

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

BASIX Certificates will be required to be submitted with each of the detailed Development Applications.

**(g) State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

Appendix 6 Area 20 Precinct Plan applies to the site. **Attachment 5** provides an assessment of the development standards established within the Growth Centres SEPP and the proposal's compliance with these standards. The development complies with the exception of building height.

*i. Clause 2.3 Zone objectives and land use table*

The consent authority must have regard to the objectives for development in a zone when determining a Development Application in respect of land within the zone.

The subject site is zoned part R3 Medium Density Residential and part RE1 Public Recreation pursuant to the Growth Centres SEPP. A residential flat building, defined as a building containing 3 or more dwellings, but not including an attached dwelling, a manor home or multi dwelling housing, is permissible within the zone with consent. The proposed residential flat buildings are entirely located within the R3 portion of the site and are

therefore permissible. The development is considered to meet the objectives of the zone. The subdivision plan identifies the area of RE1 Public Recreation land as zoned by the SEPP. Council's Recreation Planning and Design Section is satisfied with the size and shape of the land.

ii. *Clause 4.6 Exceptions to development standards*

A consent must not be granted for development that contravenes a development standard unless:

- The consent authority is satisfied that the applicant has made a written request that has adequately addressed the variation being sought and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The applicant must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.
- The consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the zone.

The applicant is seeking an exemption to the maximum permissible building height under Clause 4.6. The variation sought is up to 3.4 m above the 12 m height limit to parapet and lift overrun elements of the buildings. 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 7.1.

iii. *Clause 6.1 Public utility infrastructure*

The consent authority must not grant development consent to development on land to which this Precinct Plan applies unless it is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required. Adequate arrangements have been made with relevant service authorities in the Area 20 Precinct.

Future detailed Development Applications will be conditioned to obtain service authority clearances for the site.

**(h) Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP 20)**

i. *Clause 4 – Application of general planning considerations, specific planning policies and recommended strategies*

A consent authority must take into consideration the general planning considerations set out in Clause 5 of SREP 20 and the specific planning policies and recommended strategies in Clause 6 of SREP 20.

The planning policies and recommended strategies under SREP 20 are considered to be met through the development controls of the Growth Centres SEPP. The development complies with the development standards and controls established within the Growth Centres SEPP, to enable the orderly development of the site. Therefore, proposal is considered to satisfy Clause 4 of SREP 20.



(i) **Blacktown City Council Growth Centre Precincts Development Control Plan 2010 (Growth Centre DCP)**

The Growth Centre DCP applies to the site. **Attachment 6** provides a table that outlines the proposal's compliance with the DCP. The development complies with the development standards with the exception of a road pattern variation and variation to front setbacks.

- 6.2 Council's assessing officers consider that the development satisfies relevant clauses within applicable environmental planning instruments.

## 7 Assessment

### 7.1 Building height variation to the Growth Centres SEPP development standard

The proposal seeks to vary the building height from the maximum height of 12 m applicable to the site. The variations sought are as follows:

SEPP height	Stage	Parapet	Variation	Plant	Variation
12 m	Stage 1	10.8 m – 14.3 m	Max. 2.3 m (19 %)	13.87 m – 15.4 m	1.87 m – 3.4 m (28 %)
	Stage 2	11.44 m – 13.04 m	Max. 1.04 m (9 %)	13.49 m – 14.76 m	1.49 m -2.76 m (23 %)
	Stage 3	10.38 m – 13.1 m	Max. 1.1 m (9 %)	13.3 m – 15.08 m	1.3 m – 3.08 m (26%)

The entire site has a 12.56 m fall from the north-west corner to the south-east corner. The road levels are required to be designed to match the existing road levels of Rouse Road and Cudgegong Road. Given the need to create level building platforms and the steep topography of the land, elements of the buildings do exceed the maximum height limit established by the Growth Centres SEPP. Elements of the parapet are also below the building height limit by up to 1.1 m. Where possible the applicant has stepped the buildings mid-width, but this has been limited by core placements and accessibility needs. However, additional stepping in the buildings would result in the introduction of internal corridor stairs, with an unnecessary adverse impact on apartment accessibility. In addition, stepping of buildings could result in sub-terrain apartments, which has an undesirable amenity outcome for future residents and negative aesthetic impact on the streetscape.

The portion of the roof structures that exceeds the height limit does not result in excessive bulk and scale and does not result in adverse shadow and amenity impacts on surrounding properties, including Rouse Hill House. Also, the additional height does not result in any additional yield and does not result in an additional storey, as the height variation is offset throughout the development.

Whilst the lift overruns for buildings exceed the maximum height limit by up to 28 %, the variation is considered acceptable as the lift overruns are contained within the central areas of the roof levels, representing only point encroachments into the height plane. As a result, they are not visible from the street and will not result in additional overshadowing to adjoining properties as shadows will be fully contained within the roof area.

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.

**(a) Clause 4.6 variation request**

The applicant has submitted a request for variations to the height development standard pursuant to Clause 4.6 of the Growth Centres SEPP. 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 development standard is unreasonable and unnecessary in this instance.

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

The variation 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 R3 Medium Density Residential 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.

**(b) 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 the maximum height of buildings on land within the Area 20 Precinct*
- (b) *to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space*



*(c) to facilitate higher density development in and around commercial centres and major transport routes.*

- **Maximum height**

The maximum height limit on the site is 12 m. The proposal is 4 storeys in height, which is consistent with the 12 m building height control. Although the development exceeds the permissible height, the development does not achieve an additional residential level. Further, the height variation is offset throughout the development. The increase in height therefore does not impact on the density, floor area or scale of the development. The height variation is simply a result of the topography of the site, with no building entirely over the 12 m height limit.

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

The additional shadow impacts are negligible. The variation to the height control does not result in any significant increase in shadow and the development does not result in any unreasonable shadow impacts to adjacent properties, the future public park or the buildings within the development itself. The majority of the area of the future public park within the site will remain free from shadow throughout the day. The additional height does not result in any adverse visual impact given it is visually imperceptible.

- **Facilitate higher density development in and around the commercial centres and major transport routes**

The site is located 500 m north of the future Cudgegong Road railway station being delivered as part of the Sydney Metro Northwest and land zoned for the Cudgegong Road commercial centre. The higher density of this development meets the objectives.

The objectives of the development standard are achieved as the development is representative of the building height anticipated in the overall locality and does not result in a bulky appearance. The interesting and varied design elements used throughout the development assist with ensuring that it is consistent with the desired future character of the immediate locality. Therefore, this minor variation to building height 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 standard would not be defeated if compliance was not required. However, 100% compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standard will still be achieved despite the variations.

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

Variations to the development standards of building height have similarly been considered in the Area 20 Precinct of the Growth Centre:

- JRPP-14-00091 approved in December 2014 for the construction of 4 x 4 storey residential flat buildings included a variation to the 12 m height limit, being 500 mm or 4.6% variation
- JRPP-14-1593 approved in July 2015 for the construction of 5 x 4 storey residential flat buildings included a variation to the 12 m height limit, being 600 mm or 5 % variation
- JRPP-16-03310 approved in December 2016 for the construction of 6 x 4 storey residential flat buildings included a variation to the 12 m height limit, being 1.45 m or 12 % variation.

**5. 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 is a greenfield site. Full compliance with the development control would be able to be achieved, but the variations do not increase residential density. Further, given the greenfield context of the site, the topography of the land must be considered. The existing levels on the site result in a 12.56 m fall from the north-west of the site to the south-east of the site. Given site benching and earthworks required to meet civil grades and construction of the surrounding road network, compliance would be unreasonable in the circumstances. This includes the existing levels of Cudgegong Road to the west of the site and Rouse Road to the south.

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

## **7.2 Road pattern variation**

The application seeks to vary the road pattern identified within the Area 20 Indicative Layout Plan. The variations are identified in Figures 5 and 6 below:



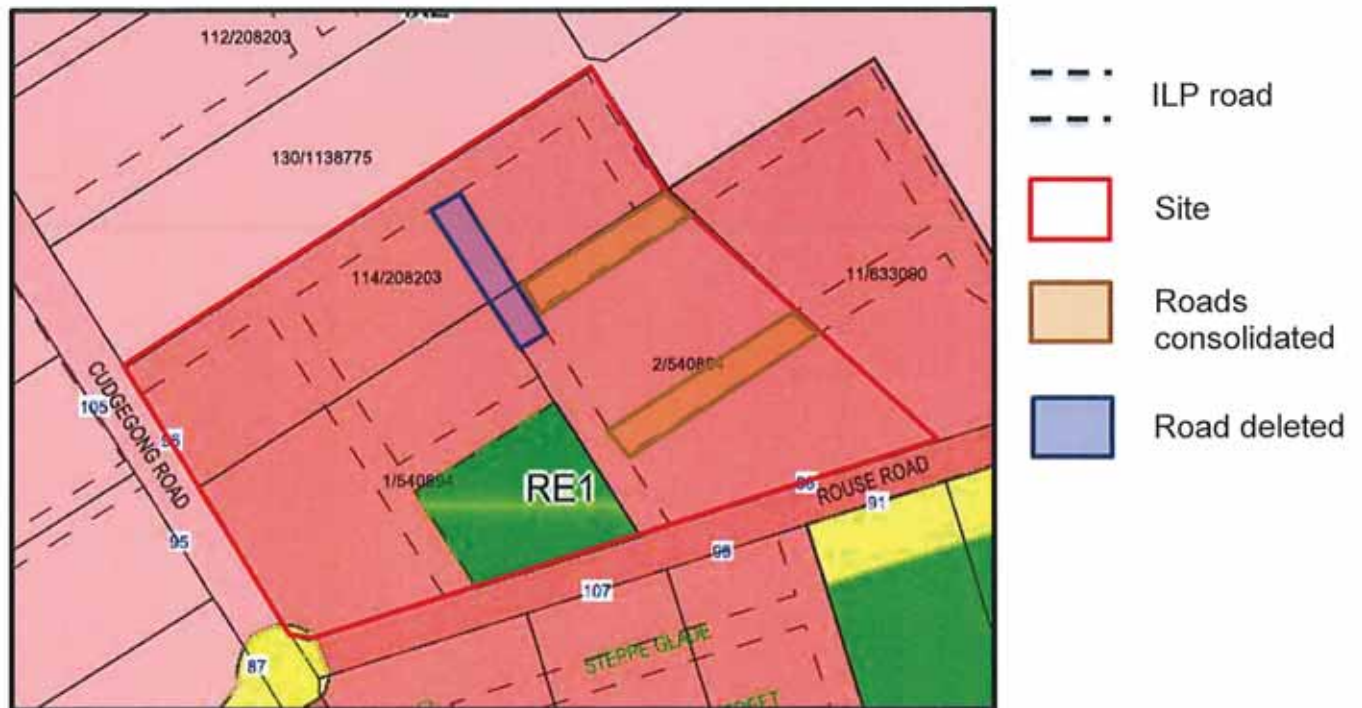


Figure 5 ILP road pattern (Source: BCC, 2016)



Figure 6 Concept plan edited to demonstrate road changes to ILP (Source: Turner and BCC, 2016)

The variation to the road pattern is considered acceptable on the following grounds:

- With all road pattern variations considered, including the developer's addition of a new road along the south-east boundary, the increase in net developable area is 490 sqm or 2.5%. This is considered acceptable and is consistent with Council's decision to consider variations of 5 % of less.

- The increased bulk and scale of the development is considered reasonable, as the development is still significantly under the maximum floor space ratio established by the Growth Centres SEPP. The development has an FSR of 1.175:1, whereas the maximum permissible is 1.75:1.
- The consolidation of roads central to the development does not have an impact on adjoining properties and the road pattern is acceptable from a local road network perspective by Council's Traffic Management Section.
- The development provides for roads with an 11 m wide carriageway, being 18 m wide roads, with the exception of roads adjoining the public reserve which are 15.5 m wide service roads. This is 2 m wider than the development controls required at the time of lodgement and have a greater benefit to the future community.
- The road pattern variation does not result in the loss of on-street car parking. Given the revised configuration and reduction in T-intersections, on-street car parking is equivalent. Under the ILP road pattern layout, there are approximately 230 car parking spaces. Under the revised road pattern proposed by the applicant, there are approximately 232 car parking spaces.
- Building separation between apartment buildings will be between 12 m and 29 m, which complies with and exceeds the Apartment Design Guide standards.

### 7.3 Front setback variation

The applicant seeks a variation to the Growth Centres DCP requirement for 6 m front setbacks where they will adjoin a public road. The development provides 6 m front setbacks to existing local roads, however, seeks a variation to reduce the front setback to 5 m where buildings front new local roads being delivered as part of the development.

The variation is considered acceptable as the variation is the result of a request by us to increase local roads within the R3 zone from a 16 m road reserve to an 18 m road reserve, with an 11 m carriageway. All the roads under the State Government's DCP in this area have been designed to be 16 m wide only, despite the higher density of development that can be achieved. A 16 m wide road only allows 2 travel lanes and 1 lane of parking.

Given the high density of residents and on-street parking that will occur in this area, we have requested that the applicant increase the road width to 18 m, so that 2 parking lanes can be achieved. As a result, the site area of the development has decreased, but as a concession to the applicant because of their acceptance of the construction of wider roads, the reduced setback to the road of 5 m is acceptable.

The increase in road width is considered to be beneficial to the surrounding local community. The decreased front setback by 1 m is considered to be minor as the bulk and scale of the development has not increased and the building separation to development on the opposite side of the road will not be altered either. Had the 16 m roads only been provided, then the development would have complied with the 6 m front setback requirement.

It should be noted that, since this DA was lodged, Council amended the Growth Centres DCP to widen the road reserves from 16 m to 18 m in the R3 zones.



## 8 External referrals

8.1 The DA was referred to external authorities as summarised below:

Authority	Comments
NSW Rural Fire Service	Bushfire Safety Authority provided and suitable conditions of consent to be imposed.
Roads and Maritime Services	No objection subject to conditions.

## 9 Internal referrals

9.1 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.
Traffic Management Services	No objection subject to conditions.
City Architect	<p>Council's City Architect raised a number of concerns with the original DA plans with regard to:</p> <ul style="list-style-type: none"> <li>i. Building height</li> <li>ii. Provision of deep soil zones in common open space areas</li> <li>iii. Road pattern variation impact on building form.</li> </ul> <p>In response to these concerns, the applicant submitted amended plans which satisfactorily resolve these matters and no objection is now raised by the City Architect.</p>

## 10 Public comment

10.1 The DA was notified to property owners and occupiers within the locality between 31 August and 14 September 2016. An advertisement was also placed in the local newspaper and a notification sign was displayed on site.

10.2 In response to the public notification, 2 submissions were received. The location of the submitters is identified below:



Figure 7 Location of submitters (Source: BCC, 2016)

10.3 The concerns raised have been summarised below, together with Town Planning comments thereon:

a. **Density**

- i. The proposed density places the land in a different zone and impacts on the amenity and character of the locality. The subject land effectively forms a transition area between RU4 Rural land, a large reservoir site and school land to the north, and land zoned for open space to the west. The residential land on the northern side of Rouse Road allows for a transition of built form to the medium and higher density land to the south of Rouse Road on approach to the planned Cudgegong Station Precinct. The land is identified with the Area 20 Precinct Plan as being appropriate for medium density residential development.
- ii. Applying the proposed amount of dwellings (ie. 693 apartments) to this net developable area equates to a density of around 128 dwellings/hectare.
- iii. It is noted that while the Council correspondence indicates 693 apartments, the Statement of Environmental Effects states that the proposal seeks concept approval for 762 apartments. If this is applied to the net developable area, the density is around 140 dwellings/hectare.
- iv. This is a greater density than anywhere within the Area 20 Precinct, even within the town centre surrounding the Cudgegong Station Precinct. This density of development is equivalent to a high density residential zone.

**Town Planning response:**

- The density proposed is consistent with that of other approved developments in the area, including the following examples:
  - JRPP-14-91 at 9 Terry Road, Rouse Hill with a density of 133 dwellings per hectare



- JRPP-15-1513 at 60 Cudgegong Road, Rouse Hill with a density of 118 dwellings per hectare
- JRPP-16-03310 at 99-101 Schofields Road, Rouse Hill with a density of 155 dwellings per hectare.
- Clause 4.1B of Appendix 6 under the Growth Centres SEPP does establish a density on the site of 25 dwellings per hectare. However, this is a minimum development standard. Objectives of the development standard include:
  - (a) *To establish minimum density requirements for residential development within the Area 20 Precinct, and*
  - (b) *To ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing, and*
  - (c) *To ensure that the scale of residential development is compatible with the character of the precinct and adjoining land.*
- v. The development proposes a density of 140 dwellings per hectare which satisfies the minimum requirement. The development is considered to meet the objectives of the development standard, by meeting the minimum requirement, contributing to the availability of housing and ensuring the scale of the residential development is consistent by meeting the floor space ratio and building height development controls.

In establishing the appropriate density for the site, other development standards within the Growth Centres SEPP must be considered. This includes a maximum floor space ratio on the site of 1.75:1. The development is substantially below the maximum floor space ratio, proposing an FSR of 1.175:1.

- vi. Further, the development generally meets the 12 m maximum building height control, proposing a 4 storey development.

Therefore, the intent of the density and development standards of building height and floor space ratio ensure the development is of an appropriate density for the site, as allowed for under the SEPP.

**b. Development is inconsistent with the zone objectives**

- i. The objectives specifically relate to the provision of housing needs within a "medium density residential environment".
- ii. The proposed Concept Plan Stage 1 seeks to establish a density of residential development that is well outside the medium density zoning. Indeed, it is greater than the density envisaged for much of the land within the town centre around Cudgegong Station and the medium to high density land within the south-east of the precinct adjacent to Rouse Hill Town Centre.

**Town Planning response:**

- The density in the R3 Medium Density zone in the Growth Centres SEPP allows residential flat buildings as well as medium density housing. This is unlike Blacktown LEP 2015 which does not allow residential flat buildings in the R3 Medium Density zone.

- The maximum density in this area is determined by the maximum building height and the other development controls, e.g. car parking, setbacks and common open space requirements, rather than a maximum density control.
- The R3 Medium Density zone within the Growth Centres SEPP permits residential flat buildings. Further, development controls, including a building height of 12 m and a floor space ratio of 1.75:1, enable residential flat buildings to be built on the site.
- The development is considered to meet the objectives of the R3 zone, as the objectives include providing for housing needs of the community and a variety of housing types within a medium density residential environment.

**c. The development will significantly alter the planned residential character and amenity of the locality**

- i. The residential density that applies to the subject land is equivalent to around 25 dwellings per hectare. Clause 3.1 of the Blacktown City Council Growth Centres DCP indicates where this type of density is envisaged.
- ii. The built form outlined above indicates a general mix of single to 2 storey dwellings with some 3 storey buildings. It is also noted that this type of medium density development is usually found within a walking catchment of rail based public transport and centres. The subject land is in excess of 400 metres from the planned Cudgegong Railway Station.
- iii. Instead of providing a mix of medium density housing forms (including some 3 storey buildings), the proposed development as envisaged within the Stage 1 Concept Plan proposes 4 to 5 storey apartment buildings across the whole site centred around a public park.
- iv. By virtue of the character principles within the density provisions of the Growth Centres DCP, the precinct planners that framed the development controls for residential land would not have intended an expanse of 4 to 5 storey apartment buildings on the northern side of Rouse Road. It is noted that even the approved development (JRPP-15-1543) directly opposite Rouse Road provides a 2 storey townhouse built form to Rouse Road and the northern part of Cudgegong Road.
- v. It is considered that this residential location (the furthest medium density area north of Cudgegong Station), and identified as being 25 dwellings per hectare, should be developed as a more traditional mix of medium density residential development. Four to five storey apartment buildings will dominate the streetscapes of Rouse Road, Cudgegong Road and the planned internal road network for the site.

**Town Planning response:**

- In rezoning the land, as well as a minimum density, the State Government introduced a maximum building height control and a maximum floor space ratio control. Whilst the DCP does establish what is 'envisaged' for the development site, the true development potential of the site is established through the development controls within the Growth Centres SEPP. The SEPP development standards take precedence over the DCP controls.



- In regard to concerns regarding streetscape dominance, the 4 storey buildings will be architecturally designed. At the concept plan stage, the detailed design of the buildings has not been provided. However, the bulk and scale of the development has been assessed by the provision of adequate solar access throughout the development, the building façade lengths and building separation which comply with the Apartment Design Guide. The 4 storey development is compliant with the 12 m height limit established by the Growth Centres SEPP. Further, front setbacks are compliant with development controls for Rouse Road and Cudgegong Road. A variation has been assessed as satisfactory for the internal roads, reducing the front setback from 6 m to 5 m due to increased road widths. However, future detailed applications will be assessed based on articulation, compliance with the design principles of SEPP 65 and the Apartment Design Guide, as well as colours and finishes. The applicant will be required to demonstrate how each building has satisfactory presentation to the street.
- In response to the objector's concern that JRPP-15-1543 proposed townhouses on their site, this was a commercial decision by the developer and not a consequence of the zoning or permissible height. In addition, the applicant successfully received a 3 storey offset from the Land and Environment Court of NSW in recognition of lower development than could be ordinarily utilised on a part of the site. This was added on top of the other buildings approved on the site. This development addresses a density of 118 dwellings per hectare.

**d. Road construction method**

- The adjoining owner to the east of the site has identified that they have no objection, but have concerns regarding the road construction method adjoining their boundary. They have a septic tank and drainage on their western boundary adjoining the development site.

**Town planning response**

- This DA is for a Stage 1 Concept Plan. No physical works are proposed as part of this DA. The applicant is required to lodge detailed Development Applications for the residential flat buildings and the civil road construction. It is, at this stage that the road construction method adjoining the submitter's property will be known. The submitter is located at 86 Rouse Road, to the east of the development site. The submitter adjoins Stages 2 and 3 of the concept plan.

## 11 Section 79C consideration

11.1 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)	The provisions of the relevant EPIs relating to the proposed development are summarised in Section 6. The proposal is considered to be consistent with the relevant EPIs, including the Growth Centres SEPP 2006, SEPP (Infrastructure) 2007, SEPP 55 Remediation of Land, SEPP BASIX 2004 and the 9 'design quality principles' of SEPP 65.	Yes

Heads of Consideration 79C	Comment	Complies
(ii) Any development control plan (DCP)	The proposed development is a permissible land use within the R3 Medium Density Residential zoning and satisfies the zone objectives outlined under the Growth Centres SEPP. The proposal is consistent with the Area 20 Precinct Plan, with the exception of the principal development standard for building height. The applicant has submitted a request to vary this development standard pursuant to Clause 4.6 of the Growth Centres SEPP. The height control is varied by up to 3.4 m. The proposed variation is discussed in detail in Section 7 and is considered satisfactory.	
(iii) The regulations	The Growth Centre DCP applies to the site. The proposed development is compliant with the numerical controls established under the DCP.	
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	<p>An assessment of the key issues relating to the proposed development is provided in Section 7. It is considered that the likely impacts of the development, including traffic, noise, parking and access, bulk and scale, overshadowing, privacy, amenity, waste management, stormwater management and the like, have been satisfactorily addressed.</p> <p>A site analysis was undertaken to ensure that the proposed development will have minimal impacts on surrounding properties.</p> <p>In view of the above, it is believed that the proposed development will not have any unfavourable social, economic or environmental impacts.</p>	Yes
c. The suitability of the site for the development	<p>The subject site is zoned R3 Medium Density Residential with a 12 m building height limit under the Growth Centre SEPP. Residential flat buildings are permissible on the site with development consent.</p> <p>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 future Cudgegong Road train station and local centre.</p>	Yes
d. Any submissions made in accordance with this Act, or the regulations	2 submissions were received as a result of notification. The submission concerns are addressed in Section 10. None of these concerns warrant refusal of the application.	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 wide range of housing diversity within the Area 20 Precinct.	Yes



## 12 Concluding comments

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- 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 the Growth Centres SEPP and the R3 Medium Density Residential zone and is permissible in the zone with development consent. The development addresses the main requirements of the Growth Centre DCP 2010, and is considered satisfactory with regard to relevant matters such as siting, bulk and scale, overshadowing, access, traffic impacts, parking and stormwater drainage, site contamination and economic impacts and the like, subject to the imposition of suitable conditions of consent, namely the submission of detailed DAs for each of the proposed stages to satisfactorily control the development.
- 12.3 The proposed variation to the principal development standard of height of buildings under the Growth Centres SEPP will not result in any commercial gain for the developer (in terms of yield or number of storeys) and will be visually imperceptible. The requested variation under Clause 4.6 is considered reasonable, well founded and is recommended for support.

## 13 Recommendation

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- 13.1 The Development Application for the concept plan 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