

Blacktown City Council assessment report Sydney West Central Planning Panel

Panel reference	2016SYW091 DA
DA number	JRPP-16-03310
LGA	Blacktown City Council
Proposed development	Demolition, road construction, super lot subdivision and construction of 6 x residential flat buildings
Street address	Lots 6 and 7 DP 1190434 and Lots 34 and 35 DP 1167828 99-101 Schofields Road, Rouse Hill
Applicant and owner	Applicant: A Falcone Owner: M Falcone and R Fuda
Date of DA lodgement	27 April 2016
Land zoning:	R3 Medium Density Residential SP2 Infrastructure (Classified Road)
Capital investment value:	\$113,832,475
Regional development criteria (Schedule 4A of the EP&A Act)	CIV over \$20 million
Number of submissions	Nil
Recommendation	Deferred commencement 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 Flat Development • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Sydney Region Growth Centres) 2006 • Blacktown City Council Growth Centre Precincts Development Control Plan
Documents submitted with this report for the Panel's consideration	Council officer assessment report
Report prepared by	Melissa Parnis, Assistant Team Leader, Blacktown City Council
Report date	21 December 2016
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 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 Contributions conditions (S94EF)? **Yes**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Assessment Report

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Attachment 2	– Applicant's Clause 4.6 variation request
Attachment 3	– Development application plans
Attachment 4	– Assessment of compliance with SEPP No. 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 Centres Development Control Plan 2010

1 Executive summary

- 1.1 Blacktown City Council is in receipt of a Development Application (DA) from A Falcone of FAL Group Pty Ltd. The DA seeks approval for the demolition of existing structures, tree removal, super lot subdivision of land, the construction of public roads as well as the construction of 6 x 4 storey residential flat buildings containing 520 apartments at 99-101 Schofields Road, Rouse Hill.
- 1.2 The proposed development constitutes 'regional development' requiring referral to the Sydney West Central Planning Panel (SWCPP), as it has a capital investment value of \$113.8 million. While Council is responsible for the assessment of the DA, the Planning Panel is the consent authority.
- 1.3 The site is zoned R3 Medium Density Residential and SP2 Infrastructure (Classified Road) under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP). The site is within the Area 20 Precinct of the North West Growth Centre. Residential flat buildings are permissible in the R3 zone with development consent and roads are permissible in the SP2 Infrastructure zone.
- 1.4 A detailed assessment has been undertaken against the provisions of the Growth Centres SEPP and the Blacktown City Council Growth Centres Precinct Development Control Plan (Growth Centres DCP) 2010. The development complies with the development standards contained within the SEPP and DCP with the exception of building height, road pattern compliance and building setbacks.
- 1.5 The applicant has lodged a request under Clause 4.6 of the SEPP provisions for variation to the development standards under the SEPP. The building height is varied by up to 900 mm above the permissible height limit of 12 m on some parts of the parapets of the buildings, representing a variation of 7.5 %. The lift overruns also exceed the height limit at some points, resulting in a maximum height variation of 1.45 m, equivalent to a 12 % variation to the development standard. The variation is considered acceptable as it is a result of the topography of the land and is offset throughout the development, with elements of the building up to 600 mm below the maximum height limit. The variation is not considered to result in excessive bulk and scale and does not result in adverse shadow and amenity impacts on surrounding properties. The height variation does not result in additional floor levels.
- 1.6 The subdivision complies with the road pattern layout of the Area 20 Indicative Layout Plan, with the exception of the deletion of the central north-south road. The road is proposed to be deleted as the entire northern east-west road has been relocated onto the applicant's land at the request of Sydney Trains. This results in a 4.2% increase in developable area. The applicant is also proposing to provide additional visitor car parking to cater for the loss of on-street car parking resulting from the deletion of the central north-south road.
- 1.7 The proposal is consistent with the objectives of SEPP No. 65 and satisfactorily achieves the 9 'design quality principles' listed under Schedule 1 of the SEPP. 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.
- 1.8 The proposed development was notified to property owners and occupiers within the locality between 9 and 23 August 2016. The DA was also advertised in the local newspapers and a sign was erected on site. As a result of the notification process, no submissions were received.
- 1.9 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.

- 1.10 It is recommended that the proposed development be approved subject to the conditions at **Attachment 1**.



Figure 1 Photomontage (Aleksandar Design Group 2016)

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. This site 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 of the site is zoned R3 Medium Density Residential, however has been acquired by Transport for NSW for the North West Rail Link. The land immediately to the east and west of the site is zoned R3 Medium Density Residential, with a building height limit of 12 m. The site immediately adjoins Schofields Road to the south, being a major arterial road. On the opposite side of Schofields Road is The Ponds housing estate, which is a mixture of low and medium density housing.
- 2.3 The site is located approximately 650 m to the east of the future Cudgegong Road train station being delivered as part of the North West Rail Link. The site is also 700 m west of Rouse Hill Town Centre, the existing North West Bus Transitway and the future Rouse Hill train station which is also being delivered as part of the North West Rail Link.
- 2.4 The existing locality is currently characterised by a mix of old rural and new residential development. An existing caravan park adjoins the site to the north. The area is currently undergoing transition, with a number of residential subdivisions and residential dwellings approved now within the locality.

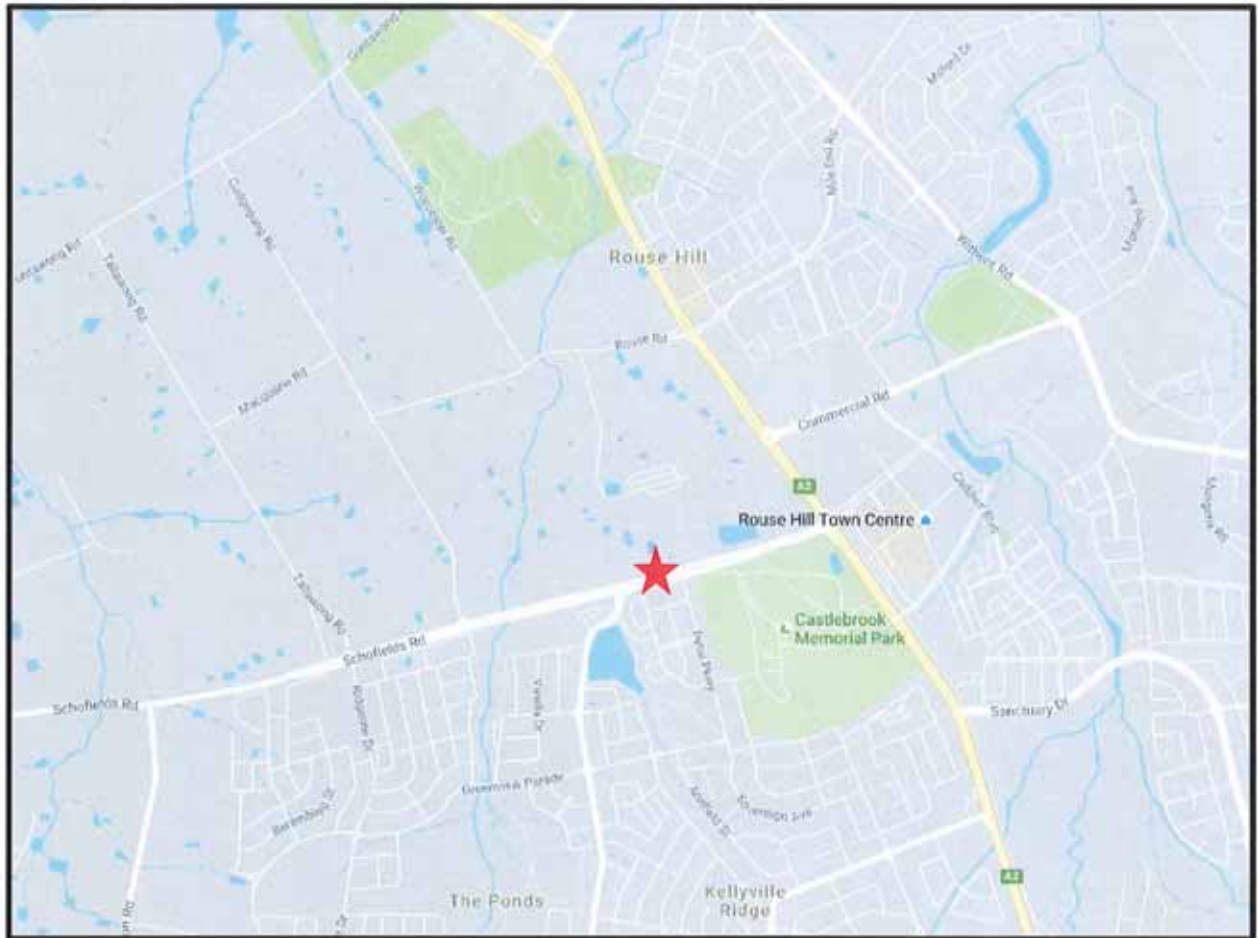


Figure 2 Location map (Source: Google maps 2016)



Figure 3 Extract from Area 20 Indicative Layout Plan (Source: Department of Planning and Environment 2015)

3 Site description

- 3.1 The site is formed by 4 separate allotments, being Lots 6 and 7 DP 1190434 and Lots 34 and 35 DP 1167828, 99-101 Schofields Road, Rouse Hill. Lots 34 and 35 are currently under ownership by the RMS, however owner's consent has been granted for the DA.
- 3.2 The lots have a regular configuration, with current street frontage to Schofields Road. The site has dimensions of 144.1 m to the north, 227.3m to the east, 234.7 m to the west and 144.6 m to the south. The total site area of the 4 allotments is 3.4717 hectares.
- 3.3 The 2 main lots currently have a dwelling on each, with 99 Schofields Road also being used for mixed agricultural purposes. Each lot currently has a dam on site.



Figure 4 Aerial image, 2 October 2016 (Source: Nearmap 2016)



Figure 5 Zoning plan (Source: BCC 2016)

4 Background

- 4.1 On 21 October 2011, the site was rezoned to part R3 Medium Density Residential and part SP2 Infrastructure (Classified Road) pursuant to the provisions of State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The site was rezoned from its previous 1(a) Rural zoning under the 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 11 September 2015, the applicant lodged a Development Application (JRPP-15-2052) for the construction of 560 residential units within 8 x 4 storey residential flat buildings and associated civil works at the subject property. However, the applicant withdrew the application on 3 November 2015 due to issues with the road pattern and the relationship of the development to the North West Rail Link to the north of the site.

5 The proposal

- 5.1 The subject Development Application (DA) has been lodged by A Falcone for the following works:
 - Demolition of existing structures
 - Tree removal
 - Subdivision of land to create 1 residue lot, construction of public roads and associated civil works
 - Construction of 6 x 4 storey residential flat buildings comprising 520 apartments
 - Basement car parking providing 676 car spaces
 - Landscaping and common open space embellishment.

The development has a capital investment value of \$113,832,475.

- 5.2 The development includes the construction of perimeter roads on all property boundaries in accordance with the Area 20 Indicative Layout Plan. All roads have been widened from a 9 m carriageway as required by the DCP at the time of lodgement to an 11 m carriageway at the request of Council officers, to cater for higher density living. This results in a full width 18 m road being constructed on the northern perimeter and a 15.5 m service road on the southern property boundary. Half road width construction is being provided on the eastern and western property boundaries, 9 m wide. A road pattern variation is sought to delete the central access road. The road pattern variation is assessed in detail in Section 7 of this report.
- 5.3 A total of 520 residential units are proposed, including 134 x 1 bedroom units, 350 x 2 bedroom units and 36 x 3 bedroom units.
- 5.4 The maximum building height of the development is 12.9 m to the parapet and 13.45 m to the lift overrun. The maximum variation sought is equivalent to a 7.5 % variation to the development control for the parapet and 12 % for the lift overrun. The applicant has lodged a Clause 4.6 variation to the development standard for consideration of the consent authority. The applicant's written Clause 4.6 request and height limit diagram is held at **Attachment 2**. Council's assessment of the variation is undertaken in Section 7 below.
- 5.5 The proposal has an FSR of 1.35:1, which is compliant with the maximum FSR of 1.75:1 permissible on the site under the SEPP.

5.6 The proposal provides for 5 m setbacks to public roads, with the exception of the public road to the north, which is setback 4 m. Internally within the development, building separation between the residential flat buildings is between 12 m and 18 m, in line with the Apartment Design Guide (ADG) requirements.

5.7 The DA provides for a single level of basement car parking for a total of 676 car parking spaces. The basement provides the following number of parking spaces:

- 544 resident car parking spaces, including 52 adaptable car parking spaces
- 132 visitor car parking spaces, including 12 disabled car parking spaces and 28 visitor car parking spaces to compensate for the loss of on-street car parking from the deletion of the public road
- 1 car wash bay
- 173 bicycle spaces.

Elevators will provide direct access from the basement carpark area to the residential levels. Each visitor car parking area is centrally located.

5.8 The DA proposes 2 new vehicle access points, one to the proposed new northern road and one to the proposed new western road. The basement level is a single level located under the footprint of the buildings.

5.9 The development provides for a central communal open space area at ground level, internally shared amongst all units. In addition, each building is provided with an embellished communal open space courtyard central to each building. The communal open space has a total area of 7,127 sqm, which exceeds the minimum requirements of the ADG and DCP. The landscaping strategy for the developments seeks a variety of spaces incorporated within the common landscaped areas, including entry nodes, transitional spaces, local courtyards with bench seating and pergolas providing passive recreational spaces as well as barbeque picnic areas and activity zones providing children play areas and exercise spaces.

5.10 The buildings have been articulated into a base, expressive middle and recessive top level. The recessed balconies provide depth to the facades and also create articulation at the street scale. A mixture of modern metal cladding, concrete frames and traditional brick are proposed to the building design. Balconies are provided with glass balustrades and vertical metal screening elements. Building colours are predominantly grey and white finishes. However, each building has been provided with different colours and feature elements to make them unique. This includes feature elements incorporating bronze and copper, and different brick colours including red, yellow and blue brick.

5.11 A Design Verification Statement prepared by Aleksandar Jelcic of Aleksandar Design Group has been prepared for the development, in accordance with the requirements of SEPP No. 65. The Design Verification Statement identifies that the buildings have been arranged on the site in a response to the site controls and surrounding context. The buildings have been stepped with the topography and each building is articulated by a podium base, expressive middle and recessive top. The development provides a range of unit options and a mix of adaptable apartments. Council officer assessment of the design principles established within SEPP No. 65 are undertaken in Section 6 below.

5.12 The Applicant has submitted an assessment of traffic and parking Implications for the development 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.

In this regard 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 151 vehicle trips per hour during commuter peak periods. 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 Centres DCP. In this regard, the development proposal necessitates an off-street car parking requirement of 642 parking spaces and the proposed development makes provision for a total of 670 off-street parking spaces. The report also concludes that the geometric design layout of the proposed car parking facilities has 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 access road system will be suitable, particularly given the provision of the wider 18 m roads, and appropriate and that there will be no adverse or unsatisfactory traffic implications as a result of the development.

- 5.13 A Road and Rail Noise Assessment prepared by Wilkinson Murray Pty Ltd has been prepared for the development, given that the proposal adjoins the future North West Rail Link and Schofields Road, being an arterial road.

The noise assessment reviewed the development to ensure the internal noise criteria as required by State Environmental Planning Policy (Infrastructure) 2007 is achieved. This includes meeting the recommendations of the Department of Planning's *Development Near Rail Corridors and Busy Roads – interim Guideline* is met.

The report recommends that, in relation to railway noise, the nominated internal noise levels will be achieved by providing 10.38 mm laminated glazing systems along the northern facades of Buildings A and B. High quality glazing will be required in apartments on the western and eastern facades that are near the rail corridor.

In relation to road traffic noise, the nominated internal noise levels will be achieved with the provision of a minimum 6 mm glass glazing system on the southern facade of Buildings C and F.

- 5.14 At Council's request, the applicant has submitted a SEPP No. 65 Amenity Compliance report for solar access prepared by Steve King, to ensure the development meets the design criteria for solar access under the Apartment Design Guide. The ADG requires a minimum of 2 hours sun to living areas and private open space between 9 am and 3 pm on June 21 to a minimum 70 % of units. The assessment has identified that 412 units from a total of 520 units achieve the solar access requirement, which is equivalent to 79.2 %.

The ADG also requires a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June. The assessment has found that 3 of the secondary courtyard spaces have direct sun to 50% of their area for a minimum 2 hours, from shortly after 11.30 am to approximately 2 pm. This is equivalent to more than 50% of the total communal open space for the development, and therefore the development complies with the ADG design criteria for solar access.

- 5.15 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

For an assessment against the Section 79C 'Heads of consideration' refer to Section 11.

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

The Planning Panel is the consent authority for all development with a capital investment value (CIV) of over \$20 million. The DA has a CIV of \$113.8 million. While Council is responsible for the assessment of the DA, determination of the application is to be made by the Sydney West Central Planning Panel.

(c) State Environmental Planning Policy (Infrastructure) 2007

i. Clause 86 Excavation in, above or adjacent to rail corridors

Development within 25 m of a rail corridor that involves the penetration of ground depth of at least 2 m below existing ground level is required to be referred to Sydney Trains. A consent authority must take into consideration any response received.

As the development satisfies the above criteria, the application was referred to Sydney Trains for concurrence in accordance with this clause. On 31 May 2016 Sydney Trains provided concurrence, subject to conditions being included within the development consent.

ii. Clause 87 Impact of rail noise and vibration on non-rail development

A consent authority is required to take into consideration the Department of Planning's *Development Near Rail Corridors and Busy Roads – Interim Guideline* and must not grant consent to a development unless it is satisfied that approval measures will be taken to ensure certain noise criteria is met as specified in Clause 87 of the SEPP.

As the development site adjoins the future North West Rail Link, Clause 87 is required to be satisfied. The applicant has submitted a Road and Rail Noise Assessment prepared by Wilkinson Murray Pty Ltd for the development. The assessment identifies that the nominated internal noise levels will be achieved by providing 10.38 mm laminated glazing along the northern facades of Buildings A and B. Good quality glazing will be required in apartments on the western and eastern facades that are near the rail corridor. Conditions will be imposed requiring compliance with the recommendations of the noise assessment, as well as a post construction validation report to ensure that the standards are met.

iii. Clause 102 Impact of road noise or vibration on non-road development

A consent authority is required to take into consideration the Department of Planning's *Development Near Rail Corridors and Busy Roads – interim Guideline* and must not grant consent to a development unless it is satisfied that approval measures will be taken to ensure certain noise criteria is met as specified in Clause 102 of SEPP (Infrastructure).

As the development site adjoins Schofields Road, being an arterial road, Clause 102 is required to be satisfied. The applicant has submitted a Road and Rail Noise Assessment prepared by Wilkinson Murray Pty Ltd for the

development. The assessment identifies that the nominated internal noise levels will be achieved by providing a minimum 6 mm glass glazing system on the southern facade of Buildings C and F, which are the buildings closest to Schofields Road. Conditions will be imposed requiring compliance with the recommendations of the noise assessment, as well as a post construction validation report to ensure that the standards are met.

iv. 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 adjoins Schofields Road and proposes more than 75 dwellings, referral to the Sydney Regional Development Advisory Committee (SRDAC) was required. RMS has raised no objection to the development, subject to a deferred commencement condition requiring the applicant to purchase the Roads and Maritime Services' owned land that forms part of the application.

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

i. Clause 7 Contamination and remediation to be considered in determining development application

SEPP No. 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 the granting of a development consent.

A Preliminary Site Investigation Report with limited sampling has been undertaken for the site in a report prepared by Environmental Investigations Australia. The assessment has undertaken a review to determine if the site is suitable for residential development by meeting the strict residential use criteria as set out in the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999, as amended in 2013.

The assessment found that there were certain areas of environmental concern or potential sources of contamination from on-site sources, including from the use of fertilisers, salination, soil contamination derived from agricultural activities and the use of hydrocarbons and presence of asbestos containing materials. The report recommends further investigation and remediation works to render the site suitable for residential use, including the preparation of a Remediation Action Plan (RAP). To ensure these works are undertaken prior to the release of a Construction Certificate on the site for the proposed residential flat buildings, suitable conditions will be imposed. The conditions will require a Stage 2 Investigation, further sampling and that the RAP address these matters and ensure that the site is made suitable for residential development without any limitations under NEPM.

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

State Environmental Planning Policy No. 65 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 No. 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 and numerical guidelines of the ADG is held at **Attachment 4**. The development complies with the 9 design principles and the ADG.

(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 requiring compliance with the submitted BASIX Certificate.

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

Appendix 6 of the SEPP – Area 20 Precinct – 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 development standards contained within Growth Centres SEPP 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 R3 Medium Density Residential and SP2 Infrastructure (Classified Road) pursuant to the Growth Centres SEPP. A residential flat building 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 also considered to meet the objectives of the zone. A portion of the local road is also located within the SP2 Infrastructure (Classified Road) portion of the site. Roads are permissible in the SP2 zone and meet the objectives of the zone to provide infrastructure.

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 objective of the zone.

The applicant is seeking an exemption to the maximum permissible building height under Clause 4.6. The variation sought is between 200 mm and 1.45 m above the 12 m height limit to the 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.

iii. Clause 6.1 Public utility infrastructure

The consent authority must not grant development consent to development on land to which the 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.

Council has received confirmation from Sydney Water Corporation (SWC) and Endeavour Energy (EE) that drinking water, sewerage and electricity are available in the Area 20 Precinct. In addition, suitable conditions of consent will be imposed requiring a SWC Section 73 Certificate and a EE Notification of Arrangements prior to the release of an Occupation Certificate.

(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, the proposal is considered to satisfy Clause 4 of SREP 20.

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

The Growth Centres 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 consistency with the Area 20 Indicative Layout Plan in terms of road pattern and building setbacks from roads. These variations are assessed in Section 7.

6.2 Council's assessing officers consider the development to satisfy 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 by up to 900 mm above the permissible height limit of 12 m, being a variation of 7.5 %. The variations sought are as follows:

Building	Maximum height at parapet	Variation sought (%)
A	12.6 m	600 mm (5 %)
B	12.9 m	900 mm (7.5 %)
C	12.3 m	300 mm (3 %)
D	12.6 m	600 mm (5 %)
E	12.2 m	200 mm (2 %)
F	12.9 m	900 mm (7.5 %)

The buildings range in height from 11.4 m up to 12.9 m to the parapet. Given the natural topography of the land, at some corners of all buildings the buildings are below the maximum height limit. However, given the need to create level building platforms and the steep topography of the land, points of the buildings do exceed the maximum height limit established by the Growth Centres SEPP. If all the building corner heights were averages, the exceedance is limited to an average of 150 mm or a 1.2 % variance. Where possible, the applicant has stepped the buildings mid-width, as allowed 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 have an undesirable amenity outcome for future residents and a negative aesthetic impact on the streetscape.

The portion of the roof structure which 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. 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.

In addition, the lift overruns for the buildings exceed the maximum height limit by 780 mm to 1.45 m. This is a maximum variation of 12 % of the development standard. 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 – variations to the development standards

The applicant has submitted a request for variation to the above 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 the 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 Panel, 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. 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 of the development. The increased height also has no impact on the 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 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 600 m from the future Cudgegong Road railway station, as well as the future Rouse Hill railway station being delivered as part of the North West Rail Link. The site is 600 m west of Rouse Hill Town Centre and the existing bus transitway. 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 the circumstances.

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

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

3. **The underlying objective 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 required. However, 100% compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standard, as outlined above, will still be achieved despite the variation.

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**

Similar variations to the development standard of building height have 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 to the development standard.
- 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 to the development standard.

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 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 6.75 m fall from the south-east portion of the site to the north-west portion. 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 the newly reconstructed Schofields Road to the south of the site and the design levels of the North West Rail Link currently under construction.

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 Figure 6 below and include:

- Movement of entire northern boundary road onto the development site, as it was previously to be provided on the North West Rail Link land
- Deletion of the central north-south local road
- Movement of part of the southern boundary road into Lots 34 and 35, which are owned by the RMS and is redundant road widening land.

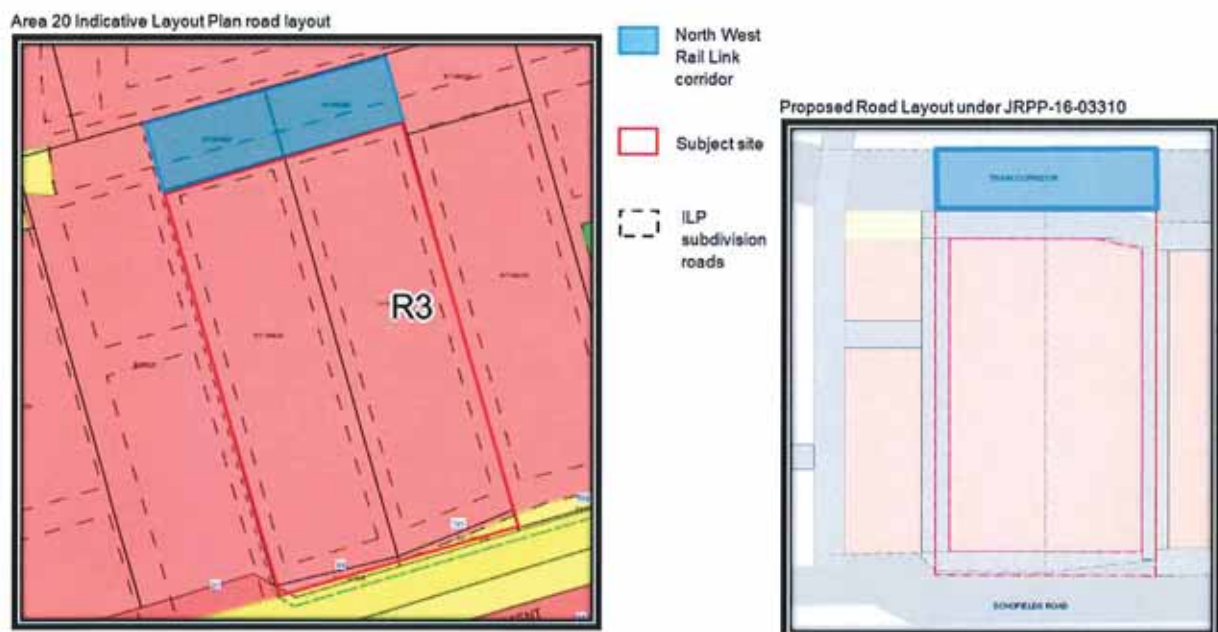


Figure 6 Road pattern variation (Source: BCC 2016)

The variation to the road pattern is considered acceptable for the following reasons:

- The northern road has shifted into the development site as a result of Sydney Trains not being able to deliver the road as it lies within the rail corridor. The applicant has taken on the additional burden to ensure that the flow of traffic and the wider local road serviceability can be achieved as part of the delivery of this development. The delivery of this road is more beneficial to the wider road network than the central north-south road which is proposed to be deleted.
- With all road pattern variations considered, the increase in net developable area is 4.2%. This is considered acceptable and is consistent with Council's decision to consider variations of 5 % or 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 1.35:1, whereas the maximum permissible is 1.75:1.
- The central road deletion 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 at the northern, eastern and western property boundaries and a 15.5 m wide service road on the southern boundary. This is 2 m wider than the development controls required at the time of lodgement and have a greater benefit to the future community.
- Lost on-street car parking as a result of the road deletion has been accommodated within the basement car parking, by providing an additional 28 car parking spaces.
- Building separation between apartment buildings is between 12 m and 17.7 m, which complies with and exceeds the Apartment Design Guide standards.
- RMS has granted owner's consent to the DA and the inclusion of the local southern boundary road within its property, as the RMS does not propose to ever to use this strip of land for any future widening of Schofields Road.

7.3 Front setback variation

The applicant seeks a variation to the Growth Centres DCP requirement for 6 m front setbacks where it will adjoin a public local road. The development provides a front setback of 5 m to all local roads, with the exception of the frontage to the northern road which is provided with a 4 m setback. The variation is considered acceptable as the variation is the result of a request by Council 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 applicant increase road widths 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 to the construction of the wider roads, the reduced setback of 5 m is acceptable.

The reduced setback to 4 m on the northern road is also considered acceptable as, in addition to providing the 11 m carriageway on the northern boundary road, the developer has taken on the entire burden of building this road off Sydney Trains and Transport for NSW. Under the Area 20 Indicative Layout Plan, the northern local road is to be developed mainly in the land within the North West Rail Link corridor. However, Sydney

Trains has advised that it is unable to commit to the delivery of this road. Given the benefits to the wider road network and the adequate acoustic treatment of the residential flat buildings' interface with the rail line, the reduced front setback is considered acceptable in this instance. These circumstances are sufficiently unique so as not to cause any precedent.

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 be not be altered either. Had the 16 m roads only be provided, then the development would have complied with the 6 m front setback requirement.

8 Internal referrals

8.1 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.
Waste Services	No objection subject to conditions.
City Architect	Council's City Architect raised a number of concerns with the original and DA plans with regard to: i. Solar access ii. Provision of deep soil zones in common open space areas iii. Landscaping. 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.

9 Public comment

9.1 The DA was notified to property owners and occupiers within the locality between 9 and 23 August 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	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	Yes

Heads of Consideration 79C	Comment	Complies
(EPI) (ii) any development control plan (DCP) (i) the regulations	relevant EPIs, including the Growth Centres SEPP 2006, SEPP (Infrastructure) 2007, SEPP No. 55 Remediation of Land, SEPP BASIX 2004 and the 9 'design quality principles' of SEPP No. 65. The proposed development is a permissible land use within the R3 Medium Density Residential and SP2 Infrastructure zones. It 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 900 mm. The proposed variation is considered satisfactory. The Growth Centres 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	An assessment of the key issues relating to the proposed development is provided under 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. 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 R3 Medium Density Residential with a 12 m building height limit under the Growth Centres SEPP. Residential flat buildings are 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 Rouse Hill Town Centre, bus transitway and future North West Rail Link. The proposal is consistent with the Area 20 Precinct Plan. It benefits from the associated services, facilities and a major arterial road network which make it suitable for higher residential densities.	Yes
d. Any submissions made in accordance with this Act, or the regulations	No submissions were received as a result of notification.	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 Area 20 Precinct Plan area.	Yes

11 Concluding comments

- 11.1 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.
- 11.2 The proposal is consistent with the objectives of the Growth Centres SEPP 2006 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 Centres DCP 2010, and 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, site contamination and economic impacts and the like, subject to the imposition of suitable conditions of consent to satisfactorily control the development.
- 11.3 The proposed variation to the principal development standard of height of buildings under the Growth Centres SEPP 2006 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.

12 Recommendation

- 12.1 The Development Application be granted a deferred commencement approval by the Sydney West Central Planning Panel subject to the conditions held at Attachment 1.
- 12.2 The applicant be advised of the Panel's decision.



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