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Consideration of the consequences of potential site isolation arising from the erection of a residential flat development at 23 – 27 Schofield Road, Schofields, adjacent to Lot 39 DP1218200, 56 Whitechapel Avenue, Schofields, as proposed by development application JRPP-16-3311.

To assist the Sydney West Central Planning Panel in its evaluation of development application JRPP-16-3311 Blacktown City Council has requested an external opinion regarding the intended isolation of Lot 39 DP1218200, Whitechapel Road, Schofields. This development application proposes that the land to the south and west of Lot 39 will be developed for residential flat buildings. An important consideration for the consent authority when determining this application is the potential for Lot 39 to be sterilized so that it has no realistic opportunity for development. A submission on behalf of the applicant, Homebush One, concludes that every endeavour has been made by the applicant to acquire Lot 39 so that it can be amalgamated with the development site. These endeavours have been unsuccessful. The applicant submits that, as site amalgamation is not feasible, the issue of site isolation should not be given weight in the determination of the development application.

As requested, this opinion addresses two related issues:

- (a) the reasonableness of the proposal not to amalgamate Lot 39 with the development site, and
- (b) the intended relationship between Lot 39 and the proposed development, and the adequacy of the design response at the interface between the properties.

What are the Relevant Provisions of State Environmental Planning Policy (Sydney Region Growth Centres) 2006?

Both sites, Lot 39 and 23-27 Schofields Road, are zoned R3 Medium Density Residential under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP), Schedule 4 Alex Avenue and Riverstone Precinct.

It is relevant that one of the objectives of the R3 zone is to *'provide a variety of housing types within a medium density residential environment.'* Consequently, many forms of residential development are permissible in the R3 zone. In addition to residential flat buildings (as proposed for the site at 23-27 Schofields Rd), dwelling houses, dual occupancies, semi detached dwellings, secondary dwellings, studio dwellings, attached dwellings and multi dwelling housing are permissible. Both sites have a minimum dwelling density of 25 dwellings per hectare, a maximum floor space ratio of 1.75:1 and a maximum building height of 16 metres.

Under Schedule 4, clause 4.1AB minimum lot sizes for various forms of residential development are specified. These minimum areas range from 400 square metres for a dual occupancy and 375 square metres for attached and multi-dwelling housing, to 300 square metres for a dwelling house. Clearly, from the zone objectives, the listing of all of the housing types as permissible, and by setting minimum lots sizes for these developments, the Growth Centres SEPP encourages, and anticipates, that all of these housing types to be constructed in the R3 zone.

Lot 39 is an existing corner lot with frontage to Whitechapel Avenue and Gloucester Street. It has an area of 546.7m² (.05467 hectares). It has sufficient land area and adequate access for all of the above residential dwelling types (other than residential flat buildings) to be constructed on the site. This would be consistent with the objectives of the R3 zone for the provision of a variety of housing types. Further, development of the site for two dwellings (eg, semi-detached dwellings, dwelling house and secondary dwelling or dual occupancy) would produce a dwelling density of 36.58 dwellings per hectare, which is well within the minimum dwelling density required in the zone. There is considerable potential for Lot 39 to be developed for residential purposes in accordance with the Growth Centres SEPP.

What are the Relevant Controls of Blacktown City Council Growth Centre Precincts Development Control Plan 2010?

Very detailed controls are incorporated in Blacktown City Council Growth Centre Precincts Development Control Plan 2010 (DCP) for the various forms of medium density residential development permitted on Lot 39. There is a maximum building height of three storeys for this form of housing. Development must achieve a minimum of 25 dwellings per hectare. This can be achieved through the construction of two or more dwellings on Lot 39.

Where two or more dwellings are oriented towards Gloucester Street Table 4-4 of the DCP specifies that a minimum building setback of 4 metres would be required from the southern boundary. If Lot 39 was to be developed for a dual occupancy or dwelling house with secondary dwelling or a studio dwelling, one dwelling could be oriented towards Whitechapel Avenue. Under these circumstances Table 4-2 specifies that the minimum building setback would be 0.9 metres from the southern boundary.

There are no controls within the Growth Centres DCP that would significantly constrain the future development of Lot 39 for medium density residential purposes.

Is Site Amalgamation Necessary to Achieve a Reasonable Planning Outcome?

To assess whether site amalgamation is appropriate and necessary the specific circumstances of the current proposal need to be examined from several perspectives. This is to ensure that the interests of all parties, including the community, receive adequate consideration. Several relevant questions will be answered in order to undertake this evaluation. When composing these questions consideration has been given to decisions of the Land and Environment Court and the relevant planning principles formulated by the Court.

Has the applicant made sufficient efforts to purchase Lot 39?

The applicant has submitted that before submitting the development application in May 2016 it was aware of the need to consider the amalgamation with Lot 39. When the subdivision that created Lot 39 was completed the applicant did not purchase the lot. The current owner purchased the lot. Proper searches and investigations by a purchaser of Lot 39 at that time would have revealed the provisions of the planning instruments and the existence of a development application for the adjacent land.

Documents provided by the applicant reveal that negotiations between agents for the two owners were undertaken between February and April 2017. An offer to purchase Lot 39 was made by the applicant in February and the owner of Lot 39 concluded the negotiations on 26 April 2017. These documents show that negotiations progressed for at least nine weeks. In the particular circumstances of this site it is considered that this was sufficient time. It is concluded that from February 2017 the applicant made sufficient effort to purchase Lot 39.

Has the applicant made a reasonable financial offer to the owner of Lot 39?

No evidence has been provided of the price paid by the owner of Lot 39 to purchase the land. From the valuation reports it is apparent that the applicant offered to purchase Lot 39 at the assessed market value. It is acknowledged that Lot 39 differed from other nearby lots because of its larger size and its location within the Residential R3 zone. The valuations needed to consider these different circumstances but they all produced a similar valuation. It is concluded that the purchase price offered for the purchase of Lot 39 was reasonable.

Is there the potential that further negotiations could achieve site amalgamation?

Blacktown City Council received written advice from the solicitor for the owner of Lot 39 stating that the owner intended to retain Lot 39. The owner has no desire to consider further negotiations. It can only be concluded that there is no potential to achieve site amalgamation if negotiations were to continue.

Is there the potential that the owner of Lot 39 or the community will be disadvantaged should site amalgamation not be achieved?

The owner of Lot 39 has had the opportunity to consider the available options. All options would have benefits and disadvantages. Constraints will apply to the development of Lot 39 that would not be relevant in a situation where adjacent development was low density with a height of two storeys. The owner of Lot 39 has had ample opportunity to assess the consequences of the proposed development. The adjacent four and five storey buildings will impact Lot 39 due to height, bulk and scale. From the evidence it appears that the owner of Lot 39 accepts these constraints and has not concluded that these constraints are a significant disadvantage.

Potential exists for Lot 39 to be developed in a manner that ensures it is used for an economic purpose. The community could be satisfied that the objectives of the planning instrument are being achieved because a diversity of housing forms are possible. The site also occupies a visually prominent location because it terminates the western view along Berkeley Street. As a lower density of development it would assist in the transition from the low density precinct in the north to an area of medium density housing in the south.

Would the exclusion of Lot 39 prejudice a better form of development on 23 – 27 Schofields Road?

Given the extent of the development proposed by this development application Lot 39 would be a minor addition to the area of the site. Site amalgamation may allow the design of buildings to be adjusted to allow increased building separation. Alternatively the footprint of some buildings could be enlarged, and this could have an adverse impact on amenity. The development proposal has been designed to take account of the site and exclusion of Lot 39 will not prejudice a superior form of development.

Can Lot 39 be developed in accordance with the provisions of the relevant planning instruments?

The previous review of the relevant planning instruments concluded that Lot 39 could be developed in a manner that achieves the planning objectives. Although the zoning of the site permits residential flat buildings, various other forms of medium density housing are also envisaged. The owner of Lot 39 would have the option to pursue several forms of housing. Development of the site for medium density housing is an appropriate outcome.

Are there any reasons why the amalgamation of the sites should be pursued?

There are no apparent reasons why the amalgamation of the sites should be further pursued. Approval of the development application for 23-27 Schofields Rd, without incorporating Lot 39, would not unreasonably isolate the site at 56 Whitechapel Avenue. As discussed above, without amalgamation Lot 39 can be developed in a manner consistent with the R3 zone objectives and controls. Evidence has been provided establishing that the owner of Lot 39 has been allowed ample opportunity to consider the benefits of site amalgamation. The owner has also received an adequate financial offer for the sale of Lot 39. A satisfactory planning outcome will be achieved if amalgamation is not pursued.

What are the Relevant Provisions of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development?

One of the planning instruments to be considered as part of the evaluation of SWCPP-16-3311 is SEPP No. 65, and the related Apartment Design Guide. SEPP No.65 has statutory effect. It establishes the relevance of the objectives, design criteria and design guidance of the Apartment Design Guide for the siting, design and amenity of residential apartment developments. As the proposed development is located to the south of Lot 39 there is no potential for Lot 39 to be overshadowed. Consideration of the requirements of the Apartment Design Guide needs to focus on building separation and visual privacy.

Building separation -

Adequate building separation is required to achieve visual and acoustic privacy, sunlight and daylight access and to avoid adverse impacts due to excessive bulk and scale. The Apartment Design Guide was not formulated to address situations such as the current circumstance. Assumptions need to be made because Lot 39 is vacant. There is no existing building from which to calculate building separation distance. Assumptions must be made about the potential nature of development on Lot 39 and its likely form.

Part 2F of the Guide specifies a building separation distance in this situation of 12 metres for the first four storeys and 18 metres for the fifth storey. There is an additional recommendation that building setbacks be increased by 3 metres at the boundary between an apartment building and a lower density area where there is a change in zone. This recommendation does not strictly apply but it recognises that the interface between low density and high density developments should be handled carefully, and the potential for adverse impacts must be recognised.

Along the southern boundary of Lot 39 the minimum building setback of the proposed building varies between 9 metres for several balconies and approximately 10.5 metres for walls with windows. This is consistent for the five storeys of the building. To the west the adjacent building is four storeys with a terrace on the roof at the fifth storey. This building has a boundary setback of approximately 7 metres.

Assuming that Lot 39 is developed with a complying development oriented to Gloucester Street that is no more than 3 storeys in height it would have a minimum rear (southern) setback of 4 metres and a side (western) setback of 0.9 metres. Minimum building separation distances of 13 metres would be achieved on the southern boundary and 8 metres on the western boundary. The minimum building separation criteria would be achieved on the southern boundary but not on the western boundary. On this boundary the criteria would only be achieved if the rooms in each building were non-habitable. Consideration must therefore be given to reducing any adverse impacts adjacent to the western boundary due to the inadequate building separation.

Visual privacy –

The provision of visual privacy allows residents on adjacent properties to use their private spaces without being overlooked. Part 3F of the Guide explains that visual privacy is one of the consequences of building separation. As explained above, building separation is not a significant issue in the current situation because it is assumed that a future building on Lot 39 would not have a height of more than 3 storeys. However, there is the potential for overlooking of Lot 39 and the loss of visual privacy.

South of Lot 39 there are 25 apartments that are oriented to the north towards Lot 39. Balconies for 20 of these apartments will overlook Lot 39. For the lower four storeys the windows and balconies are required to have a setback of 6 metres. Even if weight is given to the additional recommendation for an additional 3 metres setback when adjacent to low density development, the setback criteria is satisfied. At the fifth storey the 9 metres criterion is achieved but it is less than 12 metres.

Tree planting adjacent to the southern boundary of Lot 39 will reduce the potential for overlooking in the long term, but not in the short term. However, there is the opportunity for the potential overlooking to be reduced by two minor amendments. Ten apartments in the north-eastern section of the building have north facing bedroom windows. The installation of fixed horizontal louvres on the windows of these bedrooms would reduce the potential for downward viewing and provide solar control for summer sun. There are twenty apartments with balconies oriented to the north. The balconies on the lower levels have solid balustrades that reduce the potential for residents to look down from the balcony or the apartment. The balustrades for the apartments on the upper levels should be constructed in a similar manner.

To the west the apartment building is only four storeys in height but the roof of the building is intended to be a roof top terrace. This has the potential to cause loss of

privacy due to overlooking from this common area. The apartments on the four levels below have the specified minimum setback with bedroom windows looking east. It would be appropriate to install fixed horizontal louvres on the bedroom windows. On the roof top a fixed physical barrier should be installed to prevent residents coming closer than 2 metres to the eastern edge of the terrace. The addition of vegetation along this perimeter of the terrace would further improve the appearance of the building and reduce the potential for overlooking.

These proposed amendments will improve the design of the project for the benefit of future residents of the apartment buildings. They will also improve the amenity for future residents of Lot 39 by reducing overlooking and improving visual privacy. If these amendments cannot be incorporated in the design prior to the application being submitted for determination, appropriate conditions of consent can be applied.

Conclusion

This review of the intended isolation of Lot 39 DP1218200, Whitechapel Road, Schofields following the construction of residential flat buildings on the site known as 23-27 Schofields Road has concluded that there is no material benefit in pursuing the amalgamation of the sites. It is appreciated that the circumstances of this case are unusual. Nevertheless, it is apparent that all parties will be satisfied if amalgamation is not pursued. The planning objectives will be achieved and there will be no disadvantage to the community. Consequently, the request from the applicant for the determination of development application JRPP-16-3311 to proceed without amalgamation can be supported.

If amalgamation is not required the design of the proposed development should be adjusted to ensure that overlooking and loss of privacy do not adversely affect the future residents of the dwellings on Lot 39. These amendments to the design can be pursued prior to determination of the application, or appropriate conditions of consent can be imposed. Building separation distances satisfy the minimum requirements but there is potential for improvement. Installation of louvres on north and east facing windows will improve the amenity of the nominated apartments and reduce the potential for overlooking. Solid balustrades on balconies will promote greater privacy. Redesign of the roof top terrace can also provide a superior solution. These improvements will benefit residents of the development and Lot 39. They can be achieved without significant amendments to the design of the project.

Yours sincerely,

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