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| DATE OF DETERMINATION | Monday, 3 August 2020 |
| PANEL MEMBERS | Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran and Lara Symkowiak |
| APOLOGIES | Theresa Fedeli |
| DECLARATIONS OF INTEREST | None |

Public meeting held Public Teleconference on 3 August 2020, opened at 3:09pm and closed at 4:23pm.

MATTER DETERMINED

2016SYW161 – Camden City Council – DA866/2016 at 202 Byron Road, Leppington – Construction of a staged mixed use development (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The panel adjourned at the end of the public meeting to deliberate on the matter and formulate a resolution.

Application to vary a development standard

The DA proposes contravention of the height of buildings development standard that applies to the site under Clause 4.3 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth SEPP).

The development standard limits buildings on the subject site to a maximum height of 21m above finished ground level. Contrary to that development standard, the development will have a maximum height of 21.25m above finished ground level. The contravention relates to two lift overruns; one atop building D (21.25m) and one atop building E (21.07m).

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth SEPP), that has demonstrated that:

- compliance with that height development standard is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

Specifically, the Panel is satisfied that due to the location of the lift overruns means that they will have little significant impact on surrounding land and will not significantly change the appearance of the buildings when viewed from any external vantage.

On that basis, the panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the Growth SEPP and the objectives for development in the SP2 Infrastructure and R3 Medium Density Residential zones in which the development will be located; and
- the concurrence of the Secretary has been assumed.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

Suitability of site and public interest

The Panel considers the proposed development is a suitable use of the site and its approval is in the public interest having regard to the following matters:

- The development will provide capacity for additional residential development within Leppington and is consistent with the objectives of the Western Sydney District Plan.
- The Council assessment report concludes that the proposal will not have an unacceptable impact upon the surrounding road network and the operation of surrounding intersections, The DA was referred to RMS and Sydney Trains pursuant to the ISEPP and comments and recommended conditions received and the responses have been taken into account in the conditions imposed. The location of the basement entrance in proximity to the intersection of Byron Road / Town Centre Road has been considered by Council Traffic Engineers, who report that they are satisfied with the location.
- Council staff have assessed a detailed contamination assessment and associated information submitted in support of the DA. Following submission of the detailed contamination assessment Council staff were satisfied that the site was suitable for the development. Conditions of consent have been imposed to address a large quantity of asbestos was illegally dumped upon the site in February 2019. The Panel is satisfied that SEPP 55 has been adequately addressed in that regard.
- Council assessment staff report that the development is largely consistent with the Design Quality Principles and the Apartment Design Guide., observing that the development provides a range of building heights, upper floor setbacks, varying façade design and horizontal and vertical architectural elements projecting from the main façade to provide articulation and visual interest. Overall, the Council assessment staff report the building to be of a high standard and of architectural merit so as to make a desirable contribution in establishing the Leppington Town Centre.
- The important issue of potential flooding and drainage is reported upon by Council staff. They have concluded that the floor planning level incorporates a 500mm freeboard above the 1% AEP level, and indicate that the issue of flooding is adequately resolved.
- The development adequately satisfies the zone objectives and the height control (for reasons including those set out in the discussion of the clause 4.6 request above).

Safe and efficient pedestrian access

- Overflow parking from commuters at Leppington Train Station was observed by the Panel during its site inspection to bank up down Byron Road and Rickard Road to the site of the proposed development due to insufficient carparking capacity at Leppington Train Station.
- There is no formed pedestrian footway on either side of Byron Road with the result that pedestrians would be left to walk on the roadway as shown in this photograph taken on the day of the inspection:



- That issue of safety and reasonable infrastructure for a development of this scale was examined by the Panel who concluded that the development consent should not become operative until as a minimum safe pedestrian access has been established to Leppington Rail station.
- The Panel was aware in imposing that condition that it might present a significant challenge given the distance of the site to the station, but sees safe and efficient pedestrian access to the station as essential infrastructure before a development of this scale should proceed.
- The Council staff reported that a additional parking is to be provided adjacent to the station which ought to reduce the parking along Byron Road but that will not remove the need for some form of pedestrian footway.
- The deferred commencement condition leaves the means to provide that pedestrian way as matter to be resolved to Council's satisfaction.

Density

- There are no density development standards applying to the development.
 "Minimum lot size by density bands" are described for the locality by Control 3.1.1(2) and the table at Figure 3-1 in the Camden Growth Centre Precincts Development Control Plan. However, the table at clause 1.3.2 of that DCP indicates that Part 3 is not intended generally to apply directly to residential flat development (although Table 3-2 in that Part has at least one control applying exclusively to the minimum lot size of residential flat development which suggests that exclusion is not intended to be complete).

- The applicable band of development applying to the area generally (as opposed to residential flat development specifically) is:

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| 25 - 30 dw/Ha | <ul style="list-style-type: none"> ▪ Generally located within the walking catchment of centres, corridors and / or rail based public transport. ▪ Consists of predominantly small lot housing forms with some multi-dwelling housing, manor homes and residential flat buildings located close to the local centre and public transport. ▪ Generally single and double storey dwellings with some 3 storey buildings. ▪ Incorporates some laneways and shared driveways. ▪ Be designed to provide for activation of the public domain, including streets and public open space through the orientation and design of buildings and communal spaces. ▪ Mainly urban streetscapes, some suburban streetscapes. . See Figure 3-2 |
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- Even if it does not directly apply to residential flat building development, that 'band of development' gives some indication of the intended character of the surrounding locality.

- Council assessment staff have reported the density of the development to be acceptable given the absence of impacts on adjoining land, and specifically that it does not result in adverse impacts in respect to overshadowing or loss of visual privacy upon adjoining properties.
- The Panel also takes note of the significant and well-designed areas of accessible open space that are incorporated into the landscaping layout of the development, and the quality of the landscaping proposed generally. The proposal will also be bounded by undeveloped land in the adjacent drainage reserve.
- Having regard to each of those matters, the panel concludes that the development is on balance an appropriate built form response to the site attributes and surrounds.
- Overall, the strategic planning for the area anticipates development of this scale as part of the future growth of Leppington, with the site's zoning and height controls permitting multi-story apartment buildings.
- However, the Panel is concerned that the precinct currently lacks the infrastructure needed to support development of this nature – in particular, a fully serviceable road network with pedestrian / cycle facilities connecting the site and its surrounds to Leppington Station, as well as planned retail and other services, that would usually be expected to service development of this scale.
- With no clear timeframe for delivering these facilities, future sequencing of medium or higher density apartment developments faces significant constraints.

CONDITIONS

- The development application was approved subject to the conditions in the council assessment report but with these changes:

A. The deferred commencement conditions being amended to read as follows:

- (1) **Deferred Commencement** - The following matters must be addressed to Council's satisfaction prior to the development consent becoming operative:
 - a) The person acting on this consent must demonstrate that safe pedestrian movement from the subject site to Leppington Railway Station will be available prior to the issue of any Occupation Certificate (with any associated proposed works over Council owned land approved as part of this determination).
 - b) A legal instrument to Council's satisfaction must be furnished from the owner(s) of Lot 5 in of DP 536005 outlining their agreement to provide an Easement to Drain Water over their property to allow the free discharge of stormwater from the development site, as determined by the Council to be necessary.
 - c) Council is to be provided with plans for the retaining wall that is to be constructed on (or within close proximity to) the boundary with Lot 3 in DP 1202350 sufficient to determine the extent of any encroachment over, or requirement for additional support from, that lot. To the extent that Council determines that any encroachment will arise or support will be required, an instrument to Council's satisfaction recording agreement to the grant of a sufficient easement is to be provided in that regard.
 - d) Amended plans and adequate details must be submitted to Council indicating:
 - i. The design of Road 4 being amended such that all works are contained within the subject site and there is no need for any associated batter being provided on Lot 58B in DP 8979.
 - ii. The roundabout at Ch. 1183 on Byron Road (CH. 40.298 at Town Centre Road) being indicated upon the long sections for Byron Road (Drawing 132).

- iii. Cross sections indicating interim and future works along the length of the entire Town Centre Road.

B. The following additional conditions being included in Section 2.0 of the consent:

- (44) Prior to the issue of any Construction Certificate or Subdivision Works Certificate the Certifier must be satisfied that the following easements have been registered with NSW Land Registry Services:
 - a) An Easement to Drain Water over neighbouring Lot 5 in DP 536005 to allow the free discharge of stormwater from the development site (and any related positive covenant for maintenance of the drainage works).
 - b) (If Council has determined through the satisfaction of the deferred commencement conditions that any encroachment will arise or support will be required, arising from the retaining wall that is to be constructed on or within close proximity to the boundary with Lot 3 in DP 1202350), such easement and/or positive covenant as Council has determined to be necessary for the construction, maintenance and support of the retaining wall.

The terms of the above registered easements and positive covenants shall specify that only Camden Council has the authority to vary, release and modify the encumbrances.

- (45) Plans and details, endorsed by Council and consistent with the details approved by Council in satisfaction of deferred commencement condition (1)(a), demonstrating that safe pedestrian access will be provided from the subject site to Leppington Railway Station must be submitted to the Certifier's satisfaction prior to the issue of any Construction Certificate.

C. The following additional condition being included in Section 6.0 of the consent:





- (25) Council must provide written confirmation that safe pedestrian access has been provided from the subject site to Leppington Railway Station prior to the issue of any occupation certificate.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel.

- Open space treatment
- Stormwater / stormwater retention
- On-site carparking
- Flooding
- Impact on health and wellbeing of local residents
- Environmental impact and sustainability
- Existing traffic, noise and parking problems already on Byron Road, Leppington
- Hardship from acquisition
- Provision for access across the proposed rear boundary open space linkage

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. In addressing these issues appropriate conditions have been imposed to resolve issues raised.

| PANEL MEMBERS | |
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|  Justin Doyle (Chair) |  Nicole Gurran |
|  Louise Camenzuli |  Lara Symkowiak |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | 2016SYW161 – Camden City Council – DA866/2016 |
| 2 | PROPOSED DEVELOPMENT | Tree removal, construction of a mixed use development consisting of five (5) buildings comprising residential flat buildings and shop top housing for a total of 436 apartments, one (1) neighborhood shop, basement car parking, road construction, subdivision and associated site works. |
| 3 | STREET ADDRESS | 202 Byron Road, Leppington |
| 4 | APPLICANT/OWNER | Applicant: NLI Byron Development Pty Ltd Owner: Leppington Gateway Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | General development over \$20 million (DA lodged prior to 1 March 2018) |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Sydney Region Growth Centres) 2006 State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Infrastructure) 2007 Sydney Regional Environmental Plan Policy No 20 – Hawkesbury-Nepean River Apartment Design Guide Development control plans: <ul style="list-style-type: none"> Camden Development Control Plan 2011 Camden Growth Centre Precincts Development Control Plan Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development |

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| | | <ul style="list-style-type: none"> Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development |
| 7 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> Council assessment report: 20 July 2020 Clause 4.6 Request – Building Height Written submissions during public exhibition: 3 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Sylvia Rose Council assessment officer – Jamie Erken, Adam Sampson and Faraj Jibbs On behalf of the applicant – Jim Murray, Luke Feltis, Ben Pomeroy and Stuart Thienpont |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Briefing: Monday, 4 March 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald and Nicole <u>Council assessment staff</u>: Adam Sampson, Stephen Pratt, Ryan Pritchard, Clare Aslanis, Matt Rawson, Jamie Erken and Jessica Mesiti Site inspection: Monday, 4 March 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald and Nicole Gurran <u>Council assessment staff</u>: Adam Sampson, Stephen Pratt, Ryan Pritchard, Clare Aslanis, Matt Rawson, Jamie Erken and Jessica Mesiti Final briefing to discuss council's recommendation, Monday, 3 August 2020, 12:10pm. Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran and Lara Symkowiak <u>Council assessment staff</u>: Adam Sampson, Jamie Erken, Ryan Pritchard and Steven Pratt |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report |