

Supplementary Report to Sydney Central City Planning Panel

Panel reference	2016SYW182 DA
DA number	JRPP-16-03334
Proposed development	Demolition of existing commercial building and construction of an 18 storey shop top housing development comprising ground floor retail, first floor child care centre and 16 storeys of residential apartments with basement car parking for 230 vehicles.
Street address	10-14 Third Avenue, Blacktown
Applicant/owner	5 Units Pty Ltd (Applicant) B Vartuli (Owner)
Date of DA lodgement	5 September 2016
Number of submissions	1
Regional development criteria (Schedule 4A of the EP&A Act)	Capital investment value (CIV) over \$20 million (DA has CIV of \$42.7 million)
All relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • 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 Regional Environmental Policy No. 20 – Hawkesbury-Nepean River • Blacktown Local Environmental Plan 2015 • Central City District Plan 2018 • Blacktown Development Control Plan 2015
Report prepared by	Blacktown City Council
Original report date	14 March 2018
Panel consideration and deferral	<p>Internal panel discussion concluded that this matter cannot be dealt with electronically.</p> <p>The panel requested an addendum report addressing the proposed variation to building separation under the Apartment Design Guide.</p>
Supplementary report date	30 April 2018
Recommendation	Approval subject to conditions

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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 (s7.24)?

No

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

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ATTACHMENTS

Attachment 1	–	Details of approved development plans for 16 Third Avenue, Blacktown
Attachment 2	–	Details of development plans currently under consideration for 9 - 17 Second Avenue, Blacktown
Attachment 3	–	Details of shadow impact diagrams for the adjoining site to the south (9 – 17 Second Avenue)
Attachment 4	–	Applicant's supplementary response
Attachment 5	–	Draft conditions of consent
Attachment 6	–	Copy of original report to the Panel

1 Executive summary

- 1.1 This supplementary report is prepared in response to the Panel deferring consideration of the original report on 14 March 2018 on the basis of:

'The Panel has considered the Clause 4.6 variation request and is satisfied with the height variation, but is not convinced of the merit of such a substantial non-compliance with the ADG setback requirements.'

'Whilst the McDonald's site to the east is possibly of sufficient size to compensate for reduced setbacks on that side, the same can't be said for the adjoining site to the west. Indeed, arguably that site may be isolated by this proposal due to its comparatively narrow width. Similarly, the non-compliant rear setback to the south must have some shadowing and possibly privacy impacts on the future development of those adjoining sites. Whilst the report refers to precedents for setback variations in this locality, the exact relationship to existing or approved developments on adjoining properties is not clear to the Panel.'

A copy of the original report is at **attachment 6**.

- 1.2 We have carefully checked the adjoining property to the west, being 16 Third Avenue, and there is an approved 18 storey building on this site. Therefore this site is not going to be isolated, addressing the Panel's concern. Details of this adjoining approved development are provided in this report.
- 1.3 On the issue of shadowing to the adjoining property to the south of the subject site, there is also a current Sydney Planning Panel DA for that site that was recently deferred by the Panel for a flood study. This is also for 2 x 18 storey buildings at 9 - 17 Second Avenue and the shadow intended to be cast by this DA on that site still ensures that the minimum ADG solar access requirements are met for the adjoining proposal. Details of this adjoining proposal are also outlined in this report.

- 1.4 The initial proposal put forward to the Panel still satisfactorily demonstrates a development outcome that will not unduly compromise the adjoining western and southern neighbouring properties, maintaining consistency with the desired characteristics for developments within the Blacktown CBD.
- 1.5 The application is considered to be satisfactory when evaluated against section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).
- 1.6 This report recommends that the Panel approve the application subject to the original recommended draft conditions.

2 Further assessment of setback issues

2.1 Panel concern: The minimum building separation to the western elevation, being either 9 m or 12 m dependent on height, is not provided to the 5th storey and above, creating a potential site isolation issue

- a. The building separations (on the 5th storey and above) are as follows:
 - Eastern elevation: 6 m - 8 m (no window/opening along wall)
 - Southern elevation: 3 m - 6 m (no window/opening along wall).
- b. The adjoining property to the west at 16 Third Avenue, Blacktown was approved by Council at its Ordinary Meeting on 26 October 2016 for the construction of an 18 storey mixed use building comprising 2 storeys of business premises with 16 storeys of residential apartments above (DA-15-00467). Work has not commenced on this site but the development consent is valid until 4 November 2021. The approved plans are at **attachment 1**.
- c. The proposed building separation to the development on the subject site, i.e. to the western boundary of adjoining 16 Third Avenue, on the 5th storey and above is 6 m. There will be no potential privacy impact on the units at 16 Third Avenue as the approved building presents a blank wall along its eastern elevation.
- d. Overall, the site at 16 Third Avenue has demonstrated its capability to be redeveloped as a high density mixed use development and the Panel's concern for site isolation at this property is therefore addressed.

2.2 Panel concern: The minimum building separation to the southern elevation, being either 9 m or 12 m dependent on height, is not provided to the 5th storey and above, potentially creating overshadowing and privacy issues

- a. The adjoining property to the south at 9 - 17 Second Avenue, Blacktown is subject to an undetermined DA for the construction of 2 x 18 storey mixed use buildings, including retail premises, serviced apartments, commercial premises and residential apartments, under JRPP-16-03305. This application is currently deferred by the Panel in order for the applicant to undertake a flood study and determine the final proposed building height, as well as undertake a site contamination remediation investigation and provide diagrams which demonstrate overshadowing impact to the common open space area.

- b. The current plans for JRPP-16-03305 are at **attachment 2**. The applicant has confirmed that the proposed building height will not change. It should also be noted that the Panel did not raise any previous concern with the proposed building envelope. The proposed building separation on the 5th storey and above to the northern boundary (adjoining the subject DA site) varies across the site, from 12 m to 19.4 m (with the middle section setback at 32 m). This in turn will provide varied building separation of 19.2 m to 29 m between the subject DA and the adjoining southern building proposal. The ADG requires a minimum building separation (between habitable rooms) of 18 m to 24 m and therefore the proposed buildings are fully compliant. The Panel's concern with privacy impacts between buildings is resolved in this instance.
- c. The Panel also raised its concern for solar access to the adjoining proposed development to the south. The applicant has submitted elevational shadow impact diagrams for the subject DA against the proposed development on the southern side at 9 - 17 Second Avenue, as shown at **attachment 3**. The diagrams demonstrate the extent of overshadowing impact onto the proposed north facing units. The likely overshadowing impact is not considered to be excessive given the proposed building separation. Approximately 70% of these units have dual aspects (to the east and west) and the minimum 2 hour solar access reception is therefore capable of being provided to those units. Nevertheless, the remaining units with a single aspect to the north are designed to have a greater separation from the northern boundary (32 m), which assists with solar access reception into these units.
- d. The proposed setbacks from the building wall to the southern boundary are between 9.5 m and 10.5 m. The proposed overshadowing impact to the adjoining southern development will not be significantly improved should the subject property's development be setback a further 2.5 m (allowing for a 12 m separation as required by the ADG). The proposed development does not contribute to unacceptable amenity impacts more than what is anticipated for the CBD area.

2.3 Panel concern: Precedence of setback variations in this locality and relationship to existing or approved developments

- a. Council's City Architect has once again reviewed the application after the Panel expressed concerns with the building separation. The City Architect's review concludes that increased building separations to the 5th to 8th storeys and further separations to the 9th storey and above, will result in a wedding cake building design, which is not considered to be a desired outcome for the CBD area. An optimal high density living environment near established amenities and public transport will not be achieved if the development is required to comply strictly with the ADG.
- b. The proposed development in its current form has been assessed against the developments on the adjoining western and southern boundaries, and is considered to have sufficiently addressed the ADG principles for amenity.
- c. In response to this concern, the applicant has also submitted a supplementary response to these issues, which is provided at **attachment 4**. The response provides the following justification to the proposed non-compliance with the ADG's requirements for building separation:
 - The application of building separation in this area has not been strictly applied, as evidenced in recent years by development reports to the Sydney Planning Panel. The new building will blend with and be consistent with the urban context.

- The western elevation of the proposed development will provide small bedroom window openings and vertical screen mesh to the balconies for privacy.
- The proposed extent of overshadowing to the southern side property is unavoidable, but maintains adequate solar access to the majority of the site in midwinter. Overshadowing impacts would still occur even if the prescribed setback was implemented.

The submitted response also details how the proposal addresses the aims of the building separation requirements of the ADG, which can be found on pages 8 - 9 of the response.

3 Conclusion

- 3.1 The proposed development has been assessed against all matters for consideration 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. The site is considered suitable for the proposed development subject to conditions.

4 Recommendation

- 4.1 The Development Application be approved by the Sydney Central City Planning Panel subject to the conditions at attachment 5.
- 4.2 The submitter be notified of the Planning Panel's decision.



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