

## Report to Sydney Central City Planning Panel

<b>Panel reference</b>	2016SYW182 DA
<b>DA number</b>	JRPP-16-03334
<b>Proposed development</b>	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.
<b>Street address</b>	10 - 14 Third Avenue, Blacktown
<b>Applicant/owner</b>	5 Units Pty Ltd (Applicant) B Vartuli (Owner)
<b>Date of DA lodgement</b>	5 September 2016
<b>Number of submissions</b>	1
<b>Regional development criteria (Section 9.1 of EP&amp;A Act - Ministerial Direction)</b>	Capital investment value (CIV) over \$20 million (DA has CIV of \$42.7 million)
<b>All relevant s4.15 matters</b>	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River</li> <li>Blacktown Local Environmental Plan 2015</li> <li>Draft Central City District Plan</li> <li>Blacktown Development Control Plan 2015</li> </ul>
<b>Report prepared by</b>	Blacktown City Council
<b>Report date</b>	14 March 2018
<b>Recommendation</b>	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 – Location map
- Attachment 2 – Zoning extract
- Attachment 3 – Aerial image as of 18 January 2018
- Attachment 4 – Detailed information about proposal and DA submission material
- Attachment 5 – Development application plans
- Attachment 6 – Assessment against planning controls
- Attachment 7 – Applicant's Clause 4.6 request
- Attachment 8 – Council assessment of Clause 4.6 request
- Attachment 9 – Draft conditions of consent

## 1 Executive summary

- 1.1 This report considers a proposal for demolition of existing structures and the construction of an 18 storey shop top housing development comprising ground floor retail/business space, a child care centre on the first floor and 16 levels of residential apartments above, at 10 - 14 Third Avenue, Blacktown.
- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments has not identified any issues of concern that cannot be dealt with by conditions of consent.
- 1.3 The application is therefore satisfactory when evaluated against Section 79C of the Environmental Planning and Assessment Act 1979.
- 1.4 This report recommends that the Panel approve the application subject to the recommended conditions.

## 2 Key issues list

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- 2.1 The key issues that need to be considered by the Panel in respect of this application are:
- a. **Building height variation** (Section 7) - The applicant seeks a building height variation of 11.2%. This is a result of the lift overrun of up to 6.25 m above the maximum height limit, with less encroachment of the roof, parapet, stairs and open space structures. The variation has been assessed and is considered acceptable on its merits, with conditions of consent to incorporate the plant and equipment as part of an architectural roof feature.
  - b. **Building separation** (Section 7) – The applicant seeks to reduce building separation to a minimum 6 m, which is not compliant with the numerical building separation under the Apartment Design Guide. However, the proposed building separation does meet the daylight access, urban form context and acoustic and visual privacy objectives of the control and is therefore considered satisfactory on its merits.
  - c. **Submission** (Section 8) – A submission supporting the application has been received from the adjoining McDonald's restaurant, wanting to ensure their 24 hour trading is taken into consideration as part of the assessment. The Acoustic Assessment submitted by the applicant suitably addresses this issue, as do the supporting conditions of consent, to ensure that any acoustic concerns are addressed.

## 3 Location

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- 3.1 The site is located in the Blacktown Central Business District (CBD) on the northern side of the railway line.
- 3.2 The location of the site is shown in attachment 1. The land immediately to the south, west and east of the site is zoned B4 Mixed Use. The zoning of the site is shown on attachment 2. The land to the south-east and west has a building height limit of 64 m. The land to the north on the opposite side of Third Avenue is zoned R4 High Density Residential and has a building height limit of 20 m.
- 3.3 The site is located approximately 320 m north-east of Blacktown Railway Station.

## 4 Site description

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- 4.1 The site is a regular shaped lot, with frontage to a service road off Third Avenue. The site area is 2,380 sqm.
- 4.2 The current registered land is Lot 100 DP 1002564. A 2 storey commercial building separated into 3 tenancies exists on the site. The site is completely devoid of vegetation.
- 4.3 An aerial image of the site and surrounding area is at attachment 3.

## 5 The proposal

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- 5.1 The Development Application (DA) was been lodged by 5 Units Pty Ltd for the demolition of existing structures and the construction of an 18 storey shop top housing development.
- 5.2 The building comprises:
- a. 612 sqm of retail area on the ground floor

- b. a 155 place child care centre on the first floor
  - c. 16 storeys of residential apartments above, with 143 units.
- 5.3 The applicant proposes the construction of 5 basement levels of car parking with 230 car parking spaces. A single vehicle access point is proposed to the basement from the service road off Third Avenue.
- 5.4 The maximum building height of the development is 62.25 m. The development exceeds the maximum building height limit of 56 m by 6.25 m for only the lift overrun and structure associated with the communal open space on the roof level. The proposed height variation is discussed in detail in Section 7 below.
- 5.5 The proposal has an FSR of 6.1:1, which is compliant with the maximum FSR of 6.5:1 permissible on the site under BLEP 2015.
- 5.6 The proposal provides for a 3 storey podium built to the front boundary. The first floor provides a zero setback to all boundaries. The second and third floors provide a zero setback on the western boundary, a 6 m to 10 m setback to the eastern boundary and 7 m to 15 m setback to the southern boundary (rear). The tower located on top provides the following setbacks:
- (a) 5 m – 6 m front setback to Third Avenue
  - (b) Minimum 6 m side setback to the western and eastern property boundaries
  - (c) 7 m – 10.5 m rear setback to the southern property boundary.
- 5.7 Communal open space areas are provided on the podium as well as on the roof. These areas are embellished with BBQ, seating, turfed areas and tree shaded areas.
- 5.8 The proposed building is of a podium design. The façade has been articulated through a honeycomb pattern of boxed parapets. A variety of external materials and finishes are proposed, including rendered paint finishes in white, grey and charcoal as well as feature bronze mesh finishes and black tinted glass balustrades.
- 5.9 A Design Verification Statement prepared by registered architect, Eduardo Villa of Villa + Villa, has been prepared for the development, in accordance with the requirements of SEPP 65.
- 5.10 Other details about the proposal are at attachment 4 and a copy of the development plans is included at attachment 5.

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## **6 Assessment against planning controls**

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- 6.1 A full assessment of the DA against relevant planning controls is provided in attachment 6, including:
- a. Environmental Planning and Assessment Act 1979
  - b. State Environmental Planning Policy (State and Regional Development) 2011
  - c. State Environmental Planning Policy (Infrastructure) 2007
  - d. State Environmental Planning Policy No. 55 – Remediation of Land
  - e. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
  - f. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
  - g. Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

- h. Blacktown Local Environmental Plan 2015
- i. Draft Central City District Plan
- j. Blacktown Development Control Plan 2015.

## 7 Key planning issues assessment

### 7.1 Building height variation to the BLEP 2015 development standard

- a. The applicant seeks to vary the building height by up to 6.25 m. The maximum variation sought is equivalent to 11.2%. The following table provides a summary of the variations sought to the maximum building height limit of 56 m by the various building elements.

Building Element	Building Height	Variation (m)	Variation (%)
Rooftop level	56.08 m - 57.4 m	0.08 m – 1.4 m	0.14% - 2.5%
Open Space parapet	57.8 m – 58.2 m	1.8 m to 2.2 m	3.2% to 3.9%
Pergola and open space covered area	59.65 m	3.65 m	6.5%
Stair roof and plant roof	60.03 m – 60.34 m	4.03 m – 4.34 m	7.2% - 7.7%
Lift overrun	62.25 m	6.25 m	11.2%

- b. The rooftop level exceeds the building height limit as it is proposed to use a heavy rigid vehicle to service the site entering at the ground floor. The heavy rigid vehicle has a height clearance of 4.5 m. Council's requirement for this type of development is to provide waste collection on-site. The site's access location is dictated by the existing levels on site and the Third Avenue service road. Normally, the driveway access would be provided on the low side of the site to reduce building levels. However, the existing Third Avenue service road does not extend the full length of the block. This means that the proposal is forced to locate the access on the eastern property boundary, on the high side of the site. As a result, an overall height variation is sought.
- c. Consequently, height variations are sought to non-habitable areas such as the open space parapet, stair and roof plant and lift overrun. Further, a condition of consent is recommended to be imposed for the lift overrun, stair roof and the roof plant to be incorporated into an architectural roof feature, to reduce the extent of the variation being sought.
- d. The applicant has submitted a Clause 4.6 request to justify that compliance with the height development standard is unreasonable and unnecessary in this instance.
- e. A copy of the applicant's written request is held at attachment 7.
- f. Council officers consider that the variation will not have unreasonable impacts on the neighbouring properties or the character of the area and will result in a better planning outcome. The proposal is consistent with the objectives of the development standard and the B4 Mixed Use zone. Please refer to the detailed assessment at attachment 8.

## 7.2 Building separation

SEPP 65 requires that, when assessing an application, consideration must be given to the requirements of the Apartment Design Guide (ADG). Council's assessing officer's assessment against the relevant design concepts and numerical guidelines of the ADG is held at attachment 6. The development complies with the ADG with the exception of the proposed building separation as discussed below.

### (a) Building separation

Under the ADG, the building separation controls increase as the height of the development increases, as follows:

- i. Up to 4 storeys/12 m*
  - 12 m between habitable rooms/balconies
  - 9 m between habitable rooms/balconies and non-habitable rooms
  - 6 m between non-habitable rooms.
- ii. 5 to 8 storeys/up to 25 m*
  - 18 m between habitable rooms/balconies
  - 13 m between habitable rooms/balconies and non-habitable rooms
  - 9 m between non-habitable rooms.
- iii. 9 storeys and above/over 25 m*
  - 24 m between habitable rooms/balconies
  - 18 m between habitable rooms/balconies and non-habitable rooms
  - 12 m between non-habitable rooms.

Above the 3 storey podium level, the proposed development provides:

- A minimum 6 m setback to the western and eastern boundaries
- A minimum 7 m – 10.5 m setback to the northern boundary.

The proposed development does not provide 9 m – 12 m setbacks at Levels 4 and above to the eastern boundary and therefore does not comply with the suggested building separation for its intended height.

However, the ADG is a guide only and allows building separation controls to be varied in response to site and context constraints. Where a proposed development intends to provide less than the recommended distance separation, it must demonstrate that daylight access, urban form and visual and acoustic privacy has been satisfactorily achieved.

As this proposal does seek to vary the building separation, these key parameters are each considered below for compliance.

#### *i. Daylight access*

The proposed development complies with the minimum solar access requirement that 77 % of the units receive a minimum 2 hours direct sunlight between 9 am and 3 pm in midwinter. Given the north-south orientation of the site, adjoining properties are not overshadowed by the development for at least 3 hours a day. The building separation is therefore considered satisfactory as the proposal and adjoining sites will receive adequate solar access.

## ii. Urban form

In considering the existing urban form, consideration should be given to other DAs approved in the Northern Precinct of the CBD, which similarly have reduced side and rear setbacks. The table below compares the subject development with other approvals in the area.

Address	Development	Side Setbacks (above podium)	Determination
20 Second Avenue	DA-02-5551 11 storeys mixed-use	1 m - 5.7 m (average 3.3 m)	Approved 24 October 2004
29 - 31 Second Avenue	JRPP-09-1574 20 storeys mixed-use	6 m – 16 m (point encroachments to 5 m)	Approved 26 August 2010
26 Second Avenue	DA-13-1143 9 storeys mixed-use	6 m (point encroachments to 3.5 m)	Approved 15 September 2014
28 Second Avenue	JRPP-14-2593 24 storey mixed-use	6 m (point encroachments to 4 m)	Approved 23 June 2015
2 - 10 First Avenue	JRPP-15-2087 18 storeys mixed-use	Minimum 6 m with no point encroachments	Approved 26 July 2016
16 Third Avenue	DA-15-00467 18 storeys mixed-use	3 m – 8 m	Approved 4 November 2016
16 Second Avenue	JRPP-15-02533 19 storeys mixed-use	Minimum 6 m with no point encroachments	Approved 4 April 2017

It can be seen from the table that the proposed development is consistent with the setbacks established by previous approvals in the area. Further, the quality and character of the development is consistent with the objectives of the B4 zone, being *'to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling'*. The design of the development encourages an active street frontage and achieves a high design quality, with suitable bulk and scale that considers the restrictions of the site.

Based on the urban form established by previous approvals in the area, the development is considered to be consistent with the surrounding and future urban form.

## iii. Visual and acoustic privacy

The proposed balconies are predominantly oriented towards the street (Third Avenue) or are provided with solid balustrades.

Based on the above assessment of solar access, urban form and visual and acoustic privacy, the proposed building separation of the development is considered satisfactory, and therefore a variation to the suggested building separation requirement is considered reasonable in this circumstance. It is also noted that the numerical standards in the ADG are guidelines only and that variations should not necessarily warrant refusal of the application.



## 8 Issues raised by the public

- 8.1 The DA was notified to property owners and occupiers within the locality between 7 March and 21 March 2017. The DA was also advertised in the local newspapers, including the Blacktown Sun, and a sign was erected on the site.
- 8.2 During the notification period, only 1 submission was received from the McDonald's restaurant to the east of the property.
- 8.3 The submission identifies that as owners of the neighbouring property, they support the development proposed and request that their existing amenity is maintained. The submission requests that all doors, windows and external areas (e.g. balconies, courtyards) of the proposed development are treated appropriately by the applicant having regard to the location of the development adjoining a McDonald's restaurant that is an existing 24 hour operation.
- 8.4 The applicant has submitted an acoustic assessment prepared by Sebastian Giglio, Acoustic Consultant. Following notification, the applicant was requested to have their acoustic consultant specifically address the 24 hour trading of McDonald's restaurant to ensure that appropriate acoustic treatments of the development are undertaken to address any noise issues. The acoustic assessment has identified that the building will be constructed to accommodate noise from the nearby busy roads – Third Avenue and Sunnyholt Road. The consultant considers these appropriate noise goals for indoor levels of commercial noise. The acoustic assessment has identified the provision of thicker glass will sufficiently attenuate any noise emanating from the McDonald's site. Council's Environmental Health team has reviewed the submitted acoustic assessment and is satisfied. Suitable conditions of consent are recommended to be imposed to ensure that all recommendations of the acoustic report will be required to be implemented and a post-construction validation report will also be required to be submitted to Council.

## 9 External referrals

- 9.1 The DA was referred to the following external authorities for comment:

Section	Comments
<b>Roads and Maritime Services (RMS)</b>	Acceptable subject to conditions.
<b>NSW Police</b>	Acceptable subject to conditions.

## 10 Internal referrals

- 10.1 The DA was referred to a number of internal sections of Council and is considered acceptable subject to conditions, based on the following:
  - Council's City Architect has reviewed the design of the development and is satisfied from a design perspective.
  - Concept engineering design meets Council's development standards.
  - The parking provision satisfies the RMS requirements.
  - The anticipated traffic movements due to the proposal are likely to be accommodated within the existing and proposed road network in the area.
  - Waste service vehicles can satisfactorily service the development.



## 11 Conclusion

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- 11.1 The proposed development has been assessed against all matters for consideration and is assessed as 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.

## 12 Recommendation

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- 12.1 The DA be approved by the Sydney Central City Planning Panel subject to the conditions held at attachment 9.
- 12.2 The submitter be notified of the Planning Panel's decision.

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