

# Assessment report to Sydney Central City Planning Panel

Panel reference: PPS-2017SWC036

## Development application

|                             |   |                              |                 |
|-----------------------------|---|------------------------------|-----------------|
| <b>DA number</b>            | SPP-16-04462  | <b>Date of lodgement</b>     | 8 December 2016 |
| <b>Applicant</b>            | Design Cubicle/Merc Capital   |                              |                 |
| <b>Owner</b>                | Charles Michael Xerri, Mary Anne Xerri, Louis Cremona and Frances Cremona   |                              |                 |
| <b>Proposed development</b> | Construction of 2 x 5 storey residential flat buildings containing 100 units and 137 car parking spaces over 2 basement levels, associated demolition of dwellings and outbuildings as well as tree removal, stormwater drainage works and landscaping. |                              |                 |
| <b>Street address</b>       | 5 Schofields Road, Schofields   |                              |                 |
| <b>Notification period</b>  | 17 January to 16 February 2017  | <b>Number of submissions</b> | 4               |

## Assessment

|  |  |
|--|--|
| <b>Panel criteria</b><br>Section 7, SEPP<br>(State and Regional<br>Development) 2011 | <ul style="list-style-type: none"> <li>Capital investment value (CIV) over \$20 million (DA has a CIV of \$25.7 million).</li> </ul>   |
| <b>Relevant section<br/>4.15(1)(a) matters</b>                                       | <ul style="list-style-type: none"> <li>Environmental Planning and Assessment Act 1979</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River</li> <li>State Environmental Planning Policy (Sydney Region Growth Centres) 2006</li> <li>Blacktown City Council Growth Centre Precincts Development Control Plan July 2018</li> </ul> |
| <b>Report prepared by</b>  | Jared Spies  |
| <b>Report date</b>   | 3 September 2020   |
| <b>Recommendation</b>  | Refuse, based on the grounds listed in the report.   |

## Attachments

- Location map
- Aerial image
- Zoning extract
- Detailed information about proposal and DA submission material
- Development application plans
- Applicant's clause 4.6 variation request

## Checklist

### **Summary of section 4.15 matters**

Have all recommendations in relation to relevant section 4.15 matters been summarised in the Executive summary of the Assessment report? Yes

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### **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

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### **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

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### **Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (section 7.24)? Yes

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## 1 Executive summary

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- 1.1 The key issues that need to be considered by the Panel in respect of this application are:
  - the subdivision application (DA-16-05461) that would create the lot boundaries and site levels for the residential flat buildings (RFBs) proposed in this DA has not yet been approved
  - the site is land locked. Public road access can only be achieved via a temporary access driveway off a classified road
  - the proposed building exceeds the 16 m maximum height limit
  - waste collection has not been satisfactorily addressed
  - the proposal provides insufficient parking
  - the architectural design is considered unsatisfactory.
- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by our technical departments has identified serious issues of concern that cannot be dealt with by conditions.
- 1.3 The application is considered to be unsatisfactory when evaluated against Section 4.15 of the Environmental Planning and Assessment Act 1979.
- 1.4 This report recommends that the Panel refuse the application based on the grounds listed in the Recommendation at section 11 below.

## 2 Location

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- 2.1 The site is located at 5 Schofields Road, Schofields in the Riverstone Precinct of the North West Growth Area.
- 2.2 There is no adjacent development activity that provides access to this site and Schofields Road is an access-denied road.
- 2.3 The site is 380 m north of Schofields train station and centre.
- 2.4 The location of the site is shown at attachment 1.

## 3 Site description

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- 3.1 The site is legally identified as part Lot A in DP389673 and part Lot 18 in DP13137.
- 3.2 The site is proposed Lot 4 in a subdivision yet to be created under DA-16-05461 and is intended to have an area of 5,508 m<sup>2</sup> in that plan.
- 3.3 The site is zoned part R3 Medium Density Residential, part SP2 Infrastructure (Drainage) and part RE1 Public Recreation under State Environmental Planning Policy (Sydney Region Growth Centre) 2006 (the Growth Centres SEPP).
- 3.4 The site is currently occupied by a residential dwelling and associated outbuildings. The site is surrounded by a mix of suburban residential areas as well as rural and semi-rural land parcels.
- 3.5 The site is physically bound by vacant land to the north, Schofields Road to the south and single dwellings on large lots to the east and west.
- 3.6 An aerial image of the site and surrounding area is at attachment 2.
- 3.7 The zoning plan for the site and surrounds is at attachment 3.

## 4 Background

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- 4.1 Although this DA was submitted on 8 December 2016, it has faced major impediments along the way that have delayed it from being progressed to a point of determination.
- 4.2 The biggest impediment of all is that the site is landlocked until property owners to the east of the site develop their land which is necessary to provide the ultimate public road access arrangements. No DAs have been submitted to date on Lot B in DP 389673, Lot 21 in DP13137 or Lot 204 DP1189773. The Applicant for this DA therefore seeks to rely on a temporary access arrangement off Schofields Road until such a time as roads on the aforementioned lots are constructed which will ultimately provide public road access to Advance Street and Junction Road accordingly.
- 4.3 Transport for NSW (TfNSW) has, however, objected on more than one occasion to the proposed temporary access via a service road adjacent to and linking to Schofields Road.
- 4.4 As a result of the issues raised by TfNSW and internal sections of Council, 13 separate requests for additional information were sent to the Applicant to address the issues raised between February 2017 and August 2018. A letter requesting withdrawal of the application was sent to the Applicant in September 2018. The Applicant responded stating that significant plan amendments and discussions with TfNSW were already underway and that it wanted the application to continue being assessed once amended plans were submitted, which we agreed to.
- 4.5 A partial response to all previous requests for additional information was submitted 21 December 2018 with the view to obtain our in-principle support for the amended concepts prior to submission of a full set of amended DA materials. The partial response materials were distributed internally and to TfNSW for further comment, but only lead to further requests for additional information being issued.
- 4.6 A second request to withdraw this DA and the 2 DAs linked to it (DA-16-05461 and DA-16-05346) was sent 22 May 2019 due to the number of issues with the entire development that were unresolved. The Applicant requested that we reconsider our position to allow them an opportunity to secure a meeting with TfNSW to try address the access issue with the site which they had been struggling to set up. We once again allowed the application to proceed.
- 4.7 After lengthy discussions between the Applicant and TfNSW, an in-principle access arrangement was agreed to in December 2019 subject to the submission of amended civil plans to Council to reflect a temporary driveway off Railway Terrace and then onto Schofields Road service road. These plans were only submitted on 28 July 2020 and were then referred to TfNSW for further comment. TfNSW provided conditions of consent on 27 August 2020 that will be included in the subdivision application consent.
- 4.8 Further additional matters to be addressed were sent to the Applicant on 18 February 2020 after meeting with our Traffic and Engineering sections, based on the advice received from TfNSW in December 2019. This also included a reminder of the outstanding matters from all previous requests for additional information including planning, engineering, traffic, architecture and waste matters.
- 4.9 Subdivision DA-16-05461 which creates the ground levels and boundaries that will guide the designs for this DA has still not been approved to date. The documents submitted as part of the application have not yet been accepted by all sections of Council, and the outcome and timing of that DA is still unknown. There are now new issues that have arisen from the subdivision DA. These include zoning encroachments that will result in further requests for additional information being sent to the Applicant to address and this will delay the subdivision DA assessment even further.

4.10 Since the subdivision DA is still outstanding, the Applicant has not addressed the requests for additional information relating to this DA sent in February 2020 for the RFBs, including its siting and design.

## **5 The proposal**

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5.1 The Development Application was lodged by Design Cubicle. The Applicant has recently been changed to Merc Capital.

5.2 The Applicant proposes:

- demolition of the existing structures on site
- construction of 2 x 5 storey residential flat buildings consisting of 100 residential units
- a total of 137 car parking spaces in 2 basement levels made up of 115 residential and 22 visitor car parking spaces. This will include 11 accessible parking spaces.

5.3 The unit mix proposed is:

- 20 x 1 bedroom units
- 65 x 2 bedroom units
- 14 x 3 bedroom units
- 1 x 4 bedroom unit.

5.4 Ten of the apartments are proposed to be adaptable.

5.5 Access to the site is proposed to be via a temporary north-south access driveway off Schofields Road service road which will be accessed via a temporary driveway off Railway Terrace. When the adjoining site to the east is developed and the surrounding road network is connected, the temporary cul-de-sac turning head at the intersection of Road 2 and Road 3 will be removed. The proposed temporary access driveway will be removed at the same time and replaced with landscaping.

5.6 Other details about the proposal are at attachment 4 and a copy of the development plans is at attachment 5.

## **6 Assessment against planning controls**

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6.1 A summary assessment of the Development Application against the section 4.15(1)(a) matters is provided below but only for those planning controls that directly relate to refusal of the DA.

### **6.2 Section 4.15 'Heads of Consideration'**

| <b>Heads of Consideration</b>   | <b>Comment</b>   |
|---|--|
| <p>a. The provisions of:</p> <p>(i) Any environmental planning instrument (EPI)</p> | <p>The proposal exceeds the 16 m building height limit. The Clause 4.6 variation request contained in the Statement of Environmental Effects is not supported.</p> <p>The proposal does not adequately comply with the Apartment Design Guide in terms of unit design and configuration, materials and finishes, building facade length, solar access and accessibility.</p> |
| <p>(ii) Any proposed instrument that is or has been the subject of</p>              | <p>Prior to the lodgement of this application, a draft amendment to the Growth Centres SEPP 2006 was exhibited by the Department of Planning, Industry and Environment (DPIE) in May 2017, referred to as the 'North West Draft Exhibition Package.'</p>   |

| Heads of Consideration   | Comment   |
|--|---|
| <p>public consultation under this Act</p>  | <p>This exhibition was undertaken to coincide with the release of the Land Use and Infrastructure Implementation Plan (the purpose of which is to guide new infrastructure investment, make sure new development does not impact on the operation of the new Western Sydney Airport, identify locations for new homes and jobs close to transport, and coordinate services in the area).</p> <p>A key outcome sought by the DPIE is the establishment of minimum and maximum densities for all residential areas that have been rezoned under the SEPP (i.e. density bands). Currently the planning controls nominate only a minimum density. This proposal will have a significant influence on the ultimate development capacity (i.e. yield) of the precincts.</p> <p>The density bands for land zoned R3 Medium Density Residential in the Riverstone Precinct are proposed to be a:</p> <ul style="list-style-type: none"> <li>• minimum of 25 dwellings per hectare which equates to 14 dwellings</li> <li>• maximum of 35 dwellings per hectare which equates to 19 dwellings (currently no maximum).</li> </ul> <p>This proposal is for 100 apartments, which equates to 181 dwellings per hectare. This results in 81 more apartments being provided than anticipated by the exhibited maximum density band.</p> <p>As the proposed amendments have not proceeded to be finalised, there is no certainty that they will have legislative effect. It has therefore not been given weight in the determination of this DA.</p> |
| <p>(iii) Any development control plan (DCP)</p>  | <p>The proposal relies on changes to the Indicative Layout Plan in the subdivision application as it seeks to delete 2 roads as required by the Indicative Layout Plan. Until the subdivision is determined, the deletion of these roads can't be assumed.</p> <p>Even if the roads are agreed for deletion, the Applicant has not supplied additional visitor parking spaces on site to offset the loss in on-street parking spaces for visitors.</p>  |
| <p>(iii a) Any Planning Agreement</p>  | <p>N/A</p>  |
| <p>(iv) The regulations</p>  | <p>Complies</p>   |
| <p>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</p> | <p>It is considered that the likely impacts of the development, including traffic, parking, temporary and permanent access and consequent uncertainty this has on final design and compliance of the proposed RFBs with bulk and scale, design, the Apartment Design Guide, waste management, and stormwater management can't be satisfactorily addressed with any certainty whilst the subdivision application has not been approved.</p>  |
| <p>c. The suitability of the site for the development</p>  | <p>The site is not considered suitable for the development due to the lack of certainty around a yet to be approved design for access to the site.</p> <p>The site requires development of other properties to the east before formal public road access will be possible under the ILP road pattern for this area.</p>   |

| Heads of Consideration  | Comment   |
|---|---|
| d. Any submissions made in accordance with this Act, or the regulations | Four submissions were received during notification. Many of the issues raised are valid and are similar to our own concerns with the development.   |
| e. The public interest  | The application in its current form is not considered to be in the public interest due to the substantial amount of valid issues raised by the public during notification and the number of existing engineering, planning, architectural, traffic and waste issues that have not been satisfactorily addressed in the 4 years that the application has existed, which remain unresolved and uncertain. |

## 7 Key issues and reasons for refusal

### 7.1 The subdivision application that would create the lot boundaries and site levels for the residential flat buildings proposed in this DA has not been approved

- 7.1.1 Subdivision application DA-16-05461 that intends to create the proposed lots and intended finished site levels for the residential flat buildings proposed in this DA has yet to be approved.
- 7.1.2 This subject DA was, in fact, submitted prior to the subdivision application which is considered premature. The subdivision application was lodged on 22 December 2016 and to this date there is still uncertainty about lots and roads encroaching zone boundaries and its approval is not imminent.
- 7.1.3 It is inappropriate to consider this application for approval ahead of the subdivision application, the outcome of which is still unknown after almost 4 years of its existence. Without clear approved lot boundaries and finished ground levels for proposed Lot 4, the subject of this DA, the risk of serious non-compliance and errors is too great a risk to take.
- 7.1.4 A thorough planning and engineering assessment of the proposed RFB has not been possible for this development without certainty of the outcome of the subdivision application.
- 7.1.5 Council has no objection to the subdivision application continuing to be processed and the Applicant working through the key impediments to getting it approved. However, whilst the subdivision remains undetermined, the proposed Lot 4 on which this RFB is proposed does not exist which makes this DA premature. This RFB DA therefore cannot be assessed any longer and should be refused. The Applicant can lodge a new DA for RFBs if the DA for the subdivision is approved subject to conditions.

### 7.2 The site is land locked

- 7.2.1 Public road access can only be achieved via a temporary access driveway that will need to be constructed off a classified road via Railway Terrace and then along Schofields Road on TfNSW surplus land.
- 7.2.2 The proposed temporary access driveway is viewed by Council with caution as it could also create an unacceptable situation where any driver could be enticed to use the temporary service road onto Schofields Road service road to avoid the signalised intersection on Schofields Road and Railway Terrace.
- 7.2.3 It is unclear how any vehicles requiring access to the site will be able to do so unless they are travelling specifically in a north to south direction along Railway Terrace. This arrangement could lead to traffic issues for local roads in the area

that will be used as turn around facilities for vehicles trying to access the site via Railway Terrace.

### **7.3 The proposal exceeds the 16 m maximum height limit**

- 7.3.1 The overall height of the building proposed is 16.56 m, which exceeds the maximum height limit applicable for the site by 0.56 m or a 3.5% variation. The portions of the building that exceed the height limit are the parapets of the top floor apartments on the western side of the buildings.
- 7.3.2 The Applicant's Clause 4.6 request to accept this variation to the height limit, which was submitted as an annexure to the Statement of Environmental Effects, is not satisfactory. It has not been updated to reflect the latest set of amended plans received for this DA on 21 December 2018.
- 7.3.3 Further, and more importantly, the full extent of the height exceedance is also unclear because the proposed finished ground levels for the development are still unknown as the subdivision of the land has not been approved by Council. There is a risk that the ground levels still have to change and the final expected height of the RFB against the designated height plane also remains unclear.

### **7.4 Waste collection has not been satisfactorily addressed**

- 7.4.1 Several requests for additional information were sent to the Applicant to address the inadequate waste collection strategy. Although waste collection is proposed to be undertaken in the basement by a private contractor, our Waste Management section still requires additional information, including cross sections that illustrate waste vehicle travel paths, waste vehicle headroom allowance, basement ramp grades as well as plans that illustrate bin travel paths.
- 7.4.2 These matters have not been adequately addressed to date.

### **7.5 The proposed Indicative Layout Plan road variation in the subdivision application has not yet been accepted by Council**

- 7.5.1 The Applicant in the subdivision also proposes the deletion of 2 Indicative Layout Plan roads. These roads travel in a north-south and east-west direction along the eastern and southern boundaries of the site respectively.
- 7.5.2 Our Traffic Management section has not yet provided their support for the road pattern variation.
- 7.5.3 Again, this issue is tied to the final approval of a satisfactory subdivision of the land.

### **7.6 The proposal provides insufficient visitor parking**

- 7.6.1 No provision has been made to provide parking on-site to offset the loss of on-street parking as a result of the intended deletion of the 2 Indicative Layout Plan roads as per 7.5 above. Any agreed deletion of a designated road pattern in the subdivision application will then necessitate a compensatory offset of visitor parking that would have used these streets to be provided onsite as part of this RFB proposal, at a rate of 1 space per 6 m of road only on 1 side.

### **7.7 Inadequate architectural design**

- 7.7.1 Our City Architect has confirmed that the proposal exhibits unsatisfactory architectural design, including poor unit design and configuration, excessive use of cement render, overbearing building length, inadequate solar access to common open space areas, poor accessibility to common open space areas and no direct street access provided to ground floor units and lobbies.

7.7.2 The Applicant has not responded to our many letters and emails to fix the plans to meet the requirements of the Growth Centres SEPP and Apartment Design Guide. The Applicant has been reluctant to do this due to the uncertainty that still remains around the subdivision creating proposed Lot 4, being the subject site of this application. It is clear that this DA is premature as full compliance with the RFB design controls cannot be achieved until the lot of land is at least approved and the title created by Land Registry Services.

## **8 Issues raised by the public**

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- 8.1 The proposed development was notified to property owners and occupiers in the locality between 17 January and 16 February 2017. The Development Application was also advertised in the local newspapers and a sign was erected on the site.
- 8.2 We received 4 submissions.
- 8.3 The issues raised in the submissions relate to:
  - loss of privacy
  - maximum height limit exceedance
  - potential decrease to neighbouring property values
  - loss of access rights
  - loss of solar access
  - inadequate access to the property
  - potential ground stability and drainage impacts
  - insufficient building separation and setbacks to boundaries
  - inconsistencies with the Indicative Layout Plan
  - unclear level differences with neighbouring properties
  - poor unit design
  - noise impacts
  - inadequate adaptability of units
  - inadequate aboriginal heritage assessment
  - destruction of native trees and habitat
  - change to the character of the local area
  - strain on the capacity of local amenities.
- 8.4 The objections are considered sufficient to warrant refusal of the application on the basis that the concerns are similar to our own which the Applicant, to date, has not satisfactorily addressed.

## **9 External referrals**

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

| <b>Authority</b> | <b>Comments</b>   |
|------------------|---|
| NSW Police       | Acceptable subject to compliance with the recommended conditions provided |

| Authority         | Comments   |
|-------------------|--|
| Transport for NSW | Acceptable subject to compliance with the recommended conditions provided    |
| DPI Water         | Acceptable subject to compliance with the recommended conditions provided    |
| RFS               | Acceptable subject to compliance with the General Terms of Approval provided |

## 10 Conclusion

10.1 The proposed development has been assessed against all relevant matters and is not considered to be satisfactory. It is considered that the likely impacts of the development have not been satisfactorily addressed and that the proposal is not in the public interest. The site is not considered suitable for the proposed development.

## 11 Recommendation

- 1 The Clause 4.6 variation request to exceed the maximum building height limit be rejected because the full extent of the height exceedance is unknown because the proposed finished ground levels for the development are still unknown as the subdivision of the land has not been approved by Council. There is a risk that the ground levels still have to change and the final expected height of the RFB against the height plane therefore remains unclear.
- 2 Refuse Development Application SPP-16-04462 based on the following grounds:
  - a The subdivision DA-16-05461 that will create the finished ground levels and boundaries that will determine the design of this building has not yet been approved. Submission of this DA is considered premature since the outcome and timing of the subdivision DA is still unknown. The application is therefore considered to be inconsistent with the provisions of Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act 1979.
  - b There are still outstanding issues relating to the subdivision DA that have not been satisfactorily addressed. The unknown outcome of the subdivision DA will continue to leave the historical outstanding concerns of this DA unaddressed and delay its determination even further for an unknown amount of time. The application is therefore considered to be inconsistent with the provisions of Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act 1979.
  - c The site is land locked and requires an unsatisfactory temporary access arrangement that could potentially lead to traffic impacts unassociated to this development. A better outcome could be achieved if the property owner worked with the neighbouring owner(s) to the west to collaboratively develop their respective properties simultaneously. The site is therefore considered unsuitable under the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
  - d The proposed building exceeds the maximum height limit for the site. The finished floor level of the site is still unknown since the subdivision application has not been approved. Therefore the actual extent of the maximum height exceedance is currently unknown. The application is therefore considered to be inconsistent with the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.

- e Inadequate information has been provided to complete an assessment of the DA in terms of traffic, engineering, waste, architecture and planning. Given that inadequate information has been submitted, approval of the application is not considered to be in the public interest under Section 4.15(i)(e) of the Environmental Planning and Assessment Act, 1979. The application can also not be thoroughly assessed to determine whether it is consistent with the provisions of Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act 1979.
- f Due to the amount of valid concerns raised by the public during notification that are similar to our own concerns with the proposal, the application is considered to not be in the public interest under the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

3 Council officers notify the Applicant and submitters of the Panel's decision.



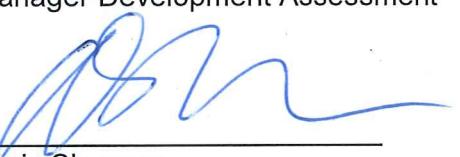
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Jared Spies  
Senior Development Assessment Planner



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Judith Portelli  
Manager Development Assessment



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Chris Shannon  
Acting Director Planning and Development