

Assessment report to Sydney Central City Planning Panel

Panel reference: 2017SWC051

Development application

DA number	SPP-17-00008	Date of lodgement	29 March 2017
Applicant	Sutherland and Associates Planning Pty Ltd		
Owner	Capital Residential Developments Pty Ltd		
Proposed development	Staged construction of 2 residential flat buildings and associated civil works and landscaping		
Street address	60 Cudgegong Road and 99 – 107 Rouse Road, Rouse Hill		
Notification period	30 May to 13 June 2017	Number of submissions	2

Assessment

Panel criteria Schedule 7, SEPP (State and Regional Development) 2011	Capital investment value (CIV) over \$20 million (DA has a CIV of \$55.8 million).
Relevant section 4.15(1)(a) matters	<ul style="list-style-type: none"> • Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • 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 (Sydney Region Growth Centres) 2006 • Blacktown City Council Growth Centre Precincts Development Control Plan 2018 • Central City District Plan 2018
Report prepared by	Planning Ingenuity, Consultant Town Planners. Holly Palmer, Senior Project Planner.
Report date	3 July 2018
Recommendation	Approve, subject to conditions listed in attachment 12 .

Attachments

1. Location map
2. Aerial image as of 29 May 2018
3. Zoning and height extract
4. Detailed information about proposal and DA submission material
5. Development application plans
6. Assessment against planning controls
7. Summary of submitter's concerns and Council response
8. Applicant's Clause 4.6 request to vary height of buildings
9. Council's assessment of Clause 4.6 request to vary height of buildings
10. Applicant's Clause 4.6 request to vary floor space ratio
11. Council's assessment of Clause 4.6 request to vary floor space ratio
12. Draft conditions of consent

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

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 (section 7.24)? Yes

Conditions

Have draft conditions been provided to the applicant for comment? Yes

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1. Executive summary

- 1.1. This report considers a detailed Development Application (DA) for 'Stage 3' of the Stage 1 Concept Plan approval (JRPP-15-01543 approved by the Land and Environment Court). Stage 3 is for 2 residential flat buildings comprising 215 apartments, 299 car parking spaces within 3 basement parking levels and associated civil works and landscaping at 60 Cudgegong Road and 99 - 107 Rouse Road, Rouse Hill.
- 1.2. The key issues that need to be considered by the Panel in respect of this application are:
 - The proposal is consistent with the Stage 1 Concept Plan approval (JRPP-15-01543 as modified by MOD-17-00295 dealt with by Council) with regard to height of buildings and floor space ratio due to a redistribution of height massing over the whole site. However, when considered in isolation, the proposal exceeds these development standards.
 - Issues raised in public submissions regarding impacts of ongoing construction works, boundary fencing and retaining walls, Council's acquisition of adjoining RE1 Public Recreation land and overshadowing of the property to the south.
- 1.3. 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.
- 1.4. Assessment of the application has also been undertaken in accordance with clause 7 of *State Environmental Planning Policy No. 55 (Remediation of Land)* and we are satisfied that the site can be made suitable for the residential development subject to conditions.
- 1.5. The application is therefore satisfactory when evaluated against Section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- 1.6. This report recommends that the Panel support the use of the Clause 4.6 requests to vary the height of buildings and floor space ratio development standards in this instance as the proposal is consistent with the Land and Environment Court approved Stage 1 Concept Plan approval (JRPP-15-01543 as later modified by Council).

2. Location

- 2.1. The site is located within the suburb of Rouse Hill. The site is within the Cudgegong Road (Area 20) Precinct within the North West Growth Centre as identified by the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. The area is undergoing major transformation from low density rural residential development to accommodate increased medium to high density residential development.
- 2.2. The location of the site is shown in **attachment 1**. The land immediately to the north forms part of a staged development on the north-eastern corner of Cudgegong Road and Rouse Road. East of Roland Street are other large scale housing developments under construction, with the exception of H/N 91 Rouse Road, Rouse Hill which contains a single detached dwelling on a large allotment and will eventually be acquired to form part of a large area of land zoned RE1 Public Recreation to the east of the subject site.
- 2.3. The site is located approximately 300 metres to the north of the Tallawong Railway Station (under construction) and approximately 1.5 km to the north-west of the Rouse Hill Local Centre.

3. Site description

- 3.1. The overall site comprises 3 allotments and is legally described as Lots 1, 2 and 3 in DP 271065. The site is known as 60 Cudgegong Road and 99 to 107 Rouse Road, Rouse Hill. The site is located on the south-eastern corner of the intersection of Rouse Road and Cudgegong Road and is irregular in shape with a frontage to Rouse Road of 254.64 metres, a splay corner of 7.44 metres and a frontage of 272.92 metres to Cudgegong Road. The site has a southern boundary length of 189.41 metres and an eastern boundary length of 269.75 metres, creating an overall site area of 60,690 m². The site has a 14 metre fall from the south-western corner to the north-eastern corner.
- 3.2. The land the subject of this 'Stage 3' application (previously referred to as Stage 4) of the Stage 1 Concept Plan approved in JRPP-15-01543 is located in the south-eastern corner of the overall site, is irregular in shape and has a total area of 10,466 m².
- 3.3. Site preparation works have been completed. An aerial image of the site and surrounding area and the latest plan of subdivision are at **attachment 2**.

4. Background

- 4.1. On 21 October 2011, the site was rezoned to R3 Medium Density Residential under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. The zoning and height of buildings plan for the site and surrounds is at **attachment 3**. The site was previously zoned 1(a) General Rural under *Blacktown Local Environmental Plan 1988*.
- 4.2. On 29 July 2015, Blacktown City Council approved DA-14-02306 for community subdivision into 3 community titles and staged construction of 62 attached 2 storey dwellings (with garages under), new roads, tree removal and stormwater infrastructure. This represented the first detailed application of the larger development site and was referred to as Stage 1 within the 'Concept Plan' approval under JRPP-15-01543.
- 4.3. On 15 July 2016, the NSW Land and Environment Court upheld a deemed refusal appeal and granted development consent to JRPP-15-01543 for a Stage 1 Concept Plan and Stage 2 Detailed Application under Section 83B of the *Environmental Planning and Assessment Act 1979* for the following development:

Stage 1 Concept Plan:

- Site and road layout.
- 9 residential building envelopes ranging from 2 to 8 storeys (referred to as Stages 1 to 5) containing 718 indicative dwellings comprising 656 apartments and 62 terrace houses.
- Community park.
- 76,608.9 m² of gross floor area (floor space ratio of 1.27:1).

Stage 2 Detailed Application:

- Subdivision of proposed Lot 3 into 2 lots.
- Extension of new north-south road along the north-eastern boundary.
- Construction of a part 5, part 6 and Part 7 storey residential flat building above 1 basement and 1 podium level car park.
- 134 residential apartments and 187 car parking spaces.
- 4,833 m² community park including a community building.

- 4.4. In granting consent to the above Stage 1 Concept Plan and subsequent Stage 2 detailed application, the Applicant's request to vary the height of buildings development standard was upheld by the Court. This approved a maximum height of 31 metres for Stage 3, the subject of this application, being 15 metres greater than that permitted by the SEPP (Sydney Region Growth Centres) 2006. The variation was granted based on a redistribution of the building heights and densities across the larger site, providing improved solar access and increased densities closer to Tallawong Railway Station (currently under construction).
- 4.5. It is noted that in the Land and Environment Court decision, the Commissioner agreed that a Building Height Offset Plan was acceptable provided there was no increase in density and the limited height of 2 to 3 storeys was enforced through a Voluntary Planning Agreement. This Voluntary Planning Agreement was agreed to by Council and the developer, was imposed as conditions of consent and executed.
- 4.6. On 23 March 2018, Section 4.56 modification application (MOD-17-00295 to JRPP-15-01543) was approved by Council to modify the building envelopes of Buildings D1 and D2 (the subject of this Stage 3 application). The approved amendments include:
 - Building D1: The 8 storey eastern and southern side components were modified to be staggered to 7, 8 and 9 storeys.
 - Building D1: The building separation was reduced from 24 metres to 20 metres between the northern 6 storey component and the southern 8 to 9 storey component of the building.
 - Building D2: The southern side portion of the building was reduced from 8 storeys and 7 storeys with mezzanine, to 7 storeys.
 - The building separation was reduced from 18 metres to 12 metres between Building D1 and Building D2.
 - The level of the centrally located landscaped podium was raised by 2.1 metres.
 - The indicative number of apartments was reduced from 236 to 215 due to the alterations to the building envelopes.
 - The indicative number of car parking spaces was reduced from 304 to 299 due to the alterations to the building envelopes.
- 4.7. The subject Stage 3 DA is consistent with the Stage 1 Concept Plan approval (JRPP-15-01543 as modified in MOD-17-00295) with regard to building footprint, basement footprint, scale and form, height, floor space ratio, solar access, natural ventilation, the number of dwellings, the number of car parking spaces, site coverage, communal open space, deep soil and landscaped area.
- 4.8. On 19 May 2017, DA-17-00299 was approved by Council for the subdivision of proposed Lot 5 under JRPP-15-01543 into 3 community title lots (including Lot 7 the subject of this application), road construction, retaining walls and associated works.

5. The proposal

- 5.1. This Development Application for residential flat buildings on part of 60 Cudgegong Road and 99-107 Rouse Road, Rouse Hill has been lodged by Sutherland and Associates Planning Pty Ltd.
- 5.2. The Applicant proposes the following staged works:
 - Construction of a part 6, part 7 and part 8 storey residential flat building (Building D1 and Building D2) containing 215 apartments above three basement levels containing 299 car parking spaces.

- Construction of an extension to both Roland Street and Torrelli Street along the boundaries of the site.
- 5.3. The Applicant also seeks staged construction as follows:
- Stage 1: Construction of basement 1, lower ground, upper ground (including cold shell for two apartments in the western linear building), and all of the eastern building for the levels above, including the podium landscaping.
 - Stage 2: Construction of the western building.
- 5.4. The proposal is consistent with the Stage 1 Concept Plan approved on this site (JRPP-15-01543).
- 5.5. Refer to **attachment 4** for further details of the proposal with regard to the Clause 4.6 requests to exceed the development standards for height of buildings and floor space ratio, as well as discussion relating to the dwelling mix, setbacks, trees, landscaping, communal and private open space, design verification, traffic, parking, acoustic impacts, contamination and remediation.
- 5.6. Refer to **attachment 5** for a copy of the development plans.

6. Assessment against planning controls

- 6.1. A full assessment of the Development Application against relevant section 4.15(1)(a) matters is provided at **attachment 6**.

7. Key issues

- 7.1. The proposed buildings exceed the maximum permitted building height
- 7.1.1 The proposal seeks to vary the building height by up to 15 metres above the permissible height limit of 16 metres, being a variation of 94 %.
- 7.1.2 The Applicant has submitted a written Clause 4.6 request (see **attachment 8**) to justify that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that consistency with the approved Stage 1 Concept Plan will result in a much better planning outcome. The Applicant's justification for contravening the development standard on environmental planning grounds is:
- Buildings and open space areas will receive more solar access.
 - There is no impact on views from the heritage listed Rouse Hill House Estate.
 - The variation of housing typology and scale generates a high level of visual interest and meets the housing needs of the community.
 - The modulation in the scale of the buildings in response to their location within the site achieves optimal environmental performance.
 - The varying building heights and undeveloped 3,173 m² 'Village Green' recreational facilities will facilitate a much better urban form outcome in comparison to a strictly complying scheme of a homogenous collection of 5 storey residential flat buildings over the entire site.
- 7.1.3 **Attachment 9** identifies our assessment of the adequacy of the request in deciding whether to grant concurrence to the variation to a development standard. There are sufficient environmental planning grounds to justify varying the development standard and we consider that the variation will not have

unreasonable impacts on the neighbouring properties or the character of the area. Given the development is underpinned by the Stage 1 Concept Plan approval (JRPP-15-01543 as amended) which enforces the maximum height of each building proposed over the entire the site, there is certainty that development on this site will achieve a much better planning outcome. It is also unique in that due to the size of the land and the scale of the Concept Plan the Applicant has been able to orientate the development to maximise sunlight, create an open space area and a desirable mix of low rise and high rise products. The Clause 4.6 variation request is considered reasonable and well founded in this particular circumstance and is recommended for support to allow flexibility in the application of the development standard.

- 7.1.4 The Applicant has offered to enter into a Voluntary Planning Agreement with Council as part of the Stage 1 Concept Plan approval issued by the Land and Environment Court not to support the Clause 4.6 height exceedances but rather to restrict the height of the low-rise residential units on the site. This Voluntary Planning Agreement will be executed and registered on the title of the land.
- 7.2. The proposed buildings exceed the maximum floor space ratio
 - 7.2.1 The maximum floor space ratio permitted on this site is 1.75:1. When calculated against the notional 10,466 m² site area for this stage, the proposed floor space ratio is 2.12:1 which exceeds this development standard. However, when calculated across the broader Stage 1 Concept Plan site area of 60,690 m², the FSR for all buildings is 1.27:1 and is consistent with the Stage 1 Concept Plan approval (JRPP-15-01543 as amended). Therefore the floor space ratio should be viewed in the context of the whole site.
 - 7.2.2 The Applicant has submitted a written Clause 4.6 request (see **attachment 10**) to justify that compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case. The Applicant's justification for contravening the development standard on environmental planning grounds is:
 - The gross floor area complies with the allocated gross floor area under the Stage 1 Concept Plan approval.
 - The proposal will deliver a high quality development that will increase the vibrancy of the Precinct whilst delivering a diversity of residential building typologies and scale.
 - The proposed distribution of built form and massing of the buildings across the overall site delivers a positive urban design outcome.
 - Apartments are provided with a high level of amenity.
 - The development provides the required provision of car parking and will have an acceptable impact on local traffic conditions.
 - There are no adverse impacts in terms of shadow, view, visual and acoustic privacy resulting from the variation to floor space ratio.
 - 7.2.3 **Attachment 11** identifies our assessment of the adequacy of the request in deciding whether to grant concurrence to the variation to a development standard. There are sufficient environmental planning grounds to justify varying the development standard and we consider that the variation will not have any adverse impacts on the neighbouring properties or the character and amenity of the area. Given the development is underpinned by the Stage 1 Concept Plan approval (JRPP-15-01543 as amended) which enforces the maximum floor space ratio for the entirety of the site, there is certainty that development on this site achieves a

better planning outcome in this unique situation. The Clause 4.6 variation request is considered reasonable and well founded in this particular circumstance and is recommended for support to allow flexibility in the application of the development standard.

8. Issues raised by the public

- 8.1. The proposed development was notified to property owners and occupiers within the locality between 30 May 2017 and 13 June 2017. The DA was also advertised in the local newspapers, including the Blacktown City Sun, and a sign was erected on the site.
- 8.2. Two submissions were received, from H/N 91 Rouse Road and H/Ns 44 56 Cudgegong Road which raised the following concerns:
 - Significant stress and financial hardship is being experienced as it has been difficult obtain tenants to rent the property at H/N 91 Rouse Road due to noise and air pollution caused by construction activities.
 - The Applicant has indicated that to construct the new road along the eastern boundary of the site shared with H/N 91 Rouse Road they will be building a 150 metre to 200 metre retaining wall along the boundary, new fencing above and a sediment control fence on the objector's property at H/N 91 Rouse Road for the duration of works. There has been little consultation from the Applicant and no financial compensation.
 - The property at H/N 91 Rouse Road comprises land zoned RE1 Public Recreation which is to be acquired by Blacktown City Council. The delay in the acquisition of this property is causing significant financial and emotional stress.
 - Additional information is required to enable better consideration of the shadow impact upon the adjoining property to the south and its future development at H/N 56 Cudgegong Road. The architectural plans submitted only illustrate the shadows cast the development within the subject site, without considering their impacts to the property to the south.
- 8.3. On 4 May 2018, updated shadow diagrams provided by the Applicant were forwarded to the submitter raising this concern. No response was received from this submitter.
- 8.4. Consideration of these issues and our response is in **attachment 7**.
- 8.5. The objections are considered to not warrant refusal of this Development Application.

9. External referrals

- 9.1. The Development Application was referred to the following external authorities for comment, with their comments summarised;

Authority	Comments
NSW Rural Fire Service	Acceptable subject to general terms of approval requiring the design and construction of buildings to withstand potential impacts of bush fire attack. RFS's response is deemed a bush fire safety authority as required under Section 100B of the <i>Rural Fires Act 1997</i> .
Roads and Maritime Services	Acceptable subject to conditions.
NSW Police	Acceptable subject to conditions.

Authority	Comments
Sydney Water Corporation	Acceptable subject to conditions.

10. Internal referrals

- 10.1. The Development Application was referred to the internal sections of Council and is considered acceptable.

11. Conclusion

- 11.1. The proposed development has been assessed against all relevant matters and is considered satisfactory. The likely impacts of the development have been satisfactorily addressed and the proposal is considered to be in the public interest. The site is considered suitable for the proposed development subject to conditions.

12. Recommendation

1. Approve Development Application SPP-17-00008 for the reasons listed below and subject to the conditions listed at **attachment 12**, as:
 - a. The proposal is in the public interest.
 - b. The site is considered suitable for the proposed development.
 - c. The requested Clause 4.6 variations are acceptable in these unique circumstances.
2. Uphold the Applicant's written request to vary the height of buildings development standard in Clause 4.3 of *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* using Clause. See **attachment 9** for justification.
3. Uphold the variation to the floor space ratio development standard in Clause 4.4 of *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* using Clause 4.6. See **attachment 9** for justification.
4. The Applicant and submitters be notified of the Planning Panel's decision.



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