

Report to Sydney Central City Planning Panel

Panel reference	2017SWC084 DA
DA number	SPP-17-00015
Proposed development	Construction of 1 x 4 storey residential apartment building and 3 x 5 storey residential apartment buildings, with a total of 128 residential units and 169 car parking spaces within 2 basement levels
Street address	Lots 205 & 206 DP1189773, Nos. 17-19 Schofields Road, Schofields
Applicant/owner	Clearstate Development Co Pty Ltd
Date of DA lodgement	26 June 2017
Number of submissions	Nil – not notified
Regional development criteria (Schedule 4A of the EP&A Act)	Capital investment value (CIV) over \$20 million (DA has a CIV of \$41,328,730 million)
All relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • 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 • State Environmental Planning Policy (Sydney Region Growth Centres) 2006 • Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River • Blacktown City Council Growth Centre Precincts Development Control Plan 2010
Report prepared by	Blacktown City Council
Report date	21 December 2017
Recommendation	Refusal

Summary of s79C matters

Have all recommendations in relation to relevant s79C 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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (s94EF)? Yes

Conditions

Have draft conditions been provided to the applicant for comment? N/A

CONTENTS

1	Executive summary.....	2
2	Key issues list.....	2
3	Location.....	3
4	Site description.....	3
5	Background.....	3
6	The proposal.....	4
7	Assessment against planning controls.....	5
8	Key planning issues assessment.....	5
9	Issues raised by the public.....	7
10	External referrals.....	7
11	Internal referrals.....	9
12	Conclusion.....	10
13	Recommendation.....	10

ATTACHMENTS

- Attachment 1 – Location map
- Attachment 2 – Aerial Image and site photographs
- Attachment 3 – Land zoning map
- Attachment 4 – DA architectural plans
- Attachment 5 – Assessment against planning controls

1 Executive summary

- 1.1 This report considers a proposal to construct 4 x 4/5 storey residential apartment buildings containing 128 units at Lots 205 & 206 in DP1189773, known as 17-19 Schofields Road, Schofields.
- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments have raised major concerns with the proposal in relation to the location of the future railway corridor and flood mitigation measures associated with a relocated drainage area (SP2 zone). The proposal also seeks to vary the building height for the site.
- 1.3 The location of the residential flat buildings within a 'transport corridor investigation area' earmarked under the SEPP (Sydney Region Growth Centres) for future public transport use is not supported and concurrence is not granted by Transport for NSW for this purpose.
- 1.4 The application is therefore unsatisfactory when evaluated against Section 79C of the Environmental Planning and Assessment Act 1979.
- 1.5 This report recommends that the Panel refuse the application.

2 Key issues list

- 2.1 The key issues that need to be considered by the Panel in respect of this application are:
 - a. SEPP Sydney Region Growth Centres – Rail corridor encroachment (Section 8)
 - b. Drainage SP2 zoned land (Section 8)
 - c. The height of the development in relation to the Railway corridor (Section 8).

3 Location

- 3.1 The site is located at 17-19 Schofields Road, Schofields on the corner of Junction Road within the North West Priority Growth Area as identified by the Growth Centres SEPP. It is located within the suburb of Schofields and is currently characterised by a mix of rural and semi-rural land parcels with some newer medium density development to the north-east of the site.
- 3.2 The location of the site is shown in **Attachment 1**. The land immediately to the north, west and east of the site is zoned R3 Medium Density Residential, with a building height limit of 16 m. The land that adjoins the site to the south is zoned SP2 Infrastructure (Drainage) and a future railway corridor investigation area transects the southern portion of the larger site, falling entirely within proposed Lot 2052 (the subject site).
- 3.3 The site is located approximately 800 m north-east of Schofields Station on the Richmond Railway Line. Part of the land between the site and Schofields Station has been identified as a neighbourhood centre.

4 Site description

- 4.1 The site is located at the intersection of Schofields Road and Junction Road and is a large land parcel currently occupied by a dwelling, outbuildings and associated structures consistent with its semi-rural location.
- 4.2 The whole site comprises Lot 205 (8,682 m²) and Lot 206 (8,098 m²) within DP1189773. The portion of the site on which the buildings are proposed relates to proposed Lot 2052, which has a total site area of 9003 m². Proposed Lot 2051 is retained in the northern portion of the site with an area of 7,783 m².
- 4.3 An aerial image of the site and photos of the surrounding area is provided at **Attachment 2**.

5 Background

- 5.1 On 17 May 2010, the site was rezoned to R3 Medium Density Residential and SP2 Infrastructure (Drainage) under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The zoning plan for the site and surrounds is at **Attachment 3**. The site was previously zoned 1(a) General Rural under the Blacktown Local Environmental Plan 1988.
- 5.2 On 21 June 2016, the application was initially presented to Council staff at a pre-application meeting (PAM Number: C16/25350) where a number of issues were raised in relation to the concept design, impact upon the rail corridor, drainage easement and floor space ratio. It was advised by Council that it was highly likely that Council would refuse any conceptual DA that involved development within the Transport Corridor Investigation Area.
- 5.3 On 3 August 2017, the application was considered at a Briefing Meeting by the Sydney Central City Planning Panel, when both the Panel and Council agreed that alternate uses cannot be accepted at this time given the earmarking of part of the site to be a transportation corridor (or investigation area) under the SEPP. Following responses to referrals, the proposal was to be recommended for refusal.

6 The proposal

- 6.1 The Development Application (DA) has been lodged by Clearstate Development Co. Pty Ltd for the construction of 1 x 4 storey residential apartment building and 3 x 5 storey residential apartment buildings, with a total of 128 residential units and 169 car parking spaces within 2 basement levels.
- 6.2 A new vehicle access point is proposed to Junction Road, on the eastern side of the development.
- 6.3 An existing 3,150 m² drainage easement (SP2 zoned land) is proposed to be relocated within the site but would retain the same area. No Planning Proposal has been submitted by the applicant seeking to amend the Growth Centres SEPP in relation to the location of the SP2 zoned land and no assessment of the flood impacts of the proposed development encroaching into the flood prone land and onto the SP2 drainage zoned land has been submitted. The submission includes no details of the proposed riparian works and associated design flood levels and therefore required floor levels cannot be determined.
- 6.4 The maximum building height of the development is 16.4 m. The development exceeds the height limit by 200 – 400 mm over only limited portions of the buildings, above the maximum height limit of 16 m under the Growth Centres SEPP. The applicant requests a variation to the development standard as the height non-compliance is minor and is not legible when viewed from the street level. The maximum variation sought is equivalent to 1.25 - 2.5% variation to the development control.
- 6.5 The applicant states that the proposal has an FSR of 1.243:1, which is compliant with the maximum FSR of 1.75:1 permissible on the site under the Growth Centres SEPP. However, the site area used to calculate the FSR includes the land falling within SP2 and RE1 zoned land, which should be excluded from the site area calculation, noting that Clause 4.5 of Appendix 4 of the SEPP 'Calculation of floor space ratio and site area' states that:
 - (4) *Exclusions from site area*
The following land must be excluded from the site area:
 - (a) **land on which the proposed development is prohibited**, whether under this Precinct Plan or any other law,
 - (b) *community land or a public place (except as provided by subclause (7)).*

Given that residential apartment buildings are prohibited on RE1 and SP2 zoned land, a reduced site area of 7,088 m² applies and the proposal would therefore result in an FSR of 1.57:1. This would still comply with the maximum FSR for the site of 1.75:1.
- 6.6 The proposal provides for 6 m setbacks to both Schofields Road and Junction Road and a setback of 6 m to the adjoining R3 zoned land identified as Lot 2051. The building has setbacks of 6 m at ground level increasing to 12 m to the upper floors to the western elevation of Block D.
- 6.7 All the buildings are located within a proposed Transport Corridor Investigation Area identified on the Growth Centres SEPP and the application was referred to Transport for NSW for concurrence. Concurrence has not been granted by Transport for NSW.
- 6.8 A Design Verification Statement prepared by Architex has been prepared for the development in accordance with the requirements of SEPP 65.
- 6.9 A copy of the Architectural Plans is located at **Attachment 4**.

7 Assessment against planning controls

7.1 A full assessment of the Development Application against relevant planning controls is provided in **Attachment 5**, 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. State Environmental Planning Policy (Sydney Region Growth Centres) 2006
- h. State Environmental Planning Policy No. 20 – Hawkesbury-Nepean River
- i. Draft Central City District Plan
- j. Blacktown City Council Growth Centre Precincts Development Control Plan 2016.

8 Key planning issues assessment

8.1 Works within the Transport Corridor Investigation Area

State Environmental Planning Policy (Sydney Region Growth Centres) 2006 identifies the site within the R3 Medium Density Residential zone upon which residential apartment buildings are permitted with consent. The site is also affected by the Transport Corridor Investigation Area as shown on the extract of the Land Zoning Map Sheet LZN_005 below at Figure 1.

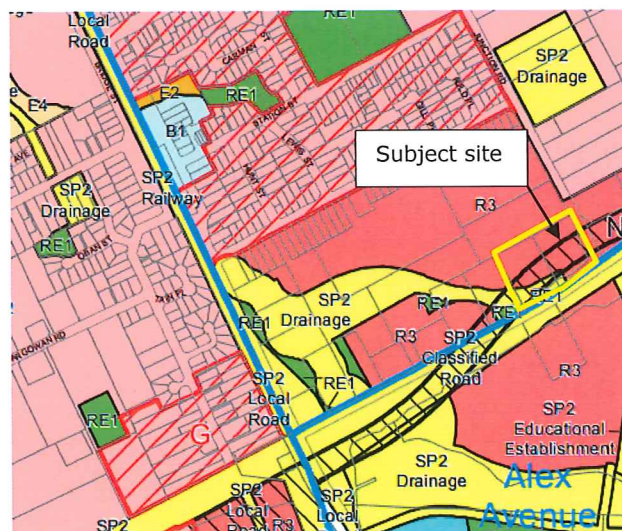


Figure 1: Extract of Land Zoning Map showing location of Transport Corridor Investigation Area

The impact of the Transport Corridor Investigation Area in respect to the subject application is that any proposal for development on the site must receive concurrence from Transport for NSW as required by Clause 6.10 within Appendix 4 of the SEPP 'Alex Avenue and Riverstone Precinct Plan' which states as follows:

6.10 Development of land within or adjacent to public transport corridor

- (1) Consent must not be granted to development in the area marked "N" on the Land Zoning Map without the concurrence of Transport for NSW.
- (2) In determining whether to provide concurrence, Transport for NSW is to take into account the likely effect of the development on:
 - (a) the practicability and cost of carrying out public transport projects on the land in the future, and
 - (b) without limiting paragraph (a), the structural integrity or safety of, or ability to operate, public transport projects on the land in the future, and
 - (c) without limiting paragraph (a), the land acquisition costs and the costs of construction, operation or maintenance of public transport projects on the land in the future.

The application was referred to Transport for NSW on 30 June 2017. A response was provided by Transport for NSW advising that concurrence is not provided for the development. Based on this decision the Panel, pursuant to Clause 6.10(1) of State Environmental Planning Policy (Growth Centres SEPP) 2006, must not grant consent to the development and consequently refusal is recommended.

8.2 Relocation of the SP2 zoned land

The other major component of the applicant's submission is to relocate the existing SP2 zoned land identified for drainage, to better respond to the site configuration. The SP2 land currently has an area of 3,150 m² which is not proposed to change as part of the proposal, although it is redistributed within the site as shown on the site plan below at Figure 2.

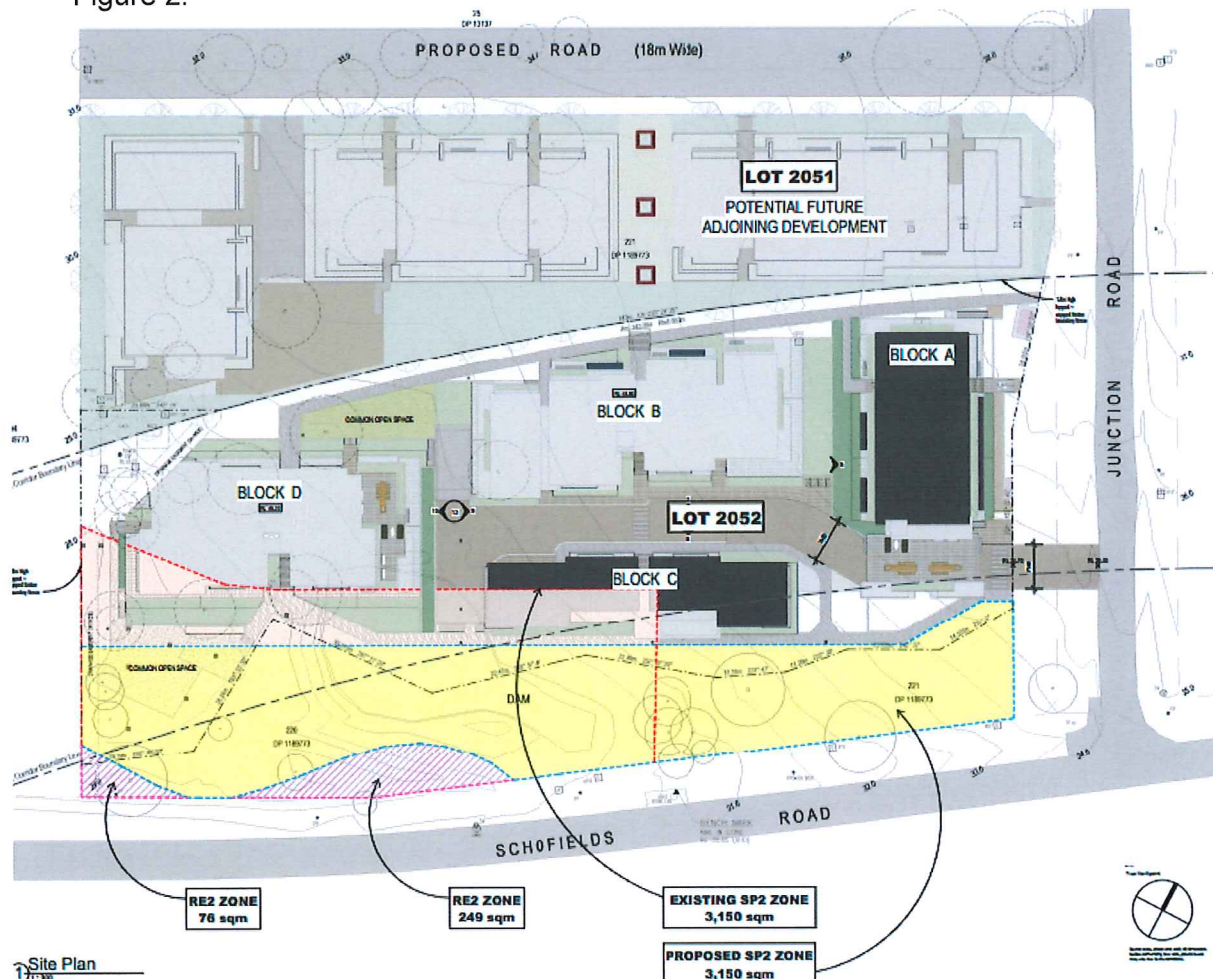


Figure 2: Site plan illustrating location of existing and proposed SP2 zoned land

Council's Strategic Planning Unit has advised that any proposed change to the SP2 zone would require the applicant to submit a request for a Planning Proposal seeking to amend the Growth Centres SEPP as it applies to the site. No request has been made to Blacktown City Council in relation to the rezoning of the land to accommodate the proposed changes. In addition, Council's Asset Design Section has advised that there is no information submitted with the DA to support relocation of the drainage area and no assessment of the flood impacts of the proposed development encroaching into the flood prone land and onto SP2 Drainage zoned land.

The submission provides no plans of the proposed riparian works and associated design flood levels and therefore required floor levels cannot be determined. The additional information has not been requested from the applicant, given that proposed work within the Transport Corridor Investigation Area cannot be resolved and progressed.

8.3 Height variation

The applicant has submitted a Clause 4.6 variation in relation to Clause 4.3 of the SEPP relating to Height of Buildings, as the proposal exceeds the maximum building height of 16 m with a height of 16.2-16.4 m. The height non-compliances predominantly result from lift overruns and access to rooftop communal open space. A detailed assessment of the Clause 4.6 variation has not been undertaken as the proposal fails to meet fundamental site development requirements relating to the Transport Corridor Investigation Area and SP2 zoned land.

While the height may not have been used as a reason for refusal in relation to built form and character considerations, advice from Transport for NSW (TfNSW) indicates that the height of the development exceeds the height of the proposed rail track above existing ground level. TfNSW therefore does not consider the proposed development, as documented, can satisfy TfNSW railway protection requirements and therefore the height variation is not supported.

9 Issues raised by the public

- 9.1 The proposal was identified for refusal at an early stage due to the location of the development within a Transport Corridor and, consequently, the proposed development was not notified to property owners and occupiers within the locality.

10 External referrals

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

Section	Comments
Transport for NSW (TfNSW)	<p><u>Concurrence not granted</u></p> <p>The proposal will encroach within the future railway or transport corridor. The height of development exceeds the height of the proposed rail track above existing ground level. TfNSW therefore does not consider the proposed development, as documented, can satisfy TfNSW railway protection requirements.</p> <p>Based on the above, concurrence pursuant to Clause 6.10 of Appendix 4 of State Environmental Planning Policy (Growth Centres) 2006 ("Growth Centres SEPP") is not provided for the above development. It is recommended that the applicant consult with TfNSW before submitting to Council revised or new documentation, which comprehensively assesses the impacts of the development proposal on the Transport Corridor.</p>

Section	Comments
Roads and Maritime Services (RMS)	<p><u>Support subject to conditions, pending TfNSW response</u></p> <ol style="list-style-type: none"> 1. RMS has previously acquired an area of land (Lots 220 and 221 DP 1189773) as road along the Schofields Road frontage of the property. All buildings and structures, together with any improvements (including tree planting) integral to the future use of the site, are to be wholly within the freehold property (unlimited in height or depth), along the Schofields Road boundary. 2. The proposed changes to the property boundary are not to affect land acquired by RMS. 3. Access is denied across the property boundary to Schofields Road. 4. Any access arrangements from within the Schofields Road upgrade or any impact on the Schofields Road upgrade are to be co-ordinated through the RMS Project Team while the Schofields Road Stage 2 upgrade is being constructed. If access is required, this will need to be coordinated with Roads and Maritime's contractor for the upgrade to ensure there is no impact or liability issues arising from this access requirement. Additionally, any developers wishing to enter the Schofields Road Stage 2 upgrade will be required to complete a full site induction prior to accessing the site. 5. The applicant should also note that new services have been installed along the Schofields Road and Junction Road alignments. These will not be available on Dial Before You Dig and can be obtained by contacting the RMS Project Team. 6. Any noise mitigation works (including foundations) required for the proposed development need to be contained fully within the developer's land, at the developer's cost. 7. Council should ensure that post the development any changes to the stormwater drainage system are to be submitted to RMS for approval, prior to the commencement of any works. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted for approval, prior to the commencement of any works. 8. A Road Occupancy Licence should be obtained from the Transport Management Centre for any works that may impact on traffic flows on Schofields Road during construction activities. 9. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Schofields Road. 10. The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement. 11. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate. 12. Any temporary and/or permanent relocation of utility services adjacent to the Roads and Maritime road corridor requires prior consultation and

Section	Comments
	<p>approval from Roads and Maritime Services.</p> <p>13. The development application should be referred to TfNSW for comment. Council should confirm that the proposed development is not affected by the potential future extension of the Sydney Metro Northwest rail link.</p>
NSW Police	<p>NSW Police are not satisfied that all the CPTED principles have been met in relation to the mailbox facilities, car parking facilities, access and control, fencing, lighting and CCTV. The Police would like adjustments made to the design of the development and Police are seeking further information in relation to certain measures. The requested further information has not been sought given the circumstances of the proposed refusal.</p>

11 Internal referrals

11.1 The DA was referred to the internal sections of Council and objections were received as detailed below:

11.2 Engineering

The site contains part of CP20 item E8.5. This item is riparian land for which the CP only includes land acquisition costs. It is the responsibility of the developer to rehabilitate the existing watercourse as part of the development works as riparian works are not on the 'essential works list' for Section 94 infrastructure.

The submission does not address the flooding controls of the DCP as there is no assessment of the flood impacts of the proposed development encroaching into the flood prone land and onto SP2 drainage zoned land.

The submission provides no plans of the proposed creek works and associated design flood levels and therefore required floor levels cannot be determined.

Submission of a Planning Proposal would be required if this proposed layout was to be considered further, as buildings are proposed on SP2 zoned land.

Recommendation

The application cannot be assessed or determined based on the information provided and therefore should be refused.

11.3 Strategic Planning

The proposed development is within the Transport Corridor Investigation Area nominated on the Growth Centres SEPP LZN Map. The purpose of the transport corridor overlay is to reserve land for a future public transport use. Strategic Planning does not support the proposed development within the transport corridor overlay area. The proposal must be referred to TfNSW for concurrence.

Any proposed change to the SP2 zone would require the applicant to submit a request for a Planning Proposal seeking to amend the Growth Centres SEPP as it applies to the site.

11.4 Access and Traffic Management

Council's Traffic Section does not support the proposed development within the Transport Corridor area. The proposal must be referred to TfNSW for concurrence.

11.5 Waste

Insufficient information provided. The applicant is required to:

- Demonstrate the truck travel path on an amended plan
- Provide amended plans showing truck swept paths for Council's 11 m long, heavy rigid vehicle
- Amend the waste management plan
- Provide plans showing all truck travel paths.

The requested further information has not been sought given the recommendation of this report.

12 Conclusion

- 12.1 The proposed development has been assessed against all matters for consideration and has been found to be unsatisfactory.
- 12.2 The location of the proposed buildings within the Northwest Transport Corridor undermines the potential of the future railway corridor as identified in the Growth Centres SEPP and therefore Transport for NSW does not provide its concurrence to the proposed development.
- 12.3 In addition, the relocation of the SP2 (Drainage) zoned land has not been the subject of a Planning Proposal seeking to amend the Growth Centres SEPP. The Development Application does not provide information to support the relocated drainage easement and flood control measures and this is contrary to the requirements of the Blacktown City Council Precincts Development Control Plan.

13 Recommendation

- 13.1 The Sydney Central City Planning Panel refuse Development Application No. 17-00015 for the following reasons:
1. Transport for New South Wales has not granted concurrence to the proposal as all the buildings are proposed over land identified as 'Transport Corridor Investigation Area' pursuant to Clause 6.10 'Development of land within or adjacent to public transport corridor' contained within Appendix 4 'Alex Avenue and Riverstone Precinct Plan' of State Environmental Planning Policy (Sydney Region Growth Centres) 2006. In addition, the height of the development exceeds the height of the proposed rail track above existing ground level.
 2. The proposal is contrary to the Clause 1.2 (h) 'Aims of Precinct Plan' of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 which seeks to provide transport infrastructure to meet the needs of the community. The location of buildings within the 'Transport Corridor Investigation Area' is premature and has the potential to undermine the orderly development of the Precinct and growth area and is therefore contrary to Clause 4 of Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River.
 3. The application seeks to relocate SP2 (Drainage) zoned land without a Planning Proposal, which is contrary to Section 55 of the Environmental Planning and Assessment Act 1979.

4. The proposal does not address the flooding control requirements contained within Part 2.3.1 'flooding and water cycle management' of the Blacktown City Council Growth Centre Precincts Development Control Plan, as the proposal does not include an assessment of the flood impacts of the proposed development encroaching into the flood prone land and onto the land zoned SP2. The application cannot be assessed or determined based on the inadequate information provided.
 5. The proposed development does not promote the orderly development of land in accordance with the objectives of the Environmental Planning and Assessment Act 1979.
 6. The proposal is unacceptable pursuant to the provisions of Section 79C(c) of the Environmental Planning and Assessment Act 1979 in that the development is located entirely within a 'Transport Corridor Investigation Area' under SEPP (Sydney Region Growth Centres) 2006 which, if developed prematurely, would jeopardise transport services within a Growth Area, which is not in the public interest.
- 13.2 The applicant be advised of the decision and of their right of appeal to the Land and Environment Court.
- 13.3 Transport for New South Wales (TfNSW), Roads and Maritime Services (RMS) and the NSW Police Force be notified of the Sydney Central City Planning Panel decision.


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