

# Assessment report to Sydney Central City Planning Panel

Panel reference: 2017SWC134

<b>DA number</b>	SPP-17-00010	<b>Date of lodgement</b>	31 May 2017
<b>Applicant</b>	Michael Bugden		
<b>Owner</b>	M Metro Award Rouse Hill Pty Ltd and CDMA Australia Pty Ltd		
<b>Proposed development</b>	8 residential flat buildings and 2 townhouse buildings		
<b>Street address</b>	44 and 56 Cudgegong Road, Rouse Hill		
<b>Notification period</b>	15 to 29 August 2017	<b>Number of submissions</b>	None

## Assessment

**Panel criteria**  
(Schedule 7, SEPP  
(State and Regional  
Development) 2011

Capital investment value (CIV) over \$20 million (DA has CIV of \$187.7 million).

**Relevant section**  
**4.15(1)(a) matters**

- 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
- Draft planning agreement for SPP-17-00010 that the developers have offered to enter into under section 7.4 of the EP&A Act 1979
- Environmental Planning and Assessment Regulation 2000, Regulation 92

<b>Report prepared by</b>	Holly Palmer, Senior Project Planner
<b>Report date</b>	18 June 2018
<b>Recommendation</b>	Approve, subject to a deferred commencement consent and including conditions listed in attachment 10.

## Attachments

1. Location map
2. Aerial image
3. Zoning and height of buildings extract
4. Detailed information about proposal and DA submission material
5. Development application plans
6. Assessment against planning controls
7. Applicant's Clause 4.6 request
8. Council assessment of Clause 4.6 request
9. Approved subdivision plans
10. 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

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- 1.1 This report considers a Development Application (DA) for the construction of 8 residential flat buildings and 2 townhouse complexes comprising 711 apartments, 1,057 car parking spaces in 3 basement levels and associated landscaping, new road construction and stormwater drainage works at 44 and 56 Cudgegong Road, Rouse Hill.
- 1.2 The key issues that need to be considered by the Panel in respect of this application are:

- 1.2.1 **Building height variation** - The proposal provides for the 'redistribution of building mass' which caters for the height of buildings to be exceeded for the 8 and 10 storey residential flat buildings whilst also providing substantially lower 2 and 3 storey townhouse style building forms. The building heights range from 8 metres to 33 metres. The Applicant seeks a building height variation of up to 27.3%. On its own, the Applicant's Clause 4.6 request to vary this development standard is insufficient to address the proposed height breach.

The application is accompanied by a letter of offer from the Applicant to enter into a Voluntary Planning Agreement with Council to establish a series of maximum building height levels throughout the development site. The intent of the Voluntary Planning Agreement is to provide certainty in relation to the planning outcomes for the site and surrounding area, and to ensure that the building envelopes remain as approved and are not varied by later applications to create greater or uncertain impacts on the surrounding locality and community space proposed. This ensures that there is no further development on this site which will generate additional building mass and height, and result in overdevelopment.

We consider the Applicant's offer to enter into a Voluntary Planning Agreement to enforce maximum building height levels on the site to be an appropriate development outcome. On the basis of the Voluntary Planning Agreement, we support the Clause 4.6 request to the proposed height variation.

- 1.2.2 **Street setbacks** – The Applicant seeks a reduced street setback for the majority of private balconies and architectural design features above the third level. The DCP requires a minimum setback of 6 metres. The proposal provides a setback of 4.5 metres. Although the full extent of the street setback isn't achieved, the proposal offers an interesting and high quality streetscape presentation which is considered satisfactory on its merits.

It is noted that the Apartment Design Guide does not include a numerical requirement for street setbacks, and directs that consideration is to be given to providing articulation zones accommodating space for building entries, ground floor courtyards, balconies, landscaping and deep soil zones. The proposal is consistent with these guidelines.

- 1.2.3 **Road verge width adjoining the future public reserve** – The Applicant seeks to provide a reduced road verge width of 1 metre along the north-eastern and eastern boundaries which adjoin the future public reserve zone. The DCP requires a road verge width of 3.5 metres. The Applicant has demonstrated that the treatment and grades between the road and future public reserve are appropriate and provide a safe outcome for the public. The reduced road verge width is endorsed by our Development Engineers, Design Engineers and Recreation Planning and Design Section.

- 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 The Applicant's request to vary the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* development standard for height of buildings has been assessed, being a variation of up to 7.1 metres above the permissible height limit of 26 metres. On its own, the Applicant's Clause 4.6 request to vary this development standard is not considered satisfactory to address the proposed height breach. To provide certainty that any further later development on this site will not result in increased building height, massing and density, we consider the Applicant's offer to enter into a Voluntary Planning Agreement to apply maximum building height levels across the site to be an appropriate outcome, and is necessary to support the Clause 4.6 variation. Council is willing to accept this offer to enter into a Voluntary Planning Agreement subject to the Panel's approval of this DA. This Voluntary Planning Agreement is being prepared for public exhibition and execution.
- 1.5 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 residential development subject to conditions.
- 1.6 The application is considered satisfactory when evaluated against section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- 1.7 This report recommends that the Panel support the use of the Clause 4.6 request to vary a development standard in this instance, given the uniqueness of the offset proposal that is reinforced in a Voluntary Planning Agreement and a restriction on title, and so approve the application subject to the recommended conditions, including a deferred commencement condition that the Applicant execute the Voluntary Planning Agreement for the site's building height limits with Council.

## 2 Location

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- 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 Area as identified by *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP). The site is to the north of the Sydney Metro Northwest rail link. The future Local Centre and Tallawong Railway Station are to the south-west on the opposite side of Cudgegong Road. The location of the site is shown in **attachment 1**.
- 2.2 The majority of the site and the land to the north and south is zoned R3 Medium Density Residential. The site and the land to the south have a permitted building height of 26 metres. The land to the north has a permitted building height of 16 metres.
- 2.3 The eastern part of the site and adjoining sites form the Second Ponds Creek riparian and drainage corridor and is zoned RE1 Public Recreation and SP2 Local Drainage, and is subject to future Council acquisition. This application seeks to carry out works which are greater than 40 metres from this watercourse.
- 2.4 The proposed nearby Local Centre is located on land immediately to the west on the opposite side of Cudgegong Road and is zoned B2 Local Centre and B4 Mixed Use, with a permitted building height of 26 metres. An aerial image of the site and surrounding area is at **attachment 2**.



### 3 Site description

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- 3.1 The 2.05 hectare site is generally rectangular in shape and is currently registered as Lots 117 and 118 in DP 208203. The portion of the site which is zoned for residential purposes slopes up to 14.8 m from the western corner of the site to the east.
- 3.2 The site has road frontage to Cudgegong Road. Due to current works to raise and upgrade Cudgegong Road over the Sydney Metro Northwest rail link, the level of Cudgegong Road has been raised by approximately 3.5 metres in the vicinity of the subject site and the adjoining site to the south, 38 Cudgegong Road. To cater for this change in levels, retaining structures have been constructed along the western boundary of this site and 38 Cudgegong Road. As a result, vehicular access to 38 Cudgegong Road is provided through this site.
- 3.3 The site is generally cleared with scattered vegetation. There is a dwelling house, 4 sheds, 3 water tanks and 3 dams at 44 Cudgegong Road. There is a dwelling house, shed, 2 water tanks and a dam at 56 Cudgegong Road.
- 3.4 The site contains a 123 kV high voltage overhead power line located on part of the western portion of the site, with an easement of a width of up to 20.4 metres associated with Endeavour Energy's nearby Rouse Hill Switching Station at 83 Schofields Road, Rouse Hill (at the corner of Cudgegong Road).
- 3.5 An aerial image of the site and surrounding area is at **attachment 2**.

### 4 Background

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- 4.1 On 21 October 2011, the site was rezoned to R3 Medium Density Residential and RE1 Public Recreation under the Growth Centres SEPP. The zoning and height of building plans for the site and surrounds is at **attachment 3**.
- 4.2 On 9 February 2018 we approved DA-17-02741 to construct the temporary road access from Cudgegong Road, through this site and to Herman Crescent at the adjoining site to the south, 38 Cudgegong Road. These works are being undertaken by Northwest Rapid Transit (NRT), being the operations, trains and systems contractor acting on behalf of Transport for NSW. This approval also included demolition of existing structures and civil works, including site preparation, clearing, tree removal and bulk earthworks.
- 4.3 On 16 March 2018, JRPP-15-02108 was approved by the Sydney Planning Panel for 4 x 8 storey residential flat buildings comprising 295 apartments on the adjoining site to the south at 38 Cudgegong Road, Rouse Hill. This application benefits from the temporary access road being provided by NRT.
- 4.4 On 10 May 2018, we approved DA-17-02743 for subdivision into 4 Torrens title lots and 2 residue lots, removal of trees (with the exception of the majority of trees within the portion of the site zoned RE1 Public Recreation at the eastern portion of the site), removal of dams, construction of new public roads, earthworks and other civil works in 2 stages. The approved staged subdivision plans are at **attachment 9**.
- 4.5 On 24 April 2018, the Applicant lodged DA-18-00697 for further site preparation works, including bulk earthworks, basement excavation and service utility connections. This application is currently under assessment.
- 4.6 The works the subject of these applications are consistent with this application. Therefore, the works the subject of this application are wholly contained within new residential lots 1, 2, 5 and 6 approved in DA-17-02743.

- 4.7 At the time of writing, the Applicant is demolishing the existing building structures on the site and removing associated asbestos and contaminated materials.

## 5 The proposal

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- 5.1 The Development Application for residential flat buildings and townhouse buildings at 44 and 56 Cudgegong Road, Rouse Hill has been lodged by Michael Bugden.
- 5.2 The Applicant proposes to construct 16 x 2 storey townhouses, 7 x 3 storey townhouses, 6 x 8 storey residential flat buildings and 2 x 10 storey residential flat buildings, comprising a total of 711 dwellings, 1,057 car parking spaces with 3 basement levels and associated landscaping, new public road construction and stormwater drainage works.
- 5.3 The application is accompanied by a letter of offer from the Applicant to enter into a Voluntary Planning Agreement with Council to establish a series of maximum building height levels throughout the development site through a building mass redistribution scheme, so as to create a varied scale of buildings being 2, 3, 8 and 10 storeys. The intent of the Voluntary Planning Agreement is to provide a guaranteed height limit in relation to the planning outcomes for the site and surrounding area, and to ensure that the building envelopes remain as approved and are not varied to create greater or uncertain impacts on the surrounding locality and community space proposed. This ensures that there is no further development on this site which will generate additional building mass and height, and result in an overdevelopment of the site. We consider the Applicant's offer to enter into a Voluntary Planning Agreement, to enforce maximum building height levels on the site, to be an appropriate development outcome. This Voluntary Planning Agreement will remain on the property title and in Council's Voluntary Planning Agreement register as a record of the revised and agreed height limits.
- 5.4 Refer to **attachment 4** for further details of the proposal with regard to the Clause 4.6 request to exceed the development standard for height of buildings and their offer to enter into a Voluntary Planning Agreement, and details about floor space ratio, dwelling mix, setbacks, trees, landscaping, communal and private open space, design verification, traffic, parking, acoustic impacts, contamination and remediation.
- 5.5 Refer to **attachment 5** for a copy of the development plans.

## 6 Assessment against planning controls

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

## 7 Key issues

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### 7.1 Proposed buildings exceed the maximum permitted building height

- 7.1.1 The proposal provides for the 'redistribution of building mass', which caters for the height of buildings to be exceeded for the 8 and 10 storey residential flat buildings and compensating for this by providing substantially lower 2 and 3 storey townhouse style building forms in other parts of the site. Compared to a series of 8 storey residential flat buildings across the whole site, this application seeks to provide building heights ranging from 8 metres to 33.1 metres, while the designated height plane for this site is 26 metres. The Applicant seeks a building height variation of up to 7.1 metres or 27.3%. Refer to **attachment 4** for details of the extent of the variation for each building.



7.1.2 The Applicant has submitted a written Clause 4.6 request (see **attachment 7**) to justify that compliance with the height development standard is unreasonable and unnecessary in this instance. The Applicant's justification for supporting the variation is that it results in planning benefits, such as:

- The proposal provides greater amenity for its residents with regard to solar access and building separation.
- The proposed apartment and townhouse dwelling types provide greater housing diversity.
- The maximum height of the proposed eastern buildings will not exceed the maximum height of the proposed western buildings. Therefore, the buildings will appear as a consistent skyline and scale.
- The height exceedance would only have a minor overshadowing impact on the adjoining property to the south, with a net overall benefit from the building mass redistribution.
- The proposal generally complies with other provisions of the Growth Centres SEPP, SEPP 65 and the Growth Centre Precincts Development Control Plan.

7.1.3 **Attachment 8** identifies our assessment of the relevant Land and Environment Court matters for a consent authority to take into consideration when deciding whether to grant concurrence to the variation to a development standard.

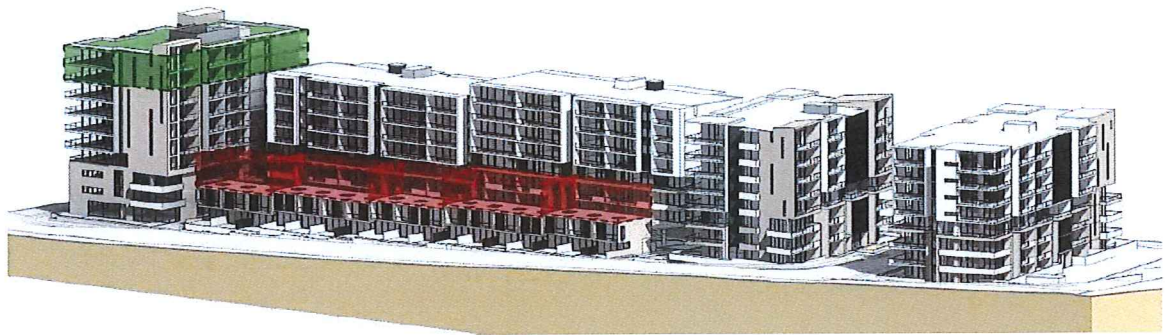
7.1.4 On its own, the Applicant's Clause 4.6 request to vary the height development standard is insufficient to address the proposed height breach. Given the scale of the development and the importance of its location, the Applicant and Council agreed to impose a restriction on the heights of the development so as to provide a public benefit associated with certainty of planning outcomes for the land, and impacts on the adjoining property to the south and the public space to the east.

7.1.5 This is to ensure that the building envelopes remain as approved in the future and are not varied by separate applications to create greater or uncertain impacts on the surrounding locality and community space proposed.

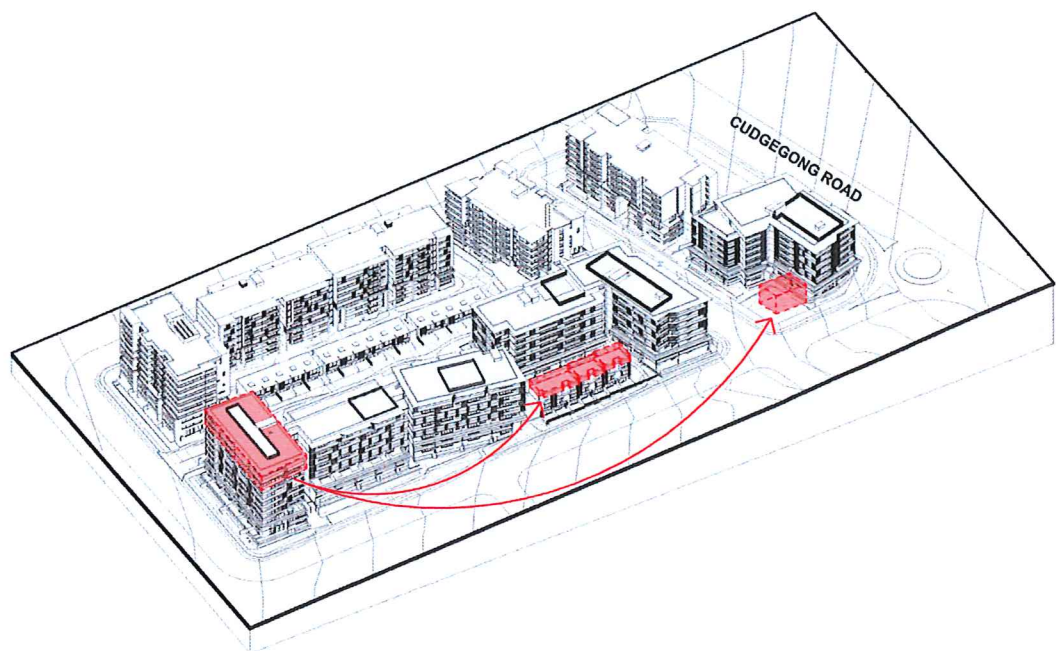
7.1.6 To provide certainty that there will not be any further development on this site which will increase the building height, massing and density and result in its overdevelopment, we consider the Applicant's offer to enter into a Voluntary Planning Agreement (VPA) to enforce maximum building height levels on the site to be an appropriate outcome. On this basis, the proposed height is supported in this instance.

7.1.7 There are sufficient environmental planning grounds to justify varying the development standard, subject to the VPA, and we consider that the variation will not have unreasonable impacts on the neighbouring properties or the character of the area. Also, the variation to the height limit will result in a better planning outcome for the future residents. Important considerations to note include that:

- The increase in height does not impact on the density of the development as demonstrated in the following massing study plans.



**Figure 1:** Massing model for 44 Cudgegong Road (the southern site) of the proposed development, demonstrating that the 2 additional storeys (consisting of 14 apartments) to the eastern Building D (shown in green) have been redistributed/reallocated from the centrally located 2 storey Building E (shown in red).



**Figure 2:** Massing model for 56 Cudgegong Road (the northern site) of the proposed development, demonstrating that the 2 additional storeys (consisting of 10 apartments) to the Building E (left of the image) have been redistributed/reallocated from the centrally located 3 storey Building B2 elements and the communal open space area of Building A (right of the image).

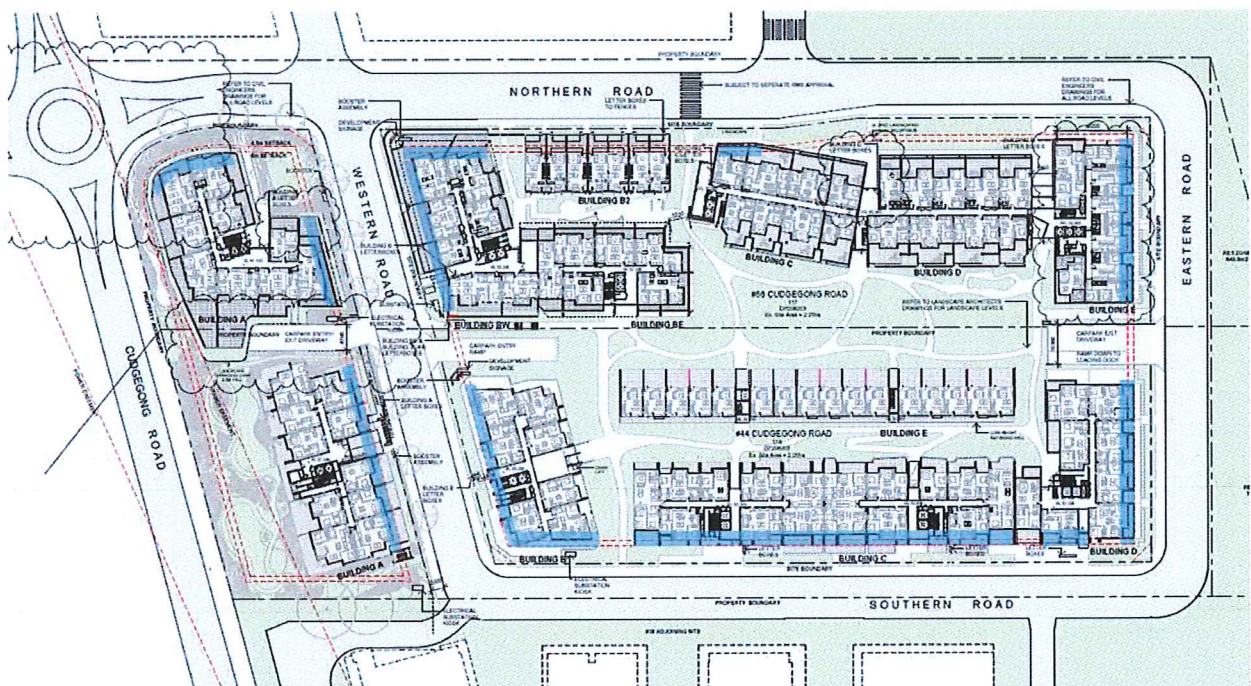
- The proposal is consistent with the objectives of the development standard and the R3 Medium Density Residential zone.
- Subject to adherence to the execution of a Voluntary Planning Agreement to enforce maximum building height levels and provide certainty that there will be no further increase to building height, massing and density on this site, the request is well founded and warrants approval.
- The proposal provides for the 'redistribution of building mass' which caters for the height of buildings to be exceeded for the 8 and 10 storey buildings whilst also providing substantially lower 2 and 3 storey building forms. This offset creates an improved Precinct outcome, thus providing sufficient environmental planning grounds to justify the variation.



- A comparative variation to the development standard of building height which is accompanied by a Voluntary Planning Agreement has been approved by the NSW Land and Environment Court for similar development in the vicinity of this site. That development consisted of approval for 9 building envelopes ranging from 2 storeys in the northern portion of the site, 5 to 8 storeys in the central portion of the site, 6 to 9 storeys in the southern portion of the site and a community park. The outcome is an increase in scale towards Tallawong Railway Station and the future Cudgegong Local Centre. Refer to **attachment 8** for further details.
- The proposal is supported by our City Architect who considers variety in building height and form, as well as and maximising solar access in to the development, as positive key reasons to support the redistribution of building mass.

## 7.2 The proposal does not satisfy the minimum required setback to the street

7.2.1 The Applicant seeks a reduced street setback for the majority of private balconies and architectural design features above the third level. The Growth Centre Precincts DCP requires a minimum setback of 6 metres. The proposal provides a setback of 4.5 metres in the locations identified in Figure 1 below:



**Figure 1:** Extract from the proposed Site Plan DA004 demonstrating the portions of the private balconies and architectural design features which encroach into the 6 metre street setback requirement above the third level. These areas are highlighted in blue.

7.2.2 However, the Apartment Design Guide does not include a numerical requirement for street setbacks, and directs that consideration is to be given to providing articulation zones accommodating space for building entries, ground floor courtyards, balconies, landscaping, deep soil zones and to 'use a setback range where the desired character is for variation within overall consistency.' The proposal is consistent with these guidelines.

7.2.3 Although the full extent of the street setback is not achieved, the proposal offers an interesting and high quality streetscape presentation which is considered satisfactory on its merits.

### 7.3 The proposal does not satisfy the minimum required road verge width

7.3.1 The Applicant seeks to provide a reduced road verge width of 1 metre along the north-eastern and eastern boundaries which adjoin the future public reserve zoned land. The DCP requires a road verge width of 3.5 metres. The Applicant has demonstrated that the treatment and grades between the road and future public reserve are appropriate and provide a safe outcome for the public, and is endorsed by our development engineers, design engineers and the Recreation Planning and Design Section.

## 8 Submissions

8.1 The proposed development was notified to property owners and occupiers within the locality between 15 and 29 August 2017. The Development Application was also advertised in the local newspapers, including the Blacktown City Sun, and a sign was erected on the site.

8.2 No submissions were received.

## 9 External referrals

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

Authority	Comments
<b>NSW Department of Industry - Water</b>	<p>This application seeks to carry out works which are greater than 40 metres from the Second Ponds Creek watercourse. Therefore, this is not an Integrated Development Application under section 91(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>This agency has advised that this application is acceptable and General Terms of Approval have been provided for a dewatering of groundwater licence.</p>
<b>Roads and Maritime Services</b>	Acceptable subject to conditions.
<b>Endeavour Energy</b>	Acceptable subject to conditions.
<b>NSW Police</b>	Acceptable subject to conditions.
<b>Transport for NSW</b>	No response received. We discussed the proposal with a representative from Transport for NSW and were advised verbally that the proposal is satisfactory.



## **10 Internal referrals**

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

10.2 Our City Architect carefully evaluated the proposal and advises:

- 10.2.1 The general concept and site configuration is strong in principle. The Applicant has thoroughly analysed the site and has placed a strong emphasis on how the development responds to the existing and future desired character of the Precinct. The development is consistent with the objectives of this Precinct and will positively contribute to its success. The building addresses the adjacent open space area well and the distribution of building mass across the site is well considered.
- 10.2.2 The proposed distribution of building mass will result in a development with a variety of building heights and typologies. This is, in our view, well considered and provides a good response to the natural topography of the site and surrounding features. The increased height of buildings will have a largely non-discernible impact on the streetscape given the sensible distribution across the site and the topography.
- 10.2.3 The varying heights and building typology across the site improve the aesthetic and streetscape presentation of the development, by providing a varied building composition across the site in lieu of simply providing uniform building envelopes, in addition to providing improved on-site amenity by way of additional solar access to lower level apartments on the southern portions of the site and to the communal open spaces provided at the ground floor level.

## **11 Conclusion**

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11.1 The proposed development has been assessed against all matters and is considered to be satisfactory. It is considered that the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. The site is suitable for the proposed development subject to conditions, including a deferred commencement condition for the Applicant to execute the Voluntary Planning Agreement with Council. The Voluntary Planning Agreement is being prepared for public exhibition and execution.

## **12 Recommendation**

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- 12.1 Uphold the variation to the height of buildings development standard in Clause 4.3 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 using Clause 4.6 for the following reasons:
- a. Subject to the execution of a Voluntary Planning Agreement to enforce maximum building height levels on the site, to provide certainty that there is no further increase to building height, massing and density on this site, the request is well founded and warrants support.
  - b. Adherence to the height standard is unnecessary in this instance as no adverse impacts will result from the variation to the Building Height map.

- c. The proposal provides for the 'redistribution of building mass' which caters for the height of buildings to be exceeded for the 8 and 10 storey buildings whilst also providing compensating substantially lower 2 and 3 storey building forms. This offset creates an improved Precinct outcome, thus providing sufficient environmental planning grounds to justify the variation. The variation will still foster development that is consistent with relevant zone objectives and is still in the public interest.
  - d. As the development is underpinned by the execution of a Voluntary Planning Agreement to enforce maximum building height levels, we consider this request to be a well written request and we support the variation.
- 12.2 Approve Development Application SPP-17-00010 for the reasons listed below and subject to a deferred commencement consent including the conditions listed at attachment 10, as:
- a. The proposal is in the public interest.
  - b. The site is considered suitable for the proposed development.
  - c. The development is underpinned by the execution of a Voluntary Planning Agreement to enforce maximum building height levels to provide certainty that there is no further increase to building height, massing and density on this site, the requested Clause 4.6 variation is acceptable.
- 12.3 The Applicant be notified of the Planning Panel's decision.

  
Holly Palmer  
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Judith Portelli  
Manager Development Assessment

  
Glennys James  
Director Design and Development