

# Assessment report to Sydney Central City Planning Panel

Panel reference: 2017SWC146

## Development application

<b>DA number</b>	SPP-17-00041	<b>Date of lodgement</b>	7 November 2017
<b>Applicant</b>	Bing Wei Pty Limited		
<b>Owner</b>	Bing Wei Pty Limited		
<b>Proposed development</b>	Construction of 2 residential flat buildings in stages, comprising 208 apartments, associated new public roads, stormwater drainage works, landscaping and a temporary access road through the part of the site zoned RE1 Public Recreation		
<b>Street address</b>	95 Cudgegong Road, Rouse Hill		
<b>Notification period</b>	12 December 2017 to 9 January 2018	<b>Number of submissions</b>	None

## Assessment

<b>Panel criteria</b> Section 7, SEPP (State and Regional Development) 2011	<ul style="list-style-type: none"> <li>Capital investment value (CIV) over \$20 million (DA has CIV of \$55 million)</li> </ul>
<b>Relevant section 4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>Environmental Planning and Assessment Act 1979</li> <li>Environmental Planning and Assessment Regulation 2000</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. 19 – Bushland in Urban Areas</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Sydney Region Growth Centres) 2006</li> <li>Blacktown City Council Growth Centre Precincts Development Control Plan 2010</li> <li>Central City District Plan 2018</li> <li>Blacktown Local Strategic Planning Statement 2020</li> </ul>
<b>Report prepared by</b>	Luma Araim, Assistant Team Leader
<b>Report date</b>	6 November 2020
<b>Recommendation</b>	Refusal, based on the grounds listed in the report

## Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning extract
- 4 Detailed information about proposal and DA submission material
- 5 Development Application plans
- 6 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

### 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

## Contents

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



## **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:
- Development engineering issues - the proposal represents disorderly development and is incompatible with the current adjoining road network. Therefore the proposal cannot be supported.
  - Drainage/stormwater issues - the current drainage design plans do not conform to Council's Water Sensitive Urban Design standards and, due to numerous errors on the plans, our Drainage Section cannot support the proposal.
  - Section 7.11 road and stormwater infrastructure issues - the catchment plans are inconsistent with adjoining developments. Given the lack of information provided, the application cannot be supported in its current form.
- 1.2 Assessment of the DA against the relevant planning framework and consideration of matters by our technical departments have identified issues of concern that cannot be dealt with by conditions.
- 1.3 The DA 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 in section 12 below.

## **2 Location**

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- 2.1 The site is located in the suburb of Rouse Hill. It is within the Cudgegong Road (Area 20) Precinct of the North West Growth Area as identified by State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP). The location of the site is shown at attachment 1.
- 2.2 The site is 570 m to the north-west of Tallawong Metro Station.
- 2.3 The site and surrounding properties are primarily zoned R3 Medium Density Residential.
- 2.4 The eastern portion of the site and surrounding properties between Rouse Road and 129 Cudgegong Road are zoned RE1 Public Recreation and will form a future local park.
- 2.5 Cudgegong Reserve is located 71 m to the south and is zoned E2 Environmental Conservation.
- 2.6 The locality is in transition. It comprises a mix of rural-residential properties and properties under development. An aerial image of the site and surrounding area is at attachment 2.
- 2.7 The range of redevelopment occurring in this locality includes dwelling houses, townhouses, residential flat buildings and the future Cudgegong Town Centre. The location of DAs which are approved, as well as those currently under assessment, are shown at attachment 3.
- 2.8 The site and adjoining properties which are zoned R3 Medium Density Residential have a maximum permitted building height of 12 m. The maximum permitted height increases towards the future Town Centre to the south-east, increasing up to 26 m.

## **3 Site description**

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- 3.1 The 2.023 hectare site is rectangular in shape. It has a centrally located high point and slopes downwards to the east and west. There is a 6.8 m slope to the north-western corner of the site and a 9.9 m slope to the south-eastern corner of the site.
- 3.2 The site has a 72 m wide frontage to Cudgegong Road.

- 3.3 The site contains 2 dwellings and associated sheds, fencing and driveways off Cudgegong Road. There is a disused dam near the southern boundary.
- 3.4 There is an overhead electricity transmission line and associated easement. It runs generally parallel to Cudgegong Road and located between 40 and 80 m from the eastern boundary of the site. The poles associated with the power lines are not located on this site. The existing power lines and easement are proposed to be retained.
- 3.5 There are 357 trees on the site that are identified as Shale Plains Woodland. There are grassed areas in that part of the site containing the electrical easement and in the central part of the site.
- 3.6 The western portion of the site is identified as a bushfire zone. The eastern part of the site, which contains the dwellings and electricity easement, is identified as a bushfire buffer zone. This application does not trigger referral to the NSW Rural Fire Service. However, the separate application for subdivision of the site, DA-17-02666, does trigger referral to the Rural Fire Service as further discussed in section 4 below.

## **4 Background**

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- 4.1 On 21 October 2011, the site was rezoned to R3 Medium Density Residential under the Growth Centres SEPP. The zoning and height of building maps for the site and surrounds are at attachment 3.
- 4.2 This DA was lodged on 7 November 2017.
  - 4.2.1 On 2 November 2018 the applicant submitted amended engineering plans, which increase the road widths to 18 m and correlate with the levels and civil infrastructure design of the surrounding proposed Development Applications.
  - 4.2.2 On 10 January 2019 the applicant submitted amended architectural plans and a Waste Management Plan in response to queries from our Sustainable Resources Project Officer.
  - 4.2.3 On 30 September 2020 the applicant submitted amended engineering plans in response to the issues raised by our engineers. However, a preliminary review by our Development Services engineers revealed that the applicant has still not adequately addressed the issues previously raised. Therefore the amended plans have not been referred to other engineering sections for assessment.
- 4.3 The applicant lodged a separate DA (DA-17-02666) with us on 12 December 2018 seeking approval to subdivide the site. This is classified as 'integrated development' and the NSW Rural Fire Service has issued its General Terms of Approval in support of the application. The proposed subdivision seeks to create Lot 1 for the part of the site zoned RE1 with an area of 5,506 m<sup>2</sup>, a lot for Road 1 with an area of 1,304 m<sup>2</sup> to be dedicated to Council in the future, and proposed Lot 2 with an area of 1.342 hectares for the proposed residential flat buildings and future new public Road 2. This subdivision was approved in July 2019. Further details are at attachment 4.

## **5 The proposal**

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- 5.1 The DA for residential flat buildings at 95 Cudgegong Road, Rouse Hill was lodged by Bing Wei Pty Limited.
- 5.2 The applicant proposes to construct 2 x 4 storey residential flat buildings in 2 stages, comprising 208 apartments as well as associated new public roads, stormwater drainage works, landscaping and a temporary access road through the part of the site zoned RE1 Public Recreation.



- 5.3 The building heights are up to 13.8 m to the roofline and up to 15.4 m to the lift structure. These consist of minor encroachments for the lift overruns, roof top open space access and part of the roof and habitable spaces with offsets above and below the height plane due to the topography of the site.
- 5.4 Details of the proposal, including a Clause 4.6 request to exceed the maximum building height, is at attachment 4 and the development plans are at attachment 5.

## 6 Assessment against planning controls

- 6.1 A summary assessment of the DA 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.

### Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment
a. The provisions of: (i) Any environmental planning instrument (EPI)	<p>The proposal is considered to be generally consistent with the relevant EPIs, including SEPP (State and Regional Development) 2011, SEPP (Infrastructure) 2007, SEPP BASIX 2004, SEPP No. 19 – Bushland in Urban Areas, SEPP No. 55 – Remediation of Land, SEPP No. 65 – Design Quality of Residential Apartment Development and the 9 'design quality principles' of SEPP 65, the Growth Centres SEPP 2006 and the Central City District Plan 2018.</p> <p>The proposal is consistent with the Area 20 Precinct Plan, with the exception of the height of buildings development standard. The maximum permitted building height is 12 m. The proposal is for building heights of up to 13.8 m to the roofline, and up to 15.4 m to the top of the lift structure, as measured from the ground levels created by the new roads. The maximum breach to this development standard is 3.4 m with offsets due to the topography of the site. The applicant has submitted a request to vary this development standard under Clause 4.6 of the Growth Centres SEPP.</p> <p>The proposal is consistent with the design criteria of the Apartment Design Guide, with the exception of minor variations to setbacks/building separation for some balconies on levels 1 and 2.</p>
(ii) Any proposed instrument that is or has been the subject of public consultation under this Act	<p>In May 2017, prior to the lodgement of this DA in November 2017, the former Department of Planning and Environment (DPE) exhibited a draft amendment to the Growth Centres SEPP 2006, referred to as the 'North West Draft Exhibition Package.' This exhibition coincided with the release of the Land Use and Infrastructure Implementation Plan (the purpose of which is to guide new infrastructure investment, make sure new developments do 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 Department is the establishment of minimum and maximum densities for all residential areas that have been zoned under the SEPP (i.e. density bands). Currently the planning controls nominate only a minimum density. This would have a significant influence on the ultimate development capacity (i.e. yield) of the precincts.</p> <p>Following exhibition in mid 2017 and the receipt of many objections, the Department is still considering this matter and no final decision has been made. The timing of adoption is uncertain</p>

Heads of Consideration	Comment
	<p>at this stage, as is the content of any amendments. There is no guarantee the exhibited controls will be adopted and made law.</p> <p>This site is within the Area 20 Precinct and the density band demonstrated in the Exhibition Package is 25 to 35 dwellings per hectare, which equates to a maximum of 51 dwellings on this site. The proposal is for 208 dwellings, being an additional 157 dwellings above that anticipated in the Exhibition Package.</p> <p>Although the proposal is inconsistent with the maximum dwelling density as exhibited, there is no certainty or imminence to these amendments coming into effect, and therefore this is not a matter for consideration in this application.</p>
(iii) Any development control plan (DCP)	<p>The Growth Centre Precincts DCP applies to the site. The proposed development is compliant with the numerical controls established under the DCP, with the exception of minor variations to setbacks for some balconies on levels 1 and 2.</p>
(iii a) Any Planning Agreement	N/A
(iv) The regulations	<p>The DA is compliant with Clause 92 of the EPA Regulation with regard to demolition.</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>It is considered that the development will result in negative impacts on both the natural and built surrounding environment due to serious engineering issues which have not been adequately addressed by the applicant, in terms of staging of the development, discharge points, overland flows, road design and stormwater design, to ensure this development is compatible with surrounding approved development.</p>
c. The suitability of the site for the development	<p>The majority of the site is zoned R3 Medium Density Residential with a 12 m building height limit under the Growth Centres SEPP. Residential flat buildings are permissible on the site with development consent.</p> <p>The eastern part of the site is zoned RE1 Public Recreation and was intended to accommodate a temporary access road to provide access from Cudgegong Road to Stage 1 of the development. The temporary access road would have been removed once the surrounding road network was in place, therefore protecting the quality and availability of the future local park in this location.</p> <p>However, there is inadequate engineering information submitted to enable a complete assessment of the proposal on the existing drainage system and approved road network. The applicant has not satisfied Council that the site can cater for this development. On this basis the site is not considered to be suitable for the proposed development as submitted to us.</p>
d. Any submissions made in accordance with the Act or the regulations	No submissions were received.
e. The public interest	<p>The proposal is not in the public interest as it is not proposing orderly development. It is not compatible with the adjoining road network at this stage and it will not be able to provide adequate on-site stormwater detention and water quality measures despite</p>



Heads of Consideration	Comment
	repeated requests from Council to address these key site constraints.

## 7 Key issues and reasons for refusal

### 7.1 Development engineering issues

7.1.1 The proposal represents disorderly development which is incompatible with the adjoining road network at this stage. In addition, further amendments to the engineering plans are required. Specifically:

- The proposed staging of the development results in the proposed registration and dedication of a land-locked section of public road (Road No 3). This is contrary to the Roads Act 1993. This is also not supported as it results in a poor outcome for the future maintenance of the isolated section of road. Furthermore, this is not considered to be orderly development.
- The staging of the proposed development relies on the adjoining developments. Stage 2 cannot commence and will not be delivered until such time as the road network from surrounding developments leading to the proposed project are registered as public roads. This is not considered to be orderly development.
- The discharge point to the west of the proposed development is shown to drain over multiple adjoining lots, and it is not clear if the outlet is proposed to be free flowing. An easement in gross to drain water would need to be created and registered over all relevant lots and must cover the tail-out works up until a legal point of discharge.
- The proposal does not reflect any provision for a temporary turning head that must be constructed on Road No. 3 once it is connected with adjoining half-width roads. This will affect the proposed residential flat buildings. In addition, the formation of the proposed roads does not reflect the road verges, footpaths, temporary turning heads and provision for future connectivity.
- The proposed road designs do not show appropriate provision and consideration regarding overland flows from upstream drainage catchments. On this basis the proposal fails to meet key road and stormwater requirements.

### 7.2 Drainage engineering issues

7.2.1 The current drainage design plans do not conform to Council's Water Sensitivity Urban Design standards and, due to numerous errors on the plans, our Drainage Section cannot support the proposal. Specifically:

- For the length of Road No. 3 adjacent to the eastern boundary of 84 Tallawong Road, the levels at the common boundary do not match the approved design levels for 84 Tallawong Road.
- The staging plans are insufficient. Staging Plan 1 has not allowed for the construction of Road No. 4 to enable legal connection with the adjacent development at 105 Cudgegong Road where the temporary road over the RE1 land is built on 95 Cudgegong Road.
- The on-site stormwater detention (OSD) requirements have not been satisfactorily addressed:



- The drainage plans do not address the separate temporary OSD systems required at the time of release of the Subdivision Certificate.
- An OSD catchment plan, showing how the flows from each catchment are directed to each OSD system at each stage, has not been provided.
- Raising the invert levels of the water quality device will result in elevated base levels for the OSD tanks which will result in larger tank footprints. It is unclear what impact this will have and whether this can be incorporated into the design of the development.

7.2.2 The water quality targets using the MUSIC digital model have not been achieved.

7.2.3 The Stream Erosion Index (SEI) target of 3.5 has not been achieved for each development lot.

7.2.4 The drainage plans are insufficient:

- The drainage system does not effectively connect with future developments upstream and downstream of the development.

### **7.3 Section 7.11 road and stormwater infrastructure issues**

7.3.1 The catchment plans and drainage design are inconsistent with adjoining developments.

7.3.2 The temporary works have not been designed to minimise redundant work and future adjustment works.

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

8.1 The DA was notified to property owners and occupiers in the locality between 12 December 2017 and 9 January 2018. It was also advertised in the local newspapers and a sign was erected on the site.

8.2 We received no submissions.

## **9 External referrals**

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

Authority	Comments
Transport for NSW and Sydney Trains	Acceptable subject to conditions
Roads and Maritime Services	Acceptable
Sydney Water	Acceptable subject to conditions
NSW Local Police	Acceptable subject to conditions

## **10 Internal referrals**

10.1 The DA was referred to the following internal sections of Council for comment:

Section	Comments
City Architect	Acceptable from a building design perspective. Our City Architect identified some concerns during his initial evaluation. In response, the applicant submitted amended plans

Section	Comments
	which reduced the height of the buildings, provided deep soil zones to support the growth of mature trees and improved noise attenuation measures for bedrooms in the vicinity of driveways. Amendments also involved improvements to the design of waste collection, provision of direct street access to ground floor apartments, reduction in the use of cement render to provide a more robust material requiring less maintenance and improved longevity, and relocation of egress stairs to be within the building form. Our City Architect is now satisfied that the proposal offers an improved and acceptable style of development.
Access and Transport Management	Acceptable. With regard to the provision of 1 temporary access road in the land zoned RE1, this arrangement is supported by Access and Transport Management.
Building	Acceptable, subject to conditions of consent.
S7.11	Acceptable, subject to conditions. Our Section 7.11 Finance Committee resolved that dedication of the part of the land zoned RE1 Public Recreation is not required at this time and conditions of consent could be imposed requiring a Section 88B restriction to be placed on this land to reflect its creation as a residue lot.
Recreation Planning and Design	Acceptable. The provision of 1 temporary access road in the land zoned RE1, is supported by Recreation Planning and Design.
Natural Areas	Acceptable, subject to conditions of consent.
Civil and Open Space Infrastructure	Acceptable, subject to conditions of consent. With regard to the provision of 1 temporary access road in the land zoned RE1 this arrangement is supported by our Civil and Open Space Infrastructure Section.
<b>Development Engineering</b>	<b>Unacceptable and cannot be supported.</b>
EHU	Acceptable, subject to conditions of consent.
Property	Acceptable
<b>Drainage Engineering</b>	<b>Unacceptable and cannot be supported.</b>

## 11 Conclusion

- 11.1 The proposed development has been assessed against all relevant matters and is considered to be unsatisfactory. The applicant has had ample time to satisfy our engineering design and drainage requirements. 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.

## 12 Recommendation

- 1 Refuse DA SPP-17-00041 for the following reasons:



- a Under the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) it is considered that the proposed development is substantially inconsistent with the controls in Blacktown Development Control Plan 2015, Part J Water Sensitive Urban Design (WSUD) and Integrated Water Cycle Management, Council's WSUD standard drawings and Council's Engineering Guide for Development.
- b Under the provisions of Section 4.15(1)(c) of the EP&A Act 1979 the site is not suitable for the development as designed as the road and drainage constraints affecting the subject land have not been resolved.
- c Under Section 4.15(1)(b) of the EP&A Act 1979 the proposal in its current form will have impacts on adjoining development and upstream drainage catchments, due to its numerous compliances with the standard drainage requirements and road design requirements of Council.
- d Inadequate information has been provided to complete an assessment of the DA in terms of engineering and drainage design matters. The proposal cannot be thoroughly assessed to be considered consistent with the provisions of Section 4.15 (1)(b) and (c) of the EP&A Act 1979.
- e Under the provisions of Section 4.15(1)(e) of the EP&A Act 1979 it is considered that, in the circumstances of the case, approval of the development would set an undesirable precedent for similar development and is therefore not in the public interest.

2 Council officers notify the applicant of the Panel's decision.



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