

Assessment against planning controls: section 4.15, summary assessment and variations to standards

1 Environmental Planning and Assessment Act 1979

1.1 Section 4.55(2) considerations for modification applications

Consideration	Comment
The proposed development is considered under section 4.55(2) of the Act. Under this provision, the consent authority may modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)	The original development was approved for residential flat buildings and a neighbourhood shop. The proposed modifications are ancillary to the primary purpose for residential flat buildings, and the proposed amendments are contained within the approved building footprint, also maintaining the same height. The proposed modifications are substantially creating the same development as originally granted.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent	Not applicable.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent	The proposed modifications were notified to the adjoining and surrounding properties for 14 days and no submissions were received.
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	Not applicable as no submissions were received.

1.2 Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment	Complies
a. The provisions of: (i) Any environmental planning instrument (EPI)	The proposal is considered to be generally consistent with the relevant EPIs, including SREP No. 20 – Hawkesbury-Nepean River, SEPP (State and Regional Development) 2011, SEPP (Infrastructure) 2007, SEPP BASIX 2004, SEPP No. 55 – Remediation of Land, SEPP No. 65 – Design Quality of Residential Apartment Development and the 9 'design quality	Satisfactory, subject to departures from the controls as raised below.

Heads of Consideration	Comment	Complies
	principles' of SEPP 65, the Growth Centres SEPP 2006 and the Central City District Plan 2018. The proposed development seeks alternate techniques of achieving natural cross ventilation to 60% of the apartments as required by Part 4B Natural Ventilation of the ADG. The proposed development also provides 42 split level apartments which are below the new ground level, which is inconsistent with Part 4L Ground Level Apartments of the ADG. Under the Growth Centres SEPP, a maximum height of buildings of 12 m applies to this site. The approved height was 15.05 m, which exceeds the development standard by 3.05 m. The current proposal maintains the approved height. The height was approved in the parent application for the following reasons: • No element of a habitable floor or room is located above the height limit. The part 4/part 5 storey buildings are considered to be consistent with the 12 m height limit permissible on the site. • The rooftop plant and equipment and lift overruns are centrally located and will have minimal visibility from the street. The additional 3.05 m in height is therefore considered acceptable. The variation is considered to be substantially offset within the development site, with significant portions of the development below the maximum height limit. • The portions of the roof structures that exceed the height limit do not result in excessive bulk and scale and do not result in adverse shadow and amenity impacts on surrounding properties. • The Applicant identified that there is no specific correlation between the areas of height variation and the location of lower level apartments, with some areas of height variation not located above lower level apartments. Conversely, there are locations where the development is below the height control but lower level apartments have been provided. The height variations arise as a result of the varied topography across the site and the desire to deliver a 4 storey development within a 12 m height control. • The site has a ridge within the development site, falling 7.4 m from the south-east corner of the site to the western boundary. As site benching and earthworks are required to meet civil grades and construction of the surrounding road network, strict compliance would be unreasonable in	Acceptable, as this allowance was raised in the assessment of the parent application and supported. Acceptable, as this allowance was raised in the assessment of the parent application and supported. No, but acceptable in the circumstances as there is no change to the approved height

Heads of Consideration	Comment	Complies
	the circumstances. - There are sufficient environmental planning grounds to justify varying the development standard and the variation will not have unreasonable impacts on the neighbouring properties or the character of the area. - The proposal is consistent with the objectives of the development standards and the R3 Medium Density Residential Zone.	
(ii) Any proposed instrument that is or has been the subject of public consultation under this Act	Following the lodgement of the parent application SPP-16-04463, a draft amendment to the Growth Centres SEPP 2006 was exhibited by the Department of Planning and Environment in May 2017, referred to as the 'North West Draft Exhibition Package.' This exhibition was undertaken to coincide with the release of the Land Use and Infrastructure Implementation Plan (the purpose of which is to guide new infrastructure investment, make sure new developments don't 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). A key outcome sought by the Department of Planning and Environment (DPE) is the establishment of minimum and maximum densities for all residential areas that have been rezoned under the SEPP (i.e. density bands). Currently the planning controls nominate only a minimum density. This proposal will have a significant influence on the ultimate development capacity (i.e. yield) of the precincts. This site is within the Area 20 Precinct, and the maximum density band for this site is 35 dwellings per hectare, which equates to a maximum of 74 dwellings on this site. This proposal is for 332 dwellings, being an additional 258 dwellings above that anticipated in the exhibition package. Although the proposal is inconsistent with the maximum dwelling density exhibited in May 2017, there is no certainty or imminence to these amendments coming into effect, and therefore this is not a matter for consideration in this application. Further, this Modification Application only seeks to make minor modifications to an already-approved DA that was approved by the Panel notwithstanding its inconsistency with the draft controls.	Not a matter of consideration for this application as the parent DA was approved notwithstanding the exhibited draft density amendments.
(iii) Any development control plan (DCP)	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 the street setback for the Level 3 balconies. The proposed departures from these controls are consistent with the mother consent, as discussed in detail in Section 10 of this attachment.	Acceptable, as this allowance was raised in the assessment of the parent application and supported.
(iii a) Any Planning Agreement	There are no Planning Agreements associated with this proposal.	Not applicable
(iv) The regulations	The proposal is consistent with the regulations including Clause 92 (demolition of structures).	Yes
b. The likely impacts of	It is considered that the likely impacts of the development,	Yes

Heads of Consideration	Comment	Complies
the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality	including traffic, parking and access, trees and landscaping, design, bulk and scale, overshadowing, noise, privacy, waste management, flora and fauna, salinity, contamination and stormwater management, have been satisfactorily addressed, subject to conditions. A site analysis was undertaken to ensure that the proposed development will have minimal impacts on surrounding properties. In view of the above it is believed that the proposed development will not have any unfavourable social, economic or environmental impacts.	
c. The suitability of the site for the development	The subject 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. The site has an area and configuration that is suited to this form of development. The design solution is based on sound site analysis and responds positively to the land uses adjoining the site. The site is located within close proximity to the under construction Cudgegong Road and Rouse Hill railway stations and local centres. The proposal is consistent with the Area 20 Precinct Plan.	Yes
d. Any submissions made in accordance with this Act, or the regulations	No submissions were received as a result of the notification of this Modification Application.	Not applicable
e. The public interest	It is considered that no adverse matters relating to the public interest arise from the proposal. The proposal provides high quality housing stock and provides for a range of housing diversity within the Area 20 Precinct.	Yes

2 State Environmental Planning Policy (State and Regional Development) 2011

Summary comment	Complies
The Sydney Central City Planning Panel (SCCPP) is the consent authority for all development with a capital investment value (CIV) of over \$20 million (being the CIV applicable for applications lodged but not determined prior to 1 March 2018 under Clause 23 transitional provisions of this SEPP). As this DA has a CIV of \$95.1 million, Council was responsible for the assessment of the parent DA. As required by the Planning Panels Operational Procedures 2016, the SCCPP is to determine applications to modify a consent for regionally significant development under section 4.55(2) of the EP&A Act 1979.	Yes

3 State Environmental Planning Policy (Infrastructure) 2007

Summary comment	Complies
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Summary comment	Complies
The SEPP ensures that Roads and Maritime Services (RMS) is given the opportunity to comment on development nominated as 'traffic generating development' under Schedule 3 of the SEPP. The Modification Application was referred to RMS, who advised that the Modification Application is acceptable "provided the proposed dwelling density and road layout design is consistent with the Area 20 Precinct. Council should be satisfied that the dwelling density can be accommodated on the local road network." The proposal has been assessed by our Access and Traffic Management Services (ATMS) Section and no objection is raised. ATMS supports the provision of additional car parking spaces within the basement levels of this proposal as it will assist with reducing the demand for on-street car parking. On-site parking is also advantageous given the distance of the site to the railway station is at least 750 m for future residents. Given ATMS supports the proposal, and this application does not affect any RMS owned road, the comments from RMS are not considered relevant to this assessment. Therefore, the amended application is satisfactory with regard to the requirements of SEPP (Infrastructure) 2007.	Yes

4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Summary comment	Complies
A BASIX Certificate has been lodged to accompany the Modification Application. The BASIX Certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores. The relevant condition will be amended to reflect the updated BASIX Certificate.	Yes

5 State Environmental Planning Policy No. 55 – Remediation of Land

Summary comment	Complies
SEPP 55 aims to 'provide a State-wide planning approach to the remediation of contaminated land'. Clause 7 requires a consent authority to consider whether the land is contaminated and if it is suitable or can be remediated to be made suitable for the proposed development, prior to the granting of development consent. The parent application was accompanied by a Preliminary Site Investigation Report prepared by Coffey Geotechnics Pty Ltd, dated 15 June 2016. This report states that the site can be made suitable for the proposed residential redevelopment with respect to land contamination, subject to recommendations. To ensure these works are undertaken prior to the release of a Construction Certificate on the site for the proposed residential flat buildings, suitable conditions were imposed to address these matters and to ensure that the site is made suitable for residential development without any limitations to the strict standards under the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 2013 guidelines.	Yes

6 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

Summary comment	Complies
The planning policies and recommended strategies under SREP 20 are considered to be met through the development controls of the Growth Centres SEPP. The development complies with the development standards and controls established within the Growth Centres SEPP 2006, to enable the orderly development of the site. Therefore, the proposal is considered to satisfy Clause 4 of SREP 20.	Yes

7 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

Summary comment
SEPP 65 applies to the assessment of Development Applications for residential flat buildings 3 or more storeys in height and containing at least 4 dwellings. Clause 30 of SEPP 65 requires a consent authority to take into consideration: - design quality of the residential flat development when evaluated in accordance with the design quality principles - the Apartment Design Guide (ADG). The tables below provide comments on our assessment of the 9 design quality principles and details where the numerical guidelines of the Apartment Design Guide are not fully complied with.

7.1 Design quality principles

Principle	Control	Comment
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7.1.1 Design quality principles

The development satisfies the 9 design quality principles.

1. Context and neighbourhood character	Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.	The layout and design of the proposal responds to the site conditions and the desired future character of the immediate locality. The development will contribute to the quality and identity of the area. The proposed residential apartments are compatible with the social, economic and environmental function of the Rouse Hill area.
2. Built form and scale	Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type,	The 4 (part 5) storey height was approved in the parent application, and is maintained in this Modification Application. The built form and scale is consistent with the desired future character of this locality. Articulation and building elements are satisfactory.

Principle	Control	Comment
	articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	
3. Density	Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.	The proposed residential development comprises 332 apartments, which is a suitable density for the development of this site. The site is in suitable proximity to public transport and is serviced by infrastructure and community facilities.
4. Sustainability	Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	The proposal demonstrates appropriate waste management during the demolition, construction and ongoing use phases. The proposal is supported by a BASIX Certificate. The commitments are incorporated into the design of the building. The proposal demonstrates satisfactory levels of sustainability and the efficient use of energy and water resources.
5. Landscape	Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	The proposal provides appropriately sited landscaping elements which are of a high quality design and are capable of being sustained and maintained. The landscaping complements the presentation of the built form as viewed from the public domain and enhances the amenity of the private and common open space areas.

Principle	Control	Comment
6. Amenity	Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.	The design of the proposal is considered to provide a suitable level of amenity through a carefully considered spatial arrangement and layout. In light of the future occupants within the site, as well as the surrounding properties, the proposal achieves a suitable level of internal amenity through providing appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas.
7. Safety	Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	The proposal is considered to be satisfactory in terms of future residential occupants overlooking communal spaces while maintaining internal privacy. Public and private spaces are clearly defined and suitable safety measures are integrated into the development. The proposal provides suitable casual surveillance of the public domain.
8. Housing diversity and social interaction	Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.	The proposal consists of a mix of dwellings which are responsive to anticipated market and demographic demands. The proposal provides additional housing choice which is in close proximity to public transport and services, including services provided at Rouse Hill Town Centre and the future services which are anticipated at the future Cudgegong Road Local Centre to the south-west of the site.
9. Aesthetics	Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials, finishes and colours and reflect the use, internal design and structure of the resultant buildings. The distinct and contemporary design assists in setting a high quality standard for the transitioning character of this locality and creates a desirable streetscape.

7.2 Compliance with Apartment Design Guide (ADG)

ADG requirement	Proposal	Compliance
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We have assessed the Modification Application against the relevant provisions of the ADG and the table below only identifies where compliance is **not fully achieved**.

It is compliant with all other matters under the ADG.

Controls

Designing the building

4B Naturally ventilation	Number of naturally cross ventilated units > 60%	67% of units are cross ventilated (224/332 units). As approved in the parent application and to achieve natural cross ventilation to at least 60% of the total of 332 apartments, as required by Part 4B Natural Ventilation of the ADG, the following alternate techniques are proposed: 18 apartments on the Ground Level, Level 1 and Level 2 rely on the use of plenum ducts, being 5.4 % of the apartments. Plenum ducts are a space between the structural ceiling and the dropped ceiling that can facilitate air circulation 109 x 2 storey apartments on Levels 2 and 3 (the top levels) rely on rooftop ventilating skylights, being 33 % of the apartments. The overall development is considered to achieve a suitable level of amenity through natural cross ventilation, subject to these alternate techniques. Condition 4.5 of the parent consent ensures that these ventilation methods are appropriately installed and reflect the relevant fire safety and acoustic requirements. Residents' access to natural cross ventilation is acceptable in this instance.	Yes, however this relies on plenum ducts and skylights to achieve ventilation, which is acceptable in this instance.
4L Ground floor apartments	Ground floor apartments to deliver amenity and safety for residents. Design solutions may include elevation of private gardens and terraces above street level by 1-1.5 m.	This proposal includes lower levels for 42 split level apartments. The ADG does not provide consideration for this, and instead supports courtyards which are consistent with or above the adjoining public domain level.	Acceptable, as this allowance was raised in the assessment of the parent application and supported.

8 Central City District Plan 2018

Summary comment	Complies
While the Act does not require consideration of District Plans in the assessment of Development Applications, the modification is consistent with the following overarching planning priorities of the Central City District Plan: Liveability • Improving housing choice • Improving housing diversity and affordability • Creating great places.	Yes

9 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

Summary comment
We have assessed the DA against the relevant provisions and the table below only identifies where compliance is not fully achieved. It is compliant with all other matters under the SEPP.

9.1 Appendix 6 – Area 20 Precinct Plan 2011

Part 4 Principal development standards		Complies
4.3 Height of Buildings Max. 12 m	The proposal complies with the building height with the exception of some portions of the roof parapet, rooftop privacy screening and lift overruns (to provide access to the rooftop communal open space area), which exceed the height limit by up to 3.05 m, being 25%.	Acceptable, as the height variation was assessed and supported in the parent application.
4.6 Exceptions to development standard Request must be in writing	The parent application was supported by a Clause 4.6 request submitted by the Applicant.	Not required for a Modification Application and the Applicant's Clause 4.6 submission was assessed and supported in the parent application.

10 Blacktown City Council Growth Centre Precincts Development Control Plan 2016 (Growth Centre DCP)

Summary comment

Summary comment

We have assessed the DA against the relevant provisions and the table below only identifies where compliance is **not fully achieved**.

It is compliant with all other matters under the Blacktown City Council Growth Centre Precincts Development Control Plan 2016.

10.1 Part 4.0 – Development in the Residential Zones (from main body of DCP)

10.1.1 Specific residential flat building controls

DCP requirement	Proposal	Complies	
Key controls for residential flat buildings (Table 4-10)			
Front setback	Minimum 6 metres Balconies and other articulation may encroach into setback to a maximum of 4.5 metres from the boundary for the first 3 storeys, and for a maximum of 50% of the façade length.	The proposal satisfies the 6 m setback with an allowance for balconies to encroach to a maximum of 4.5 m. However, this encroachment is also proposed for Level 3. For the purpose of this proposal, we do not regard the lower levels as a 'storey' given they are below the level of the public domain (being the lower level of 27 split level apartments along the northern boundary of the site). The encroachment of the Level 3 balconies into the 6 m building setback is considered suitable in this instance as the balconies are the primary form of façade articulation in what is an otherwise simple building design. The retention of the balcony encroachment for Level 3 is considered to 'complete' the presentation of the building.	Acceptable, as this allowance was raised in the assessment of the parent application and supported.