

DATE OF DETERMINATION	Monday, 15 February 2021
PANEL MEMBERS	Justin Doyle (Chair), Susan Budd, Sue Francis and Lara Symkowiak
APOLOGIES	Nicole Gurran, Theresa Fedeli and Louise Camenzuli
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 21 January 2021.

#### MATTER DETERMINED

2018SSW019 – Camden – DA/20/2018/694/1 at 297 Bringelly Road, Leppington – Staged mixed use development containing commercial/retail space, 259 apartments, basement car parking, road construction, subdivision and associated site works (as described in Schedule 1)

#### PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons outlined in the council assessment report.

#### Application to vary a development standard

The development will breach the height of buildings development standard that applies to the site under clause 4.3 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (**Growth Centres SEPP**) by around 6.4%. The contravention arises substantially due to the lift overruns on proposed Building A, but with four comparatively small separate portions of the roof also exceeding the maximum height of buildings by a maximum of 164mm, 167mm, and 744mm to allow for clerestory windows and a parapet.

The non-compliance will not significantly alter the solar access within the development or shadow to adjoining properties. The setback of the non-compliant portions of Building A will largely be imperceptible from most viewpoints. The non-compliant portion of the building will not disrupt of views, or result in any unacceptable visual impacts or loss of privacy. It will not impact on any heritage conservation areas or heritage items

On that basis, after considering a written request from the applicant seeking to justify the contravention of the height development standard, made under cl 4.6 of the Growth Centres SEPP, the Panel is satisfied that the request adequately addresses the matters required to be addressed under cl 4.6(3) of the LEP and demonstrates that:

- compliance with the height development standard under cl. 4.3 is unreasonable or unnecessary in the circumstances;
- there are sufficient environmental planning grounds to justify contravening the development standard.

- c) The proposal is consistent with the relevant provisions of the LEP and the objectives for development in the B4 Mixed Use Zone.
- d) Accordingly, the variation to the numerical height development standard is in the public interest.

The concurrence of the Secretary to the variation has been assumed.

### **Merit consideration**

#### The proposal

1. The proposed mixed-use development containing commercial and retail space at its lower levels below 259 apartments spread over the two buildings is permitted with consent in the applicable B4 zone under the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth SEPP). It will include basement car parking, subdivision and associated site works. There is a good mix of 1, 2 and 3 bedroom apartments, and 15 of the units within Building A plus 12 of the units within Building A will be adaptable units.
2. The development application also includes local road construction including particularly a section of a new local road to be dedicated to Council that is intended to serve as a town centre street augmented by landscaping, consistent with the Mixed Use SP2 Infrastructure zoning of that portion of the site.
3. Staged construction of the two buildings is proposed to allow the childcare centre currently operating at the Bringelly Road frontage to continue operating while the southern building is built.
4. The Panel reviewed and accepted, in substance, the assessment and recommendations contained in the Council staff assessment report, but as supplemented by, and subject to, the following additional observations.

#### Compliance with the objectives of the Western Sydney District Plan, SEPP 65 and ADG

5. Development of the two new residential buildings with ground floor retail/commercial premises to be concurrently approved, with a third subdivided lot reserved for future development adjacent to the Leppington Station carpark, will make a significant contribution to increasing capacity for residential and commercial development within Leppington. As such, the development is consistent with the objectives of the Western Sydney District Plan.
6. The Council staff assessment report has assessed the proposal against the Design Quality Principles and the Apartment Design Guide (ADG), with which the development has found to be consistent. The two new buildings incorporate a sufficiently articulated and varied façade design which complies with the visual privacy / building separation design criteria of the ADG, achieving the minimum boundary setback and separation requirements set.
7. Overall, the Council assessment staff report the proposal to be of a sufficiently high standard and architectural merit such that the new buildings will make a desirable contribution to the planned more dense residential development of this locality, located as it is immediately to the North of Leppington Station with the planned new Town Street to run through its middle. It will allow for progress in the transition to a planned more urban form of development within the South West Growth Centre.
8. The proposal was assessed positively by Council to comply with the SEPP 65 design quality principles, achieving a high standard and of architectural merit that will assist in establishing the Leppington Town Centre. It was particularly observed that while the residential flat building development will be new to the area such that the new buildings will be striking before surrounding development proceeds, the presentation of the ground floor retail and commercial tenancies (the use of which will be subject to separate applications) to the surrounding streets at the two lower storeys will achieve a human scale to the proposed development when viewed from the public domain.
9. In this respect, the Panel discussed the impact of the proposed future development on the solar amenity of the proposal and, mutual solar shading. Council advised that they were satisfied that future development would be able to achieve ADG solar compliance due to the adherence to the ADG required separation distances in the subject proposal. In this respect the Panel noted the lack of solar

access in the proposed ground floor communal open space but noted that the principal communal open space was located on level 5 and did achieve the minimum required solar access under the ADG

### Density

10. As with developments of a similar scale in Leppington, a key consideration of the proposal examined in detail by the Panel is the proposed density, given the stark contrast between the high density multi storey forms characterising most proposals which are replacing the present predominantly low density semirural character. Notably, observations related to density were included in the submission made by Liverpool Council whose local government area boundary is across the road from the site.

11. "Minimum lot size by density bands" are described for the locality by Control 3.1.1(2) and the table at Figure 3-1 in the Camden Growth Centre Precincts Development Control Plan. However, the table at clause 1.3.2 of that DCP indicates that Part 3 is not intended to apply directly to residential flat development (although Table 3-2 in that Part has at least one control applying exclusively to the minimum lot size of residential flat development which is difficult to reconcile with that exclusion).

12. The applicable band of development applying to the area generally is:

<b>40+ dw/Ha</b>	<ul style="list-style-type: none"><li>▪ Generally located immediately adjacent centres and / or rail based public transport</li><li>▪ Consists of predominantly residential flat buildings, shop top housing, manor homes, attached or abutting dwellings and multi-dwelling housing</li><li>▪ Generally double and multi-storey buildings</li><li>▪ Predominantly urban streetscapes with minimal front setback; incorporates laneways and shared driveways. . See Figure 3-2</li></ul>
------------------	--

Even if it does not directly apply to residential flat building development, that 'band of development' gives some indication of the intended character of the surrounding locality. It notably anticipates shop top residential flat buildings in this location within the local centre and close to public transport." Residential flat building development would be expected to achieve a higher density yield than other forms of residential development, which is presumably why it is excluded from the application of the control.

13. The Panel has observed before that a dwelling per hectare standard (as opposed to a floor space ratio control) would generally be expected to allow for an integrated development of a large site including roads and any public spaces created. It is not a guide to controlling density that is easy to apply. Even if the bands of development are to apply to residential flat buildings, then some other form of control is necessary to provide more useful guidance to manage development in Growth Centre portion of Leppington. If the only numeric controls to apply are height and setbacks, then further urgent work is required to moderate density to explain how the anticipated mix of development described in the DCP is to be delivered.

14. Planning for the area would be greatly assisted by a more informative maximum floor space ratio, or similar control applying to individual sites so as to achieve consistency in achieving the anticipated character of the area.

15. That urgent need has been repeatedly raised by the Panel in previous assessment reports, discussions with senior Council planning staff and in communications to the Department of Planning, without meaningful guidance having yet been received.

16. This issue for planning in the Growth Centre portion of Leppington requires immediate attention in the Panel's view.

17. Important for this case, the height control and setback development standards permissible for residential flat development applying ADG minimums anticipate far higher yields of dwellings per hectare than 40 dwellings per hectare set as the minimum required by this band provided for by the DCP to apply to other forms of development.

18. The Panel sought advice from the Council assessment staff whether current planning work for the Growth Centre part of Leppington was likely to encourage densities consistent with that proposed by this DA and was informed that was the direction of present work.

19. The assessment report for this application reports that proposed density of the development will be acceptable given the absence of impacts on adjoining land, and specifically that it does not result in adverse impacts in respect to overshadowing or loss of visual privacy upon adjoining properties, and the applicable controls and ADG guidelines are met.
20. Taking those matters into account, the Panel accepts the advice of the Council assessment report that the proposed higher densities are appropriate in this location in the Town Centre adjacent to the station with access to an emerging commercial centre, employment lands and public transport.

#### Access

21. The DA was referred to TfNSW pursuant to the ISEPP who made no adverse comments.
22. An issue arose as to whether departing vehicles ought to be directed towards Bringelly Road or the proposed Town Street. At the direction of TfNSW access is to be allowed to Bringelly Road at present, but a cul de sac head has been included in the design so that access can be closed off in future.
23. While the Panel understands that there are undoubtedly issues surrounding the access points for the local road system to Bringelly Road as a newly constructed classified road, the Panel equally has concerns about directing the substantial volumes of traffic to be generated by high density development in this precinct onto a local road planned as the central Town Street anticipated to generate civic life for Leppington. The civic plan for Leppington could be significantly compromised.
24. The Panel understands Council is opposed to traffic being directed down Town Street for those reasons.
25. Noting the proposal allows for access out to Bringelly Road via a turning head to be constructed at the northern end of the north-south Service Lane that connects with Bringelly Road in the Indicative Layout Plan in Stage 3 of the development, there is no reason to reject this proposal, but the Panel hopes this issue will receive further careful consideration.

#### Ongoing use of the childcare centre and other matters

26. Construction of the proposal is divided into the first 2 stages in the DA documents, allowing the childcare centre to continue operations while the southern building anticipated is constructed.
27. It is important that planning associated with staging of the construction is directed to minimising conflict between the construction and the childcare use, and augmentation to the conditions is proposed in that regard.
28. Council staff have assessed a phase two detailed contamination assessment and were satisfied that the site was suitable for residential development. SEPP 55 has therefore been satisfactorily addressed.
29. The associated site works (including earthworks, drainage and landscaping) have been considered by the Council and have been judged to be acceptable.
30. Notably, no use is proposed for the southern end of the site. If any portion of that area is to be used during construction, attention should be given to visual impacts to the station.

#### **CONSIDERATION OF COMMUNITY VIEWS**

31. In coming to its decision, the Panel notes that one written submission was received from Liverpool Council which comments on issues concerning density and land use which are discussed in the assessment report and partly commented upon above.
32. Notably, the assessment reports that a review of the Leppington Town Centre's land uses and development controls is now being managed by the Strategic Planning branches of Liverpool and

Camden Council. No doubt the considerations identified in Liverpool Council's submission will be examined carefully as planning for the Growth Centre portion of Leppington moves forward.

## CONDITIONS

The development application was approved subject to the conditions in the council assessment report, but with those conditions adapted as necessary to include the requirements.

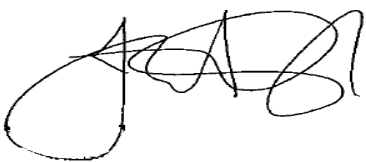



- (a) A condition is to be inserted to the effect:

"A photovoltaic roof top solar system servicing the two buildings (including associated battery storage) to achieve a minimum rated electrical output of **{to be determined by Council prior to issue of the notice of determination}** shall be provided for the development. Details demonstrating compliance shall be provided to the certifier with the Construction Certificate Application."

- (b) The Construction Management Plan and the Environmental Management Plan required to be provided prior to commencement of works (See section 3; conditions 11 and 12) are to be updated to the satisfaction of the certifying authority to make detailed provision for measures to mitigate and minimise Stage 1 construction impacts on the occupants of and the operation of the childcare centre.

- (c) The following Condition in relation to staging is currently located in Section 2.0 - Prior to Issue of a Construction Certificate. It shall be moved to Section 1 General Conditions and edited to be an ongoing condition, not prior to CC

(1) Staging of Construction Works - The development is to be completed in stages in accordance with the approved Staging Plan/s titled Staging Plan (Stage 1), Staging Plan (Stage 02), and Staging Plan (Stage 03), Dwg. No. DA2301, DA2302 and DA2303, Rev. E, prepared by Urban Link, Project No. 16-0067, dated 17/06/2020. The approved engineering works shall be staged such that the civil works are undertaken with Stage 1 of the development and the stormwater drainage concept works and landscaping works are undertaken with the relevant buildings. One Construction Certificate may be issued for all stages, or a single Construction Certificate may be issued with respect to each stage or a combination of stages.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Susan Budd
 Lara Symkowiak	 Sue Francis

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SSW019 – Camden – DA/2018/694/1
2	PROPOSED DEVELOPMENT	Demolition of existing structures, tree removal, construction of a staged mixed use development containing commercial/retail space, 259 apartments, basement car parking, road construction, subdivision and associated site works.
3	STREET ADDRESS	297 Bringelly Road, Leppington
4	APPLICANT/OWNER	Applicant: Urbanlink Pty Ltd Owner: Anthony & George Mourched.
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy 9 Sydney Region Growth Centres) 2006</li> <li>State Environmental Planning Policy (Infrastructure 2007</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Camden Development Control Plan 2011</li> <li>Camden Growth Centre Precincts Development Control Plan</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 21 January 2021</li> <li>Written submissions during public exhibition: 1</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: Monday, 22 October 2018 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Peter Sidgreaves</li> <li><u>Council assessment staff</u>: Adam Sampson, Jordan Davies and Jessica Mesiti</li> </ul> </li> <li>Site inspection: Monday, 22 October 2018 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran and Peter Sidgreaves</li> <li><u>Council assessment staff</u>: Adam Sampson, Jordan Davies and Jessica Mesiti</li> </ul> </li> <li>Final briefing to discuss council's recommendation: Tuesday, 2 February 2021</li> </ul>

		<ul style="list-style-type: none"><li>○ <u>Panel members</u>: Justin Doyle (Chair), Susan Budd, Lara Symkowiak and Sue Francis</li><li>○ <u>Council assessment staff</u>: David Rowley, Ryan Pritchard, Stephen Pratt and Mathew Rawson</li></ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report