

Assessment report to Sydney Central City Planning Panel

Panel reference: PPS-2018SWC087

Development application

DA number	SPP-17-00026	Date of lodgement	10 August 2017
Applicant	JS Architects Pty Ltd		
Owner	Provincial Investments (NSW) Pty Ltd		
Proposed development	Demolition of existing dwellings and structures, dam dewatering, tree removal, subdivision of 3 lots into 6 residential superlots, 1 residue lot for drainage and public roads; with the construction of 20 residential flat buildings, basement car parking, street tree planting, landscaping and stormwater drainage works.		
Street address	H/Ns 249, 259 and 271 Railway Terrace, Schofields		
Notification period	Not notified	Number of submissions	N/A

Assessment

Panel criteria Section 7, SEPP (State and Regional Development) 2011	<ul style="list-style-type: none"> Capital investment value (CIV) over \$20 million (DA lodged prior to 1 March 2018. The DA has a CIV of \$268.216 million (excluding GST))
Relevant section 4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Act 1979 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 No. 55 - Remediation of Land State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (GC SEPP) Central City District Plan 2018 Blacktown City Council Growth Centre Precincts Development Control Plan 2010
Report prepared by	Ruth Bennett
Report date	5 October 2020
Recommendation	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 Extract from Statement of Environmental Effects - applicant's Clause 4.6 submission

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 SEPP) 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

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1 Executive summary

- 1.1 The key issues that need to be considered by the Panel in respect of this application are:
- Insufficient and inaccurate information has been provided for this large scale development to enable Council to complete a detailed assessment. This is compounded by the fact the applicant did not have a pre-DA meeting or submit a masterplan for this 20 x residential flat buildings development.
 - The proposal is not consistent with the GC SEPP Indicative Layout Plan, and this inconsistency results in a proposal which is not compatible with approved neighbouring development. Further, as a result, the stormwater drainage plan and the proposed road pattern change will not provide a layout and levels consistent with the approved adjoining developments.
 - The proposal is not consistent with the GC SEPP zoning. The applicant proposes to change the size and location of the land zoned SP2 Infrastructure on the site. Council does not support any changes to the drainage zone location or shape.
 - The proposal does not provide suitable amenity and connectivity from the site to the public domain.
 - Non-compliance with the Apartment Design Guide as the proposal fails to meet key criteria in the Apartment Design Guide, namely with regard to building separation, street setbacks, setbacks to the boundaries and between buildings at the 5th storey, building appearance, solar and daylight access to communal open space, deep soil, communal open space and landscaping, pedestrian access, acoustic privacy, public domain interface and other ADG requirements.
 - The suitability of this site for the proposed use with regard to site contamination under State Environmental Planning Policy No. 55 - Remediation of Land is not certain as a Phase 2 investigation report has not been provided. On this basis Clause 7 of SEPP 55 (Contamination and remediation to be considered in determining a Development Application) has not been satisfied.
 - A compliant Clause 4.6 variation request to address the building height non-compliance has not been provided.
 - The late submission of amended plans in late August 2020 that change the proposed use from residential flat buildings to shop top housing, amend the subdivision plan as well as the size and location of the drainage zoned lot and further amends the street network within the site, which is unsatisfactory.
 - Tree removal is proposed, notwithstanding that 1 tree is noted as having significance.
- 1.2 Assessment of the originally submitted plans against the relevant planning framework and consideration of matters by our technical departments has identified issues of concern that cannot be dealt with by conditions of consent.
- 1.3 The application 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 at Section 11 below.

2 Location

- 2.1 The site is located in the Alex Avenue Precinct of the North West Growth Area as identified under State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

- 2.2 The site is opposite the Richmond line railway corridor and the Schofields railway station is located 350 m to the north-west. The site fronts onto Railway Terrace to the west and Pelican Road to the east. There is a kindergarten opposite the eastern boundary of the site, being Hopskotch Kindergarten at 46 Pelican Road.
- 2.3 The area is in transition from rural to urban.
- 2.4 The property to the south has been approved for residential development, under DA-14-01602 and DA-14-01812 (subdivision and residential flat buildings). Further to the north approximately 220 m away is a Woolworths supermarket. Schofields Public School is approximately 1.4 km to the north.
- 2.5 The location of the site is shown at attachment 1.

3 Site description

- 3.1 The site consists of 3 lots known as Lots 3, 4, 5 in DP 26987 or H/Ns 249, 259 and 271 Railway Terrace, Schofields. The total area of the site is 7.233 ha.
- 3.2 The site is generally regular in shape with the exception of the eastern boundary adjacent to Pelican Road. It has a street frontage along its western boundary to Railway Terrace of 228 m, and its eastern boundary to Pelican Road is 246 m in length. The northern boundary of the site is 313 m and the southern boundary is 296 m in length.
- 3.3 Vehicular access will be from Railway Terrace to the west and from Pelican Road (a collector road) to the east.
- 3.4 The site contains sheds and machinery sheds on the northern part of 249 Railway Terrace. 259 Railway Terrace is vacant land with a dam on the western part of the site whilst 271 Railway Terrace has a dwelling in the south-western corner. There is sparse vegetation across the site which is mainly grass and scattered trees. The past uses are identified as mainly agricultural uses such as grazing and rural residential.
- 3.5 The site contours show that the ground surface falls gradually towards the west to Railway Terrace, with the lowest point of the site being the dam located at 259 Railway Terrace. The elevation of the topography is mapped between RL 36 metres and RL 27 metres AHD (Australian Height Datum). The site is well drained, with no flood prone areas.
- 3.6 An aerial image of the site and surrounding area is at attachment 2.

4 Background

- 4.1 On 4 May 2010, the site was rezoned to largely R3 Medium Density Residential under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The site was previously zoned 1(a) General Rural under Blacktown Local Environmental Plan 1988. The zoning plan for the site and surrounds is at attachment 3.
- 4.2 A history of the development proposal is as follows:
- 4.2.1 The subject Development Application was submitted on 10 August 2017. No pre-DA meeting was held with Council prior to lodgement. A masterplan for the site was not submitted with the DA, although this was requested by Council's City Architect given the scale of the proposal for 20 Residential Flat Buildings (RFBs).
- 4.2.2 Council officers held 3 meetings with the applicant on 5 October 2017, 23 May 2018 and 3 September 2019. Present at these meetings were officers from our Planning, Engineering, Drainage, Forward Planning, Traffic, Sustainable Waste, Recreation Planning and Design and Civil and Open Space Infrastructure sections, the Environmental Health Unit and the City Architect's Office.
- 4.2.3 The applicant was advised at these meetings that we were not supportive of the scheme as presented. These meetings were for the purpose of outlining our

expectations for the submission of amended plans and additional information that was required to enable a detailed assessment to be undertaken.

- 4.2.4 Despite our requests, the application has not been satisfactorily amended in response to our meetings and correspondence with the applicant. We have requested twice that the applicant withdraw the application (on 6 June 2018 and 21 August 2020), which the applicant chose not to do.
- 4.2.5 Following our second request for the applicant to withdraw the application, the applicant submitted amended architectural plans, Issue B, on 21 August 2020 which changed the nature of the proposal from residential flat buildings to shop top housing. This was not accompanied by any documentation explaining this significant amendment. In the applicant's correspondence on that date there was no request to amend the application to a different use. The amended plans are substantially not the same development as originally submitted. These amended plans have been briefly examined by our Senior Architect and Planning Officers and are deficient.
- 4.2.6 A number of key issues, including drainage, road design, engineering and traffic matters, landscaping, waste and environmental health matters, as well as amenity concerns, remain unresolved, and information has not been forthcoming to enable these aspects of the proposal to be properly assessed.
- 4.2.7 Neither the original proposal nor the amended proposal have been placed on public exhibition, as neither proposal is supported by Council.
- 4.2.8 This assessment report deals with the original plans and proposal submitted by the applicant.

5 The proposal

- 5.1 The applicant's original proposal was for:
 - demolition of existing dwellings and structures, dam dewatering, tree removal, public road construction, subdivision into 6 residential superlots and 1 residue lot for drainage
 - construction of 20 residential flat buildings containing 1,010 apartments.
- 5.2 The originally proposed development comprises 20 x 5 storey buildings containing studio units, 1 bedroom units, 2 bedroom units and 3 bedroom units, and a 2 level basement for 1,301 car spaces.
- 5.3 The originally submitted proposal includes subdivision into 7 lots and public roads, being 6 residential superlots and 1 residue lot for drainage. Road construction, including half width road frontage to both Railway Terrace and Pelican Road, as well as 5 public roads, dam dewatering, stormwater drainage, landscaping, street tree planting and temporary on-site stormwater detention is proposed.
- 5.4 A copy of the architectural plans (original proposal) is at attachment 4. A copy of the amended plans is at attachment 5.

6 Assessment against planning controls

- 6.1 A summary assessment of the Development Application against section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979 is provided below, but only for those planning controls that directly relate to our proposed refusal.

S4.15 'Heads of Consideration'	Comment
<p>a. The provisions of:</p> <p>(i) Any environmental planning instrument (EPI)</p>	<p>The proposal does not satisfy the requirements of:</p> <ul style="list-style-type: none"> • Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River, as it has not adequately addressed on-site stormwater drainage requirements. • State Environmental Planning Policy (Infrastructure) 2007, as it has not addressed the railway corridor in terms of Transport for NSW requirements and acoustic amenity requirements of future residents. Concurrence from Transport for NSW (Roads and Maritime Services and Sydney Trains) has not been provided to either the original proposal or in relation to the architectural plans received for shop top housing on 21 August 2020. • State Environmental Planning Policy No. 55 - Remediation of Land as a Phase 2 site contamination investigation report has not been provided. • State Environmental Planning Policy (Building Sustainability Index: BASIX), as an amended BASIX Certificate has not been provided. • State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – refer to 7.7 below.
<p>(ii) Any development control plan (DCP)</p>	<p>Blacktown City Council Growth Centre Precincts Development Control Plan 2010 - the proposal is not consistent with the DCP as it does not comply with the DCP road pattern due to variations which do not align with adjoining approved development.</p> <p>Blacktown Development Control Plan 2015 - the proposal does not comply with Part J stormwater or with Council's Engineering Guide for Development, and fails to demonstrate that it is compatible with future regional infrastructure.</p>
<p>(iii a) Any Planning Agreement</p>	<p>There are no formalised or proposed Planning Agreements associated with this proposal.</p>
<p>(iii) The regulations</p>	<p>The DA is contrary to Clause 50 and Clause 55A of the Environmental Planning and Assessment Regulation 2000 as the applicant is required to provide all the necessary and requested information to Council to allow for a proper assessment of the application, including the submission of requested information including all matters that reflect the current proposal. The amended plans are not ostensibly the same development as the proposal as lodged and an amended BASIX Certificate has not been provided.</p>
<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>	<p>It is considered that the development will result in negative impacts in relation to:</p> <ul style="list-style-type: none"> • amenity - the visual and acoustic impacts on future residents • accessibility requirements due to not meeting the requirements of the Apartment Design Guide relating to the Common Open Space (COS) and retail spaces • stormwater management and drainage have not been adequately addressed to ensure compatibility with the future regional infrastructure

S4.15 'Heads of Consideration'	Comment
	<ul style="list-style-type: none"> • traffic circulation, due to road design not complying with the Growth Centre DCP, such that the proposed variation to the road network is not compatible with surrounding development • public domain due to deficiencies in terms of building façade, form, articulation and materiality • public domain due to inadequate interface with the future drainage lot, as the requirements of Council's Recreation Planning and Design and Civil and Open Space Infrastructure sections have not been addressed • engineering requirements have not been adequately addressed in terms of road design and stormwater design, to ensure compatibility with the approved surrounding development • waste requirements have not been adequately addressed as an amended Waste Management Plan is required. <p>In view of the uncertainty of the above key issues, it is Council's view that the proposed development in its current form will have unfavourable social, economic and environmental impacts.</p>
<p>c. The suitability of the site for the development</p>	<p>The subject site is zoned R3 Medium Density Residential with a 16 metre building height limit under the Growth Centres SEPP. Residential flat buildings are permissible on the site with development consent. Shop top housing is also permissible on the site with development consent.</p> <p>The minimum dwelling density requirement is 45 dwellings per hectare. The applicant proposes 156 dwellings per hectare.</p> <p>The proposal fails to meet the Indicative Layout Plan to reflect the adopted Growth Centre DCP road pattern.</p> <p>The proposal fails to adhere to the relevant development controls with regard to stormwater, water quality, access, traffic access and circulation, subdivision, landscaping and the Apartment Design Guide. Based on the high density proposed and the unresolved issues, this will be a poor development outcome for the site and represents a significant over-development of the site.</p>
<p>d. Any submissions made in accordance with this Act, or the regulations</p>	<p>The original proposal and the architectural plans provided to Council on 21 August 2020 have not been placed on public exhibition as they fail to meet our requirements.</p>
<p>e. The public interest</p>	<p>The proposal is not in the public interest as it currently represents a serious overdevelopment of the site. It does not comply with the height of building, deep soil, communal open space, solar access, visual and acoustic amenity, access and other ADG and Growth Centre DCP requirements. The application, in both the original proposal and the amended architectural plans provided to Council on 21 August 2020, fails to provide suitable amenity for the future residents.</p> <p>The proposal fails to meet the GC SEPP ILP, does not meet accessibility requirements, and does not provide adequate on-site detention and water quality measures despite repeated requests from Council.</p>

S4.15 'Heads of Consideration'	Comment
	<p>The applicant has sought to relocate the SP2 zoned drainage lot further to the south. This will place part of the drainage land within the R3 zone, however the applicant has not addressed this by way of a Planning Proposal for rezoning. At any rate, the alternate location of the drainage reserve is not supported by our infrastructure design engineers.</p> <p>On this basis, given that inadequate information has been submitted, approval of the application is not considered to be in the public interest.</p>

7 Key issues and reasons for refusal

7.1 Insufficient and inaccurate information has been submitted to support this large scale proposal

- 7.1.1 Insufficient, incomplete and inaccurate information has been provided to enable us to complete a detailed assessment.
- 7.1.2 A masterplan has not been provided and the drainage and engineering information is still deficient and incomplete. Amended architectural plans and amended landscaping plans that comply with the ADG have not been provided that address Council's concerns.
- 7.1.3 The subdivision plan, both in its original and amended form, has not been drawn up by a registered surveyor which is required by Council. This was requested by Council officers on a number of occasions.
- 7.1.4 The Clause 4.6 variation request to address the Clause 4.3 building height variation on the plans does not provide adequate information as outlined below in section 7.7.
- 7.1.5 The access report is incomplete as it does not adequately provide details of how ground floor units will access the street frontage apart from through the central lift lobbies. Direct access to the street frontage from ground floor units is not addressed.
- 7.1.6 The acoustic report is inaccurate as it does not adequately address the impact of the adjacent collector roads and the adjacent railway corridor on the RFBs. It asserts that the site is located 215 m from the nearest operating railway track, however since time of lodgement of this proposal the road network and rail network have undergone substantial changes, and as a result a new acoustic assessment is required.
- 7.1.7 Incomplete information has been provided to address concerns raised by Council's Property Section in relation to the subdivision property boundaries.
- 7.1.8 The subdivision plan is also required to show splay corners that have not been provided as requested by Council's Asset Design Section and Property Section.
- 7.1.9 Amended architectural plans have not been submitted to adequately address the ADG and design concerns raised by our Senior Architect and Development Services Unit.
- 7.1.10 An amended street tree planting plan has not been submitted and landscaping plans to address the requirements of our Recreation Planning and Design Section have not been provided.
- 7.1.11 Information requested by our Drainage Section has not been submitted for the proposal. This includes amended drainage plans, OSD calculations, amended

Music model and additional SEI Music model. Drainage plans have been provided instead for the shoptop housing development on 21 August 2020 which is not under consideration in this report.

- 7.1.12 Information requested by our Engineering Section has not been provided. This includes amended stormwater and civil engineering plans.
- 7.1.13 The traffic report is inaccurate as it assesses a proposal for only 17 residential flat buildings across the 6 lots, with 6 separate 2 level basement carparks.

7.2 Proposal is not compatible with the GC SEPP Indicative Layout Plan

- 7.2.1 The applicant proposes a variation to the GC SEPP Indicative Layout Plan.
- 7.2.2 On the adjacent land to the south at 279 Railway Terrace, consent was granted under DA-14-01602 and DA-14-01812 for subdivision and residential flat buildings, with a Construction Certificate issued, i.e. CC-16-01978. There is no evidence that this proposal will be compatible with the approved road pattern approved in these development consents.
- 7.2.3 The engineering plans as submitted with this application also fail to clearly demonstrate that the proposed development is compatible with the approved development, either being to the east, DA-14-01112 on Lot 3 DP 1231287, or to the south, DA-14-01602 and DA-14-01812.
- 7.2.4 The variation is not supported as the road layout and road levels are not consistent with the road pattern approved in the adjoining development. The approved road pattern on the adjoining lot to the south is not aligned with the amended road pattern of this proposal, such that the proposed half road on the southern boundary of the site does not ensure that a 18 m wide road is provided in the R3 zone. This variation will also result in traffic safety issues as not all proposed roads will be consistently 18 m wide throughout the site.
- 7.2.5 Approval for variation to the road pattern from adjoining affected land owners located on the northern and southern boundaries of the site has not been obtained. Amended engineering plans to reflect the road pattern as requested by Council's engineers have not been provided.
- 7.2.6 This road pattern variation was not supported by any supporting justification to warrant any further consideration.
- 7.2.7 Due to the proposed variation to the road pattern, Council's engineers have advised that the proposed development fails to demonstrate that it is compatible with the future regional infrastructure, or with the surrounding approved development.
- 7.2.8 On this basis the proposal with its intended road pattern variations cannot be supported due to potential impacts on neighbouring development.

7.3 The proposal is not consistent with the GC SEPP zoning

- 7.3.1 The proposed development (which is close to future regional road and drainage infrastructure detailed in Council's Contributions Plan) does not illustrate how this development will facilitate and ensure compatibility with the design of these infrastructure works.
- 7.3.2 The applicant proposes to change the size and location of the future SP2 - Infrastructure (Local Drainage) lot. The applicant's amended subdivision plan has relocated the SP2 drainage lot further south, and so does not comply with the zoning plan within the GC SEPP. This change to the size and location of the proposed drainage lot is not supported as it fails to provide adequate stormwater configuration, and potentially results in drainage land being located within the R3

Medium Density Residential zone to the south. We note the drainage lot differs in size from that shown on the Approximate Zoning Areas drawing provided by our Asset Design Section, dated 12 October 2017, which includes an SP2 drainage lot of 9,326 m². The applicant has proposed a subdivision lot size for the drainage lot of only 7,467.24 m² (proposed Lot 7).

- 7.3.3 This problem is compounded by the fact that the subdivision plan, both in its original and amended forms, has not been drawn up by a registered surveyor, which is essential to ensure accuracy with zonings and property boundaries as is required by Council. This has resulted in the drainage plans not being compatible with the neighbouring development and the future regional infrastructure.
- 7.3.4 The change to the drainage lot in size and location further south, and in a different configuration from that shown in SEPP mapping, could only occur through a Planning Proposal if the drainage is moved onto land mapped as R3 Medium Density Residential.
- 7.3.5 Due to the relocation and resizing of the drainage lot, Council's Drainage Section has advised that the proposed development is not compatible with the future regional drainage infrastructure. On this basis the location proposed by the applicant is unacceptable and cannot be supported by Council.

7.4 Proposal not compatible with future Schofields Town Centre

- 7.4.1 The proposal is not suitably designed and has a poor street appearance. The proposal fails in this area as it does not provide suitable amenity and connectivity from the site to the public domain due to lack of adequate pedestrian links, it does not provide for quality landscaping of the public domain, it is not situated in accordance with the Indicative Layout Plan and it does not provide for high quality landscaping treatment of the public domain including on the drainage lot.
- 7.4.2 The proposal does not provide high quality communal open space or provide for adequate pedestrian links across the site. Due to the above factors, including the lack of a masterplan, the proposal does not provide for a development suitable for this emerging neighbourhood.

7.5 Non-compliance with the Apartment Design Guide

- 7.5.1 The proposal does not meet Part 1 of the ADG (1B Local character and context and 1C Precincts and individual sites) as it does not comply with the Indicative Layout Plan and the future regional infrastructure. The proposal does not adequately address the future local character as the proposed residential flat buildings do not relate well to the public domain including the local street network and the future open space within the site.
- 7.5.2 The proposal does not meet Part 1C Precincts as the proposal does not provide for clearly defined through site links. The ground plane / landscape design should respond accordingly to facilitate the successful use of these spaces and the interface of the development with the future public domain. This is to ensure compliance with the Precinct Plan, which typically incorporates new streets and infrastructure, through-site links and open spaces that relate in scale, location and character to the local context.
- 7.5.3 The proposal does not comply with objective 2F Building separation, as the 5th storey setbacks (to the boundaries (and between the buildings on the site) are required to be 9 metres (18 metres) to the balcony to be compliant, but the proposal only shows 6 metres (12 metres).
- 7.5.4 The proposal is not fully compliant with objective 2G Street setbacks, as the street setbacks are to be compliant with the ADG. The required setbacks for habitable rooms/balconies to the street under the ADG require a 6 metre setback for

buildings up to 5 storeys, and a 9 metre setback for 5-8 storeys. The proposal shows setbacks to balconies at 4.384 m, 4.418 m, 5.518 m etc for the 5- storey buildings, which will result in an encroachment onto the 6 m wide front setback. The 5th storey on each building is also non-compliant as it will not be setback the required 9 m from the side or rear boundary.

- 7.5.5 The proposal does not comply with objective 3B Orientation, as the orientation of the 20 buildings across the site is such that there is inadequate solar and daylight access afforded to the communal open areas at ground level. No information was provided on the amount of solar and daylight access available to the communal open space areas at ground level. The solar access diagrams only relate to the built form. In addition, the building orientation also does not enable adequate through-site links to enable convenient and safe access by all to the open space areas within the site. The applicant was requested to amend the site layout and orientation of the buildings to achieve the required solar access to communal open space.
- 7.5.6 The proposal does not comply with objective 3C Public domain interface as it is not compatible with the Indicative Layout Plan and the future regional infrastructure, including the SP2 drainage lot. The SP2 drainage lot is not in a size, location and with a landscape design that is supported for this future infrastructure.
- 7.5.7 The proposal does not comply with objective 3D Communal and public open space. The communal open space proposed by the applicant is solely limited to the rooftop level, and there is landscaping at the ground level which does not meet the ADG requirements for communal open space. Our City Architect requested amendments to provide for communal open space at ground level. The landscaping plans for the communal open space do not provide for a quality ground floor or roof top communal open space experience, as the applicant shows a series of pathways with intermittent barbeque areas and turfed areas that cannot be accessed due to planting to the perimeter. Council has also advised the applicant that on-site communal facilities should be provided, such as communal rooms, gyms, play equipment and the like. The communal open space areas do not enjoy adequate solar and daylight access, as advised by Council's City Architect, due to the orientation of buildings across the site. No solar and daylight access diagrams were provided to demonstrate compliance with the ADG requirement at objective 3D-1 for a minimum of 50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours between 9 am and 3 pm on 21 June.
- 7.5.8 The proposal does not comply with objective 3E Deep soil zones. While on a quantity basis the requirement of 15% of site area is met on each lot, what is intended to be provided is at the periphery of each lot as shown on the landscaping plans, which will provide inferior areas for tree planting within a strip of approximately 2 metres wide. There is no provision of areas of 6 metres by 6 metres which is required to provide a deep soil zone which is 7% of the site area as shown at objective 3E-1. This is due to building encroachments within the side setbacks which reduce the setback areas to less than 6 metres. Thus, no existing significant trees have been nominated for retention, and it would not be possible to suitably grow medium and large sized trees on each lot, except on the lot boundaries. We have requested amended landscaping plans so that all communal open space areas including courtyards include at least one deep soil zone of 6 metres by 6 metres within the centre of each lot, in order to accommodate larger tree species to provide shade to the COS and to the building elevations. Council advised the applicant that planter boxes or planter areas with a nominal depth above any structure are not an acceptable substitute to take the place of deep soil zones as required by the ADG.

- 7.5.9 The proposal does not comply with objective 3G Pedestrian access and entries. This is because platform lifts have been included in the ground level plan, rather than provision of ramps, and because there are ground level units which do not have direct street access. Council requested amendments to address this. The use of platform lifts is discouraged to external areas, and the City Architect has advised that access to all areas to those who need it should be by way of ramps and varying levels of the ground plane rather than through the use of platform lifts which are expensive to maintain.
- 7.5.10 The proposal does not comply with objective 4A Solar and daylight access as the required solar access to the communal open space areas across the site is not achieved. No information was provided on the plans to detail the amount of solar and daylight access available to the COS areas at ground level, and Council's Senior Architect noted that due to the site layout and orientation of the 20 buildings across the 6 residential lots this would result in inadequate solar and daylight access to the COS areas at ground level. In our correspondence on 6 June 2018 we requested: "The site layout and orientation of the buildings be amended to achieve the required solar access to the COS in addition to responding to Council's concerns of bulk/massing and orientation to the street." The solar access diagrams provided only relate to the built form.
- 7.5.11 Amended plans were also requested to address objective 4F Common circulation and spaces, so as to meet objective 4F-2. Council has requested that building entries be redesigned to ensure they are clear and legible.
- 7.5.12 Amended plans were also requested to address objective 4L Ground floor apartments. The design of ground floor apartments is not supported overall, as there are multiple units that are positioned below ground level which is not acceptable, e.g. block D on Lot 1 has ground floor apartments greater than 2 metres below the adjacent ground levels, and so will be subterranean and will have no direct street access.
- 7.5.13 A major non-compliance with the ADG is with respect to objective 4M Facades, and the bulk and mass of the proposed 20 residential flat buildings across the 6 residential lots. The proposal will have a monotonous repetition of building form, articulation and materiality and will result in a poor streetscape with insufficient level of differentiation between each building. The design of the façade is not supported, and it does not provide for a high quality development with a balanced composition. Council requested a suitable mix of high quality materials to be provided, including masonry, and a revised building materials selection that provides relief and variation in the intended building form for each of the 20 buildings across the 6 lots, to eliminate the repetitive urban impact that will result from the proposal. It lacks articulation and variety in materials throughout, with little relief or variation in building form, with a similar treatment and streetscape to each of the buildings. We requested amendments to ensure a high quality façade with a variable mix of building elements, textures, materials and colour selections is achieved, that incorporates adequate articulation for each of the 20 buildings across the 6 lots.
- 7.5.14 The proposal does not comply with objective 4N Roof design as the roof design does not incorporate high quality materials, and there will be bulky roof intrusions over the permissible height plane. Amended plans were requested to address the facilities located on the roof spaces, and it was suggested that store rooms and amenities should be consolidated to reduce the built form on the rooftop.
- 7.5.15 The proposal does not comply with objective 4O Landscape design. Due to the placement of deep soil zones in the periphery of the lots, this limits the planting of medium and large size trees to the lot boundary, and will result in no trees being

planted within the central COS areas. Council has also advised that landscaped zones are required to both sides of each driveway, and that where the driveway abuts a site boundary then a minimum 2 metre wide landscaped zone is required.

- 7.5.16 The proposal does not comply with objective 4P Planting on structures. Raised planters were requested to be incorporated over portions of the driveways as the driveway lengths to the basement require intervention to reduce the prominence and extent of the driveways, and to improve the outlook over the driveways.
- 7.5.17 The proposal provides insufficient amenity in terms of acoustic privacy (objective 4H of the ADG) for future residents with respect to the railway corridor and the collector road (Pelican Road) as an accurate and up to date acoustic assessment has not been provided.

7.6 Insufficient consideration of site suitability re site contamination

- 7.6.1 While a contamination report has been provided, produced by Geotesta entitled Stage 1 Preliminary Site Investigation Report, NE166-17, a further Stage 2 environmental investigation has not been submitted and is considered necessary.
- 7.6.2 The Stage 1 report reviewed the current and historical activities on the site and assessed the potential risk of soil and ground water contamination existing on the land, and recommended that a Stage 2 investigation be carried out. This was due to the past dwelling construction and activities on the site which have the potential to have introduced contaminants in the form of asbestos as a construction material, pesticides for pest control and heavy metals. The areas of contamination concern include the dwellings, sheds, dam, and areas of possible cropping or market gardens.
- 7.6.3 As a result of a Phase 2 investigation report not having been provided, there has been insufficient consideration of the site's suitability with regard to site contamination.
- 7.6.4 On this basis Clause 7 of SEPP 55 (Contamination and remediation to be considered in determining development application) is not satisfied. This requires that, if the land is contaminated, satisfactory evidence in regard to the land's contamination and the remediation required is to be provided in a detailed investigation report, in order to determine that the land will be considered suitable for residential purposes once any recommendations of the NSW EPA certified consultant have been completed. These recommendations are ordinarily included in the conditions of consent.
- 7.6.5 Due to the lack of information provided to date in the Stage 1 report, it is not possible to determine at this time what, if any, remediation is required to render the site suitable for residential use, and if in fact the site can even be made suitable for residential use as we do not know the extent of any contamination issues. On this basis we cannot say that the site can meet the site acceptance criteria with reference to the residential standard in the National Environment Protection Measure (NEPM) Guidelines 2013. On this basis the proposal as submitted fails the Clause 7 test in SEPP 55 and cannot be supported.

7.7 A suitable Clause 4.6 variation request has not been submitted

- 7.7.1 The site has a 16 metre height limit under Clause 4.3 of the SEPP (SRGC) 2006. The proposal exceeds the maximum height of 16 metres in relation to the lift overruns, roof top communal open space and with point encroachments on the parapet. The applicant submitted a Clause 4.6 variation request with the original plans at the time of lodgement of the Development Application.

- 7.7.2 This Clause 4.6 request does not provide adequate justification for the variation from the building height standard. This is because it does not go into sufficient detail in addressing the variation sought. The request:
- does not provide detailed information as to which of the 20 buildings exceed the 16 metre building height standard, and which elements of each of these buildings exceed the height standard, and quantify this in measurement and percentage variation from the maximum building height mapped under the GC SEPP
 - does not provide detail on the topography of the site, and the natural ground levels across the site, together with elevation plans that clearly show the 20 RFBs (with a red line depicting the 16 metre maximum building height line) in order to demonstrate where they comply with the standard and where they exceed the building height standard
 - does not provide details on the RLs for the maximum extent of each of the 20 buildings, to enable an assessment by Council of the portions of the development which are above the 16 metre height plane and the portions of the development which are below the 16 metre height plane
 - does not detail the communal open space elements on the rooftops of the 20 RFBs that are located above the 16 metre building height.
- 7.7.3 Insufficient grounds are given to address whether compliance with the development standard is unreasonable or unnecessary (Clause 4.6.4 (a)(ii)) as particulars are not provided in relation to site topography, waste requirements, the design of each of the buildings and the proposed floor to floor dimensions.
- 7.7.4 Insufficient grounds are given to address how the proposal meets the objectives of the standard notwithstanding non-compliance with the standard (Clause 4.6.4 (a)(ii)) as scant information is given to addressing the surrounding development, the frontages to Railway Terrace and Pelican Road and the relationship to the public domain.

7.8 Late submission of amended plans that change the proposed use

- 7.8.1 Following our written request to the applicant on 21 August 2020 to withdraw the application, the applicant submitted amended plans that changed the proposed use from residential flat buildings to shop top housing and also amended the subdivision plan and size and location of the drainage-zoned lot, and further amended the street network within the site. The submission did not include justification for this change of proposed use.
- 7.8.2 The applicant also submitted amended civil engineering plans on 8 September 2020 and a link by email to further civil engineering plans on 15 September 2020.
- 7.8.3 The amended plans were not considered as part of this assessment as they changed the nature of the proposal from that originally lodged, further amended the size and location of the drainage-zoned lot, and also due to their late submission.

8 Issues raised by the public

- 8.1 The proposed development was not notified to property owners and occupiers in the locality. This is because the original proposal and the amended proposal were not in an acceptable form.

9 External referrals

- 9.1 The Development Application was not referred to either Transport for NSW (Roads and Maritime Services or Sydney Trains) as the proposal is unsatisfactory.

10 Conclusion

- 10.1 The proposed development has been assessed against all relevant matters and is not considered to be satisfactory. 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. The site is not considered suitable for the proposed development.

11 Recommendation

- 1 The Clause 4.6 variation request is not supported for the following reasons:
- a It does not sufficiently address the variation from the Clause 4.3 Building Height standard and it does not provide detailed information as to which of the buildings exceed the standard and the elements of the buildings which exceed the standard.
 - b It does not quantify in measurement or percentage variation the extent of exceedance.
 - c It does not provide detail on site topography and natural ground level together with elevation plans with RLs to demonstrate the exceedance.
 - d It does not provide rooftop communal open space features.
 - e It does not sufficiently address Clause 4.6.4(a)(ii) which requires that consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- 2 Refuse Development Application SPP-17-00026 based on the following grounds:
- a Insufficient information has been submitted to allow Council to carry out a full assessment of the application. [Section 4.15 (1) Environmental Planning & Assessment Act 1979 (EP&A Act)].
 - b Inconsistency with the objects of the Environmental Planning and Assessment Act 1979 as it does not provide for orderly development as it does not comply with the Indicative Layout Plan - Blacktown City Council Growth Precincts Development Control Plan 2010 road pattern, and the subdivision plan is not supported and is not in an acceptable format [Section 4.15 (1)(a)(i) and (1)(a)(iii) EP&A Act].
 - c The proposed drainage lot does not align with the GC SEPP drainage zone and with Council's plan for future regional infrastructure, and has been partially relocated into the R3 Medium Density Housing zone [Section 4.15 (1)(a)(i) EP&A Act].
 - d Failure to demonstrate adequate amenity for future residents, due to not meeting the requirements of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide as follows:
 - building separation, street setbacks, orientation, building appearance, solar access, deep soil, communal open space and landscaping, pedestrian access, acoustic privacy, public domain interface and other ADG requirements
 - this results in an unacceptable impact upon existing and future desired streetscape due to the repetition of building form, lack of articulation, materiality and inadequate interface with the public domain

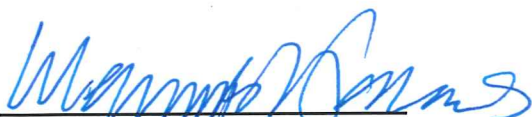
- adverse environmental impacts result from non-compliance with deep soil requirements
 - adverse environmental impacts result from acoustic impacts, as the impact on residents due to busy roads and the adjacent railway corridor has not been adequately addressed [Section 4.15 (1)(a)(i) EP&A Act].
- e Inconsistent with State Environmental Planning Policy - Infrastructure 2007 as an acoustic report has not been provided to address the impacts of the adjacent railway corridor and the road network [Section 4.15 (1)(a)(i) EP&A Act].
- f Fails to comply with Clause 7 of State Environmental Planning Policy No. 55 - Remediation of Land as a Phase 2 Contamination Report has not been submitted to give certainty that the land can be made suitable for residential development in accordance with the residential standards in the NEPM Guidelines 2013 [Section 4.15 (1)(a)(i) EP&A Act].
- g Inconsistent with Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River as insufficient and inadequate information has been provided in relation to stormwater drainage infrastructure and its relationship to the future regional infrastructure, and failure to demonstrate acceptable stormwater disposal [Section 4.15 (1)(a)(i) EP&A Act].
- h Inconsistent with the Blacktown City Council Development Control Plan 2015 as it does not comply with Council's Engineering Guide for Development or with Part J of the DCP in relation to stormwater and drainage requirements [Section 4.15 (1)(a)(iii) EP&A Act].
- i Approval of the application is not considered to be in the public interest [Section 4.15 (1)(e) EP&A Act] given that:
- there is a significant deficiency in design as the proposal fails to demonstrate compatibility with the future regional infrastructure and also with surrounding development
 - it is not in accordance with the Indicative Layout Plan
 - it does not fully comply with the requirements of the Apartment Design Guide
 - inadequate and incomplete information has been submitted.
- 3 Council officers notify the applicant of the Panel's decision.



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