

Assessment report to Sydney Central City Planning Panel

Panel reference: PPS-2019CCI009

Development application

DA number	SPP-18-01555	Date of lodgement	18 December 2018
Applicant	Tilrox Pty Ltd C/- Design Cubicle Pty Ltd		
Owner	Sam Sassen & Sons Developments Pty Ltd, Sassen Constructions Pty Ltd		
Proposed development	Integrated Development including tree removal, construction of 2 x 5 storey residential flat buildings (RFBs) with 178 residential apartments over 2 levels of basement car parking		
Street address	12 Sunnyholt Road, Kings Langley		
Notification period	6 February to 8 March 2019	Number of submissions	71 individual submissions

Assessment

Panel criteria Section 7, SEPP (State and Regional Development) 2011	<ul style="list-style-type: none"> Capital investment value (CIV) over \$30 million (DA has a CIV of \$40.9 million).
Relevant section 4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Act 1979 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and Apartment Design Guide (ADG) State Environmental Planning Policy No. 55 – Remediation of Land Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River Blacktown Local Environmental Plan 2015 Blacktown Development Control Plan 2015 Central City District Plan 2018 Blacktown Local Strategic Planning Statement 2020
Report prepared by	Sami Ahangari
Report date	2 December 2020
Recommendation	Approve subject to a deferred commencement consent and including the conditions listed in attachment 10.

Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning extract
- 4 Detailed information about proposal and DA submission material
- 5 Development application plans
- 6 Assessment against planning controls
- 7 Issues raised by the public
- 8 Applicant's Clause 4.6 request
- 9 Council's Assessment of Clause 4.6 request
- 10 Draft conditions of consent

Checklist

Summary of section 4.15 matters

Have all recommendations in relation to relevant section 4.15 matters been summarised in the Executive summary of the Assessment report? Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments, where the consent authority must be satisfied about a particular matter, been listed and relevant recommendations summarised in the Executive Summary of the Assessment report? Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the Assessment report? Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (section 7.24)? Not applicable

Conditions

Have draft conditions been provided to the applicant for comment? 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:

- Realignment of the creek, which is addressed in the executed Voluntary Planning Agreement (between Council and the applicant) associated with rezoning of the land. The Office of Water has granted its General Terms of Approval to these proposed works.
- The site is identified as flood prone land (1 in 100 year), but the finished floor level of the residential flat buildings will be at the higher flood wave level of a potential basin failure or dam break.
- The stormwater detention basin upstream of the development site in Council's reserve. In the unlikely event of there being a catastrophic failure of the basin wall, it has been determined that the resultant flood wave will not adversely impact this development (situated directly downstream of the basin), provided the finished floor levels of the residential flat buildings are above the designated flood level for this area. This will be conditioned in the consent.
- The proposed variations to the side and front setback requirements. These are considered reasonable given this is an isolated site, with no immediate abutting residential zone, and will provide passive surveillance over the reserves.
- The provision of a one-way 'entry-only' slip lane on Vardys Road is required within and along the front setback of the site on the western side of the proposed driveway heading east from Sunnyholt Road. This can be accommodated in the development and will be conditioned to be provided by the applicant for a length of 20 m and width of 3 m to enter the site driveway only from Vardys Road.
- The proposed buildings' exceedance of the maximum permitted building height by 5.6 m. This is considered acceptable in this instance as it is predominantly for the lift overrun and staircase to access the rooftop communal open space, and with only minimal intrusion of habitable space caused by the need to raise the finished floor level to the flood wave level as outlined above.
- Matters arising from Council's resolution when the rezoning of the land was approved.
- The minor variation to the car parking requirement of Blacktown Development Control Plan 2015. This will necessitate the applicant changing the unit mix to ensure all units have the minimum required car parking spaces provided for them in the basement carpark. The applicant will be required to provide an amended floor plan for the units being changed, as a deferred commencement condition.
- The land is identified as being included in the 'Design excellence' catchment on the Design Excellence Map under Blacktown Local Environmental Plan 2015. Our City Architect has reviewed the building design and it is considered satisfactory subject to conditions of consent that require a revised alternative materials selection instead of the use of render, which must be limited and largely substituted for more robust durable alternative materials requiring less maintenance.
- The SP2 Drainage zone as published did not exactly reflect Council's adopted Planning Proposal on 9 December 2015, whereby the R4 zone has been reduced slightly and the SP2 zone has been increased slightly. The Voluntary Planning Agreement that applies to the site is based on Council's adopted zone boundaries, not the published ones. Council's Director Planning and Development resolved on 2 December 2020, under her Council delegation, to prepare a Planning Proposal that rectifies the anomaly utilising the section 3.22 Expedited amendments provisions under the Environmental Planning and Assessment Act 1979.

- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by our technical departments have not identified any issues of concern that cannot be dealt with by conditions of consent.
- 1.3 The application is therefore assessed as satisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979.
- 1.4 This report recommends that the Panel approve the application subject to a deferred commencement consent including conditions listed in this report and at attachment 10. The deferred commencement conditions will require the applicant to amend the proposal to address all of the key issues identified above.

2 Location

- 2.1 The site is located at 12 Sunnyholt Road, Kings Langley and on the north-eastern corner of the intersection of Sunnyholt Road and Vardys Road.
- 2.2 The site is bounded by Sunnyholt Road to the west, Vardys Road to the south, adjoining Evan Place to the north with residential lots opposite, and an existing public reserve with playing fields and a stormwater detention basin to the east.
- 2.3 The development site (for the construction of residential flat buildings) after the subdivision will be an isolated site with Public Recreation and Drainage zoned land abutting it to the north, east and west, and with access only available from Vardys Road.
- 2.4 The location of the site is shown at attachment 1.

3 Site description

- 3.1 The site's legal description is Lot 1 in DP 1097685 and has a total area of 1.74 ha.
- 3.2 The site is rectangular in shape, measuring 157 m along the Vardys Road frontage and 90 m along Sunnyholt Road.
- 3.3 The site is currently vacant, however, an unnamed ephemeral (dry) watercourse creek line traverses through the site in an east to west direction from the adjoining open space reserve to the east.
- 3.4 The topography of the site has as an undulation throughout the land and it generally falls from both the north and south sides of the site to the gully with the existing creek line through the middle of the site.
- 3.5 There are 53 trees within the overall site, with the majority of the trees located along the creekline and to the west.
- 3.6 An aerial image of the site and surrounding area is at attachment 2.

4 Background

- 4.1 In December 2015, Council resolved to adopt a Planning Proposal, with an accompanying VPA, on the subject site which rezoned the land from part R2 Low Density Residential and part R3 Medium Density Residential to part R4 High Density Residential, SP2 Infrastructure (Drainage) and RE1 Public Recreation, with an increase in the maximum height of buildings on the R4 portion of the site from 9 m (3 storeys) to 16 m (5 storeys).
- 4.2 The adopted Planning Proposal requires the realignment of the existing creek towards the northern portion of the site and restricted access of any future development on this site only to Vardys Road.
- 4.3 Accordingly, in 2016 the applicant entered into a Voluntary Planning Agreement with Council which obligates the developer and landowner to:

- design, construct and landscape the realignment of the existing creek in line with the proposed Landscaping Plan at Schedule 3 of the VPA, and to Council's approved design and specification as part of the Development Application process
- design and construct the unformed part of Evan Place to Council's design and specification
- dedicate land to Council for the creek, dedicate the constructed half-width of Evan Place and that part of the land zoned RE1 Public Recreation.

4.4 Council also resolved in December 2015 that:

- the required Voluntary Planning Agreement is to include the provision of substantial mature tree planting in the 10 m area either side of the top of bank to Council's satisfaction
- the applicant for any future DA be required to provide extra visitor parking to Council's satisfaction to address existing residents' expressed concern at the potential for visitors to the residential flat building to park in Evan Place
- the applicant for any future DA be required to specifically address existing residents' expressed concern at the potential that their privacy will be impacted from the future occupants along the northern side of the future development. The applicant is to address this issue in the design through the use of, for example, fixed louvres to balconies along the northern face of the building and/or planter boxes integrated into the built form of the balconies. Any rooftop terrace is to also deal with potential overlooking.

These Council resolutions are addressed in more detail in Section 7 of this report.

- 4.5** The proposed residential flat buildings will only be situated within that part of the land zoned R4 High Density Residential. The zoning plan for the site and surrounds is at attachment 3, noting that, as explained in Section 7.10 below, the incorrect Drainage zone alignment is being rectified separately by Council's Strategic Planning section.

5 The proposal

- 5.1** The Development Application has been lodged by Design Cubicle Pty Ltd on behalf of Tilrox Pty Ltd.
- 5.2** The applicant proposes the construction of 2 × 5 storey residential flat buildings with 178 residential apartments over 2 levels of basement car parking containing 255 car parking spaces.
- 5.3** The residential apartments will consist of:
- 2 x studio units (1.1%)
 - 2 x 1 bed units (11.8%)
 - 145 x 2 bed units (81.5%)
 - 10 x 3 bed units (5.6%).
- 5.4** This application also comprises the works required under the executed Voluntary Planning Agreement associated with the rezoning of the land. These works include the design, construction and landscaping of a realigned creek (including the 10 m landscaped buffers on both sides of the creek), half width construction of Evan Place with an associated subdivision to dedicate the road and the parts of the land zoned SP2 and RE1 to Council. These works must be completed prior to the issue of any Construction Certificate for building works on the R4 zoned part of the land.

- 5.5 The proposal is also Integrated Development under section 4.46 of the Environmental Planning and Assessment Act 1979, requiring the concurrence of the Natural Resources Access Regulator under the Water Management Act 2000.
- 5.6 Other details about the proposal are at attachment 4 and a copy of the development plans is at attachment 5.

6 Assessment against planning controls

- 6.1 A full assessment of the Development Application against relevant planning controls is provided at attachment 6.

7 Key issues

7.1 Realignment of the creek is required prior to building construction works

- 7.1.1 There is an existing creekline passing through the site in an east to west direction. The footprints of the proposed residential flat buildings will encroach into this creek and therefore this proposal depends on the creek being realigned first.
- 7.1.2 In August 2016, Council resolved to endorse a Voluntary Planning Agreement (VPA) on the subject site to support the ministerial approval of the Planning Proposal for rezoning of the land. The VPA provides for the:
- design, construction, realignment and landscaping of the existing creek based around the proposed Landscaping Plan at Schedule 3 of the VPA, and to Council's approved design and specification as part of the Development Application process. This will reflect the alignment of the SP2 and R4 zones as adopted by Council on 9 December 2015.
 - design and construction of the unformed part of Evan Place to Council's design and specification
 - dedication of the creek, the constructed half width of Evan Place and that part of the land zoned RE1 Public Recreation to Council.

These 3 elements must be designed, constructed and dedicated before any Construction Certificate will be issued for the residential flat buildings. Whilst this is not a component of the VPA, it will be a pre-condition on the development consent to the issuing of any Building Construction Certificate.

- 7.1.3 The applicant has provided the engineering plans for the works required under the VPA (e.g. channel design, stormwater works and landscaping) as part of this application.
- 7.1.4 Our Drainage and Development Engineering section has reviewed the application and raised no objections to the proposal subject to imposing deferred commencement conditions of consent. The deferred commencement conditions will require amendments to the engineering plans, for Council's approval, to address the new creek channel design, stormwater works and landscaping works.
- 7.1.5 The applicant is obligated, under the VPA, to complete the above works first to facilitate a developable site on which the construction of residential flat buildings can take place on the R4 zoned part of the land. Therefore, a further condition will be imposed on the consent requiring the works under the VPA to be completed to Council's satisfaction prior to the issue of any engineering or building Construction Certificate for the residential flat buildings.
- 7.1.6 The applicant will also be required to maintain the finished realigned creek for a period of 3 years after its construction (interim completion) to ensure that the realignment of the creek is established and maintained and the new vegetation is

suitably established to prevent it from dying off or being washed away. Therefore, a condition is also imposed on the consent that the Subdivision Certificate (to dedicate the RE1 and SP2 land to Council) and the Occupation Certificate for the residential flat buildings are not to be released until 3 years after interim completion of the creek and riparian corridor works.

7.2 The site is identified as flood prone land (under the 1 in 100 year flood)

- 7.2.1 The objectives of Clause 7.1 of the Blacktown Local Environmental Plan (BLEP) 2015 are to minimise the flood risk to life and property associated with the use of land, to allow development on land that is compatible with the land's flood hazard and to avoid significant adverse impacts on flood behaviour and the environment. This clause applies to land identified at or below the flood planning level.
- 7.2.2 Clause 9.4.3 (i) in Part A of Blacktown Development Control Plan 2015 (DCP) states that, for subdivision in residential zones, Council will require land to be filled to 500 mm above the designated flood level. This development is adjacent to a realigned creek and there is a requirement to provide a 10 m wide riparian buffer to the creek which will be reinforced with a condition requiring a restriction (under Section 88B of the Conveyancing Act) over the 10 m wide riparian corridor, so that it is not to be developed for any purpose except as a vegetated buffer area. The riparian corridor is to also be maintained by the owners of the residential flat buildings in line with a Council approved Vegetation Management Plan.
- 7.2.3 For the length of the creek some of the 1 in 100 year ARI flood extends partly into this buffer area, and in other areas the 100 year flood occupies nearly all of the 10 m wide riparian buffer. However, the residential flat buildings will be built on a podium with the habitable floor levels being at the flood wave level in the event of a basin failure which is higher than the 500 mm above the 100 year Annual Recurrence Interval (ARI) (designated) flood level. As the residential building component is above the required flood level and the 10 m riparian area cannot be built on, it is considered that this is an acceptable variation to the DCP controls so that the riparian corridor does not have to be raised above the required flood level.
- 7.2.4 A Flood Study Report has been submitted with the application to determine the flood levels across the site, design the new location and shape of the new watercourse and address Council's engineering requirements.
- 7.2.5 Our drainage and development engineers have reviewed the applicant's Flood Study and confirmed that the proposed habitable floor levels of the 2 residential flat buildings will meet the flood wave levels. On this basis we have no objection to the proposal subject to appropriate deferred commencement conditions of consent to ensure the applicant addresses our engineering design requirements.

7.3 Failure of the upstream detention basin wall will not adversely impact the development site

- 7.3.1 Upstream of this development site there is a Council stormwater detention basin known as Waller Creek Basin. This basin was constructed across Waller Creek approximately 20 years ago to reduce flooding in the residential development immediately downstream and for much of the industrial developments on the south-west side of Sunnyholt Road.
- 7.3.2 Waller Creek Basin has a grass covered embankment up to 3.5 m high and approximately 320 m in length, varying in elevation from RL 50.1 m AHD to RL 50.5 m AHD. It is usually a dry basin with no permanent water storage behind the basin embankments and only fills up in times of flooding. The aim of the basin is that it then releases the collected flows slowly at pre-development flows over a long period well after the flood or storm event has passed.

- 7.3.3 As the discharge point from Waller Creek Basin is directed onto the subject land, a Dam Break Flood Study was also requested from the applicant in addition to the normal flood study requirements.
- 7.3.4 The Dam Break Flood Study is an assessment of the impacts of the resultant flood wave that would flow onto the subject land should there be catastrophic failure of the basin wall. The study concludes that there would be no change in the category of risk as a result of this development. As this flood wave would only result from both the basin wall failing and a 1 in 100 year flood event occurring at the same time, the likelihood of this happening is significantly lower than the normal 1 in 100 year flood risk. Consequently, the habitable floor levels for the development will be at the dam break level with no freeboard, which is still higher than the 1 in 100 year flood level plus 500 mm freeboard.
- 7.4 The proposal includes acceptable variations to side and front setbacks given the location of this development site**
- A. Side setback**
- 7.4.1 Section 6.6 of Blacktown Development Control Plan 2015 requires a minimum side setback of 6 m to habitable rooms and balconies for the 4-storey building height and 9 m for 5 storeys and above.
- 7.4.2 The applicant seeks to vary the development controls so that balconies facing the eastern boundary of the site on levels 1 to 4 have a setback of only 3 m to the eastern boundary. The proposal provides a 4.5 m to 6.6 m side setback from the building line to its eastern boundary on the ground level.
- 7.4.3 The subject site adjoins a public reserve (RE1 zone) to its eastern boundary and there will never be any residential development on the adjoining site. As such the proposed variation to the side setback will raise no adverse impacts on any residential development in respect to privacy, views, solar access or visual intrusion. The minor non-compliance is reasonable as it also allows for a good level of passive surveillance over a recreational space, noting the development has oriented habitable windows to the site's eastern and northern boundaries.
- 7.4.4 The Apartment Design Guide does not include a numerical requirement for side setbacks and requires consideration be given to the building context, requirements for communal and private open space, deep soil zone, building separation and visual privacy, and any overshadowing impact on the adjoining properties. The proposal meets these requirements of the Apartment Design Guide.
- 7.4.5 Whilst there is no easement over the site benefiting Endeavour Energy, there are 11 kV high voltage overhead power line running from Vardys Road to the north, parallel to the eastern boundary of the subject site, requiring a notional 9 m easement width, being 4.5 m to both sides of the centre line.
- 7.4.6 The justification provided by the applicant in support of the variation sought for the side setback relies on a minimum 3 m setback to this eastern boundary of the site, and the centre of the pole holding the lines is approximately 1.7 m away from its boundary, which would correspond to the centre line. As a result, a minimum separation of 4.7 m is provided to the centre line, which complies with the Endeavour Energy minimum requirement of 4.5 m separation to both sides of the centre line.
- 7.4.7 Given that the proposal satisfies the required clearances to the building footprint, the proposed variation of the side setback to the building line is considered acceptable and is supported. However, the applicant will be required to liaise with Endeavour Energy and address the concern raised by Endeavour Energy in

relation to the 'various other encroachments and activities proposed within the easement', prior to the issue of any Construction Certificate.

B. Front setback

- 7.4.8 The applicant seeks to vary the development controls so that buildings have a setback of 6 m to Vardys Road. The Blacktown Development Control Plan 2015 requires the front setback to be generally in line with the setback characteristic of neighbouring properties and to be generally a minimum of 9 m.
- 7.4.9 Although the full extent of the street setback is not met, the proposal is designed in a U-shaped built form, which provides a substantial breaking up of the massing of the building as viewed from Vardys Road and a street setback significantly greater than the 6 m in some parts of the building being up to 35 m indented for a length of 13 m in each building. In addition, there is no existing setback pattern established along the northern side of Vardys Road as the site has no shared residential boundaries. The existing width of Vardys Road is 30 m, which provides a substantial separation to the residential development opposite and mitigates any potential adverse impact arising from the reduced front setback on the development site.
- 7.4.10 Given the scale of this proposal, the development should be considered holistically and we consider that the articulation of the buildings compensates for some of the proposed building elements having a reduced setback.
- 7.4.11 The Apartment Design Guide does not include a numerical requirement for street setbacks, and directs that consideration be given to providing articulation zones accommodating space for building entries, ground floor courtyards, balconies, landscaping, deep soil zones and to "use a setback range where the desired character is for variation within overall consistency". The proposal is consistent with these guidelines.
- 7.4.12 Although the full extent of the street required setbacks are not achieved, the proposal is considered to be satisfactory in its unique setting, and so on its merits is supported.
- 7.5 Provision of a slip lane on Vardys Road is considered necessary to improve safety at the entry point to the proposed development**
 - 7.5.1 The proposed vehicle access arrangement to the development comprises a 6 m wide combined ingress/egress driveway located centrally on the Vardys Road frontage and approximately 112 m away from the Sunnyholt Road intersection. Vardys Road is a Council road and not a Transport for NSW road.
 - 7.5.2 The application was referred to the then Roads and Maritime Services (RMS) as the proposal is close to a signalised intersection (Sunnyholt Road and Vardys Road) to the west. The RMS raised no objection and appropriate conditions have been provided, but do not include a requirement for a slip lane into the development site from Vardys Road.
 - 7.5.3 Council's Traffic section has reviewed the proposal and has concluded that a left turning slip lane is needed to separate traffic slowing down to turn into the 90-degree basement driveway access, from the through-traffic, as Vardys Road is a 2 lane sub-arterial road heading east on this side and carries significant traffic volumes.
 - 7.5.4 Whilst the applicant has objected to providing a slip lane along the frontage to Vardys Road, Council is of the view that a 3.5 m wide slip lane is needed to improve the safety of cars/trucks arriving to the entry point of the proposed development from the west, as it will take them off the main Vardys Road traffic lanes and allow them to slow down before turning into the site, eliminating the

likely risk of an accident or pile up of traffic. It is noted that the provision of a 3.5 m wide slip lane within the 6 m front setback will not adversely impact on the streetscape subject to dense landscaping of the remaining 2.5 m wide front setback along the slip lane length. This will also not impact on the required area for common open space under the Apartment Design Guide as additional common open space will be provided on the rooftop.

- 7.5.5 A deferred commencement condition is recommended that will require the applicant to submit an amended plan, for Council approval, showing a 3.5 m wide private slip lane driveway within the 6 m front setback (with dense landscaping on the remaining 2.5 m wide front setback) along the length of the slip lane of 20 m from the basement driveway location.

7.6 Proposed buildings exceed the maximum permitted building height

- 7.6.1 The proposal seeks to vary the building height to 21.6 m, being up to 5.6 m above the permissible height limit of 16 m, in certain locations only. This equates to a variation of 35%. The proposal is predominantly compliant with the maximum building height with the exception of some habitable room area of the uppermost level and elements of the parapets, fire stairs and lift overrun on both Buildings A and B.
- 7.6.2 The majority of the height exceedance relates to parts of the buildings including the roofline and parapets, rooftop plant and equipment and services, to enable access to rooftop communal open space areas of the buildings.
- 7.6.3 The applicant has submitted a Clause 4.6 request to justify that compliance with the height development standard is unreasonable and unnecessary in this instance. A summary of the justification follows and a copy of the request is at attachment 8.
- The buildings have no full habitable floor level that protrudes above the 16 m height control, but rather some upper level encroachment that relates to undulation in the ground below and the land reshaping to deal with flooding matters.
 - The point encroachments for the lift and stair overruns provide access to the rooftop communal open space areas on top of the buildings, which achieve solar access for residents and private open space well in excess of the minimum requirements. 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 any residential properties.
 - The portions of the roofline and some habitable room area that exceed the height plane range from 0.199 m to 2.26 m, covering 72.4% to 0.5% of the top floor in Building A and from 0.199 m to 0.78 m in Building B, covering 25.1% to 1.1% of the top floor. This is due to the existing site topography and the creek channel level, as well as a response to the flooding affectation for the site and the need to ensure that a suitable freeboard level associated with the 100 year dam break study carried out.
- 7.6.4 This is a greenfield site with a significant level difference due to the existing creek running through the development site. The existing creek channel results in a gully with the levels approximately 3 m lower from the bed of the creek to the top of the embankment. Given the need to fill and realign the creek to create a building platform, elements of the buildings inevitably do exceed the maximum height limit established by BLEP 2015.
- 7.6.5 It is noted that the part of the site which is visually dominant as viewed from Vardys Road is generally consistent with the height limit and the area of the

exceedance, including the lift overruns, staircase and some habitable space, are adjoining the landscaped buffer facing the creek and riparian zone to the north and west portions of the development site, which assists with reducing the visual impact of this height exceedance.

- 7.6.6 It is considered that the site is an isolated island situated away from other residential lands. The SP2 zoned land which is to be embellished with stormwater and landscape works provides a significant separation between the residential properties to the north of Evan Place and the proposed buildings. The variation is for some portions of the building and roof form, with the majority of windows located below the prescribed height limit, and there are no privacy impacts on nearby residential properties. Therefore, the impacts arising from the overshadowing and visual impacts associated with the non-compliance with the height control are mitigated due to the lot residing within its own island and away from other residential zoned land parcels.
- 7.6.7 Our assessment of the adequacy of the request to vary the development standard is at attachment 9 and identifies that there are sufficient environmental planning grounds to justify varying the development standard. It concludes that the Clause 4.6 variation request is reasonable and well founded in this particular circumstance and is recommended for support to allow flexibility in the application of the development standard. The variation in height is primarily caused by the applicant meeting the dam break flood level for the finished ground floor of both buildings, which is in the public interest and is supported.

7.7 Matters arising from Council's resolution at the stage of rezoning of the land

7.7.1 Additional car parking

"As the residents have expressed concerns at the potential for visitors to the residential flat building to park on Evan Place, the applicant for any future DA is required to provide extra visitor parking to the satisfaction of Council within the development."

- The proposed residential buildings have no (pedestrian or vehicular) access or connection to Evan Place to the north and the 50 m wide open space and creek corridor across the northern boundary of the site also restricts vehicular traffic from the development to Vardys Road to the south of the site only.
- As such, it would be highly unlikely that there would be any cars associated with the development parking in Evan Place as it does not directly access the residential flat buildings and is remote from the main entry points on Vardys Road. In addition, there will be palisade fencing separating the creek/riparian corridor from the development site. Therefore, there will be no loss of car parking in Evan Place or the need to provide additional car parking over that required by the Blacktown Development Control Plan.

7.7.2 Additional tree planting

"The provision of substantial mature tree planting in the 10 m area either side of the top of the bank to Council's satisfaction. Further, that the proposed landscaping plan for the drainage corridor be notified specifically to the residents/owners of Evan Place when the VPA is placed on public exhibition."

- The draft VPA was publicly exhibited between 7 June 2016 and 5 July 2016. The residents/owners of Evan Place were also notified and provided a copy of the VPA and the proposed Landscaping Plan attached to the VPA that showed the concept landscaping within the 10 m landscaped buffer.

- The applicant has submitted a detailed landscape plan that relates to the intended embellishments proposed for the riparian corridor and SP2 zoned land, centred around the creek design.
- Council's Open Space team has reviewed the submitted landscape plan for the riparian corridor and recommended a revised landscape plan be submitted as part of deferred commencement conditions, to address the Council requirements. The revised landscape plan is to address the interface treatments between the different zoning and boundaries, maintenance access, additional planting per square metre and amended species.

7.7.3 Additional privacy measures

"As the residents have expressed concerns at the potential their privacy to be impacted from the future occupants along the northern side of the future development, the applicant of any future DA be required to specifically address this issue in the design through the use of, for example, fixed louvres to balconies along the northern face of the building and/or planter boxes integrated into the built form of the balconies. Any rooftop terrace to also deal with potential overlooking."

- The realigned creek and open space corridor will create a generous buffer of approximately 50 m between the existing residential properties on Evan Place and the proposed residential flat buildings in the R4 zone. The embellishment of the riparian corridors and creek with significant trees will only help add to the dense vegetation layer of visual privacy separating the development from the low density residential properties to the north and diminish any potential impact of future development on the existing residents in Kings Langley.
- In addition to the above, the roof design includes planter boxes along with some parapet walls on the roof. Together these proposed measures will assist to prevent any potential overlooking from the roof to the low density residential areas to the north. Therefore, the development is not considered to have any potential privacy impacts on the existing low density dwellings on Evan Place to the north.
- However, to acknowledge the concerns the residents in Evan Place it is recommended that fixed louvres be installed to all balconies along the northern face of both buildings and this is reflected in a condition on the consent. It is noted the rooftop common open space has already been designed to address potential overlooking.

7.8 Compliance with car parking requirements of Blacktown Development Control Plan 2015 will necessitate changing the unit mix

7.8.1 Blacktown Development Control Plan 2015 requires the provision of car parking at the following rate:

- 1 space per 1 or 2 bedroom dwelling
- 2 spaces per 3 or more bedroom dwelling
- plus 1 space per 2.5 dwellings for visitor parking (or part thereof).

7.8.2 The proposal incorporates a total of 255 car parking spaces over 2 basement car parking levels based on the following unit mix:

- 2 x studio units - 2 spaces
- 21 x 1 bedroom units - 21 spaces
- 145 x 2 bedroom units - 145 spaces
- 10 x 3 bedroom units - 15 spaces

- 178 dwellings / 2.5 - 72 spaces (for visitors).

- 7.8.3 Applying the car parking rates under Blacktown DCP 2015, the proposed development will require a total of 260 car parking spaces, representing a shortfall of 5 car parking spaces.
- 7.8.4 Given the concerns raised in relation to the lack of on-street car parking in the area and the need to provide additional car parking as discussed above, it is recommended that a deferred commencement condition be imposed on the consent that requires the proposed unit mix to be modified to fully comply with the car parking requirement.

7.9 The land is identified as 'Design Excellence' on the Design Excellence map

- 7.9.1 Clause 7.7 'Design Excellence' of Blacktown LEP 2015 applies to the site. The objective of this clause is to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Blacktown and whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.
- 7.9.2 The proposed materials include rendered and painted finishes for the facade walls, a combination of solid balustrades as well as glazed balustrade treatments, Alucobond cladding for partial walls and timber cladding for architectural elements and parapet wall on the roof.
- 7.9.3 Council's City Architect has reviewed the proposed schedule of materials and the submitted photomontage with the application and identified some concerns during his initial evaluation. Our preference is for the use of render to be limited and substituted for more robust materials (such as masonry) and replacing the timber cladding to metal cladding with a timber veneer look so as to ensure there is less ongoing maintenance and improved longevity of the finishes for this development.
- 7.9.4 The applicant has agreed to the matters raised by our City Architect, in principle, and requested to defer the revised schedule of materials to be provided once the revised design is confirmed. Therefore, a condition is imposed on the consent requiring the revised schedule of materials to be provided to Council's City Architect's satisfaction as a deferred commencement condition.

7.10 The 10 m setback on the southern side of the creek will form part of the R4 zone once the zone boundary anomaly is rectified

- 7.10.1 In December 2015, Council resolved to adopt a Planning Proposal, with the associated VPA, which required the provision of substantial mature tree planting in the 10 m area either side of the top of bank to Council's satisfaction.
- 7.10.2 It was determined at that time that the 10 m setback on the northern side of the creek will be located in the drainage corridor (SP2 zoned land), whilst the 10 m setback on the southern side of the creek will eventually form part of the R4 zoned land. The southern setback will not be developable and will form part of the landscaping component of the future development. The 10 m southern setback will be subject to a restrictive covenant on title and Council will be the authority over this restriction.
- 7.10.3 Council's Strategic Planning section has recognised that there is a discrepancy between the R4 and SP2 zoning boundary on the plan adopted by Council on 9 December 2015 and the boundary shown on the zoning plan that appears on the NSW Government Legislation website.
- 7.10.4 The current zoning indicates that the 10 m buffer to the south of the channel is currently zoned part SP2 and part R4. However, the 10 m buffer was intended to be landscaped and maintained by the owner in perpetuity as the required setback

to the proposed development on the R4 zoned land and as per the plan adopted by Council on 9 December 2015.

- 7.10.5 In order to rectify this anomaly, Council resolved on 2 December 2020, under delegated authority to the Director Planning and Development, to prepare a Planning Proposal utilising the section 3.22 Expedited amendments provisions under the Environmental Planning and Assessment Act 1979.
- 7.10.6 Section 3.22 states that an amending environmental planning instrument may be made without compliance with the provisions of Part 3 of the EP&A Act if it amends a principal instrument in order to:
- “correct an obvious error in the principal instrument consisting of a misdescription”.
- 7.10.7 In this case, the zoning description that was made (published) on 2 December 2016 (Amendment No. 3 to Blacktown LEP 2015) misdescribed the zoning on the Land Use Zoning Map that was adopted by Council on 9 December 2015. The applicant has prepared the DA in good faith, relying on the zoning plans that formed part of the VPA and that was adopted by Council. The Council-adopted zoning plan is the subject of the section 3.22 expedited amendment application.
- 7.10.8 The Department of Planning, Industry and Environment prepared a Planning Circular (PS 06-014) on 12 July 2006 to provide guidance on the process to be followed by councils when requesting an amendment to an LEP under section 3.22 (formerly 73A). The Circular includes a standard application form, requiring a resolution from Council to prepare the amendment. We have commenced the process through a resolution by the Director Planning and Development under her delegated authority.

8 Issues raised by the public

- 8.1 The proposed development was notified to property owners and occupiers in the locality between 6 February and 8 March 2019. The Development Application was also advertised in the local newspapers and a sign was erected on the site.
- 8.2 We received 71 individual submissions. We have also received 2 support letters from the applicant and the owner.
- 8.3 The issues raised by the residents in these submissions relate to:
- inadequate car parking on site and potential overflow parking on local streets and sporting fields
 - increased traffic negatively impacting the area and local road network, particularly the traffic flow on Vardys Road
 - development not in keeping with the character of the area
 - the site being flood prone and its impacts on the sporting fields
 - safety concerns and potential for increased crime in the area
 - scale and quality of development and non-compliance with the height limit and front and side setback controls
 - noise and privacy impacts on surrounding residential properties
 - impact on local services
 - failure to comply with the commitments at the rezoning stage
 - site suitability for the development and potential to set a precedent for similar developments in the area

- tree planting, landscaping of the area adjacent to the site, and ecology of the local area
- impact on property prices.

8.4 A summary of each issue and our response is at attachment 7.

8.5 The issues raised in the submissions are, in our opinion, not sufficient to warrant refusal of the Development Application.

9 External referrals

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

Authority	Comments
Natural Resources Access Regulator	Acceptable and subject to General Terms of Approval as provided
Transport for NSW	Acceptable subject to conditions
NSW Police	Acceptable subject to conditions
Endeavour Energy	A condition will be imposed requiring the applicant to address the remaining concern by Endeavour Energy prior to issue of the Construction Certificate. Please refer to section 7.5 of this report for a detailed discussion on this issue.

10 Internal referrals

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

Section	Comments
Engineering	Acceptable subject to conditions
Drainage	Acceptable subject to conditions
Property	Acceptable subject to conditions
Section 7.11 team	Acceptable subject to conditions
Open Space	Acceptable subject to conditions
Recreation Planning and Design	Acceptable subject to conditions
Traffic	Conditions provided
Environmental Health	Acceptable subject to conditions
Waste	Acceptable subject to conditions
Building	Acceptable subject to conditions
City Architect	Acceptable subject to conditions and comments in Section 7.10 of this report

11 Conclusion

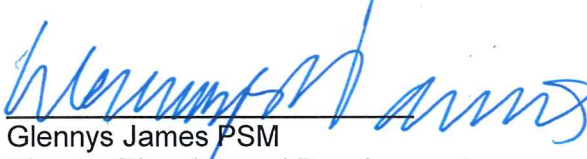
- 11.1 The proposed development has been assessed against all relevant matters and is considered to be satisfactory. It is considered that the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. The site is considered suitable for the proposed development subject to conditions included in the deferred commencement consent at attachment 10.

12 Recommendation

- 1 Uphold the applicant's Clause 4.6 written request to vary the height of buildings development standard in Clause 4.3 of Blacktown Local Environmental Plan 2015 as the proposal still meets the height objectives of the zone and provides a positive development outcome, for the following reasons:
 - a The proposed areas that exceed the height limit do not result in excessive bulk and scale and do not create unreasonable environmental impacts on the surrounding area with regard to overshadowing, solar access, amenity or privacy impacts.
 - b The breach will enable access to rooftop communal open space, as it provides for the increased height of the lift overrun to enable access to the communal roof terrace.
 - c The majority of the departure is located in a portion of the site where the topography falls due to the natural ground level of the existing creek running through the development site, which is to be realigned. The height exceedance is also a direct result of a specific design response to the flood affectation of the site and the need to ensure that the finished floor levels of both buildings are at a suitable height above the 1 in 100 year freeboard and is in the public's best interest.
 - d This is a unique site and there are sufficient planning grounds to justify the proposed variation to the height considering the site constraints.
 - e The request is satisfactory and the height variations are supported.
- 2 Approve Development Application SPP-18-01555 for the reasons listed below and subject to the deferred commencement conditions listed in attachment 10:
 - a The proposal is in public interest [section 4.15 (1) (e) EP&A Act 1979].
 - b The site is suitable for the proposed development [section 4.15 (1) (c) EP&A Act 1979].
 - c The requested Clause 4.6 variation is acceptable [section 4.15 (1) (a) (i) EP&A Act 1979].
- 3 Council officers notify the applicant and all submitters of the Panel's decision.



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