

Assessment report to Sydney Central City Planning Panel

Panel reference: 2019CC1030

Development Application

DA number	DA-18-00567	Date of lodgement	29 March 2018
Applicant	Creative Planning Solutions Pty Ltd		
Owner	Aboriginal Housing Office		
Proposed development	Seniors housing development comprising 4 dwellings, car parking and landscaping		
Street address	30 Frank Street, Mount Druitt		
Notification period	2 to 16 May 2018	Number of submissions	1 letter and a petition with 21 signatures

Assessment

Panel criteria

Section 7, SEPP
(State and Regional
Development) 2011

- Crown Development as Council is recommending refusal of the proposal.

Relevant section 4.15(1)(a) matters

- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- Blacktown Local Environmental Plan (BLEP) 2015
- Blacktown Development Control Plan (BDCP) 2015.

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Report date 15 May 2019

Recommendation The Panel refer the application to the Minister for Planning seeking his approval to refuse the application under section 4.33(1)(a) of the Environmental Planning and Assessment Act 1979.

Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning extract
- 4 Development Application plans
- 5 Assessment against planning controls
- 6 Issues raised by the public

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? Not applicable

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?

Not applicable

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?

No

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1 Executive summary

- 1.1 The key issue that needs to be considered by the Panel in respect of this application is the inability to drain the site to Council's drainage and stormwater disposal requirements and a non-compliance with the Seniors Living SEPP's deep soil zone requirements.
- 1.2 Assessment of the application against the relevant planning framework and consideration of matters by our technical departments have identified issues of concern that cannot be dealt with by conditions.
- 1.3 The application is therefore unsatisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979.
- 1.4 This report recommends that the Panel request that the Minister for Planning refuse the application based on the grounds listed in the Recommendation in Section 11 below.

2 Location

- 2.1 The site is located at 30 Frank Street, Mount Druitt.
- 2.2 The location of the site is shown at attachment 1.

3 Site description

- 3.1 The site is known as Lot 7 DP 2042.
- 3.2 It is currently occupied by a single storey dwelling.
- 3.3 An aerial image of the site and surrounding area is at attachment 2.

4 Background

- 4.1 The site is zoned R2 Low Density Residential under Blacktown Local Environmental Plan 2015. The zoning plan for the site and surrounds is at attachment 3.
- 4.2 There are no previous DAs for the site.

5 The proposal

- 5.1 The Development Application has been lodged by Creative Planning Solutions Pty Ltd on behalf of the Aboriginal Housing Office (being a Crown Authority).
- 5.2 The Applicant proposes the construction of a seniors housing development containing 4 self-contained dwellings, parking for 4 vehicles, drainage works, landscaping and tree removal.
- 5.3 A copy of the development plans is at attachment 4.

6 Assessment against planning controls

- 6.1 A full assessment of the Development Application against relevant planning controls is provided at attachment 6, including:
 - Environmental Planning and Assessment Act 1979
 - State Environmental Planning Policy No. 55 – Remediation of Land
 - State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
 - Blacktown Local Environmental Plan (BLEP) 2015
 - Blacktown Development Control Plan (BDGP) 2015.

7 Key issues

7.1 Lack of appropriate downstream drainage

- 7.1.1 BDCP 2015 Part C states that “where a site proposed for attached dwellings and multi dwelling housing falls away from the fronting street, the DA must include documentation establishing a suitable drainage solution including an inter-allotment drainage (and proposed easement) through downstream properties and written permission from downstream property owners where applicable.”
- 7.1.2 The site falls to the rear and should therefore drain with the natural catchment. In this regard an easement for drainage should be obtained over the properties at the rear of the site in accordance with the requirements of Council's DCP.
- 7.1.3 This situation is not uncommon and Council has consistently required the acquisition of downstream easements to ensure stormwater follows as close as possible to the natural flow path.
- 7.1.4 There is a readily available mechanism to achieve this outcome through section 88K of the Conveyancing Act, which allows the NSW Land and Environment Court to impose an easement on a property for the purpose of development. The Applicant has chosen not to pursue this option.
- 7.1.5 Rather than follow the natural fall of the land, the Applicant has proposed a system that drains against the natural fall of the land. This is achieved by the proposed construction of a kerb inlet pit and approximately 75 m of new pipe drainage infrastructure within Frank Street. This new infrastructure will become a Council asset and will be significantly deeper than would normally be constructed by Council.
- 7.1.6 This drainage is only necessary to facilitate this development and provides no benefit to Council or the community. It also places an ongoing financial burden on Council for the cost of maintaining and renewing this unnecessary infrastructure in the roadway.
- 7.1.7 The approval of this application in the proposed configuration will undermine Council's ability to apply the DCP consistently and will result in increased asset management costs to Council across the LGA as a result of inheriting unnecessary and inefficient infrastructure.
- 7.1.8 There are no provisions in the SEPP which preclude Council from refusing the application on this ground subject to the concurrence of the Minister for Planning, as the development is on behalf of the Crown.
- 7.1.9 The Applicant was advised in writing on 13 July 2018 of Council's DCP requirements and requested to submit revised drawings to comply. The Applicant advised that amended plans providing a downstream easement would not be submitted and the proposed gravity discharge system was intended to drain the site, and requested the application be considered on the basis of the plans as submitted.
- 7.1.10 The proposal in its current form is not supported by Council's Engineering Section and in this regard draft conditions of consent cannot be provided.
- 7.1.11 Accordingly, as the application is a Crown development, a referral is required to the Minister for Planning under section 4.33(1)(a) of the Act seeking his approval for refusal of the application.

7.2 Insufficient deep soil zone provided in accordance with the Seniors Living SEPP

- 7.2.1 The Applicant proposes a non-compliance with the minimum requirement of 15% (151 sqm) of the site being provided as a deep soil zone as required under the Seniors Living SEPP.
- 7.2.2 The proposal has provision for 12%, or an area of 118 sqm, resulting in a deficit of 33 sqm or 3%.
- 7.2.3 Whilst this is a variation, it is considered reasonable in this instance as each of the 4 units is provided with private open space areas well in excess of the minimum requirements, and the private open spaces are provided with low maintenance landscaping.
- 7.2.4 The proposal achieves compliance with all remaining controls and variation to this control, if approval was granted, is considered acceptable.

8 Issues raised by the public

- 8.1 The proposed development was notified to property owners and occupiers in the locality between 2 and 16 May 2018.
- 8.2 We received 1 written submission and a petition including 21 signatures.
- 8.3 Whilst a number of issues were raised in the submissions, in the event that approval is granted these could be addressed through conditions of consent. A summary of each issue and our response is provided in attachment 6.
- 8.4 The objections are not considered to warrant refusal of the Development Application in the event that approval of the application is recommended for refusal by the Panel to the Minister for Planning.

9 Internal referrals

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

Section	Comments
Engineering	The proposal is not suitable as it does not comply with Section 5.19 of Blacktown Development Control Plan 2015, Part C. Approval is not recommended and conditions of consent have not been provided.
Building	Acceptable subject to conditions.

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.

11 Recommendation

- 1 The Panel refer the application to the Minister for Planning seeking his approval to refuse the application under section 4.33(1)(a) of the Environmental Planning and Assessment Act 1979, for the following reasons:

- a The proposed development is not consistent with the requirements of Blacktown Development Control Plan 2015, Part C as the proposal does not comply with Section 5.19 Drainage [Section 4.15(1)(a)(iii) of the Act].
 - b Granting consent to the proposal in its current form would result in adverse impacts to the locality and the natural and built environments in terms of an appropriate drainage solution for the site [Section 4.15(1)(b) of the Act].
 - c Granting of consent to the proposal in its current form would not be in the public interest as the proposal does not provide an appropriate drainage solution for the site [Section 4.15(1)(e) of the EP&A Act].
- 2 Council officers notify the Applicant and submitters of the Panel's decision.



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