

SYDNEY WESTERN CITY PLANNING PANEL

Panel No:	2019WCI002
DA Number:	2018/1478/1
Local Government Area:	Camden
Development:	Remediation of land, demolition of existing structures, tree removal, Torrens title subdivision to create three lots, construction of new roads, construction of 4 x 7 storey residential flat buildings containing 254 apartments and strata title subdivision.
Street Address(es):	183 & 185 Bringelly Road, Leppington
Applicant / Owner:	Jomon Varghese / Grand Views Pty Ltd
Date of DA Lodgement:	19th December 2018
Number of Submissions:	At the time of writing this report, the application had not notified / advertised as there were outstanding matters Council was seeking to resolve prior to notifying the application (ie. Submission of a Remediation Action Plan and owners consent for the adjoining property for which works were proposed to be carried out). As discussed further within the main body of this report, the applicant has failed to provide the requested information and has filed a Class 1 appeal against the deemed refusal of the development application.
Recommendation:	Refusal.
Regional Development Criteria (Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011):	General development capital investment value >\$30 million. CIV – \$94,667,145
List of All Relevant s4.15(1)(a) Matters:	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy (Sydney Region Growth Centres) 2006. • 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) 2004 • Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River. • Camden Growth Centre Precincts Development Control Plan 2011.

	<ul style="list-style-type: none"> • Apartment Design Guide.
List all Documents Submitted with this Report for the Panel's Consideration:	<ul style="list-style-type: none"> • Assessment report. • Compliance Tables. • Apartment Design Guide Assessment Table. • Proposed plans.
Report Prepared By:	Adam Sampson, Executive Planner.
Report Date:	July 2019.

Summary of Section 4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes.
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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.
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Clause 4.6 Exceptions to Development Standards

If a written request for a contravention to a development standard (clause 4.6 of the Growth SEPP) has been received, has it been attached to the assessment report?	N/A.
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions (s7.24)?	Yes.
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Conditions

Have draft conditions been provided to the applicant for comment?	No.
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PURPOSE OF REPORT

The purpose of this report is to seek the Sydney Western City Planning Panel's (The Panel) determination of a development application (DA) for the remediation of land, demolition of existing structures, tree removal, Torrens title subdivision to create three lots, construction of new roads, construction of 4 x 7 storey residential flat buildings containing 254 apartments and strata title subdivision.

The Panel is the determining authority for this DA as the capital investment value (CIV) of the development is \$94,667,145. This exceeds the CIV threshold of \$30 million for Council to determine the DA pursuant to Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

SUMMARY OF RECOMMENDATION

That the Panel determine DA/2018/1478/1 for the remediation of land, demolition of existing structures, tree removal, Torrens title subdivision to create three lots, construction of new roads, construction of 4 x 7 storey residential flat buildings containing 254 apartments and strata title subdivision pursuant to Section 4.16 of the *Environmental Planning and Assessment Act, 1979*, by way of refusal for the reasons attached to this report.

EXECUTIVE SUMMARY

Council is in receipt of a DA for the remediation of land, demolition of existing structures, tree removal, Torrens title subdivision to create three lots, construction of new roads, construction of 4 x 7 storey residential flat buildings containing 254 apartments and strata title subdivision at 183 & 185 Bringelly Road, Leppington.

The DA has been assessed against the *Environmental Planning and Assessment Act 1979*, the Environmental Planning and Assessment Regulation 2000, relevant Environmental Planning Instruments, Development Control Plans and policies.

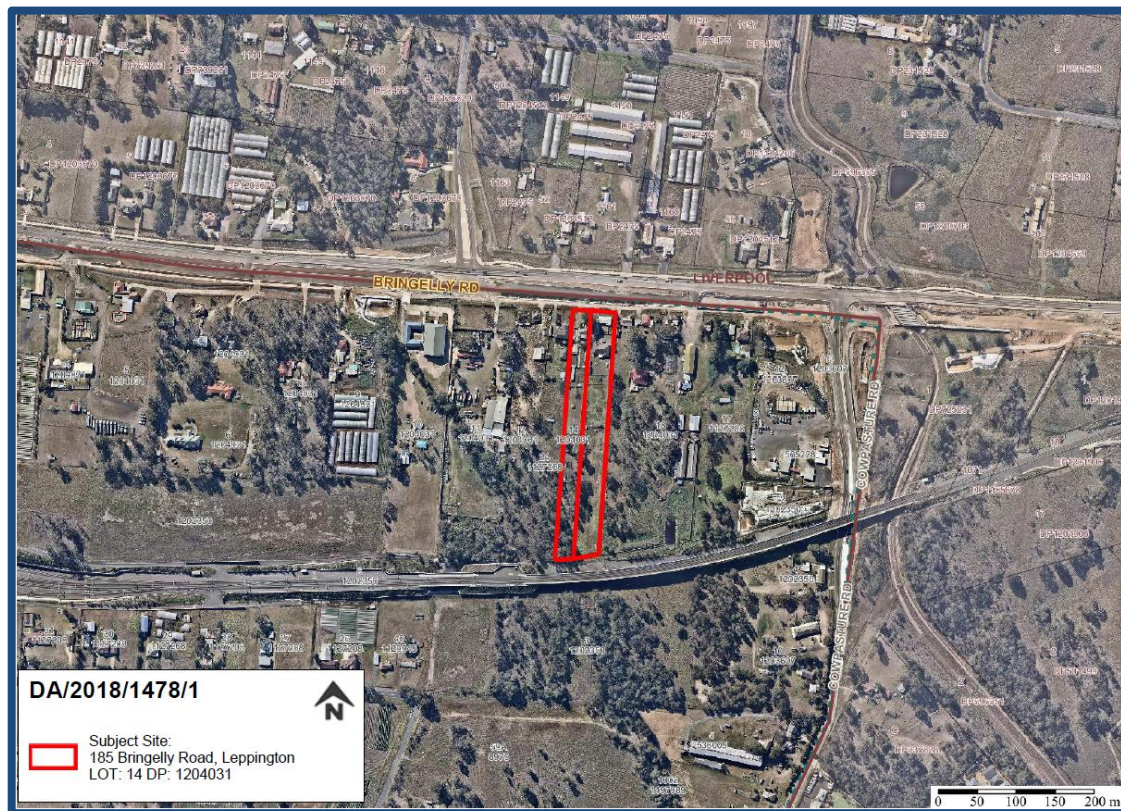
Assessment of the application reveals that the development is inconsistent with the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development. In addition, the development fails to comply with several development controls of Camden Growth Centre Precincts Development Control Plan, including front and secondary setbacks. A discussion of these non-compliances and other non-compliances are made within the body of this assessment report.

The development is reliant upon temporary vehicular access being obtained from Bringelly Road in the absence of adjoining local roads and proposes the construction of a 4.5m wide temporary access lane along the eastern property boundary. At a width of 4.5m, the development will not be able to accommodate two-way movement to allow a Council waste vehicle to pass an oncoming passenger vehicle. The eastern facades of Buildings A, B, C and D are setback 750mm from this access lane (which may be in place for a number of years) and is considered an unsatisfactory design response in establishing the desired future character of the area and the streetscape with regards to lack of landscaping to soften the building form. An appropriate solution would be to undertake local road construction upon the eastern and western property boundaries as per the Indicative Layout Plan or on the site to allow the orderly development of the land.

Based on the assessment, it is recommended that the DA be refused for the reasons attached to this report.

On the 12 June 2019, a Class 1 appeal was filed in the NSW Land and Environment Court against the deemed refusal of the development application in accordance with Section 8.7 of the *Environmental Planning and Assessment Act, 1979*.

AERIAL PHOTO



THE SITE

The site is commonly known as 183 & 185 Bringelly Road, Leppington and is legally described as Lots 14 & 15 DP1204031 and has an overall area of 1.7622 hectares. Development works consisting of a new vehicular crossing connecting to Bringelly Road are proposed over Lot 34 DP1204031. Lot 34 has an area of 213.6m² and was originally created for road acquisition for Bringelly Road upgrade works.

The site has a combined frontage of 55.39 metres to Bringelly Road and is rectangular in shape. The site falls from RL77.04 at the north-east corner towards a point of RL73.41 at the south-west corner. The site is located on the southern side of Bringelly Road and is located within the Austral and Leppington North Precinct and the Leppington Major Centre of the South West Growth Area.

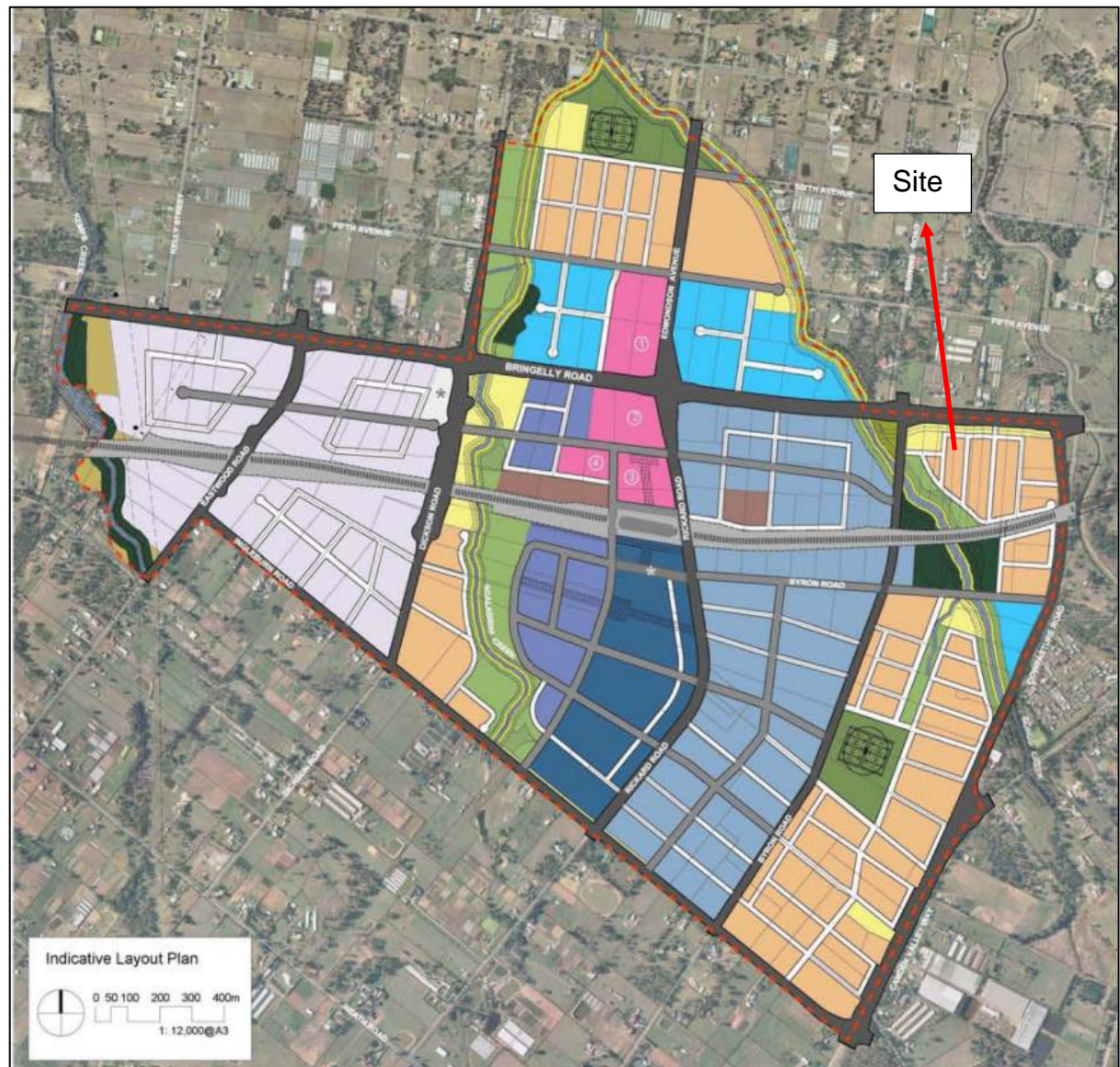
The site known as 183 Bringelly Road contains two dwellings and several detached outbuildings consisting of sheds, awnings, a garage and a shipping container. Scattered vegetation is located in the lower half of the site along the western property boundary and along the eastern property boundary.

The site known as 185 Bringelly Road contains a fibro cottage and several detached outbuildings, consisting of sheds and metal kennels. Scattered vegetation which is mapped as existing native vegetation and native vegetation retention in accordance with State Environmental Planning Policy (Sydney Region Growth Centres) 2006 is located in the lower half of the site.

The surrounding area is characterised by undulating topography, scattered vegetation, dams, market gardens and poultry farms and a range of rural and rural residential land uses.

The locality is predominantly rural-residential in character and is undergoing transition to residential. To the east of the site there is one and two storey rural-residential development. Along the southern property boundary, the Leppington Railway line exists, with Leppington Railway station located approximately 889 metres to the west of the site. To the east of the site at 171 Bringelly Road, Leppington there is an existing piggery.

INDICATIVE LAYOUT PLAN (SCHEDULE 2 – LEPINGTON MAJOR CENTRE)

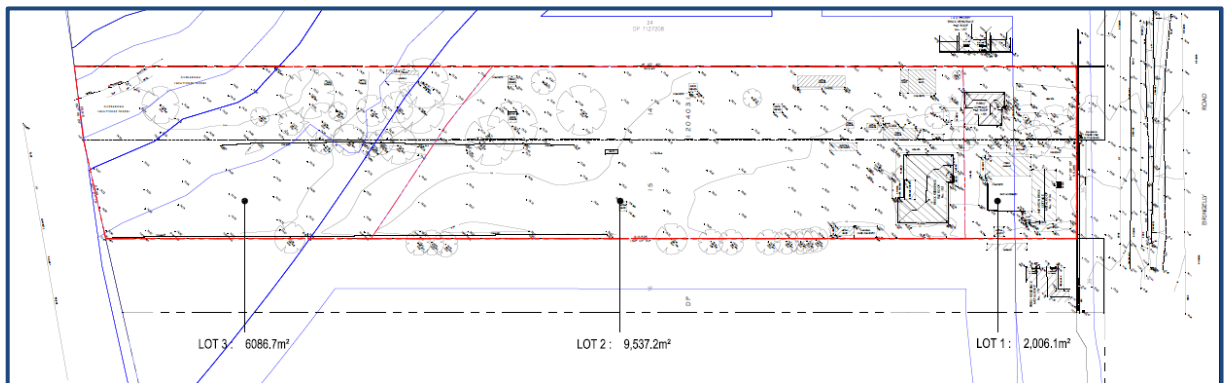


THE PROPOSAL

DA/2018/1478/1 seeks approval for the remediation of land, demolition of existing structures, tree removal, Torrens title subdivision to create three lots, construction of new roads, construction of 4 x 7 storey residential flat buildings containing 254 apartments and strata title subdivision at 183 & 185 Bringelly Road, Leppington.

Specifically, the proposed development involves:

- Torrens title subdivision to create three lots. An extract of the proposed subdivision plan is provided below.



- Construction of four (4) X seven (7) storey residential flat buildings containing 254 residential units, consisting of 65 x 1 bedroom units, 163 x 2 bedroom units and 26 x 3 bedroom units. Twenty eight (28) adaptable units are proposed;

The building will be constructed of masonry and glazing. Wall finishes will consist of render and painted finishes.

- Construction of two levels of basement parking providing 332 parking spaces, 281 spaces for residents and 51 spaces for visitors, including 90 bicycle spaces and 3 motorcycle spaces;
- Communal open space is provided at ground level between each of the buildings and also as rooftop communal open space upon each of the proposed buildings;
- Five (5) trees are proposed to be removed from 183 Bringelly Road and twelve (12) trees from 185 Bringelly Road, Leppington;
- Construction of two local roads of 16m in width. One road is located within proposed Lot 1 to the north of the site in an east–west axis parallel with Bringelly Road and the other road within proposed Lot 3 in an east–west axis to the south of proposed Lot 2. The two local roads are proposed to be joined by a temporary access road 4.5m in width (as nominated upon the architectural drawings) in a north-south axis parallel to the eastern property boundary;
- Vehicular access is proposed from Bringelly Road via a new driveway crossing;
- Strata title subdivision; and
- Associated site works, including earthworks, drainage and landscaping.

The capital investment value of the works is \$94,667,145.

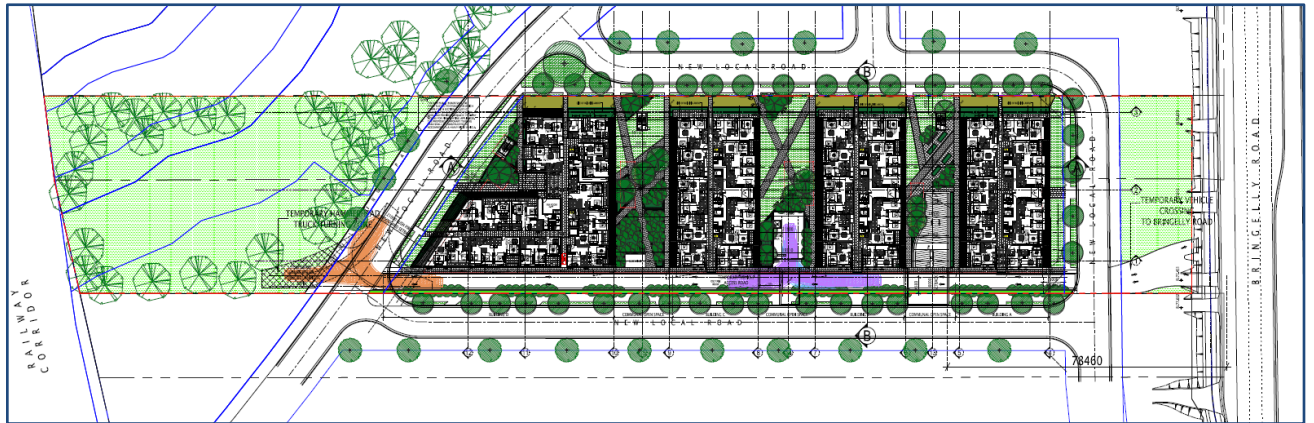


Image 1 – Proposed site plan (Stage 1 – Temporary Access lane along the eastern property boundary)



Image 2 – Perspective viewed from the north east

ASSESSMENT

Environmental Planning and Assessment Act 1979 – Section 4.15

In determining a DA, the consent authority is to take into consideration the following matters as are of relevance in the assessment of the DA on the subject property:

(a)(i) The Provisions of any Environmental Planning Instrument

The Environmental Planning Instruments that relate to the proposed development are:

- State Environmental Planning Policy (State and Regional Development) 2011;
- State Environmental Planning Policy (Sydney Region Growth Centres) 2006;

- 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) 2004; and
- Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River.

An assessment of the proposed development against these environmental planning instruments is detailed below.

State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)

The SRD SEPP identifies that the development is regionally significant development.

The Panel is the consent authority for this DA as the CIV of the development is \$94,667,145. This exceeds the CIV threshold of \$30 Million for Council to determine the DA Pursuant to Schedule 7 of the SEPP.

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

Permissibility

The site is zoned SP2 Infrastructure along the site's frontage to Bringelly Road and partially at the south west corner of the site, R3 Medium Density Residential and RE1 Public Recreation.

The proposed buildings will be restricted to the part of the site zoned R3 Medium Density Residential. The proposed development is defined as a '*residential flat building*' which is permissible with consent in the R3 Medium Density residential zone.

ZONING MAP



Zone Objectives

The objectives of the R3 Medium Density zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

Officer comment:

The proposed development includes 254 apartments which will provide for the housing needs of the community. The proposed development is in the form of four x seven storey residential flat buildings, which will create a high-density residential environment. As per Clause 4.1B of the SEPP, there is no maximum density development standard, with the development proposing a residential density significantly above the minimum residential density of 25 dwellings per hectare (approximately 187 dwellings per hectare proposed).

- *To provide for a variety of housing types within a medium density residential environment.*

Officer comment:

The proposed development will provide a variety of apartment types including 65 x 1 bedroom units, 163 x 2 bedroom units and 26 x 3 bedroom units. Whilst the development does provide a variety of apartment types, it is predominantly consists of 2 bedroom units. Justification for this unit mix has not been provided as part of the

development application. Whilst a market analysis report was submitted with the application, it does not discuss the apartment mix proposed within the application.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Officer comment:

This objective is not relevant to the proposed development as the proposal is for residential flat buildings.

- *To support the well-being of the community by enabling educational recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.*

Officer comment:

This objective is not relevant to the proposed development as the proposal is for residential flat buildings.

Relevant Clauses

The DA has been assessed against the following relevant clauses of the Growth Centres SEPP (Appendix 9).

Clause	Requirement	Provided	Compliance
2.6 Subdivision	Development consent is required for the subdivision of land.	The application seeks development consent for the subdivision of land.	Yes
2.7 Demolition	The demolition of a building or work may be carried out only with development consent.	The application seeks the demolition of all structures on the land.	Yes
4.1AB Minimum Lot Sizes for Residential Development	Minimum lot size of 2,000m ² for residential flat buildings	Lot 2 – 9537.2m ²	Yes
4.1B Residential Density	Minimum residential density of 25 dwellings/ha	187 dwellings per hectare (approx.)	Yes
4.3 Height of Buildings	Maximum building height of 21m above ground level (existing)	21m (however the floor to floor heights do not comply with those recommended in the ADG)	Yes
5.1 Relevant acquisition authority	The clause identifies Council as the relevant acquisition authority for local open space.	The subject site contains land that is zoned SP2 Infrastructure and RE1 Public Recreation. The land is marked as 'classified road (SP2)',	Yes

Clause	Requirement	Provided	Compliance
		'local open space (RE1) and 'local drainage (SP2) under the Land Acquisition Map. Clause 5.1 indicates RMS as the acquisition authority for 'classified road (SP2)' and Council as the acquisition authority for 'local open space (RE1)' and 'local drainage (SP2)'.	
5.9 Preservation of Trees of Vegetation	Development consent is required for tree removal	With the exception of trees located in areas of the site mapped as existing native vegetation and native vegetation retention, the site is biocertified and tree removal can be granted with consent.	Yes
5.10 Heritage Conservation	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	The site is adjacent to a mapped heritage item being Item No. 17 – Bringelly Road – cultural landscape. The comment within the Statement of Environmental Effects advises that <i>“the proposed development will have no effect on the significance”</i> lacks substance and it is considered that the application has not satisfactorily addressed the potential impact upon the mapped heritage item.	No
6.1 Public Utility Infrastructure	The consent authority is to be satisfied that essential public utility infrastructure is available or that adequate arrangements have been made to make that infrastructure available when required	The consideration of this clause is detailed in the “likely impacts of the development...” section of this report.	Yes
6.2	Development consent under this	Council has requested that the open swale drain	No

Clause	Requirement	Provided	Compliance
Development Controls – Native vegetation retention area	<p>clause is not to be granted unless the consent authority is satisfied of the following in relation to the disturbance of native vegetation:</p> <p>a) That there is no reasonable alternative available to the disturbance of the native vegetation,</p> <p>b) That as little native vegetation as possible will be disturbed,</p> <p>c) That the disturbance of the native vegetation will not increase salinity,</p> <p>d) That native vegetation disturbed for the purposes of construction will be reinstated where possible on completion of construction,</p> <p>e) That the loss of remnant native vegetation caused by the disturbance will be compensated by revegetation on or near the land to avoid any net loss of remnant native vegetation,</p> <p>f) That no more than 0.5 hectares of native vegetation will be cleared unless the clearing is essential for a previously permitted use of the land.</p>	<p>that bisects mapped native vegetation retention areas is replaced is replaced with a 375mm diameter RCP pipe to discharge stormwater directly into the SP2 Infrastructure zone for local drainage purposes. The applicant has not provided amended plans or details satisfying the requirements of this clause.</p>	

Clause	Requirement	Provided	Compliance
6.3 Development Controls – existing native vegetation	The consent authority must not grant development consent for development on land to which this clause applies unless it is satisfied that the proposed development will not result in the clearing of any existing native vegetation (within the meaning of the relevant biodiversity measures under Part 7 of Schedule to the Threatened Species Conservation Act, 1995).	Council has requested that the open swale drain that bisects mapped existing native vegetation is replaced with a 375mm diameter RCP pipe to discharge stormwater directly into the SP2 Infrastructure zone (for local drainage purposes). The applicant has not provided amended plans or details demonstrating that no clearing of existing vegetation will occur.	No

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 – Development with frontage to classified road

Under clause 101 of the Infrastructure SEPP, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

At the present time, the network of adjoining local streets depicted in the ILP have not been developed to allow this development site to obtain vehicular access from a road in lieu of vehicular access being provided from Bringelly Road, which is an arterial road.

The applicants require the concurrence from the RMS to construct a temporary vehicular crossing to allow site access, until such time as the adjoining road network is developed. A plan of the road hierarchy within Schedule 2 – Leppington Major Centre is produced below, which indicates that the network of surrounding local roads will

ultimately connect to Cowpasture Road to the east, Byron Road to the west, with one road connection to Bringelly Road.

ROAD HIERARCHY PLAN



The RMS have reviewed the application and advise that they do not provide concurrence for the vehicular crossing to connect to Bringelly Road and have requested additional information from the applicant, consisting of civil design drawings and swept paths with road lane markings of the longest vehicles (construction vehicles) entering and exiting the site. In addition, the RMS have advised that the existing slip lane / deceleration lane needs to be extended to satisfy relevant Austroads and Australian Standards for the sign posted speed. It is noted that the existing deceleration lane fronting the property only provides a 46m lead distance into the vehicular crossing.

Clause 102 – Impact of road noise or vibration on non-road development

The development site is located adjacent to Bringelly Road, which is a classified road. It is considered that the proposed residential development will be adversely affected by road noise from Bringelly Road. Accordingly, the development is to provide mitigation measures to achieve internal noise levels set by Clause 102(3), which prescribe that:

the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation – 35 dB(A) at any time between 10pm and 7am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) – 40 dB(A) at any time.*

The applicant has submitted an acoustic report which recommends that glazing be laminated and have a minimum thickness of 6.38mm, in combination with a minimum R_w value for window frames to achieve internal noise levels set by the Infrastructure SEPP. In addition, external façade construction must be either masonry or cavity brick with the roof and ceiling of the development constructed of concrete with a plasterboard cavity ceiling.

In respect to acoustic assessment, the mitigation measures are based on having windows and external doors closed. Whilst the development may be able to achieve acoustic amenity to internal residential areas, it is at the expense of natural ventilation, whereby noise impacted units would be required to be mechanical ventilated.

Clause 104 – Traffic-generating development

Schedule 3 of the Infrastructure SEPP Infrastructure lists types of developments that are to be referred to Roads and Maritime Services (RMS) due to their size or capacity and the potential for impacts on the local road network, including classified roads. The proposed development exceeds the thresholds listed within Schedule 3 of the SEPP and has direct access to Bringelly which is a classified road.

As discussed above within comments made against Clause 101 of the SEPP, the RMS have objected to the proposed vehicular crossing connecting to Bringelly Road and have not granted concurrence.

State Environmental Planning Policy No 55 – Remediation of Land (SEPP)

The SEPP requires the consent authority to be satisfied that the site is suitable for its intended use (in terms of contamination) prior to granting consent.

The development site is contaminated with asbestos, heavy metals (that exceed adopted freshwater criteria), micorbiologicals (E. Coli and thermotolerant down gradient from septic tanks) and requires remediation to enable the site to be made suitable for future residential development.

Additional information has been requested from the applicant including a sampling location plan; further testing to be undertaken around and underneath the footprint of buildings; sampling for asbestos to be carried out in accordance with NEMP criteria and not just detect/non detect; and submission of a Remediation Action Plan for all contamination identified on the site.

The applicant has not submitted the requested information to enable further assessment of contamination. As the additional information regarding the extent of contamination on-site and the type of contaminants on-site has not been provided, Council cannot be satisfied that the site will be made suitable for the purpose of residential development in accordance with Clause 7 of the SEPP.

State Environmental Planning Policy No 65 – Quality Design of Residential Apartment Development (SEPP 65)

SEPP 65 aims to improve the design quality of residential apartment development and provides an assessment framework, the Apartment Design Guide for assessing 'good design'. The SEPP requires consideration of any Development Application for residential accommodation meeting the application criteria of the SEPP against the nine (9) design quality principles, including the advice obtained from a design review panel and the Apartment Design Guide (ADG). A copy of the assessment of the proposed development against the design criteria of the ADG is provided as an attachment to this report, with assessment of the application revealing several inconsistencies with the ADG and the design quality principles. In addition, urban design advice was obtained from Council's Design Advisory Group, who were unsupportive of the design / proposed built form.

It is considered that the development does not have adequate regard to the design quality principles and lacks an understanding of the future desired character of the precinct. The development is considered to have an inappropriate built form and street wall height, lacking articulation along the facades and roof line and failing to provide visual interest. The development fails to activate the street edge adjacent to a future local road along the western property boundary.

The proposed development has been assessed against the SEPP's design quality principles:

Principle 1: Context and Neighbourhood Character – Non compliant

The entire area is undergoing a significant transition from rural/rural residential to an urban character. Appropriate building heights / length coupled with street wall heights are essential in establishing the desired future character of Leppington. The eastern façade of Building D proposes a wall length of approximately 51 metres, which is considered excessive. An appropriate built form would provide breaks in the façade with indents and recesses every 20 metres and discontinuing the length of the building every 30 – 40 metres. Buildings greater than 40 metres will require effective articulation on each facade to mitigate the perception of bulk and scale.

In addition, the proposed continuous six (6) part seven (7) storey street wall proposed along each road and along future roads is not an acceptable built form for the subject site and the desired future streetscape as it does not provide a 'human scale' to the development. A two (2) to four (4) storey wall height across the site, with a secondary setback above the podium without any protrusions would create a more human scale / a pedestrian-friendly environment with reduced overshadowing to adjoining streets and lots.

Principle 2: Built Form and Scale – Non compliant

As discussed above, the building length of the eastern façade of Building D (greater than 50m) is excessive and needs to be broken up to a maximum of 30m to 40m to create an adequate urban design / form response to present a more relevant human scale to the street, acceptable visual presentation and to ensure the amenity of future developments.

As per the DCP storey controls, the DCP seeks to introduce a lower built form for the subject site and to the surrounding lots as per the objectives of Clause 5.1.3 Building height and envelope controls which are to *'control the height, bulk and scale of*

buildings to be consistent with the Leppington Major Centre Vision and Planning Principles and to *'ensure appropriate sunlight penetration to streets and public spaces'*. Hence, the proposed continuous six (6) part seven (7) storey street wall along local roads and future local roads is not an appropriate built form for the subject site and the desired future streetscape.

Street wall presentation could be resolved with the provision of a distinct podium form along the proposed streets or by introducing a secondary setback to upper levels. It is not acceptable from an urban design perspective to have a continuous six (6) part seven (7) storey street wall without any effective break.

The western entry points into each building are significantly recessed and narrow, generating tunnels of concealment, which are unsatisfactory and unsafe.

The orientation of proposed buildings results in a large amount of shadow to the proposed communal open space areas with less than 50% of the proposed communal open space receiving adequate (2hrs) solar access.

Principle 3: Density – Non compliant

The proposed development seeks to provide approximately 187 dwellings per hectare, with the minimum dwelling density being 25 dwellings per hectare as per State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP)(Appendix 9). Based on the issues identified in the proposal such as overshadowing of the communal open space, inappropriate street wall height, natural ventilation requirements unlikely to be met, the proposed development is considered to be of an excessive density, resulting in dwellings of reduced / substandard amenity.

Principle 4: Sustainability – Non compliant

The proposal does not satisfactorily demonstrate that natural cross ventilation can be achieved. Twenty-two units in Building A adjacent to Bringelly Road will have internal noise levels for habitable rooms unable to achieve the internal noise criteria unless windows are closed. As such, an alternative form of ventilation i.e. mechanical ventilation would be required for those spaces. The proposal also fails to provide information demonstrating a sound consideration of all other sustainability measures.

Principle 5: Landscape – Non compliant

The exposed basement ramp and waste holding room between Buildings B and C is considered to compromise the visual quality of the public domain. It is considered more appropriate for the basement ramp to be encapsulated into a built form. Considering the overshadowing issue to the communal open space on the ground level, significant improvements are required to enable solar amenity to be received to the ground floor communal open space areas to provide for better amenity. The proposed development also fails to achieve the minimum deep soil requirements, providing only 5% of the sites area as deep soil, with dimensions of 6 metres.

Principle 6: Amenity – Non compliant

The Statement of Environmental Effects states that a number of units can achieve natural ventilation requirements, however the mitigation measures of the acoustic report are based on having windows and external windows closed. As such it has not been clearly demonstrated that 60% of dwellings are capable of receiving natural

ventilation given units fronting Road No.1 are exposed to the traffic noise source of Bringelly Road and would require doors and windows to remain closed.

The proposed building(s) orientation significantly overshadows each of the ground floor communal open space areas, whereby no area is capable of receiving more than 50% direct sunlight to the principal usable part of the communal open space areas. The areas of communal open space are also compromised by a padmount substation, waste collection area and an open basement ramp.

The development has not considered the visual and acoustic impacts of locating the basement ramp immediately adjacent to units between Buildings B and C.

Principle 7: Safety – Non compliant

The western entry points into each building are significantly recessed and narrow, generating tunnels of concealment, which are unsatisfactory and unsafe.

Principle 8: Housing Diversity and Social Interaction – Non compliant

Whilst the development does provide a variety of apartment types, it is predominantly consists of 2 bedroom units. Justification for this unit mix has not been provided as part of the development application. Whilst a market analysis report was submitted with the application, it does not discuss the apartment mix proposed within the application.

Principle 9: Aesthetics – Non compliant

As discussed within design principles one and two, a street wall height of six part seven storey's is excessive particularly given the lack of articulation and modulation in the facades. In addition, the proposed development is heavily reliant on the use of painted render and fails to provide sufficient variety in finishes to create architectural interest.

The development fails to provide a secondary setback into the design to provide breaks between the street wall height and the upper levels. Vertical elements and proper insets are also required to create breaks / create visual interest in the facades of the development.

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

The applicant has submitted a valid BASIX certificate in support of the DA that demonstrates that water, thermal comfort and energy requirements have been achieved.

Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River (SREP 20)

SREP 20 aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

There will be no detrimental impacts upon the Hawkesbury-Nepean River system as a result of the proposed development, as the development proposes appropriate erosion and sediment control measures and water pollution control devices which will avoid adverse impacts on natural watercourses and ultimately the Hawkesbury – Nepean River system.

- (a)(ii) *The Provisions of any Draft Environmental Planning Instrument (that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)).***

Draft Environment SEPP

The development is consistent with the Draft Environment SEPP in that there will be no detrimental impacts upon the Hawkesbury-Nepean River system as a result of it.

- (a)(iii) *The Provisions of any Development Control Plan***

Camden Growth Centre Precincts Development Control Plan

A copy of the assessment of the proposed development's compliance with the controls in the Camden Growth Centre Precincts Development Control Plan is provided as an attachment to this report.

- (a) (iia) *The Provision of any Planning Agreement that has been entered into under Section 7.32, or any draft Planning Agreement that a developer has offered to enter into under Section 7.4***

No relevant agreement exists.

- (a)(iv) *The Regulations***

The Regulations prescribe several matters that can be addressed via conditions should the application be approved.

- (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***

Odour

In late 2016 Council commissioned odour modelling of identified agricultural activities (poultry and piggeries) in the Leppington area. The outcome of this modelling led to modified odour criteria of 4.5 OU for 250 hours per annum (supported by an odour contour plan) to be applied by Council to all development applications for residential development.

Since early 2017, Council has been assessing proposed residential development in the Leppington area against the odour contour plan. Where such proposals are found to be located outside of the 4.5 OU 250 hour contour (on the plan) development is considered to be acceptable from an odour impact perspective, as the impact of odour 'nuisance' would be limited to occur for 10 days (on average) per annum and not be detrimental to residential amenity. Alternatively, where development is proposed to be located within the 4.5 OU 250 hour contour, site specific assessment is required to determine the extent of odour impact on the proposal. The subject site is within Council's 4.5 OU 250 hour contour plan and further site specific was required.

The Odour report (Envirecco: Dated 28 November 2018 - Version 2) submitted with the application concludes that the proposed development lies between the 2 OU and 3 OU contour lines (for 250 hours of impact) and complies with Council's adopted

criteria. A review by Council of the above mentioned report indicates that there is a significant difference in the odour outcomes when compared to the modelling undertaken for Council in late 2016.

Further, the plan (figure 10 – Odour Contours at the subject site) provided in the odour impact assessment (Enviroecco: Dated 28 November 2018 - version 2) does not show any odour contour levels immediately around the piggery. The assessment also appears to model only one poultry shed at 250 Bringelly Road, Leppington.

Development proposed within Odour Unit contour lines greater than 4.5 OU will be exposed to greater odour 'nuisance', which may also be considered 'offensive' and for some receivers potentially detrimental to human health.

Waste Servicing

Waste and recycling storage areas are proposed within basement levels 1 and 2 and later transferred to ground level in a collection holding area between Buildings B and C. It is proposed that Council's waste vehicles would reverse into the waste holding area from the temporary access road, with collection undertaken at the rear of the vehicle. However, there is conflict between the architectural plans and civil engineering plans submitted with the application as to the width of the temporary access, with the architectural plans specifying a width of 4.5m and the civil engineering plans specifying a width of 5.5m. At a width of 4.5m, the development would be unable to accommodate two-way movement to allow a Council waste vehicle to pass an oncoming passenger vehicle. At a minimum, the temporary access road should be designed to achieve a minimum width of 6m to allow vehicles to pass simultaneously. Based on the current design, Council's waste vehicles would be unable to access the site and the service the proposed development.

Public Utility Infrastructure

Clause 6.1, Schedule 9 of the Growth Centres SEPP prohibits development consent from being granted unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

The SEPP defines public utility infrastructure as the supply of water and electricity and the disposal and management of sewage.

Water and Sewerage

The DA was referred to Sydney Water for comment in accordance with Sydney Water's DA referral guidelines, however at the time of writing this report a response from Sydney Water had not been received.

Existing water mains and waste water mains exist in proximity to the development and may need to be augmented and / or amplified to allow for increased capacity. Detailed water and sewerage requirements would be provided at the Section 73 application stage if development consent was granted.

Electricity

The applicant has submitted a site servicing report which advises that the site is serviced by high voltage infrastructure with high voltage feeders on Bringelly Road. Based on calculated energy demands, the development of this size would be required to be serviced by a padmount substation, which is shown in the architectural plans as being located between Buildings C and D, adjacent to the communal open space area and the temporary access road.

It is noted that the Leppington area is being progressively serviced by public utility infrastructure over time. It is therefore considered that adequate arrangements for the provision of public utility infrastructure could be made via conditions if development consent was granted.

(c) *The suitability of the site*

It is considered that the site is not suitable for development until such time as adjoining connecting roads as per the indicative layout plan are delivered.

The proposed temporary solution, which may remain in existence for a significant number of years, is considered unsatisfactory. As noted above, the proposed development relies on a temporary vehicular access from Bringelly Road (denied by the RMS) and the creation of a 4.5m temporary access lane alongside the entire eastern edge of the development which has a negative impact on the appearance of the development and creates an unsafe environment with substandard amenity.

In the absence of an adjoining road network and stormwater system, it is proposed to burden an adjoining future local park within land zoned RE1 – Public Recreation via a headwall and an open drainage swale to discharge stormwater from the development. The drainage outlet and open drain located within RE1 Public Recreation space are not desirable and burdens this land for its intended purpose.

In addition, the development site is located within Council's 4.5OU 250 hour contour plan and will be exposed to greater odour 'nuisance', which may also be considered 'offensive' and for some receivers potentially detrimental to human health. As such, it is considered that the impact of the piggery in respect to odour makes the site unsuitable for development.

(d) *Any submissions made in accordance with this Act or the Regulations*

As discussed earlier within this report, the application has not been notified / advertised as there were outstanding matters Council were seeking to resolve prior to notifying the application (i.e. Submission of a Remediation Action Plan and owners consent for the adjoining property for which works were proposed to be carried out).

(e) *The public interest*

The public interest is served through the detailed assessment of this DA under the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, *Environmental Planning Instruments*, *Development Control Plans* and policies. Based on the above assessment, the proposed development is not considered to be in the public interest.

EXTERNAL REFERRALS

The external referrals undertaken for this DA are summarised in the following table:

External Referral	Response
NSW Rural Fire Service (NSW RFS).	On the 18 th February 2019, a request for additional information was received from the NSW RFS. On 31 st May 2019, correspondence was received advising that the NSW RFS cannot support the proposed development as previously requested information had not been received within the legislative timeframes allowed to assess the application against the aims and objectives of 'Planning for Bush Fire Protection 2006'
Roads and Maritime Services (RMS).	On the 15 th April 2019, a request for additional information was received. The correspondence also advised that consent to development works under Section 138 of the <i>Roads Act, 1993</i> would not be granted by the RMS.
Natural Resources Access Regulator	On the 1 st May 2019, General Terms of Approval, requiring a Controlled Activity Approval were granted.
Sydney Trains	On the 11 th March 2019, a request for additional information was received.
Sydney Water	No response received.
Water NSW	No response received.

FINANCIAL IMPLICATIONS

This matter has no direct financial implications for Council.

CONCLUSION

The DA has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act, 1979* and all relevant instruments, plans and policies. The application is recommended for refusal for the reasons attached to this report.

RECOMMENDED

That the Panel refuse DA/2018/1478/1 for remediation of land, demolition of existing structures, tree removal, Torrens title subdivision to create three lots, construction of new roads, construction of 4 x 7 storey residential flat buildings containing 254 apartments and strata title subdivision at 183 & 185 Bringelly Road, Leppington for the following reasons:

1. The development application has not received concurrence in accordance with Section 4.13(1) of the *Environmental Planning and Assessment Act, 1979*.
2. The proposed development is inconsistent with the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development. (*Pursuant to Section 4.15(1)(a)(i) Environmental Planning & Assessment Act, 1979.*)

3. The proposed development does not comply with Clause 4.3.5 Table 4-10 of Camden Growth Centre Precincts Development Control Plan with respect to front and secondary setbacks. (*Pursuant to Section 4.15(1)(a)(iii) Environmental Planning & Assessment Act, 1979.*)
4. The proposed development fails to with comply with Camden Growth Centre Precincts Development Control Plan Clause 4.3.5 Table 4-10, as the development fails to satisfy the minimum landscaped area requirement of 30%. (*Pursuant to Section 4.15(1)(a)(iii) Environmental Planning & Assessment Act, 1979.*)
5. Failure to provide owner's consent consenting to the application in accordance with Schedule 1, Part 1 (1)(i) of the *Environmental Planning and Assessment Regulation, 2000*. (*Pursuant to Section 4.15(1)(a)(iv) Environmental Planning & Assessment Act, 1979.*)
6. The proposed continuous six (6) and part seven (7) storey street wall proposed long each road and along future roads is not an acceptable built form for the subject site and the desired future streetscape as it does not provide a 'human scale' to the development. (*Pursuant to Section 4.15(1)(b) Environmental Planning & Assessment Act, 1979.*)
7. Insufficient information has been submitted to enable a proper consideration of the application and its likely impacts in respect to vehicular access and manoeuvrability and waste servicing. (*Pursuant to Section 4.15(1)(b) Environmental Planning & Assessment Act, 1979.*)
8. The site is considered unsuitable for development, given that the development site is located within Council's 4.5OU 250 hour contour plan and will be exposed to greater odour 'nuisance', which may also be considered 'offensive' and for some receivers potentially detrimental to human health. (*Pursuant to Section 4.15(c) Environmental Planning & Assessment Act, 1979.*)
9. Due to the above reasons, the proposal is not considered to be in the public interest. (*Pursuant to Section 4.15(1)(e) Environmental Planning & Assessment Act, 1979.*)