

# Assessment report to Sydney Central City Planning Panel

Panel reference:

## Development application

<b>DA number</b>	SPP-20-00002	<b>Date of lodgement</b>	8 May 2020
<b>Applicant</b>	Nirmal Patel, Idream Property Limited		
<b>Owner</b>	Mr Jerry Xerri and Mrs Emanuela Xerri		
<b>Amended Proposed development</b>	Subdivision into 22 Torrens title residential lots, including 1 superlot for mixed use development, 1 superlot for the R3 Torrens title lot intended for a stage 2 subdivision into 16 residential lots, 1 residue lot for SP2 zoned land, public roads, civil/drainage works and demolition of existing structures. On superlot 1 the construction of a staged 8 storey mixed use development comprising 6 buildings containing retail floor space in multiple tenancies, a child care centre, gym, 246 residential apartments, basement carpark and landscaping.		
<b>Street address</b>	971 Richmond Road, Marsden Park		
<b>Notification period</b>	24 June to 8 July 2020	<b>Number of submissions</b>	1

## Assessment

<b>Panel criteria</b> Section 7, SEPP (State and Regional Development) 2011	<ul style="list-style-type: none"> <li>Capital investment value (CIV) over \$30 million (DA has CIV of \$84.5 million excluding GST)</li> </ul>
<b>Relevant section 4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>Environmental Planning and Assessment Act 1979</li> <li>Environmental Planning and Assessment Regulation 2000</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Sydney Region Growth Centres) 2006</li> <li>State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</li> <li>Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River</li> <li>Blacktown City Council Growth Centre Precincts Development Control Plan 2010</li> <li>Central City District Plan 2018</li> <li>Blacktown Local Strategic Planning Statement 2020</li> </ul>
<b>Report prepared by</b>	Ruth Bennett, Senior Development Planner
<b>Report date</b>	4 December 2020
<b>Recommendation</b>	Refuse, based on the grounds listed in the report.

## Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning and height of building map extracts
- 4 Detailed information about proposal and DA submission material
- 5 Development Application plans
- 6 Applicant's Clause 4.6 variation request

## 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)?	Yes
---	-----

## Contents

1	Executive summary.....	4
2	Location.....	5
3	Site description .....	5
4	Background .....	5
5	The proposal.....	7
6	Assessment against planning controls .....	8
7	Key issues and reasons for refusal .....	10
8	Issues raised by the public.....	14
9	External referrals .....	15
10	Internal referrals.....	13
11	Conclusion.....	15
12	Recommendation.....	16



## **1 Executive summary**

---

1.1 The key issues that need to be considered by the Panel in respect of this application are:

### **1.1.1 Development engineering/road design issues including:**

- No owner's consent has been provided for the proposed works on adjoining owners' land. In addition, this development is reliant on a legal road access through to Grange Avenue, which relies on a temporary road to the north that is not yet a public dedicated road, and so this site is presently landlocked.
- The road design has been amended several times but still does not correlate with the required levels, widths and civil infrastructure design required to match the approved adjoining development.

### **1.1.2 Drainage/stormwater and water quality issues including:**

- The current drainage design plans do not conform to Blacktown DCP 2015 or Council's Water Sensitive Urban Design standards and Engineering Guide 2005. In addition, and due to numerous errors on the plans, our Drainage section cannot support the proposal, its stormwater drainage plan, subdivision plan or the Torrens title subdivision, which are incompatible with the proposed water quality strategy.

### **1.1.3 Design issues raised by our City Architect's Office:**

- The proposal substantially fails to meet the criteria in the Apartment Design Guide.
- Unsatisfactory information on visual privacy, solar access, cross-ventilation, amenity of ground floor communal open space and landscaped area, and separation distance requirements between buildings.

### **1.1.4 Traffic issues including:**

- Internal traffic circulation within the mixed use development is not satisfactory as it does not provide for safe pedestrian and vehicular access to the child care centre.
- Trucks reversing for waste collection is not acceptable.

### **1.1.5 Planning issues:**

- There is a height exceedance which has not been adequately justified, as a revised Clause 4.6 variation request has not been provided for the amended plans.
- The child care centre is not compliant with the requirements of the Education Facilities and Child Care SEPP.

1.2 Assessment of the amended application against the relevant planning framework and consideration of matters by our technical departments have identified serious concerns that cannot be dealt with by conditions of consent.

1.3 The application is considered to be unsatisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979.

1.4 This report recommends that the Panel refuse the application based on the grounds listed in the recommendation in section 12 below.



## **2 Location**

---

- 2.1 The site is located at 971 Richmond Road, Marsden Park, within the Marsden Park Precinct of the North West Growth Area as identified by State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP). The location of the site is shown at attachment 1.
- 2.2 The site is on the eastern side of Richmond Road and is 2 km south-east of the Marsden Park village centre being developed by Stockland.
- 2.3 The site is zoned B4 Mixed Use and R3 Medium Density Residential. The land use map shows that the southern portion of the site has a transport investigation area affectation, relating to the future South Street Sydney Metro rail corridor. The zoning and height of buildings maps for the site and surrounds are at attachment 3.
- 2.4 The site has a maximum permitted building height of 28 m in the B4 zone and 14 m in the R3 zone. The maximum permitted building height is generally 28 m in the immediate setback to Richmond Road, between South Street and Grange Avenue, with the exception of the corner of Richmond Road and Grange Avenue, which has a portion of land with a maximum building height permitted of 12 m as shown on the height of buildings map.
- 2.5 The surrounding properties to the north are zoned largely B4 Mixed Use and properties to the east are zoned R3 Medium Density Residential. Directly across Richmond Road is an area zoned B2 Local Centre, and across Richmond Road to the south-west is an area zoned B7 Business Park, which is mostly the Sydney Business Park.
- 2.6 The locality is undergoing transition from rural-residential properties to a higher density urban area serviced by key road networks, and is adjacent to the future extension of the Sydney Metro Northwest rail corridor, which is planned to be extended to St Marys. An aerial image of the site and surrounding area is at attachment 2.

## **3 Site description**

---

- 3.1 The site has a legal description of Lot 13 DP 1190560 and an area of 29,980 m<sup>2</sup>. It is a large irregular-shaped corner lot with frontage to Richmond Road to its western boundary and South Street to its southern boundary.
- 3.2 An area of 7,760 m<sup>2</sup> within the site is to be dedicated as SP2 zoned land. This southern portion of the site has been identified as a transport corridor under Appendix 12, Clause 6.10 (Development of land within or adjacent to public transport corridor) of the Growth Centres SEPP.
- 3.3 The site has a split zoning with the western portion of the site zoned B4 Mixed Use and the eastern portion of the site zoned R3 Medium Density Residential. The site is adjacent to land strips marked by acquisition for road widening of Richmond Road and South Street.
- 3.4 A dam is located in the north-eastern corner of the site.
- 3.5 There are 10 trees on the site, mainly located in the north-eastern corner, that are identified as being Cumberland Plain species. Vegetation on the site is minimal with mainly grassy areas. The current land use is rural residential.

## **4 Background**

---

- 4.1 The applicant had a pre-DA lodgement meeting with Council on 27 September 2018. This recommended that, as the proposed development was not supported, the applicant consider the preliminary advice provided, amend the development proposal, and book

another pre-application meeting. The applicant did not arrange for another pre-DA meeting and lodged the application on 8 May 2020.

- 4.2 We advised the applicant by email on 10 June 2020 that the road design should be amended to align with the approvals at 999 Richmond Road. This would require an amended subdivision plan and redesign of the mixed use development due to the alteration in the developable areas on the site.
- 4.3 We further outlined to the applicant by email on 19 June 2020 that Council's Traffic section had concerns about the road alignment and staggered intersection. We noted that, at present, lawful vehicular access to the site was not yet achievable as the NSW Land and Environment Court development consent DA-15-02765 was not yet activated. The site is access-denied to both Richmond Road and South Street.
- 4.4 We also provided comments at that time from our Waste, Drainage and Engineering sections.
- 4.5 An amended application was submitted on 9 July 2020. The subdivision and mixed use development were substantially redesigned due to the street network being amended to reflect the adjoining approvals which had been determined by the Land and Environment Court (LEC). The package included amended architectural plans, stormwater management plan, MUSIC model, an amended subdivision plan (the subdivision of the R3 zoned lot to alter the lot yield) and amended road network to align with the approved Development Applications on the site to the north. The amendments also included a redesign to change the configuration and design of the 6 buildings on the B4 zoned land and amended the commercial components of the proposed development.
- 4.6 The application triggered referral to NSW Roads and Maritime Services and Transport for NSW (Sydney Metro) as a traffic-generating development, and due to the southern portion of the site being identified for a future Metro rail corridor.
- 4.7 The amended application:
  - increased the number of residential units from 234 to 246 units, accommodated within the same 6 buildings originally proposed, but with greater separation distances between buildings
  - increased the capacity of the child care centre from 71 to 84 children, due to the additional open outdoor play space generated between buildings
  - amended the R3 zone development due to the reduction in the developable area, as a result of the road design amendment. The 22 Torrens title lots were reduced to 16 Torrens title lots, the majority of which are less than 300 m<sup>2</sup> in size. No building envelope plans have been received and it is not possible to assess whether there will be sufficient solar access for the private open space areas of future dwellings due to this lack of information.
- 4.8 Amended stormwater engineering drawings were submitted on 20 August 2020.
- 4.9 On 1 September 2020 the applicant submitted a proposed staging plan and amended draft subdivision plan.
- 4.10 The requested amended civil engineering plans and amended drainage plans were not submitted by the deadline of 27 October 2020. These were required to demonstrate correlation with the levels and civil infrastructure design of the surrounding Development Applications under LEC approvals DA-15-02765 and JRPP-16-02971.
- 4.11 The applicant submitted the amended subdivision plan drawn by a registered surveyor on 5 November 2020. They advised at that time that they had just received the engineering plans for the neighbouring development at 999 Richmond Road. The latest amended subdivision plan did not show a turning head on New Road 4, as had been shown on the draft amended subdivision plan by Architex, Issue E, submitted on 1 September 2020.



- 4.12 There were other clear differences between the draft subdivision plan submitted on 1 September 2020 and the final amended subdivision plan submitted on 5 November 2020 (which was drawn by a registered surveyor as we had requested), e.g. proposed lot 3 is shown as either 7,760 m<sup>2</sup> or as 8,106 m<sup>2</sup>.

The applicant wrote to Council on 27 October 2020 to request our consideration of an application for a Voluntary Planning Agreement under Council Policy 520. Under the proposed VPA the applicant wanted the proposed 16 small housing lots to be accommodated by off-site water quality treatment within the Council regional basin. Our Asset Design team advised the applicant that the investigation under Council Policy 520 would require 6 to 8 weeks to complete, and any Voluntary Planning Agreement would then need to be publicly exhibited for the requisite 28 day period before the assessment of the DA could be finalised.

- 4.13 However all these amendments have been submitted too late, not allowing time for our detailed assessment. This report is based only on the amended plans lodged on 8 July 2020 and the amended subdivision plan and staging plan provided on 1 September 2020. It does not examine the amended subdivision plan provided on 5 November 2020.

## 5 The proposal

---

- 5.1 The Development Application was lodged by Nirmal Patel, Director of Idream Property Limited. It was amended on 8 July 2020 when amended architectural plans, amended subdivision plan and other documentation were submitted following a redesign to reflect the road pattern which had been approved at the adjoining site at 999 Richmond Road.
- 5.2 This assessment report deals with the amended architectural plans and proposal as submitted by the applicant.
- 5.3 Under the amended application, the applicant now proposes:
- demolition of all existing structures
  - Torrens title subdivision and creation of new public roads and a private laneway
  - tree removal, stormwater drainage works, landscaping and street tree planting
  - public road construction of 4 roads.
- 5.4 The subdivision of Lot 13 DP 1190560, as amended under the draft subdivision plan submitted on 1 September 2020 to create 22 Torrens title lots, includes:
- proposed Lot 1 for mixed use development (8,771 m<sup>2</sup>)
  - proposed Lot 2 being a R3 zoned residue lot
  - 1 lot for public roads
  - 16 Torrens title residential lots within the R3 zoned area of the site, which range in size from 227 to 324 m<sup>2</sup>. Building Envelope Plans for the lots less than 300 m<sup>2</sup> in size have not been submitted
  - proposed Lot 3 - residue lot for the SP2-zoned land (7,760 m<sup>2</sup>) for the future rail corridor.
- 5.5 Within the B4 Mixed Use area on the site the proposal includes construction of a large mixed use development within proposed Lot 1 comprising a series of 6 (mixed use) buildings proposed to contain:
- retail floor space of 2,784 m<sup>2</sup> for 15 commercial tenancies ranging in size from 56 m<sup>2</sup> to 329 m<sup>2</sup>, a child care facility (505 m<sup>2</sup>) and a gymnasium (403 m<sup>2</sup>) on the ground floor



- 246 residential units in the 7 storeys above the ground floor and 465 car parking spaces within 2 and 3 basement levels.
- 5.6 The development is proposed to be undertaken in 2 stages:
- Stage 1: subdivide 1 lot into 22 Torrens title lots including the creation of new roads
  - Stage 2: construction of a large mixed use development within proposed Lot 1, of 6 x 8 storey buildings.
- 5.7 There is a dam on the site, however dam dewatering is not listed in the development description.
- 5.8 Details of the proposal, including a Clause 4.6 request to exceed the maximum building height, is at attachment 4 and the development plans as amended are at attachment 5.

## 6 Assessment against planning controls

- 6.1 A summary assessment of the amended Development Application against the section 4.15(1)(a) matters is below, but only for those planning controls that directly relate to our proposed refusal of the DA.

### 6.2 Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment
a. The provisions of: (i) Any environmental planning instrument (EPI)	<p>The proposal is considered to be generally consistent with the relevant EPIs, including SEPP (State and Regional Development) 2011, SEPP (Infrastructure) 2007, SEPP BASIX 2004, SEPP No. 55 - Remediation of Land and the Growth Centres SEPP 2006.</p> <p>The proposal is consistent with the Marsden Park Precinct Plan, with the exception of the height of buildings development standard. The maximum permitted building height is 28 m in the B4-zoned portion of the site, and 14 m in the R3-zoned portion of the site.</p> <p>The proposal is for building heights of up to 29.5 m to the roofline, and up to 32.2 m to the top of the lift overrun on buildings as measured from the ground levels created by the new roads. The maximum breach to this development standard is 4.2 m with offsets due to the topography of the site. The applicant has submitted a request to vary this development standard under Clause 4.6 of the Growth Centres SEPP but only for the original proposal, not the amended proposal.</p> <p>The amended proposal is still not consistent with the design criteria of the Apartment Design Guide, due to amenity concerns with solar access, cross ventilation, privacy impacts and the amenity of the ground level communal open space areas. There are also variations to building separation which are not supported.</p> <p>An acoustic report has been submitted, and under SEPP Infrastructure the proposal was referred to Transport for NSW/Sydney Metro in regard to the future rail corridor and concurrence has been received. However, the NSW Roads and Maritime Services has not provided concurrence and requires further information to be submitted due to the site's proximity to Richmond Road.</p>
(ii) Any proposed instrument that is or has been the subject of	<p>In May 2017, the former Department of Planning and Environment exhibited a draft amendment to the Growth Centres SEPP 2006, referred to as the 'North West Draft Exhibition</p>

Heads of Consideration	Comment
public consultation under this Act	<p>Package'. This exhibition coincided with the release of the Land Use and Infrastructure Implementation Plan (the purpose of which is to guide new infrastructure investment, make sure new developments do not impact on the operation of the new Western Sydney Airport, identify locations for new homes and jobs close to transport, and coordinate services in the area.</p> <p>A key outcome sought by the Department is the establishment of minimum and maximum densities for all residential areas that have been zoned under the SEPP (i.e. density bands). Currently the planning controls nominate only a minimum density. This would have a significant influence on the ultimate development capacity (i.e. yield) of the precincts.</p> <p>Following exhibition in mid-2017 and the receipt of many objections, the Department is still considering this matter and no final decision has been made. The timing of adoption is uncertain at this stage, as is the content of any amendments. There is no guarantee the exhibited controls will be adopted and made law.</p> <p>This site is within the Marsden Park Precinct. There is no residential density mapped in the B4 portion of the site. The R3 portion of the site is mapped as 25-30 dwellings per hectare. The density band demonstrated in the Exhibition Package is 25 to 35 dwellings per hectare. Thus there is no difference to the minimum density requirement. The density of the proposal is 25 dwellings per hectare within the R3 portion of the site.</p>
(iii) Any development control plan (DCP)	<p>The Blacktown City Council Growth Centre Precincts Development Control Plan 2010 applies to the site. The proposal is not consistent with the Indicative Layout Plan. The original proposal resulted in the road pattern not being in alignment with the adjoining approved development to the north, which did not fully comply with the 18 m wide road widths required by the Growth Centre DCP. The amended subdivision plan submitted on 1 September 2020 still does not provide a fully compliant 18 m wide road width for proposed half road 2.</p> <p>The application proposes that the site will have legal public road access via an adjoining temporary road which connects into Grange Avenue under DA-15-02765. This approval has not been activated and so this site remains landlocked.</p> <p>The requirements of our Civil and Open Space Infrastructure section have not been addressed as a suitable street tree plan is required to reflect the amended subdivision now proposed.</p> <p>The DA also does not comply with Blacktown Development Control Plan 2015 Part J as it has not demonstrated compliance with Council's Water Sensitive Urban Design standards and fails to demonstrate that it is compatible with future regional infrastructure. While a Voluntary Planning Agreement has very recently been proposed, no information has been submitted to be assessed under Council Policy 520 by Council's Asset Design section.</p>
(iii a) Any planning agreement	<p>No planning agreement has been entered into. The applicant has made preliminary enquiries about a Voluntary Planning Agreement to address water quality requirements, but this is too late in the process.</p>



Heads of Consideration	Comment
(iv) The regulations	The DA is contrary to Clause 50 and Clause 55A of the Environmental Planning and Assessment Regulation 2000 as the applicant is required to provide all the necessary and requested information to council to allow for a proper assessment of the application, including the submission of the requested information by our Drainage and Engineering sections. Also, an amended BASIX Certificate has not been provided.
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	It is considered that the development will result in negative impacts on both the natural and built environment due to serious engineering issues which have not been adequately addressed by the applicant in terms of staging of the development, road design and stormwater design, to ensure that this development is compatible with surrounding development. The RMS has not provided concurrence to the application and requires further detailed information.
c) The suitability of the site for the development	There is inadequate engineering information submitted by the applicant to enable a complete assessment of the impact of the proposal on the existing drainage system and approved road network. The applicant has not satisfied Council that the site can cater for this development. On this basis the site is not considered to be suitable for the proposed development as amended.
d) Any submissions made in accordance with this Act, or the regulations	The application was exhibited for a period of 14 days and 1 submission was received. Refer to section 8 below.
e) The public interest	The proposal is not in the public interest as it is not proposing orderly development, is not compatible with the adjoining road network due to a staggered intersection, there are issues with sightlines on Road 1, and road widths are not complied with.  The current proposal does not provide adequate on-site stormwater detention and water quality measures, despite repeated requests from Council to address these key site constraints.

## 7 Key issues and reasons for refusal

### 7.1 Development engineering issues

7.1.1 The proposal represents disorderly development as it is incompatible with the current adjoining road network and with approvals provided to adjoining developments. In addition, further important amendments to the engineering plans are required, specifically:

- Owner's consent has not been provided for works in adjoining owners' land. In particular, consent is required for the construction of the temporary road, batter works and drainage outlets in adjoining land. Concurrence from RMS has also not been submitted to Council for the batter works in the Richmond Road reserve as shown in the engineering plans.
- This proposal relies for access on a temporary road on adjoining land that was approved under DA-15-02765. In the event the subject development site is constructed before the approved northern development, the development site



will not have any public road access. Even if this DA was approved it could not commence construction until there is legal public road access to Grange Avenue.

- Proposed Road 1 in the latest amended engineering plans does not have the same road dimensions as the approved road connection to the northern development in DA-15-02765.
- Road 1 is classified as 'Parallel Street to Richmond Road and South Street' in Schedule 6 – Marsden Park Precinct from the Blacktown City Council Growth Centre Precincts DCP. The proposed road dimensions are not in line with Figure 4-4 of Schedule 6 and so does not comply with the DCP.
- The location of the Road 4 temporary turning head encroaches significantly into Lots 9 and 10. The proposed 8.5 m radius is not acceptable as Council has a minimum requirement of 9 m.

#### 7.1.2 Items where more information is required:

- Amended engineering plans must be submitted to reflect the changes made in the latest subdivision plans. In particular:
  - proposed Road 2 to be widened to 5.5 m half-width carriageway and 3.5 m verge
  - Road 3 to be widened to have a 11 m wide carriageway and moved to line up with the approved road connection to the northern development.
- The future road connections to the east as per the ILP Road in Figure 4-2 of Schedule 6 – Marsden Park Precinct must also be shown on the engineering plans.
- All road and drainage lines must continue to the northern development to demonstrate compatibility. The road connecting to proposed Road 3 in the northern development is shown to cross the road drainage line over to the eastern side of Road 3.
- Clarification is required as to why proposed Road 4 is not constructed as a half-width road, noting the Road ILP in Figure 4-2 of Schedule 6 – Marsden Park Precinct shows this road as being through the middle of the property boundary.
- The proposed private access road to provide dimensions in line with Table 3.2 of Council's Engineering Guide for Development 2005.
- Locations of shared paths have not been provided.

## 7.2 Drainage engineering issues

7.2.1 The submitted engineering plans do not comply with the Blacktown DCP, Council's WSUD Developer's handbook, WSUD standard drawings or BCC Engineering Guide 2005.

7.2.2 The proposed subdivision plan cannot be approved because:

- The proposed Torrens title subdivision of the R3 lot is incompatible with the proposed water quality strategy that relies on Community title ownership.
- The commercial zone needs 8 m x 8 m splay corners and this will conflict with the proposed building layouts.
- The stream erosion index (SEI) is required to be less than 3.5 to protect the local waterways, but no information or calculations are provided to demonstrate that this can be satisfied.

- 7.2.3 The water quality requirements have not been satisfactorily addressed:
- An interim and ultimate water quality plan/strategy has not been submitted.
  - The B4 zoned area requires permanent water quality measures on site, but this is not detailed in the drainage plans.
  - The R3 zoned area requires permanent on-lot water quality, but only temporary water quality was provided and the temporary arrangement nominated contradicts the MUSIC model provided.
  - The water quality treatment of the roads has not been provided for.
  - Water conservation calculations for the business units have not been provided to justify the reuse rates.
- 7.2.4 There are numerous contradictions between the drainage plan and MUSIC model that make approval impossible.
- 7.2.5 The temporary detention requirements for the site have not been satisfactorily addressed.
- The basin catchment plan does not reflect the upstream catchments as per DA-15-02765.
  - The detention requirements of the temporary access road have not been provided.
  - There is insufficient information available to verify that the nominated storage volumes can be stored in the basin.
- 7.2.6 There is uncertainty as to how this development fits into the context of surrounding development:
- The adjacent DA-15-02765 has not been referenced where works are proposed near existing Development Applications to ensure consistency with all boundary alignments, drainage works and road alignments.
  - The development is discharging onto the adjoining development through a pipe and swale, but no easement has been provided to give a legal point of discharge.
  - Owner's consent for all external works, including batter works on private lots, has not been demonstrated.
  - Permission is required for use of the temporary access over an adjoining property.
- 7.2.7 Drainage plans are incapable of being correctly assessed as:
- The engineering plans contradict the latest architectural and engineering plans for adjacent DA-15-02765.
  - There are numerous inconsistencies between the drainage plans and the supporting models.
  - The MUSIC model shows a 300 kL rainwater tank and a large Stormfilter chamber, however these are not shown on the plans and it is unclear whether these can be incorporated into the building design.
  - The road drainage is not sized for the minimum 10 year ARI flows as per the NWGC DCP.
- 7.2.8 The stormwater management report is incompatible with the drainage plans as follows:



- The Stream Erosion Index requirements have not been met.
- The water quality requirements have not been satisfactorily addressed.
- The temporary detention requirements for the site have not been satisfactorily addressed.
- Insufficient information has been provided for the nominated storage volumes and whether they can be stored in the basin.
- There is uncertainty as to how this development fits into the context of the surrounding development.
- The development is discharging onto the adjoining site through a pipe and swale but no easement has been provided to give a legal point of discharge.
- The drainage plans, engineering plans and latest architectural plans are contradictory.
- The road drainage is not sized for minimum 10 year ARI flows.

### **7.3 Height, design and amenity issues**

- 7.3.1 A variation is proposed to the maximum height control of 28 m to the mixed use buildings, roof structures and lift overruns, of up to 4.2 m including a communal open space area on top of one of the buildings. The building heights are up to 29.5 m to the roofline across the 6 buildings, and up to 32.2 m to the lift overruns.
- 7.3.2 The height exceedance has not been adequately justified for the amended proposal, as a compliant revised Clause 4.6 variation request has not been submitted.
- 7.3.3 The proposal does not satisfy SEPP No. 65 - Design Quality of Residential Apartment Development and its 9 'design quality principles'.
- 7.3.4 Incomplete information has been provided on the following matters:
- visual privacy
  - solar access
  - cross-ventilation
  - amenity of ground floor communal open space and landscaped area
  - separation distance requirements between buildings.
- 7.3.5 There is insufficient information to enable a full planning assessment to be completed whilst ever the road design and subdivision layout for the site has not been finally agreed to by Council and all the engineering and drainage issues are not fully addressed to Council's satisfaction. Only if these issues had been addressed could the final developable area and dimensions of the B4-zoned portion of the site be established. This would have informed the final design of the mixed use buildings and their positioning.

### **7.4 Traffic issues**

- 7.4.1 Internal traffic circulation within the mixed use development is not satisfactory as it does not provide for safe pedestrian and vehicular access to the child care centre.
- 7.4.2 The proposal provides a waste collection arrangement at ground level (as well as basement level) with trucks reversing, which is not an arrangement that is supported by Council's Sustainable Waste or Engineering and Traffic sections.



7.4.3 The child care centre is not compliant with the requirements of the Education Facilities and Child Care SEPP and the current pedestrian and vehicular access to this centre is not supported.

7.4.4 Concurrence has not been provided by Roads and Maritime Services.

## **7.5 Incomplete information**

7.5.1 No Building Envelope Plans were submitted for the 16 residential lots, all of which are less than 300 m<sup>2</sup> in area.

7.5.2 A compliant revised Clause 4.6 variation request to address the amended architectural plans and building height non-compliance was not submitted.

7.5.3 Amended drainage and civil engineering plans to address a list of engineering concerns were not submitted. We provided the applicant a period of 28 days for these plans to be submitted by 27 October 2020, but they failed to meet the deadline to enable the plans to be assessed and reported to the panel accordingly.

7.5.4 Insufficient information has been provided to complete our planning assessment of the development. Due to the insufficient information on the lot layout and final road network, there has been uncertainty as to the final dimensions of the building envelopes which in turn impacted on the accuracy of the architectural plans in relation to setbacks, building separation and even potentially height.

7.5.5 The non-compliances with the Apartment Design Guide, and the issues outlined above relating to traffic, waste collection and the child care centre's design, have not been addressed.

7.5.6 The road network has not met the requirements of Council's Development Engineering section who had requested amended plans. The most recent subdivision plan and road design is not supported and, due to the uncertainty with the road network and the drainage plan, it has not been possible to completely assess the mixed used development as amended.

7.5.7 The residential small lot subdivision also could not be fully assessed, as the dwelling Building Envelope Plans for these house lots were not submitted.

7.5.8 The applicant was also seeking to further amend its application by requesting a Voluntary Planning Agreement with Council under Council Policy 520. However the applicant has submitted insufficient information to Council's Asset Design section for this enquiry to be seriously considered.

## **7.6 Conclusion**

7.6.1 A number of key issues, including the subdivision plan, road design, drainage, engineering, traffic matters, Apartment Design Guide issues, design of child care centre, landscaping, waste and environmental health matters, as well as amenity concerns, remain unresolved. Information has not been forthcoming to enable these aspects of the proposal to be properly assessed, and it still remains unclear what the final developable area for both the B4 and R3 zoned areas will be.

## **8 Issues raised by the public**

8.1 The proposed development was notified to property owners and occupiers in the locality between 24 June and 8 July 2020. The Development Application was also advertised in the local newspapers and a sign was erected on the site.

8.2 The original proposal was placed on public exhibition and 1 submission was received on 25 June 2020 objecting on the basis of lack of infrastructure, including lack of public transport, traffic impacts and lack of services.

- 8.3 The objection is not considered to warrant refusal of the DA. These issues are regional issues and so cannot be addressed by this DA alone. These difficulties in infrastructure rollout are inevitable in a Growth Area undergoing transition.

## 9 External referrals

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

Authority	Comments
Transport for NSW/Sydney Metro	No objection subject to conditions
NSW Roads and Maritime Service	<b>Objection</b>

## 10 Internal referrals

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

Section	Comments
City Architect	<b>Unacceptable and cannot be supported</b>
Access and Transport Management	<b>Unacceptable and cannot be supported</b>
Building	No objection subject to conditions
Environmental Health Unit	No objection subject to conditions
Civil and Open Space Infrastructure	An amended street tree plan is required
Drainage Engineering	<b>Unacceptable and cannot be supported</b>
Development Engineering	<b>Unacceptable and cannot be supported</b>
Sustainable Waste	<b>Unacceptable and cannot be supported</b>

## 11 Conclusion

- 11.1 The proposed development has been assessed against all relevant matters and is substantially unsatisfactory and unacceptable. The applicant has been requested since June 2020 to provide additional information, amended plans and further particulars to satisfy our engineering design, road design and drainage requirements. The requisite information was not provided on time and as evidenced in the background information, ample opportunities were given to the applicant to resolve the outstanding issues.
- 11.2 It is considered that the likely impacts of the development have not been satisfactorily addressed and the proposal in its present form is not in the public interest.
- 11.3 On this basis the site in its current form is not considered suitable for the proposed development.




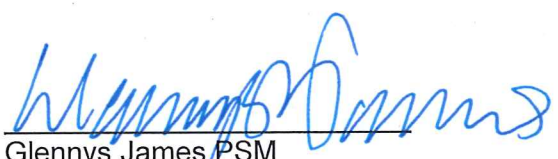
## 12 Recommendation

---

- 1 Refuse Development Application SPP-20-00002 for the following reasons:
  - a Under section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), it is considered that the proposed development is substantially inconsistent with the controls in Blacktown Development Control Plan 2015, Part J Water Sensitive Urban Design (WSUD) and Integrated Water Cycle Management, Council's WSUD standard drawings and Council's Engineering Guide for Development.
  - b Under section 4.15(1)(c) of the EP&A Act 1979, the site is not suitable for the development as designed, as the road and drainage constraints affecting the subject land have not been resolved.
  - c Under section 4.15(1)(b) of the EP&A Act 1979, the proposal in its current form will have substantial impacts on adjoining development and upstream drainage catchments, due to its numerous non-compliances with the standard drainage and road design requirements of Council.
  - d Inadequate information has been provided to complete an assessment of the DA in terms of engineering and drainage design matters, compliance with SEPP 65 and the Apartment Design Guide and a range of other related design issues. The proposal cannot be thoroughly assessed to be considered consistent with the provisions of section 4.15 (1)(b) and (c) of the EP&A Act 1979.
  - e Under section 4.15(1)(e) of the EP&A Act 1979, it is considered that, in the circumstances of the case, approval of the development would create an unacceptable risk for the public due to risk of downstream inundation as a result of poorly managed stormwater runoff and roads that do not match adjoining approved development at their boundaries and is therefore not in the public interest.
- 2 Council officers notify the applicant and submitter of the Panel's decision.

  
\_\_\_\_\_  
Ruth Bennett  
Senior Development Planner

  
\_\_\_\_\_  
Judith Portelli  
Manager Development Assessment

  
\_\_\_\_\_  
Glennys James PSM  
Director Planning and Development