

DETERMINATION AND STATEMENT OF REASONS

SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	14 December 2020
PANEL MEMBERS	David Ryan (Acting Chair), Noni Ruker, Sameer Pandey and Martin Zaiter
APOLOGIES	Abigail Goldberg, Ken McBryde and Gabrielle Morrish
DECLARATIONS OF INTEREST	Nil

Public meeting held by public teleconference on 9 December 2020, opened at 1.30pm and closed at 2.10pm.

MATTER DETERMINED

PPSSCC-119 – DA/397/2020, City of Parramatta, 2-16 Epping Road and 2-4 Forest Grove, Epping, Demolition of all structures, site preparation works, excavation and tree removal; construction of 5x 5-8 storey residential flat buildings comprising 321 apartments; construction of 2x 2-3 level basement car parks comprising 266 car parking spaces, storage and plant rooms; construction of an internal road; a public pedestrian through site link; associated landscaping works; and delivery/augmentation of services (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was **unanimous**.

REASONS FOR THE DECISION

1. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(c) to the *Environmental Planning and Assessment Act, 1979* as it has not been demonstrated that suitable access can be provided to the proposed development and the proposed north-south through site link is inconsistent with Hornsby Development Control Plan 2013.
2. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because it is contrary to the provisions of Clause 4.3 Height of Buildings of Hornsby Local Environmental Plan 2013. Specifically, proposed Building D has a building height of 18.45m on its eastern side, which exceeds the maximum building height by 0.95m (or 5.4%). No written request pursuant to Clause 4.6 has been submitted to justify the variation.
3. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because it is contrary to the Clauses 87 and 102 of SEPP (Infrastructure) 2009 as it has not been adequately demonstrated that the proposed apartments will achieve satisfactory internal noise levels due to noise and vibration from nearby roads and railway infrastructure.

4. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because it is contrary to the Clauses 101 and 104 of SEPP (Infrastructure) 2009 as the proposed development includes a connection to Blaxland Road, which is a classified road and it has not been demonstrated that a connection from Forest Grove, a lower order road can be achieved. As such, the development will have an adverse impact on the safety, efficiency and ongoing operation of Blaxland Road. Transport for NSW has not granted concurrence for the proposed connection to Blaxland Road.
5. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because it is contrary to the provisions of SEPP No. 55 – Remediation of Land as a Detailed Site Investigation (Phase 2) is required but has not been undertaken. As such, the application fails to adequately demonstrate that site can be made suitable for the proposed use in accordance with the requirements of SEPP No. 55.
6. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because it is contrary to the provisions of SEPP (Vegetation in Non-Rural Areas) 2017 as the proposed development does not preserve the biodiversity values and amenity of non-rural areas through the preservation of trees on the site. In particular, it has not been demonstrated that a row of mature Brush Box trees (Trees 1-10, 45 and 64) can be suitably retained and protected on and adjacent to the site.
7. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because it is inconsistent with the Design Quality Principles in Schedule 1 of SEPP No. 65 – Design Quality of Residential Apartment Development.
8. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(i) to the *Environmental Planning and Assessment Act, 1979* because pursuant to Clause 28(2)(c) of SEPP No. 65 – Design Quality of Residential Apartment Development, the proposed development is contrary to the various parts of the Apartment Design Guide, as follows:
 - 3B Orientation, 3C Public Domain Interface, and 3G Pedestrian Access and Entries as entries to the proposed buildings are not directly from the street and are not clear and legible, a number of ground floor apartments are below existing ground level, and through site links are convoluted, lack clear wayfinding and do not provide equitable access through the site;
 - 3D Communal and Public Open Space as the proposal provides Communal Open Spaces that are located within through site links and pathways, and do not provide facilities to encourage social interaction. Further, a number of the ground floor Communal Open Spaces directly overlook Private Open Space areas of ground floor apartments;
 - 3E Deep Soil Zones as the majority of deep soil zones provided on site are well below the minimum dimension required of 6m and are not capable of supporting large canopy trees on site;
 - 3F Visual Privacy as building separation between buildings proposed on the site is not compliant with the numerical requirements under 3F, and it has not been demonstrated that proposed apartments will achieve acceptable levels of visual privacy;
 - 3H Vehicle Access as a suitable access is not provided and direct vehicular access to site from Blaxland Road is not supported;
 - 3J Bicycle and Car Parking as there is an overprovision of car parking and under provision of bicycle parking proposed;

- 4B Natural Ventilation as only 165 out of 321 (51.4%) of apartments are naturally cross ventilated and it has not been adequately demonstrated that design treatments can be suitably incorporated into the development to achieve 60% natural cross ventilation;
 - 4D Apartment size and layout as a number of apartments have habitable room depths exceeding 8m;
 - 4E Private Open Space and Balconies as a number of ground floor apartments have private open space areas that are not 3m deep and do not achieve satisfactory amenity;
 - 4F Common Circulation and Spaces as no common room has been provided within the development;
 - 4H Acoustic Privacy and 4J Noise and Pollution as it has not been satisfactorily demonstrated that the internal noise levels for a number of apartments facing Epping and Blaxland Roads can comply with the relevant internal noise criteria;
 - 4K Apartment Mix and 4Q Universal Design as the percentage of adaptable and livable apartments are not evenly distributed between 1, 2 and 3 bedroom apartments proposed;
 - 4L Ground Floor Apartments as the proposed ground floor apartments are not directly accessible from the street level, and are provided with unsatisfactory amenity as many are located below ground level by up to 6 metres, are overlooked by common areas and public domain, and do not incorporate suitable landscaping.
 - 4O Landscape Design as the proposal removes a number of high retention trees that should be retained on site, deep soil zones proposed on the site are not adequate in dimension to support new large canopy trees, and no green roofing is proposed.
9. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) to the *Environmental Planning and Assessment Act, 1979* because it is considered to be inconsistent with the provisions of Part 1 General of Hornsby Development Control Plan 2013. In this regard, the proposal is inconsistent with the objectives and controls in the following sections:
- 1B.6 Tree Preservation;
 - 1C.1.2 Stormwater management;
 - 1C.1.4 Earthworks and Slope;
 - 1C.2.1 Transport and Parking;
 - 1C.2.2 Accessible Design;
 - 1C.2.7 Crime Prevention;
 - 1C.2.9 Landscaping; and
 - 1C.2.12 Avoiding Isolated Sites.
10. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) to the *Environmental Planning and Assessment Act, 1979* because it is considered to be inconsistent with the provisions of Part 3.4 Residential Flat Buildings (5 Storeys) of Hornsby Development Control Plan 2013. In this regard, the proposal is inconsistent with the objectives and controls in the following sections:
- 3.4.1 Desired Future Character;
 - 3.4.2 Design Quality – SEPP 65;
 - 3.4.3 Site Requirements;
 - 3.4.4 Height;
 - 3.4.5 Setbacks;

- 3.4.6 Building Form and Separation;
 - 3.4.7 Landscaping;
 - 3.4.8 Open Spaces;
 - 3.4.9 Privacy and Security;
 - 3.4.11 Sunlight and Ventilation;
 - 3.4.12 Housing Choice;
 - 3.4.13 Vehicular Access and Parking;
 - 3.4.14 Public Domain and Traffic Management Works; and
 - 3.4.15 Epping Road/Forest Grove, Epping Precinct.
11. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) to the *Environmental Planning and Assessment Act, 1979* because it is considered to be inconsistent with the provisions of Part 3.5 Residential Flat Buildings (6 Storeys or more) of Hornsby Development Control Plan 2013. In this regard, the proposal is inconsistent with the objectives and controls in the following sections:
- 3.5.1 Desired Future Character;
 - 3.5.3 Site Requirements;
 - 3.5.5 Setbacks;
 - 3.5.6 Building Form and Separation;
 - 3.5.7 Landscaping;
 - 3.5.8 Open Spaces;
 - 3.5.9 Privacy and Security;
 - 3.5.11 Sunlight and Ventilation;
 - 3.5.12 Housing Choice;
 - 3.5.13 Vehicular Access and Parking;
 - 3.5.14 Public Domain and Traffic Management Works; and
 - 3.5.15 Epping Road/Forest Grove, Epping Precinct.
12. The proposal is unacceptable pursuant to the provisions of Section 4.15(1)(a)(iii) to the *Environmental Planning and Assessment Act, 1979* because it is considered to be inconsistent with the provisions of Part 9 Heritage of Hornsby Development Control Plan 2013. In this regard, the proposal is inconsistent with the objectives and controls in the following section:
- Development in the vicinity of heritage.
13. The proposal is unacceptable pursuant to the provisions of Section 4.15(b) to the *Environmental Planning and Assessment Act, 1979* in that the application includes insufficient information to satisfactorily assess the likely impacts of that development, including:
- The submitted Survey Plan (2000221_A) prepared by Beveridge Williams does not include a site area for the development site (excluding Lot D in DP 388783);
 - Evidence of correspondence submitted in relation to negotiations to purchase No. 18 Epping Road are out-of-date and therefore do not demonstrate that the offers provided are based on a current "fair market price". Further, inadequate building envelopes have been provided to demonstrate that the orderly and economic development of No. 18 can occur despite the proposed development;
 - No clothes drying areas for apartments are shown on the architectural plans to satisfy the objectives and controls of the Hornsby Development Control Plan 2013, Section 3.4.8 and 3.5.8 Open Spaces;

- No Public Domain and Alignment Plan has been submitted to satisfy the objectives and controls of the Hornsby Development Control Plan 2013, Section 3.4.13 and 3.5.13 Public Domain and Traffic Management works;
 - The Landscape Plans, Arboricultural Impact Assessment, and Tree Protection Plan submitted do not contain sufficient detail to demonstrate that Trees 1 to 10, 45 & 64 can be viably retained, and that sufficient soil volumes are provided on site to support new canopy trees to achieve a healthy maturity;
 - Inadequate evidence has been provided to demonstrate that the proposed site can be made suitable for the proposed use in respect of land contamination;
 - The Acoustic Report prepared by Renzo Tonin & Associates does not include details of design treatments that can be incorporated into the development to ensure that acceptable internal noise levels are achieved for all proposed apartments;
 - Insufficient detail has been provided for design treatments to be incorporated into the development to ensure that more than 60% of apartments achieve natural cross ventilation, as described in the Natural Ventilation Statement prepared by Windtech; and
 - The proposed OSD located in the basement will give rise to the following issues that require addressing:
 - Drowned orifice,
 - Possible reverse flow in outlet and emergency overflow pipes,
 - No surface emergency overflow path presented or possible.
14. The proposal is unacceptable pursuant to the provisions of Section 4.15(c) to the *Environmental Planning and Assessment Act, 1979* in that the subject site is not suitable for the proposed development in its current form.
15. The proposal is unacceptable pursuant to the provisions of Section 4.15(e) to the *Environmental Planning and Assessment Act, 1979* in that the proposal's non-compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest and would set an undesirable precedent.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Site should be provided as an extension of Forest Park for public use.
- Proposed access road encroaches onto former bowling club site.
- Removal of Brush Box trees adjacent to Forest Park.
- Removal of Trees 53 and 61, located on Forest Park.
- Replacement trees should be similar to those being removed
- Development and landscape design could make reference to the heritage of the local areas.
- Adverse impact on local heritage item, Forest Park.
- Not enough car parking proposed
- Traffic impacts and increased traffic congestion
- Safety risks from vehicular access direct onto Blaxland Road.
- Overdevelopment and surplus of apartments in the area.
- Lack of community facilities, schools and amenities for local residents.
- Isolation of adjoining site at No. 18 Epping Road, Epping

- Provision for future pedestrian bridge across Epping Road
- Pedestrian through site link between Building C and D should be closer to the Blaxland Road intersection
- Overshadowing of former bowling club site.
- Overshadowing of neighbouring properties.
- Lack of solar access to the proposed development
- Insufficient setbacks and building separation
- Scale and design of the buildings and adverse impact on streetscape
- Non-compliance with height
- Lack of setback to enable a planned cycleway along Epping Road.
- Landscaped areas and inadequate in dimension to support large trees.
- Communal open space is not adequate for the scale of development.
- Restrictions on garbage collections
- Disruption during construction
- No long term employment opportunities created by the development
- Wind tunnel impacts.
- Loss of views of the sky and over-towering neighbouring properties.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 David Ryan (Acting Chair)	 Martin Zaiter
 Noni Ruker	 Sameer Pandey

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-119 – DA/397/2020, City of Parramatta
2	PROPOSED DEVELOPMENT	Demolition of all structures, site preparation works, excavation and tree removal; construction of 5x 5-8 storey residential flat buildings comprising 321 apartments; construction of 2x 2-3 level basement car parks comprising 266 car parking spaces, storage and plant rooms; construction of an internal road; a public pedestrian through site link; associated landscaping works; and delivery/augmentation of services
3	STREET ADDRESS	2-16 Epping Road and 2-4 Forest Grove, Epping
4	APPLICANT/OWNER	Austino Epping 2 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Capital Investment Value over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	• Roads Act 1993 • Environmental planning instruments:

		• SEPP (Building Sustainability Index: BASIX) 2004 • SEPP (Infrastructure) 2007 • SEPP (State and Regional Development) 2011 • SEPP (Sydney Harbour Catchment) 2005 • SEPP No. 55 (Remediation) • SEPP (Vegetation in Non-Rural Areas) 2017 • SEPP No. 65 (Design Quality of Residential Apartment Development) & Apartment Design Guide • Hornsby Local Environmental Plan 2013 • Draft environmental planning instruments: • Draft Consolidated City of Parramatta Local Environmental Plan • Development control plans: ○ Hornsby Development Control Plan 2013 • Planning agreements: Nil • Provisions of the Environmental Planning and Assessment Regulation 2000 • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	• Council assessment report: 27 November 2020 • Written submissions during the public exhibition: 46 • Verbal submissions at the public meeting: ○ In support – Nil ○ In objection – Paul Farris, Mike Moffatt on behalf of Epping Civic Trust and Margaret McCartney on behalf of Save Epping's Forest Park -. ○ Council assessment officer – Ashleigh Kizana and Myfanwy McNally ○ On behalf of the Applicant – Simon Parsons, Kate Gong and Daniel West.
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: 10 September 2020 ○ <u>Panel members</u>: Abigail Goldberg (Chair), David Ryan, Gabrielle Morrish, Sameer Pandey and Martin Zaiter ○ <u>Council assessment staff</u>: Ashleigh Kizana and Myfanwy McNally • Site inspection: Site inspections have been curtailed due to COVID-19. Where relevant, Panel members undertook site inspection individually. • Final briefing to discuss council's recommendation, 9 December 2020, 11.30am (teleconference) Attendees:

		○ <u>Panel members</u>: David Ryan (Acting Chair), Noni Ruker, Sameer Pandey and Martin Zaiter ○ <u>Council assessment staff</u>: Ashleigh Kizana and Myfanwy McNally ○ <u>Matters discussed</u>: Matters arising from assessment report
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A