

Assessment against planning controls: section 4.15, summary assessment and variations to standards

1 Environmental Planning and Assessment Act 1979

1.1 Section 4.22 'Concept Development Applications'

Summary comment	Complies
<p>This application is lodged under section 4.22 Concept Development Applications of the Environmental Planning and Assessment Act 1979.</p> <p>As specified by Clause 5, our consideration under section 4.15 of the Act as to the likely impact of the development the subject of the concept Development Application is limited to the likely impact of the concept proposal (the concept envelopes for the development of the site) and the detailed subdivision stage of the development only (Stage 1 being the).</p> <p>This application does not include consideration of the likely impact of the carrying out of development that is the subject of the future stages of development, which is required to be the subject of a separate Detailed Development Applications (being the construction of the new buildings and associated car parking within the proposed concept envelopes).</p>	Satisfactory

1.2 Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment	Complies
<p>a. The provisions of:</p> <p>(i) Any environmental planning instrument</p>	<p>The proposal is considered to be generally consistent with the relevant EPIs, including Blacktown Local Environmental Plan 2015, SREP No. 20 – Hawkesbury- Nepean River, SEPP (State and Regional Development) 2011, SEPP (Infrastructure) 2007, SEPP No. 55 – Remediation of Land, SEPP No. 65 – Design Quality of Residential Apartment Development and the 9 'design quality principles' of SEPP 65 and the Central City District Plan 2018.</p> <p>The proposed development is defined as a mixed used development and is permissible in the B4 Mixed Use zone and satisfies the zone objectives.</p> <p>Under BLEP 2015, the maximum height limit for the site is 64 m. The proposed development will incorporate an overall building height of 66.53 m, which exceeds the maximum limit by 2.53 m (3.95%). The applicant has submitted a request to vary this development standard under Clause 4.6 of BLEP 2015. The proposed variation is considered acceptable.</p>	Satisfactory
<p>(ii) Any proposed instrument that is or has been the subject of public consultation under this Act</p>	<p>Amendments to Clause 4.6 of the Standard Instrument</p> <p>Under the proposed revised Clause 4.6, which is currently on exhibition, the consent authority must be directly satisfied that the applicant's written request demonstrates the following essential criteria to vary a development standard:</p> <ul style="list-style-type: none"> The proposed development is consistent with the objectives of the relevant development standard and land use zone. 	Yes

Heads of Consideration	Comment	Complies
	<ul style="list-style-type: none"> The contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes. <p>The proposed development has been assessed against the amendments to Clause 4.6 of the Standard Instrument and it meets the above criteria for assessing Clause 4.6 variations.</p>	
	<p>Draft State Environmental Planning Policy (Remediation of Land)</p> <p>The draft Remediation of Land State Environmental Planning Policy was exhibited from January to April 2018 and seeks to repeal and replace SEPP 55 in relation to the management and approval pathways for contaminated land.</p> <p>The draft Remediation of Land State Environmental Planning Policy will:</p> <ul style="list-style-type: none"> Provide a state-wide planning framework for the remediation of land. Maintain the objectives and reinforce those aspects of the existing framework that have worked well. Clearly list the remediation works that require development consent. Categorise remediation work based on the scale, risk and complexity of the work. Require environmental management plans relating to post remediation, maintenance and management of on-site remediation measures to be provided to Council. 	<p>This proposal is not inconsistent with the provisions of this draft State Environmental Planning Policy subject to conditions that will be imposed on the consent.</p>
	<p>Draft Design and Place State Environmental Planning Policy (DP SEPP)</p> <p>The draft State Environmental Planning Policy (Design and Place) 2021 (DP SEPP) and supporting guides is currently on exhibition from 10 December 2021 to 28 February 2022.</p> <p>The DP SEPP will supersede the existing SEPP No 65 – Design Quality of Residential Apartment Development, and SEPP (Building Sustainability Index: BASIX) 2004, with relevant provisions transferred across. It will include an updated Apartment Design Guide (ADG) and BASIX tool, as well as introducing new guides and requirements for non-residential development that aims to support better outcomes for all built environment projects in NSW.</p> <p>The Department of Planning, Industry and Environment (DPIE) has advised that for the purposes of section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 (EP&A Act), the draft proposed State Environmental Planning Policy (Design and Place) 2021 is not notified to any consent authorities and so is not a mandatory matter for consideration under section 4.15 of the EP&A Act.</p>	<p>Not applicable for this Concept DA. However, it is recommended that the requirements of ADG are addressed in the future Detailed Development Applications.</p>

Heads of Consideration	Comment	Complies
(iii) Any development control plan	The draft Mount Druitt DCP is currently on exhibition, concluding on 14 January 2022. Given that the subject concept proposal was lodged in advance to the new draft DCP, the provisions of the Draft DCP have not been strictly applied in relation to the subject application. Where applicable, the detailed development objectives and controls of any relevant DCP will be considered and guide the assessment of the future Detailed Development Applications on the subject site.	Not applicable for this Concept Development Application.
(iii a) Any Planning Agreement	Future Detailed Development Application will be bound by the provisions of a Voluntary Planning Agreement. Please refer to section 8 of the assessment report for further discussion regarding this matter.	Yes, subject to conditions
The regulations	There are no regulations to be considered.	N/A
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	<p>It is considered that the likely impacts of the concept development including traffic, parking, design and presentation, amenity, bulk and scale, overshadowing, noise, privacy, waste management, acoustic impacts, salinity, contamination, stormwater management are capable of being appropriately addressed in the future Detailed Development Applications. Appropriate conditions have been imposed on the consent to ensure that the likely impact of the development will be addressed in the future Development Applications.</p> <p>It is also considered that the proposed subdivision development will not have any unfavourable social, economic or environmental impacts on the locality.</p>	<p>Satisfactory subject to the conditions which requires each matter to be addressed in detail in the future Detailed Development Applications,</p> <p>Satisfactory</p>
c. The suitability of the site for the development	<p>The subject site is zoned B4 Mixed Use zone and the proposal is permissible with consent.</p> <p>The site has an area and configuration that is suited to the form of development proposed. The subject site is located in the Mount Druitt CBD, immediately north of Mount Druitt Train Station and is well serviced by public transport.</p> <p>There is no critical habitat or threatened species habitat on the subject site.</p> <p>The scale of the proposed development is appropriate for the site and is consistent with the desired CBD character for Mount Druitt. The proposal supports pedestrian movement and connectivity across the site and within the Mount Druitt CBD.</p> <p>The site is therefore considered suitable for the proposed development.</p>	Satisfactory
d. Any submissions made in accordance with this Act, or the regulations	The DA was exhibited from 28 April to 28 May 2021. A total of 3 submissions were received. The issues raised by the residents relate to traffic generation, increases in populations and lack of services, character, overshadowing, privacy and building height. Please refer to Attachment 10 for the summary of each issue and our response. The issues raised in the submissions are considered sufficient to not warrant	Satisfactory

Heads of Consideration	Comment	Complies
	refusal of the development application and can be addressed by way of conditions.	
e. The public interest	<p>The proposed development provides additional commercial and residential development in the Mount Druitt CBD area and supports the creation of Mount Druitt CBD as a strong mixed use centre. The proposal is consistent with the objective of the zoning for the site. Appropriate conditions have been included to ensure the interests of the surrounding properties are addressed in the future Detailed Development Applications.</p> <p>Overall, the proposal is considered to be in the public interest as the development will contribute to the residential, retail and employment opportunities in the Mount Druitt CBD and is recommended for approval.</p>	Satisfactory

2 State Environmental Planning Policy (State and Regional Development) 2011

Summary comment	Complies
<p>The Sydney Central City Planning Panel (SCCPP) is the consent authority for all development with a capital investment value (CIV) of over 30 million.</p> <p>As this Development Application has a capital investment value of \$339,456,588 million, Council is responsible for the assessment of the Development Application and determination of the application is to be made by the Panel.</p>	Yes

3 State Environmental Planning Policy (Infrastructure) 2007

Summary comment	Complies
<p>The State Environmental Planning Policy ensures that Transport for NSW is given the opportunity to comment on development nominated as 'traffic generating development' under Clause 104 of the State Environmental Planning Policy.</p> <p>The development was referred to TfNSW for their consideration. TfNSW have reviewed the submitted application and provided the following comments for Council's consideration:</p> <ol style="list-style-type: none"> 1 The applicant is to demonstrate that the adjacent intersections can accommodate the traffic generated by this development to the satisfaction of Council. SIDRA modelling should be provided showing nearby intersections, particularly the signalised intersection of Mount Street and North Parade. Modeling should include base and future scenarios, with and without development. 2 North Parade currently experiences heavy vehicle traffic. It is recommended that all vehicle access to the proposed development is via the side streets. 3 It is noted there are a number of access points to the proposed development. Please clarify if all access points lead to the same areas of basement carpark internally. 4 It is suggested that access points be consolidated to minimise conflict with pedestrians and cyclists along the roads." <p>Council's comments:</p> <p>-Traffic generation:</p>	Satisfactory subject to conditions

Summary comment	Complies
<p>Due to the uncertainty associated with flooding and the likely future flood planning level and yield, mix and number of the apartments, it is difficult to calculate the likely future car parking numbers and traffic movements that can be attributed to the development.</p> <p>It is therefore proposed that as Detailed Development Applications will be required in the future, when the towers are proposed to be constructed, the SIDRA Analysis of the traffic generation be required to be submitted at the lodgement of the first detailed application.</p> <p>A condition is imposed on the consent that requires the SIDRA Analysis of the traffic generation be required to be submitted at the lodgement of the first detailed application.</p> <p>-Access</p> <p>Our Traffic section has reviewed the comments from TFNSW advised that that Jirrang Close (to the east of the site) has a 6m wide carriageway of and therefore it is not considered suitable for heavy vehicle access. The access ramp for heavy vehicle on North Parade is proposed in left in/left out arrangement only and it is considered satisfactory by our Traffic section.</p> <p>-Noise</p> <p>In respect requirements of Clause 87 and Clause 102 of the Infrastructure SEPP, the application is accompanied by an Acoustic Assessment prepared by Renzo Tonin and Associates which assessed the impacts of external noise intrusion onto the development site from rail movements and road traffic noise predominantly on North Parade.</p> <p>The report recommends indicative façade constructions for compliance with mandatory and recommended internal noise goals. Indicative advice is provided for the treatment of public, communal and private outdoor space due to rail and traffic noise impacts.</p> <p>This assessment presents proposed criteria for external noise emissions from the operation of the site, for the amenity of surrounding receivers and future residents within the precinct itself. Further detailed assessment/s will be required at Development Application stage whilst the proposed acoustic framework has been presented. This include further assessment of noise emission from a licenced premise and an analysis of the types of retail/commercial use at the ground floor.</p> <p>Council's Environmental Health Unit did not object to the DA and recommended appropriate conditions. Conditions of consent are imposed to ensure the future developments satisfy the relevant Australian Standards and NSW Environment Protection Authority (EPA) Policy, and to ensure a suitable level of amenity is maintained.</p>	

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

Summary comment	Complies
As permitted by section 4.22(5) of the Act, detailed consideration with regard to SEPP BASIX 2004 will be undertaken in the applicable future Detailed Development Applications.	Yes

5 State Environmental Planning Policy No. 55 – Remediation of Land

Summary comment	Complies
State Environmental Planning Policy 55 aims to 'provide a State-wide planning approach to the remediation of contaminated land'. Clause 7 requires a consent authority to consider whether the land is contaminated and if it is suitable or can be remediated to be	Yes, subject to conditions

Summary comment	Complies
<p>made suitable for the proposed development, prior to the granting of development consent.</p> <p>A Detailed Site Investigation (DSI) prepared by Alliance Geotechnical has been submitted with the application. The assessment included a desktop study and collection of soil samples according to a sampling plan within the accessible areas the development site.</p> <p>The results of the chemical analyses have identified elevated concentrations of nickel exceeding adopted ecological criteria on the site and states that ecological risks associated with nickel will require resolution once development plans are finalised and the configuration of the site is known.</p> <p>Subsequently, the applicant has submitted an supplementary letter by AG to the site investigation report that provides detailed recommendations to make the site suitable for the proposed use, as per the requirements of Clause 7 of State Environmental Planning Policy 55. AG concludes that the land can be made suitable for the proposed development by implementation of the following:</p> <p>Completion of a supplementary investigation in areas of the site not accessible area, which will include, at a minimum, intrusive investigation at an additional nine (9) sampling points to satisfy the sampling density requirements of NSW EPA (1995) Sampling Design Guidelines for a 1.3 ha site. The investigation should also include:</p> <ul style="list-style-type: none"> • Installation of at least one (1) groundwater monitoring well at the western site boundary, and opposite the UPSS located on Cleeve Close, to investigate groundwater quality at the site boundary and evaluate any potential risk to future users of the site, particularly via the vapour inhalation exposure pathway. • Assessment of potential ecological exposure to elevated nickel contamination in retained deep soil or landscape areas of the proposed development once development plans are finalised and results of supplementary investigation in accessible site areas have been completed. • Preparation of a Remedial Action Plan (RAP) to outline requirements to manage any potential contamination at the site that poses a risk to human health and/or ecological receptors identified upon the completion of the supplementary investigation, to make the site suitable for the proposed end land use. • Completion of remediation and validation activities, as specified under the RAP, where such activities are required. <p>Council's Environmental Health Unit did not object to the DA and recommended appropriate conditions that require the recommendations outlined Detailed Site Investigation prepared by Alliance Geotechnical and the addendum letter, must be carried out. The conditions also require a site audit statement be prepared upon completion of remediation and be reviewed by an EPA accredited site auditor. The site audit statement is to ensure that the land is validated to strict residential standards in the NEPM 2013 Guidelines.</p>	

6 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

Summary comment	Complies
The planning policies and recommended strategies under SREP 20 are considered to be met through the development controls of Blacktown Local Environmental Plan 2015.	Yes

7 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

Summary comment	Complies
<p>As permitted by section 4.22 (5) of the Act, detailed consideration with regard to SEPP 65 will be undertaken in the separate Detailed Development Applications.</p> <p>The development is considered capable of satisfying the 9 design quality principles and assessment against the relevant design concepts under SEPP 65 and the Apartment Design Guide. This will be considered in detail in the separate DAs at the detailed design stage of the development.</p> <p>Notwithstanding the above, the proposed Building Envelop Plans include a variation to the building separation between Building D & E.</p> <p>For buildings higher than 9 storeys, the Apartment Design Guide requires a minimum of 24 m building separation between habitable rooms and balconies.</p> <p>The proposal does not comply with this provision for Building E and D, as the proposed separation distances between the residential levels above the podium from levels 1 to 19 are 18 m.</p> <p>A minimum of 18 m building separation between Buildings E and D has been considered acceptable subject to not opposing habitable spaces above the 8th storey of these towers in the future Development Application for these buildings. These measures are included as conditions of consent for the future Detailed Development Application to ensure that there will be no adverse privacy or visual impact on the future unit occupants as a result of proposed non compliance.</p>	<p>Not strictly applicable for this Concept DA</p> <p>However appropriate investigations have been conducted and relevant conditions have been imposed to address these considerations in the future Detailed Development Applications.</p>

8 Central City District Plan 2018

Summary comment	Complies
<p>While the Act does not require consideration of District Plans in the assessment of development applications, the Development Application is consistent with the following overarching planning priorities of the Central City District Plan:</p> <p>Liveability</p> <ul style="list-style-type: none"> Improving housing choice Improving housing diversity and affordability Improving access to jobs and services Creating great places Contributing to the provision of services to meet communities' changing needs. 	Yes

9 Blacktown Local Strategic Planning Statement

Summary comment	Complies
<p>The Blacktown Local Strategic Planning Statement outlines a planning vision for the City over the next 20 years to 2041. The Blacktown Local Strategic Planning Statement contains 18 Local Planning Priorities based on themes of Infrastructure and collaboration, Liveability, Productivity, Sustainability and Implementation.</p> <p>The Development Application is consistent with the following priorities:</p> <ul style="list-style-type: none"> LPP5 - Providing housing supply, choice and affordability with access to jobs, services and public transport. 	Yes

10 Blacktown Local Environmental Plan 2015

Summary comment

Blacktown Local Environmental Plan 2015 (BLEP 2015) applies to the site.

We have assessed the application against the relevant provisions as follows:

Development Standard	Proposal	Complies
<p>2.6 Subdivision—consent requirements</p> <p>(1) Land to which this Plan applies may be subdivided, but only with development consent</p>	The proposal includes subdivision of the subject site into 2 Torrents title lot	Yes, subdivision is permissible
<p>4.3 Maximum height of buildings 64 m</p>	The maximum proposed building height is 66.53 m.	No, but acceptable for the reasons as discussed in Section 8 of the Assessment report and also as discussed in attachment 12.
<p>7.1 Flood planning</p> <p>The objectives of this clause are to minimise the flood risk to life and property associated with the use of land, to allow development on land that is compatible with the land's flood hazard and to avoid significant adverse impacts on flood behaviour and the environment.</p>	<p>Councils engineering section has identified a number of areas within the site and its locality with the potential flooding impacts.</p> <p>Council's engineering section has agreed to the applicant's response to impose a condition of consent on the Concept DA to ensure any detailed analysis undertaken as part of a subsequent Detailed Development Applications.</p> <p>Future detailed flood modelling including a survey and analysis of the of the surrounding stormwater drainage network, will determine:</p> <ul style="list-style-type: none"> the specific flood planning level for the site the on-site detention applicable to the development of the site the need for any enhancement of the surrounding drainage network arising from the proposed development 	Satisfactory subject to conditions to be addressed in the future DAs. Please refer to section 8 of the assessment report for further discussion regarding this matter

Development Standard	Proposal	Complies
Clause 7.7 Design Excellence Development consent must not be granted to development involving the erection of a new building or external alterations to an existing building on any land unless the consent authority is satisfied that the development exhibits design excellence.		Not applicable for this Concept DA However appropriate investigations have been conducted and relevant conditions have been imposed to address these considerations in the future Detailed Development Applications. Please refer to section 8 for further discussion regarding City Architects comments.

11 Blacktown Development Control Plan 2015

Summary comment	Complies
<p>On 27 October 2021 Council resolved to introduce complimentary Development Control Plan provisions to provide greater clarity and direction to future applicants, in order to realise Councils long term objectives for Mt Druitt. (Refer attachment 4 of this report). The controls are currently on public exhibition in accordance with the Environmental Planning and Assessment Act 1979 and Regulation 2000. The exhibition periods runs from 1 December 2021 till 14 January 2022.</p> <p>Aspects of the current proposal that are not consistent with the draft DCP relate to include:</p> <ul style="list-style-type: none"> • Podium height. • Setback above Podium: • Floor to ceiling height. • Solar access (for public space) • Deep soil zone <p>Given that the subject concept proposal was lodged in advance to the new draft Development Control Plan, some discretion has been applied in respect of the strict application of all aspects of the draft Development Control Plan. Please refer to section 8 of the assessment report for further discussion regarding this matter.</p> <p>Once the exhibition period has concluded, the draft DCP will become a more relevant consideration in the assessment of future detailed Development Applications.</p>	<p>Whilst not strictly applicable for this concept DA, the current application has been assessed against the provisions of the Draft Development Control Plan. As discussed in the report, the current application is generally compliant.</p>