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Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2022/00160160

TITLE OF PROCEEDINGS

First Applicant	2 - 6 First Ave Blacktown Pty Ltd ATF 2 - 6 First Ave Blacktown Unit Trust ACN 623360556
First Respondent	BLACKTOWN CITY COUNCIL ABN 18153831768

FILING DETAILS

Filed for	BLACKTOWN CITY COUNCIL, Respondent 1
Legal representative	NICHOLAS DAVID THOMAS
Legal representative reference	
Telephone	02 9353 4751

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (Signed SOFAC - First Avenue Blacktown (002).pdf)

[attach.]

STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS

Court	Land and Environment Court of NSW
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Applicant	2 – 6 First Ave Blacktown Ltd ATF 2 – 6 First Ave Blacktown Unit Trust
Respondent	Blacktown City Council

FILING DETAILS

Filed for	Blacktown City Council, Respondent
Legal representative	Nick Thomas, Clayton Utz
Legal representative reference	81024537
Contact name and telephone	Nick Thomas, 02 9353 4751
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PART A: FACTS

THE PROPOSAL

1. The Applicant has commenced an appeal against the deemed refusal of a development application with reference number SPP-21-00010 (**DA**), which was lodged on 2 August 2021, and seeks development consent for the construction of a 25 storey shop top housing development comprising (**Proposed Development**):
 - (a) retail premises at ground floor;
 - (b) commercial premises on the 1st and 2nd floors;
 - (c) 220 residential apartments; and
 - (d) 6 levels of basement car parking containing 277 spaces.
2. Clause 2.19(1) of *State Environmental Planning Policy (Planning Systems) 2021* provides that development specified in Schedule 6 of that Policy is declared to be

“regionally significant development” for the purposes of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. Clause 2 of Schedule 6 of that Policy identifies a category of regionally significant development as development which has a capital investment value exceeding \$30 million. The Capital Investment Value Report dated 21 June 2021 which was lodged with the DA estimates that the capital investment value of the proposed development significantly exceeds this amount.

3. As a result:
 - (a) the development proposed in the DA is "regionally significant development" within the meaning of the EP&A Act; and
 - (b) the Sydney Central City Planning Panel (**Panel**) is the relevant consent authority under section 2.15(a) of the EP&A Act.
4. In these proceedings, the Respondent is subject to the control and direction of the Panel in connection with the conduct of the appeal under section 8.15(4) of the EP&A Act.

THE SITE and THE LOCALITY

Description of the Site

5. The development site is legally described as Lot 2 DP 1214977, and is otherwise known as 2 – 6 First Avenue, Blacktown NSW 2148 (**Site**).

Dimensions of the Site

6. The dimensions of the Site are as follows:

(a)	North boundary (First Avenue frontage):	42.52 m
(b)	South (rear – Humphries Lane) boundary:	51.9 m
(c)	Eastern boundary (Zolyomi Lane frontage):	45.705 m
(d)	Western boundary:	44.8 m
7. The Site has a total area of 2,111m².
8. The Site is trapezoidal in shape with frontages to First Avenue to the north and to Zolyomi Lane to the east, and is located on the western side of Sunnyholt Road.

Topography of the Site

9. The Site slopes down from the north-east to the south-west corners of the side boundaries by 1.65 m over distance of 61.64 m resulting in a gradient of 2.7%.

Existing Improvements and Surrounding Land

10. The Site is vacant and unimproved.
11. The Site is the subject of an existing development consent, no. JRPP-15-02087, granted by the Sydney West Joint Regional Planning Panel on 26 July 2016, for an 18 storey shop top housing development consisting of a 2 storey commercial podium and 16 residential floors (**2016 Consent**). The development the subject of the 2016 Consent comprises 1170m² of commercial floor space, 160 residential units and 4 levels of basement parking.
12. The property immediately to the north of the Site (separated by First Avenue), with the street address 1 First Avenue, is a single storey funeral home. The property immediately to the south of the Site (separated by Humphries Lane), with the street address 5 George Street, is currently under construction for a part 15 / part 16 storey shop top housing building comprising 227 residential apartments, 7 basement parking levels, a supermarket, 14 retail tenancies, a childcare centre including landscaping and public domain works, under development consent no. SPP-19-00008.
13. The property immediately to the west, adjoining the Site, is a 2 storey office building occupied by Centrelink and Medicare. The property immediately to the east of the Site (separated by Zolyomi Lane) is a row of single storey food and drinks premises and other shops.
14. A plan showing the location of the Site (marked "A") is shown below.

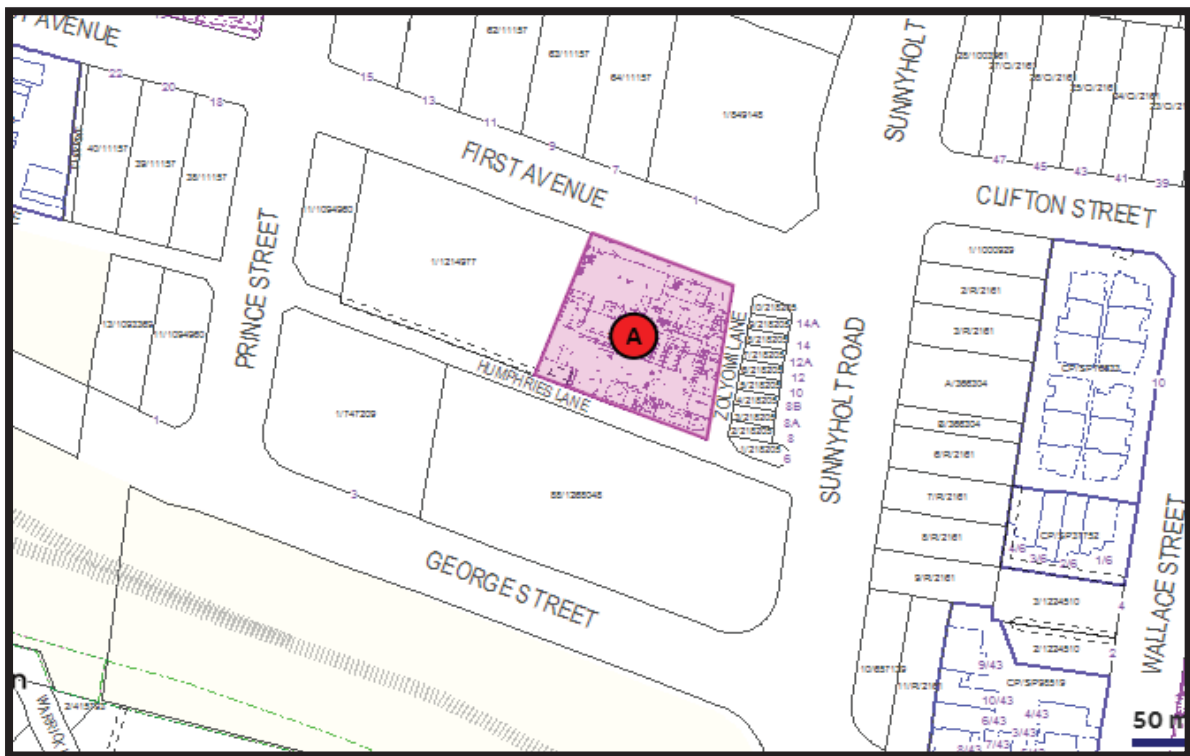


Figure 1 – Location Map site shaded in purple (Source: Council GIS)

15. An aerial image of the Site (marked “A”) and surrounding area is shown below.

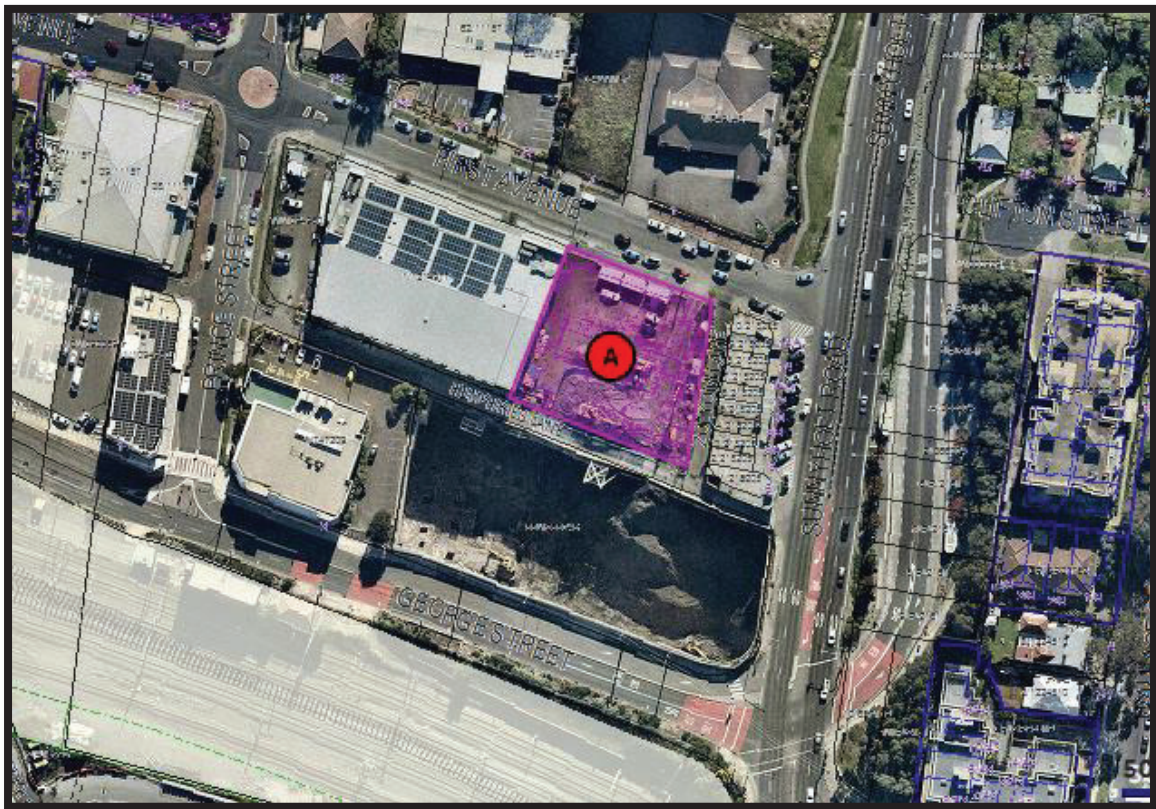


Figure 2 – Aerial Map site shaded in purple (Source: Nearmap)

16. Blacktown Train Station entrance is located approximately 550m from the proposed main entrance of the Proposed Development and the railway line corridor is approximately 70m from the southern boundary of the Site.

THE STATUTORY INSTRUMENTS

17. The following legislation and statutory instruments are relevant to the assessment of the DA:
- (a) EP&A Act;
 - (b) *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*;
 - (c) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)*;
 - (d) *State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)*;
 - (e) *State Environmental Planning Policy Resilience and Hazards 2021 (Resilience and Hazards SEPP)*;
 - (f) *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)*, and the accompanying Apartment Design Guide (**ADG**);
 - (g) *State Environmental Planning Policy (Housing) 2021*;
 - (h) *State Environmental Planning Policy (Industry and Employment) 2021*;
 - (i) *State Environmental Planning Policy (Planning Systems) 2021*;
 - (j) *Blacktown Local Environmental Plan 2015 (BLEP)*;
 - (k) *Blacktown Development Control Plan 2015 (DCP)*.

Blacktown Local Environmental Plan 2015

18. Under the provisions of BLEP:
- (a) The Site is zoned B4 Mixed Use;
 - (b) Sunnyholt Road is zoned SP2 Classified Road;

(c) the land on the eastern side of Sunnyholt Road opposite the Site (with the exception of several small lots fronting Sunnyholt Road) is zoned R4 High Density Residential; and

(d) the land to the north, south and west of the Site is zoned B4 Mixed Use.

19. A plan showing the zoning of the Site (marked “A”) and surrounding land under BLEP is shown below.

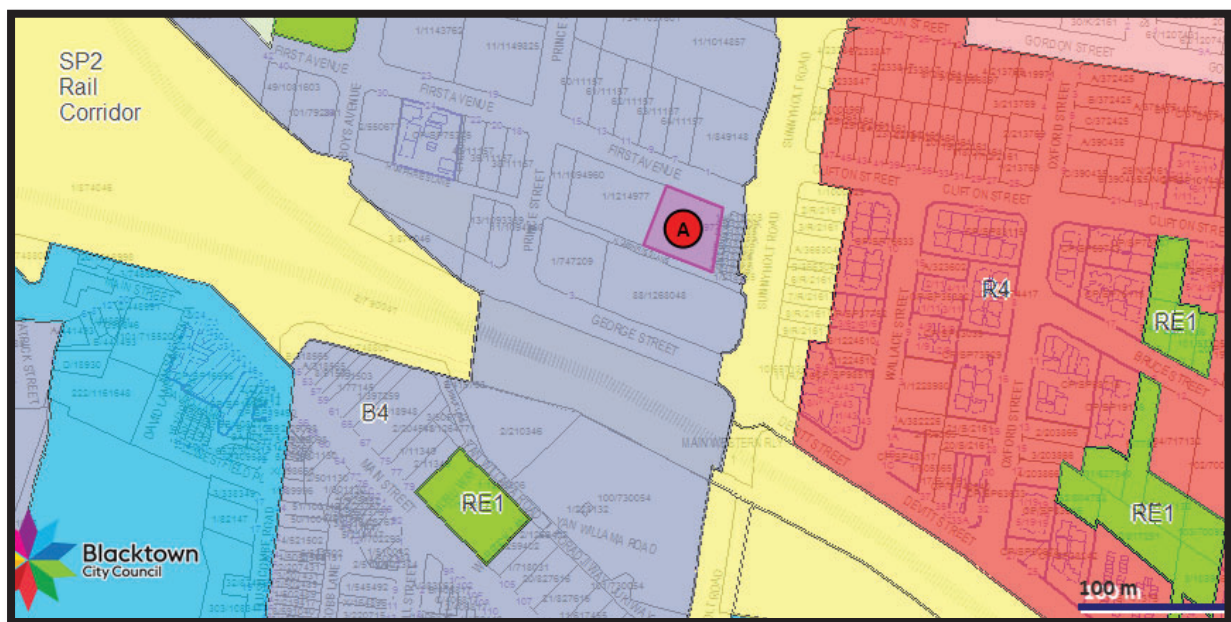


Figure 3 – Zoning Map site shaded in purple (Source: Council GIS)

20. The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

21. Clause 4.3 of BLEP identifies a maximum building height of 80 metres in the B4 zone.

22. The objectives of the development standard for building height are:

- (a) *To establish the maximum height of buildings,*

- (b) *To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
 - (c) *To facilitate higher density development in and around commercial centres and major transport routes.*
- 23. Clause 4.6 of BLEP prohibits the grant of development consent for development which contravenes a development standard unless, among other things, the consent authority is satisfied of the matters in clause 4.6(3) of BLEP.
- 24. Clause 7.7 of BLEP prohibits the grant of development consent for development to which the clause applies unless the consent authority considers that the development exhibits design excellence. Clause 7.7 applies to the Proposed Development.
- 25. Under Clause 7.7 of BLEP, in considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:
 - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
 - (c) *whether the development detrimentally impacts on view corridors,*
 - (d) *whether the development detrimentally impacts on any land protected by solar access controls established in the Blacktown Development Control Plan,*
 - (e) *the requirements of Blacktown Development Control Plan 2015,*
 - (f) *how the development addresses the following matters-*
 - (i) *the suitability of the land for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*

- (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- (v) *bulk, massing and modulation of buildings,*
- (vi) *street frontage heights,*
- (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- (viii) *the achievement of the principles of ecologically sustainable development,*
- (ix) *pedestrian, cycle, vehicular and service access and circulation requirements,*
- (x) *the impact on, and any proposed improvements to, the public domain.*

26. Clause 7.12(2) of BLEP applies to the Site. Clause 7.12(2) provides:

"Development consent must not be granted to the erection of a building ... on land to which this clause applies, unless the consent authority is satisfied that the ground floor and first floor of the building will be used for a purpose other than residential accommodation."

Blacktown Development Control Plan 2015

27. The DA is required to be assessed against the relevant provisions of Parts C (Development within the Residential Areas) and D (Development in Business Zones) in the DCP, particularly:

- Part C:
 - Part 6 – Residential Flat Buildings
- Part D:
 - Part 4 – General Guidelines for Development
 - Part 5 – Sub-Regional Centres

ACTIONS OF THE RESPONDENT

Details of Advertisement of DA

28. The DA was notified between 18 August – 1 September 2021 to surrounding properties via letters, with advertisement via the Respondent's website and a sign fixed at the Site. Two submissions were received, including one letter of support.
29. The submission objecting to the DA raised concerns relating to construction impacts, such as the availability of street parking, noise issues and soil stability from excavation works.
30. On 10 August 2021, the Respondent notified the DA to Transport for NSW because of its proximity to Sunnyholt Road and its status as traffic generating development under clause 2.122 of the Transport and Infrastructure SEPP. On 31 August 2022, Transport for NSW indicated that it had no objections.
31. On 7 September 2021, the Respondent notified the DA to NSW Police - Blacktown Local Area Command pursuant to clause 8.4 of Part A of the DCP. As at the date of this Statement of Facts and Contentions (**SOFAC**), the Respondent has not received a response.
32. On 13 July 2022, the Respondent notified the DA to Caltex Australia Petroleum because of the Site's proximity to a gas pipeline. As at the date of this SOFAC, the Respondent has not received a response.

Consideration of DA

33. On 24 September 2021, the Respondent issued a written request for further information (**RFI**) to the Applicant raising issues concerning design, engineering, waste, environmental health, planning and traffic, among others.
34. On 29 October 2021, the Respondent issued another RFI in relation to design and vehicular access issues, including building setbacks and the building's external appearance.
35. On 22 and 30 November 2021, the Applicant provided responses to these RFIs, including amended plans.
36. On 10 March 2022, the Respondent attended a briefing meeting with the Panel to seek advice going forward in respect of the DA. Based on the amended plans, outstanding issues were identified in relation to building setbacks, waste and stormwater management, car parking spaces and site contamination. The Panel

suggested that a final opportunity be given to the Applicant to address the remaining issues before the Panel determined the DA.

37. On 18 March 2022, the Respondent requested that the Applicant provide further information to address the remaining issues by no later than 15 April 2022.
38. On 28 April 2022, the Applicant advised the Respondent that the Applicant would not be providing any further information and that the DA should be determined in its current form.
39. In light of the Applicant's advice, a report was drafted for a determination meeting with the Panel in July 2022, which recommended refusal of the DA.
40. The Applicant lodged this appeal to the Court on 2 June 2022. As at the date of this SOFAC, the DA remains undetermined.

PART B - CONTENTIONS

The Respondent contends that the following facts, matters and circumstances require or should cause the Court, in exercising its functions of the consent authority, to refuse consent to the DA.

1. Design quality

The Proposed Development must be refused because it fails to exhibit design excellence as required by clause 7.7 of BLEP. The Proposed Development is unacceptable with regard to design quality and fails to adequately engage and comply with relevant provisions of BLEP, the DCP, SEPP 65, the ADG and other applicable planning standards and guidelines.

Particulars:

- (a) The Proposed Development fails to demonstrate a high standard of architectural design and fails to demonstrate that the form and external appearance of the Proposed Development will improve the quality and amenity of the public domain, in terms of:
 - (i) the articulation of tower and podium forms;
 - (ii) the incorporation of appropriate street and side setbacks;
 - (iii) amenable and ADG compliant internal layouts;

- (iv) amenable and ADG compliant communal open space;
- (v) well considered materials and detailing;
- (vi) lane activation at ground level;
- (vii) upgrade and detailing of footpaths, lanes and landscapes; and
- (viii) integration of the substation.

Setbacks

- (b) The proposed footprint of the building consists of a zero setback to the western boundary for the full height of the building. A zero setback above the podium to the western boundary is unacceptable because:
 - (i) it contravenes the controls in clause 5.3 of Part D of the DCP which require a setback of at least 6 metres as "an absolute minimum";
 - (ii) it will result in a continuous 25 storey solid wall to the streetscape;
 - (iii) it will result in a poor urban design outcome when considering future neighbouring developments;
 - (iv) it will reduce solar access to the podium communal open space; and
 - (v) it will place an unacceptable burden on the development of neighbouring land.
- (c) The failure to provide any setback to the Site's western boundary and the lack of any front setback is liable to transform the streetscape from a potentially clear podium scale with separated and setback towers above, to a continuous 25 storey street wall in the future context. On such a prominent site, this will be highly intrusive on the surrounding existing and future context.
- (d) The zero front setback and the zero side setback to the western boundary contribute to an inadequately defined podium, a greater

apparent bulk of the tower above, and the presentation of a relentless 25-storey high wall to the streetscape. This is starkly at odds with the clearly defined podiums, setback and separated towers envisaged by the DCP. This also contributes to the aesthetic non-compliance of the Proposed Development, alongside the lack of privacy and amenity for residential uses stemming from the full-height, dark-shaded performance glazing that predominates the Proposed Development. Apart from yield, the western and southern setbacks are independent matters and simply trading floor space from the southern side of the Site to the western side, as the Applicant has proposed, fails to appropriately address urban design considerations.

Context

- (e) The Proposed Development fails to engage with the range of scales required to be considered under the ADG, being wider scale, neighbourhood scale, streetscape scale and site scale. The DA fails to explain how the Site fits into a wider, neighbourhood, streetscape and site context, and does not explain how the Proposed Development can enhance adjacent public domain or the desired future character of the locality. The Proposed Development has not been informed by a thorough context and site analysis, which would clearly describe the future as well as existing built form context and the role of each adjacent lane and street in the local and broader context.
- (f) Despite the scale of the Proposed Development and its role in leading large scale development in this location in the future, the DA provides inadequate information to enable a proper assessment of:
 - (i) whether the absence of laneway activation at ground level can be justified;
 - (ii) how the property with street address 8-14 Sunnyholt Road can appropriately be developed in a future context, having regard to building separation and the amenity of balconies and habitable spaces that face the property, and how constraints associated with future built form would be resolved, so as to demonstrate that this neighbouring property would not become isolated or sterilised by the Proposed Development;

- (iii) how future built form will impact on the ADG compliances currently claimed in the DA and the amenity of internal and external spaces proposed; and
- (iv) how the Proposed Development will fit into the new context and create a compelling, high-quality streetscape,

all of which are essential to demonstrating design excellence.

- (g) The Proposed Development dedicates the entire frontage to adjacent lanes at ground floor level (both Zolyomi Lane and Humphries Lane) exclusively to services and provides no capacity for active uses and passive surveillance. This results in:

- (i) an absence of any lane activation at the ground level leading to a poor-quality streetscape along the length of the laneways; and
- (ii) a lack of optimisation of safety and security within the Proposed Development and the public domain, which is inconsistent with the principles of *Crime Prevention Through Environmental Design* (CPTED).

Bulk and aesthetics

- (h) The proposed tower element displays excessive bulk and an overly imposing visual scale which will dominate the streetscape. This is exacerbated by:
 - (i) the failure to articulate a tower that is set back from a clearly defined podium;
 - (ii) the presentation of a 25 storey sheer face to the streetscape;
 - (iii) the failure to use environmental measures to appropriately modulate the tower; and
 - (iv) the excessive height of the proposed tower.
- (i) The proposed tower fails to demonstrate a well composed and compliant composition of well-considered materials as follows:

- (i) The aesthetics of the tower component are dominated by full height glazing. This is liable to result in an excessive degree of visual intrusion into the units.
- (ii) The Proposed Development fails to incorporate elements to articulate built form and to provide each unit with sufficient enclosure and protection to ensure amenity and environmental control, such as clearly expressed regular bays, solid fins, spandrels, well integrated screening and other devices.
- (iii) The Proposed Development utilises applied decorative architectural elements, such as painted rendered surfaces and coloured aluminium composite panels, rather than integrated elements, which results in an inferior aesthetic outcome that fails to achieve design excellence. Unlike integrated materials - such as brick or carefully detailed and prefinished precast panels, applied decorative features tend to quickly age and crack, require expensive and frequent maintenance with little control over longevity or sustainability, resulting in a poor visual appearance of the building, while the failure of some composite aluminium panels has resulted in their wholesale removal at significant expense.

Amenity

- (j) The DA fails to demonstrate that the form and external appearance of the Proposed Development will improve the quality and amenity of the public domain.
- (k) There appears to be no footpath upgrade and landscape treatment proposed for adjacent street and lanes or, if there is, inadequate information has been provided to enable any proper assessment of it.
- (l) Because the proposed built form does not incorporate appropriate street and side setbacks, visual and physical impacts will be significantly increased through:
 - (i) the extent of overshadowing on the local context;
 - (ii) wind impacts of the tower on the public domain below.

- (m) The substation has not been incorporated into the built form, which is a poor amenity outcome.
- (n) The amenity of the commercial components of the Proposed Development is unacceptable, with no access to natural light, air, or outlook in the first and second-floor commercial lobbies. The western commercial space on the first level also includes excessively deep areas (ie. more than 12m from a window) that are liable to be dark, while doors to the ground floor retail and commercial spaces open beyond the northern boundary so as to impact on adjacent public domain.
- (o) The proposed communal open space does not meet the 25% site area proportion required by the ADG, nor does it appear to comply with objectives relating to solar access, privacy, breeze, outlook and character. The proposed communal open space will also be highly impacted by adjacent units, leading to conflicts around solar access, noise and privacy. The children's garden, in its current location, is liable to adversely impact on the acoustic and visual privacy of adjacent units, thereby decreasing their internal amenity.
- (p) The Proposed Development:
 - (i) fails to demonstrate that compliant separation, solar access, and cross-ventilation (to both units and communal open space) will be achievable;
 - (ii) fails to demonstrate compliance with the ADG's mid winter solar requirements (at least 70% of units and balconies to receive at least 2 hours between 9am and 3pm);
 - (iii) fails to demonstrate compliance with the ADG's mid winter "no solar" access requirements (maximum 15% of units between 9am and 3pm);
 - (iv) fails to demonstrate compliance with the ADG's mid winter solar access to communal space requirements (at least 50% of communal open space (COS) to receive at least 2 hours between 9am and 3pm);

- (v) fails to demonstrate compliance with the ADG's cross ventilations requirements (at least 60% of units in the first 9 storeys being naturally ventilated).
- (q) The proposed apartment layout results in poor amenity outcomes as follows:
 - (i) The minimal separation between Units 8 and 9 results in significant acoustic and visual privacy issues.
 - (ii) Objective 4F-1 of the ADG recommends a maximum of eight units per core. By increasing the number of units per core, the Proposed Development has resulted in non-compliances with solar access and natural ventilation requirements in the ADG, as well as excessively long corridors.
 - (iii) The proposed layout does not comply with Objective 4F- 1 of the ADG, which requires greater articulation for corridors more than 12m from the core.
 - (iv) The proposed layout includes many units that lack a formal entry (such as units 2, 3 5 and 9 on each level).
 - (v) Many main bedrooms appear not to comply with ADG minimal bedroom size requirements (such as unit 4 on each level).
 - (vi) Many of the main bedrooms (such as unit 9 on each level) incorporate "snorkels" that do not comply with the ADG's minimal 3m bedroom width requirements.
 - (vii) The slot adjacent to unit 5 on each level does not comply with the minimum width to depth ratio of 2:1 required by Objective 4B-2 of the ADG.
 - (viii) There is no lobby or even any roof cover shown adjacent to the lift at roof terrace level.
 - (ix) It is not clear how security and privacy will be achieved between adjacent private roof terraces at roof level.
 - (x) It is not clear where plant will be located.

- (r) Impacts of future surrounding development (such as shadowing and privacy) have not been considered or addressed by the Proposed Development.

Sustainability

- (s) The Proposed Development does not achieve the principles of ecologically sustainable development, noting that:
 - (i) no screening is proposed to limit heat gain through extensive full height glazing; and
 - (ii) no solar panels are proposed.

2. Building height

The Proposed Development must be refused pursuant to clause 4.6(4) of BLEP because:

- (a) it contravenes the applicable building height limit of 80 metres in the B4 zone specified by clause 4.3 of BLEP; and
- (b) it does not demonstrate that compliance with the height limit is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention.

The height exceedance is the result of the Proposed Development being an overdevelopment of the Site.

Particulars:

- (a) The proposed built form is roughly 20m (ie. seven additional levels) higher than the 60m high development which is the subject of the 2016 Consent.
- (b) The contravention of the height limit is proposed mainly to provide private terraces. This undermines any environmental planning grounds for the additional height, especially as the level three communal open space will be overshadowed for most of the day and heavily impacted by adjacent units.

- (c) Apart from increasing visual and physical impacts on streetscape and adjacent context, the extra height adversely affects the proportions of the built form and detracts from its capacity to create a high quality street interface.
- (d) The extent of the non-compliance with the height limit appears to be understated by the DA having regard to functional demand requirements because:
 - (i) the DA fails to provide for a lobby or roof cover in front of the lift, or indicate an appropriate location for plant; and
 - (ii) The standard 3.1-metre floor-to-floor height proposed above level 24 is insufficient to accommodate necessary insulation, waterproofing and fall.

3. **Drainage, stormwater and water conservation**

The DA should be refused because insufficient information has been provided to allow a proper assessment of the adequacy of the proposed drainage, stormwater and water conservation arrangements on the Site.

Particulars:

- (a) The architectural plans submitted with the DA are deficient in a number of respects, as follows:
 - (i) The architectural plans incorrectly refer to the ground floor plan as site plan, and no site plan has been submitted as part of the plans.
 - (ii) There are several tanks (rainwater and onsite stormwater detention (**OSD**)) shown on the architectural plans which are also reflected on the stormwater plans. However, only one OSD and one rainwater tank is detailed in the stormwater plans. This is to match the stormwater plans.
 - (iii) The detention tank is not shown as part of section B on Dwg. 306.

- (iv) The area for the stormwater tank does not accord with the stormwater plans. The current stormwater tank is shown half the size of its current size.
 - (v) The OSD and storm filter tank cannot be in an enclosed area due to odour emanating from the system. The DA fails to clarify whether this is open to air at all times or enclosed and whether it is sufficient. If the communal space is to be enclosed, an acceptable solution is required. This may require the relocation or redesign of the rooms. Placement of the OSD and storm filter tank within the services room should be considered.
 - (vi) The architectural plans must be updated to reflect amended stormwater plans addressing the matters above.
- (b) The DA does not adequately provide for water conservation, as follows:
- (i) The water conservation strategy relies on a stormwater tank. However, the stormwater tank is not adequately designed to ensure reliability and safety. There are two options to address these issues in a trafficable roof scenario:
 - A. subject to compliance with any applicable height limit, propose a suitable roof over the trafficable roof areas and drain this roof to a rainwater tank, which can then be directly used for toilet flushing. If the roof is insufficient then refer to the 2020 WSUD Developer Handbook (Blacktown City Council) (**WSUD Developer Handbook**) for further requirements.
 - B. alternatively, drain the trafficable roof (including third floor if required) to a splitter pit;
 - (ii) Any splitter pit must be designed to isolate the 100 year from the 6 months or 20 year ARI flows (refer to WSUD Developer Handbook).
 - (iii) The 100 year goes to the detention tank while the 6 months or the 20 year ARI flows goes to the storm filter tank.

- (iv) The treated storm filter underdrain then goes to the rainwater tank (the tank may have to be all the way to the ground floor level due to levels).
 - (v) The overflow from the storm filter chamber is to be bypassed to the detention tank.
 - (vi) UV filtration will be required before internal use.
 - (vii) The operation of the splitter pit must be modelled (using MUSIC) as a generic node from the storm filter chamber to the rainwater tank as a secondary link while the primary link is to bypass the stormwater tank to the OSD (refer to section 11.14.10 of the WSUD Developer Handbook).
 - (viii) The proposal must accord with section 11.14.6 WSUD Developer Handbook.
- (c) The DA does not provide adequate catchment plans as follows:
- (i) The DA should provide an OSD catchment plan, and the underlay should be a site plan.
 - (ii) Generally, the OSD and storm filter tank must treat the levels on which they are located and above, while the lower levels (ground floor) as per site plan are to be considered as bypass for both OSD and Water Quality.
 - (iii) The MUSIC catchment plan is required to show the site plan. Currently, the architectural underlay does not match with the site breakup. It is showing the ground floor plan.
- (d) The DA, whether by amended plans or otherwise, is required to address the following additional matters:
- (i) The proposed stormwater tank encroaches on the turning path of the MRV truck. Thus, the clearance to the ground floor is less than 4.5m as required. A step may need to be introduced in the tank to enable safe clearances or redesign/relocate. Details need to be provided;

- (ii) For the basement design, the geotechnical report and water table interaction need to be addressed. The basement needs to be appropriately designed while considering the highest water table as presented. A water table of 46.20m AHD is likely across the Site. Therefore basement 4 and below must be tanked and waterproofed. The basement tanking note needs to be updated. The DA needs to explain how this would be further confirmed through subsequent boreholes, and at what stage.
- (iii) An updated MUSIC model to reflect the site plan MUSIC catchment plan and site breakup, amended stormwater plans and architectural plans needs to be provided;
- (iv) Details as to how the storm filters are to be maintained/replaced on the first floor need to be provided. This includes access, replacement of cartridge (lifting) and desludging. A written note from a reputable and qualified contractor must be provided in order to adequately and safely address this in detail, while in line with standard operating procedures and guidelines.

4. **Waste management**

The DA should be refused because inadequate information has been provided to allow a proper assessment of the proposal in respect of waste management.

Particulars:

- (a) Travel paths for bins using the platform lift have not been demonstrated to ascertain if the Proposed Development will work.
- (b) The DA does not provide for the waste and recycling generation rates listed in the NSW EPA's *Better Practice Guide for Resource Recovery in Residential Developments 2019* for each proposed retail and commercial tenancy. It is noted that the homeware, kitchenware and variety gift shop rates identified in the DA are incorrect. These uses generate 20L/premises/day for waste and 120L/premises/day for recycling. The

highest generator must be accommodated so their bins will be sufficiently housed.

- (c) The DA fails to demonstrate that the retail and commercial waste room can accommodate all the required waste and recycling bins based on the correct generation rates provided above.
- (d) The waste management plan fails to include:
 - (i) number of bins for the retail and commercial component of the development (the correct rate needs to be applied);
 - (ii) correct waste and recycling generation rates for the proposed retail and commercial use(s) as listed above.
- (e) The DA:
 - (i) fails to provide a vertical cross section plan demonstrating a 4.5m headroom allowance clear of eaves, overhangs, balconies, services, sprinklers and at the roller door entry point, for the trucks entire travel path (as per AS2890.2); and
 - (ii) fails to address engineering issues raised by the suspended tanks inside the required 4.5m clearance for the trucks travel path.
- (f) The DA fails to provide the vertical and horizontal AutoCAD file in DWG format and 1:1 scale for the truck's entire travel path in addition to the proposed swept paths to enable assessment of the suitability of the proposed truck access.
- (g) A sliding door or roller door to the end of the residential bulky waste room is required where a hinged door is currently shown.
- (h) The DA fails to demonstrate that access to the residential waste chute rooms on each residential floor are wheelchair friendly.

5. **Site contamination**

The DA should be refused because inadequate information has been provided to enable a proper assessment of the suitability of the Site for the Proposed

Development, having regard to site contamination and the requirements of clause 4.6 of the Resilience and Hazards SEPP.

Particulars:

- (a) Clause 4.6 of the Resilience and Hazards SEPP requires the consent authority to consider a report specifying the investigations and findings in respect of the land concerned.
- (b) The DA provides a stage 2 contamination report and a remediation action plan which were prepared in 2016, which identify the presence of asbestos contamination at the Site.
- (c) There is no indication as to whether any remediation has been undertaken since then, and a validation report has not been submitted. An up to date, detailed site investigation (or addendum) is required to confirm that the 2016 reports are still current, having regard to the Site's current condition, to enable the DA to be assessed.

6. Earthworks

The DA should be refused because inadequate information has been provided to enable a proper assessment of the impacts of the earthworks proposed as part of the Proposed Development.

Particulars:

- (a) The DA proposes excavation to accommodate 6 basement levels, but no earthworks plan has been submitted.
- (b) Insufficient information has been provided to confirm that there are no unacceptable impacts to the existing underground gas pipeline in the vicinity of the Site.

7. Public interest

The DA should be refused because the Proposed Development is not in the public interest having regard to the contentions and particulars set out above.

SIGNATURE

Signature of authorised officer
of respondent consent authority

A handwritten signature in black ink, appearing to read 'Alan Middlemiss', is written over a light grey rectangular background.

Name of authorised officer

Alan Middlemiss

Capacity

Coordinator Planning Assessment, Blacktown City
Council

Date of signature

25 July 2022