

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

1 Environmental Planning and Assessment Act 1979

1.1 Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment	Complies
a. The provisions of: (i) Any environmental planning instrument (EPI)	The proposal is considered to be generally consistent with the relevant EPIs, including SREP No. 20 – Hawkesbury-Nepean River, SEPP (State and Regional Development) 2011, SEPP (Infrastructure) 2007 and the Growth Centres SEPP 2006. The site is zoned R3 Medium Density Residential. The proposed development is permitted with consent and satisfies the zone objectives outlined under the Growth Centres SEPP.	Yes
(ii) Any proposed instrument that is or has been the subject of public consultation under this Act	In May 2017 (prior to the lodgement of this application) the Department of Planning, Industry and Environment (DPIE) exhibited a draft amendment to the Growth Centres SEPP 2006, referred to as the 'North West Draft Exhibition 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). A key outcome sought by DPIE is the establishment of minimum and maximum densities for all residential areas that have been rezoned under the SEPP (i.e. density bands). Currently the planning controls nominate only a minimum density. This proposal will have a significant influence on the ultimate development capacity (i.e. yield) of the precincts. Following exhibition in mid-2017 and the receipt of many objections, DPIE 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. This site is within the Alex Avenue Precinct and the density band demonstrated in the Exhibition Package is 25 to 35 dwellings per hectare, which equates to a minimum of 103 and maximum of 143 dwellings on this site. Based on a yield of 88 lots, of which 5 are proposed to provide a yield of 4 dwellings (manor home), the development delivers an indicative yield of 103 dwellings and a residential density of 25.2 dwellings per hectare. This represents 30 dwellings under that anticipated as the maximum in the Exhibition Package (whilst meeting the minimum density of 25 dwellings per hectare). Although the proposal is under maximum dwelling density as exhibited, there is no certainty or imminence to these amendments coming into effect, and	Yes, however the draft amendment is not certain or imminent and cannot therefore be given any substantive weight.

Heads of Consideration	Comment	Complies
	therefore this is not a matter for consideration in this application.	
(iii) Any development control plan (DCP)	The Growth Centre Precincts DCP (GCDCP) applies to the site. The proposed development is compliant with the relevant controls established under the DCP except for maximum cut and fill and design controls (in relation to minimum side setback and maximum length of zero lot boundary) for the proposed Building Envelope Plans.	No, but the non-compliance is acceptable subject to conditions
(iii a) Any Planning Agreement	Landcom (the applicant) has entered into 3 Voluntary Planning Agreements (VPA) (based on the stage of the development) to pay monetary contributions in lieu of on-lot water quality treatment of stormwater as it is not practical to deliver on-lot treatment due to the small size of the lots proposed under this application. The VPAs were placed on exhibition for 28 days and have now been executed by both parties, in mid May 2020.	Yes
(iv) 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	It is considered that the likely impacts of the development, including traffic, access, design, salinity, contamination and stormwater management, have been satisfactorily addressed. A site analysis was undertaken to ensure that the proposed development will have minimal impacts on surrounding properties. In view of the above it is believed that the proposed development will not have any unfavourable social, economic or environmental impacts.	Yes
c. The suitability of the site for the development	The subject site is predominantly zoned R3 Medium Density Residential. The proposal is considered to have a minimal environmental impact on the natural and built environment and will not adversely impact on the amenity of surrounding development.	Yes
d. Any submissions made in accordance with this Act, or the regulations	The application was advertised for comment for a period of 14 days. 4 submissions, including 1 petition, were received during the notification period. A summary of issues raised in the submissions and our response is at attachment 7. The objections received are not considered to warrant refusal of the Development Application.	Satisfactory
e. The public interest	The proposal is in public interest. The proposal will provide subdivided land for future housing stock and provides for housing diversity within the Precinct. It also promotes a greener and cooler streetscape, which can be an example for other developers to emulate.	Yes

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

Summary comment	Complies
The Sydney Central City Planning Panel (SCCPP) is the consent authority for development on a Council-owned site with a Capital investment Value of over \$5 million. As this DA has a CIV of \$17,440,910, Council is responsible for the assessment of the DA and determination of the application is to be made by the SCCPP.	Yes

3 State Environmental Planning Policy (Infrastructure) 2007

Summary comment	Complies
- Clause 101 includes requirements for the new development with frontage to a classified road to not compromise the effective and ongoing operation and function of a classified road. All roads, including Burdekin Road, are local roads (not classified roads) with control under Blacktown City Council. Therefore, no referral was required to the RMS. - Clause 102 includes requirements for development adjacent to a major road corridor with an annual average daily traffic volume of more than 20,000 vehicles, to consider the impacts associated with road noise and vibration. The proposal is accompanied by a Noise Assessment Report which has undertaken an assessment of the traffic noise impacts from Burdekin Road on the proposed development, as Burdekin Road will ultimately have an annual daily traffic volume that triggers this clause. This report concludes that some dwellings in the proposed development will require façade and building treatments to achieve suitable internal noise levels as outlined within the recommendations of the report. Compliance with recommendations of the Noise Assessment Report for future dwellings will be conditioned to be included as restrictions on the respective lots. - Clause 104 applies to development specified in Schedule 3 that identifies traffic generating development. The development is not classified as traffic generating development under the ISEPP as it only involves the establishment of 88 residential allotments.	Yes, subject to conditions

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

Summary comment	Complies
The proposed development includes BASIX affected buildings and therefore requires assessment against the provisions of this SEPP, including BASIX certification. A valid BASIX Certificate has been submitted with the Development Application in line with the provisions of this SEPP. The BASIX Certificate demonstrates that the proposal complies with the relevant sustainability targets and will implement those measures required by the certificate. This will be conditioned in the consent.	Yes

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

Summary comment	Complies
SEPP 55 aims to 'provide a State-wide planning approach to the remediation of contaminated land'. Clause 7 requires that a consent authority consider whether the land is contaminated and if it is suitable or can be remediated to be made suitable for the proposed development, prior to the granting of development consent. A Preliminary Site Investigation, prepared by Douglas Partners dated February 2017, was submitted with the application. The investigation identified 6 potential areas of environmental concern which required further investigation and/or remediation for the site to be considered suitable for the proposed land use. Subsequently a Remediation Action Plan (RAP) was prepared by Douglas Partners dated January 2018 which describes the remediation requirements for various areas of environmental concern identified in the previous investigation. The Remediation Action Plan states that remediation of the site can be achieved and render the site suitable for residential development except for the area denoted as AEC2B to the south-east of the site. Following the request from Council to investigate the remaining concerned area, an Interim Advice Report from an EPA Site Auditor, Ian Swane & Associates P/L dated 18 March 2020, was submitted to review the available data and assess whether the site can be remediated suitable for residential use. The Site Auditor report states: "The Douglas Partners (January 2018) Remediation Action Plan (RAP) considers the site can be remediated to a condition suitable for residential use. The Site Auditor considers the weight of evidence supports this conclusion provided: • The additional investigation and report are undertaken in accordance with NSW EPA guidance and review the comments provided by the Site Auditor in the 4 interim advice reports. • A RAP addendum is prepared, if required, in accordance with NSW EPA guidance to the satisfaction of the Site Auditor. • The site is remediated and validated, if required, in accordance with NSW EPA and Site Auditor requirements as specified in Interim Advice Reports 01 to 04. • All known asbestos is removed from the site both across the ground surface and at depth. • Following the completion of remediation work, the data supports the conclusion that the amount of unknown asbestos contamination remaining at the site is considered to be trivial. • If some contamination is encountered by future development work, the data provided by the remediation and validation report supports the conclusion that a reasonable and practical approach would be for such small amounts to be removed as part of future redevelopment work in accordance with regulatory requirements. • Following the completion of remediation work, the Site Auditor prepares a site audit statement (SAS) concluding that the site is suitable for residential use." Council's Environmental Health Unit has reviewed the report/statements and has recommended an appropriate condition. The condition requires that a validation report and a Site Audit Statement be prepared by a qualified geoscientist upon completion of work validating the suitability of the site for the proposed residential development to National Environment Protection Measures (NEPM) 2013 Guidelines and this report is to be endorsed by Council prior to the release of the final plan of subdivision.	Yes, subject to conditions

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

Summary comment	Complies
Clause 4 of SREP 20 states that a consent authority must take into consideration the general planning considerations set out in Clause 5 of SREP 20 and the specific planning policies and recommended strategies in Clause 6 of SREP 20. The applicant has submitted stormwater drainage plans and hydraulic calculations to address the relevant planning policies of the REP. Council's Engineers reviewed the information submitted and consider that the information has satisfactorily addressed Clause 6 of the REP with regard to total catchment management, water quality, water quantity, urban development and their relevant strategies. In this regard they are satisfied that the proposal will have minimal impact on the environment of the Hawkesbury-Nepean River system and therefore the requirements of Clause 4 have been met.	Yes

7 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

Summary comment
We have assessed the DA against the relevant provisions of the SEPP. It is compliant with all matters.

8 Blacktown City Council Growth Centre Precincts Development Control Plan 2020 (Growth Centre Precincts DCP)

Summary comment
We have assessed the DA against the relevant provisions and the table below only identifies where compliance is not fully achieved. It is compliant with all other matters under the Blacktown City Council Growth Centres Precinct Development Control Plan 2020 (Growth Centre Precincts DCP).

8.1 Part 4 – Development in the residential zones (from main body of DCP)

Control	DCP requirement	Proposal	Complies
4.1 Site Responsive Design			
4.1.2 Cut and fill	Site grading is proposed under this DA to establish road levels and to construct level building pads for the proposed dwellings and future residential development, with 22,200 m³ of cut and 11,700 m³ of fill proposed (a maximum cut of 2 m and fill of 2.2 m) . This results in a balance of 10,500 m³ of excess cut material which will be suitably disposed off-site. Temporary retaining walls are proposed to facilitate the development in the interim. Once the adjoining site is redeveloped and the temporary basins decommissioned, the retaining walls will be removed.		No, but acceptable in the circumstances

Control	DCP requirement	Proposal	Complies
4.2 Dwelling Design Controls			
Dwelling Design controls – All lots >4.5 m for rear accessed dwellings (BEPs)			
Side setbacks (minimum)	If lot burdened by zero lot boundary, side setback must be within easement:– 0.9 m (single storey) 1.2 m (double storey) For side loaded garages (as per site specific DCP controls): 900 mm to the dwelling and garage Turning paths must be provided to ensure that adequate manoeuvrability can be achieved for vehicles to access the garage in 2 manoeuvres or less. Where this cannot be achieved, the minimum side setback will need to be increased to ensure compliance.	Lots 602, 603, 303 and 304 are double storey and burdened by a zero lot boundary. A condition will be imposed requiring the BEPs on these lots to be amended to increase the side setback at the upper floor from 900 mm to 1.2 m. Lots 114, 121 and 107 are provided with a side loaded garage. A condition will be imposed requiring the BEPs on these lots to be amended to increase the side setback to the garage from 500 mm to 900 mm. Turning paths have been provided and demonstrate that adequate manoeuvrability can be achieved for vehicles to access the garage.	No, but subject to conditions No, but subject to conditions Yes
Maximum length of zero lot line on boundary	Zero lot house: 15 m (excludes rear loaded garages)	Lots 302, 303, 304 and 602 exceed the maximum length of 15 m on the zero boundary. A condition will be imposed on the consent requiring amendments to the BEP on these lot to reduce the length of zero lot lines to 15 m.	No, but subject to conditions
Dwelling Design controls – for lots with frontage width ≥ 9m and ≤15m for front accessed dwellings (The proposed abutting dwellings and front-loaded BEPS)			
Maximum length of zero lot line on boundary	11 m	Lots 604 – 606 and 501 - 504 exceed the maximum length of 15 m on the zero boundary. A condition will be imposed on the consent requiring amendments to the BEP on these lot to reduce the length of zero lot lines to 11 m.	No, but subject to conditions

9 Central City District Plan 2018

Summary comment	Complies
While the Act does not require consideration of District Plans in the assessment of Development Applications, the DA is consistent with the following overarching planning priorities of the Central City District Plan: Liveability • Improving housing choice • Improving housing diversity and affordability.	Yes

10 Blacktown Local Strategic Planning Statement 2020

Summary comment	Complies
The LSPS applies to the site, with 18 Priorities and 61 Actions contained within the plan to support the vision for our City and to guide development, balancing the need for housing, jobs, and services with the natural environment. The LSPS builds on the framework established under the Blacktown Community Strategic Plan Our Blacktown 2036 and also gives effect to the NSW Government's Greater Sydney Region Plan and Central City District Plan. The DA complies with the following Priority: Local Planning Priority 5 Providing housing supply, choice and affordability with access to jobs, services and public transport.	Yes