

## BRIEFING DETAILS

<b>BRIEFING DATE / TIME</b>	Monday, 24 May 2021, 3:00pm – 3.46pm
<b>LOCATION</b>	Teleconference

## BRIEFING MATTER(S)

PPSSWC-142 – Campbelltown – 3532/2020/DA-SW - Goldsmith Avenue Campbelltown - Concept master plan for a high density residential and mixed use development (to be known as Macarthur Gardens North), and construction of stage 1 of the master plan, encompassing roads, parks, civil works, landscaping and subdivision of the site into super lots

## PANEL MEMBERS

<b>IN ATTENDANCE</b>	Justin Doyle (Chair), Nicole Gurran, Darcy Lound and George Griess
<b>APOLOGIES</b>	Sue Francis
<b>DECLARATIONS OF INTEREST</b>	Louise Camenzuli: Declared a COI as she considered there may be a perceived conflict of interest as one of her Partners has recently acted for Landcom, albeit on an unrelated matter

## OTHER ATTENDEES

<b>COUNCIL ASSESSMENT STAFF</b>	David Smith, Fletcher Rayner, Luke Joseph and Rana Haddad
<b>APPLICANT ATTENDEES</b>	Carlos Frias, Nicholas Lennon, Nicola Gibson, Steve Zhou and Thomas Gianatti
<b>OTHER</b>	Melissa Felipe and George Dojas – Panel Secretariat

## KEY ISSUES DISCUSSED

The Panel heard separate briefings from the council and the applicant's team. This note addresses matters raised in both briefings.

### Permissibility

An important threshold issue for the development is permissibility.

The Panel Chair raised the following matters for the attention of the Council and the Applicant:

- The document submitted by the Applicant to update the Panel since the Council's briefing includes this history:

*"Council officers indicated that amending the planning proposal to allow terraces as a permissible use on the site was not supported and the LEP amendment was too far progressed*

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*for change. Instead, Landcom was advised by Council to rely on savings provisions by submitting a stand-alone DA for the terraces which are permitted under the existing planning controls. Council also recommended that Landcom write to the Department of Planning, Industry & Environment seeking inclusion of terraces as a permitted use. On Council's advice, Landcom therefore expedited the terrace precinct DA ahead of the remainder of the master plan area rather than pursue its preferred approach of making multi dwellings a permissible use under the new controls."*

- Council assessment staff report that the proposed terrace form of housing is prohibited in the applicable under Land Use Table of the Campbelltown LEP 2015 (the "2015 LEP") as that instrument is presently worded.
- The Chair understands that before changes were made to the 2015 LEP by Campbelltown Local Environmental Plan 2015 (Amendment No 24) (2021 Amending LEP) ( gazetted on 30 April 2021), the larger Macarthur Gardens North site had had been marked as a "deferred area" under the 2015 LEP. The effect of that marking was to preserve the effect of the repealed Campbelltown (Urban Area) Local Environmental Plan 2002 (2002 LEP) in relation to the Landcom site. The site was zoned 10(a) Regional Centre Zone under that earlier 2002 LEP. Terrace housing appears to have been permitted on the site under that zone.
- Cl 1.8A(1) of the 2015 LEP sets out the "savings provisions relating to development applications". It says that the subclause only operates where a "development application has been made before the commencement of this Plan". That does not seem to be the case here where the plan was made in 2015 and the subject DA was made in October 2020.
- The Chair's understanding of the effect of the Court of Appeal's decision in *Wingecarribee Shire Council v De Angelis [2016] NSWCA 189* (at paragraphs [9] to [22]) is that savings provisions worded in the way clause 1.8A of the 2015 LEP is worded require an additional specific provision if prior versions of the LEP are to be applied after it has been amended.
- An example of such a specific provision is clause 1.8A(2) of the 2015 LEP which addresses the effect of another unrelated amending LEP (Campbelltown Local Environmental Plan 2015 (Amendment No 17). That subclause reads:
 

**1.8(2)** If a development application has been made before the commencement of Campbelltown Local Environmental Plan 2015 (Amendment No 17) in relation to land to which that Plan applies and the application has not been finally determined before that commencement, the application must be determined as if that Plan had not commenced.
- There is no similar provision addressing the changes to the LEP by the 2021 Amending LEP in issue here.
- For reference, the 2021 Amending LEP is found at [http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/num\\_epl/clep2015n242021199l30a2021541/](http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/num_epl/clep2015n242021199l30a2021541/).
- The 2021 Amending LEP relevantly repealed Campbelltown (Urban Area) Local Environmental Plan 2002 (**2002 LEP**) as it had applied to the land, and instituted the present zoning which prohibits the terrace housing. The Chair therefore queries whether there is any longer any instrument which would permit that form of housing on the land, as the savings provision at clause 1.8A would not seem to assist the application.
- Without applicable savings and transitional provisions to address the introduction of the Amending LEP, permissibility would seem to be a significant issue which may require a further amendment to the LEP before the DA could be lawfully approved.

The Panel would be interested to know the Applicant's position in relation to that permissibility issue.

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### Additional matters

If the issue of permissibility can be overcome, the Panel saw the following additional issues as important:

- The apparent inconsistency of the terrace housing element with the recent LEP amendment and current high density zoning for the site.
- The rationale for activating the wider development with the terrace component for which there is currently an established market.
- The need to ensure strong public realm elements consistent with stage 1 of the site's proposed master plan, are provided concurrently with any residential development on the site, including the new link to the station and strong pedestrian connections to Western Sydney University.
- The likely timing of the wider master plan in terms of higher density apartment development.
- The design rationale of the street network and building presentations, to integrate the proposed terrace elements with the higher density apartment blocks.
- The intended housing diversity outcomes addressed by the proposed terrace element, in terms of small lot, attached dwellings, with careful rear loaded architectural design.