

ADDENDUM COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-148										
DA Number	4079/2017/DA-CD										
LGA	Campbelltown City Council										
Proposed Development	Concept approval of a residential development comprising 45 detached dwellings, 4 dual occupancy dwellings and 85 attached terrace dwellings in the following stages: <table> <tr> <td>Stage 1 (3 Substages)</td><td>Site preparation and subdivision</td></tr> <tr> <td>Stage 1(I)</td><td>- Bulk earthworks to prepare the site</td></tr> <tr> <td>Stage 1(II)</td><td>- Subdivision to excise development site from WSU land</td></tr> <tr> <td>Stage 1(III)</td><td>- Civil Works and subdivision into separate lots for detached housing and master lots for medium density development.</td></tr> <tr> <td>Stage 2 (66 Substages)</td><td>Residential development of the resulting lots</td></tr> </table>	Stage 1 (3 Substages)	Site preparation and subdivision	Stage 1(I)	- Bulk earthworks to prepare the site	Stage 1(II)	- Subdivision to excise development site from WSU land	Stage 1(III)	- Civil Works and subdivision into separate lots for detached housing and master lots for medium density development.	Stage 2 (66 Substages)	Residential development of the resulting lots
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Street Address	University Drive, Campbelltown										
Applicant	Western Sydney University										
Owner	Western Sydney University										
Date of DA lodgement	Original Lodgement: December 2017 Current Form of Application: August 2020										
Number of Submissions	Nil										
Recommendation	Concept Approval and First Stage Development Consent, subject to conditions										
Regional Development Criteria	Development on behalf of the Crown with a capital investment value (CIV) over \$5 million										
List of all relevant s4.22 matters	• Environmental Planning and Assessment Act, 1979 • Environmental Planning and Assessment Regulations, 2000 • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment • Campbelltown Local Environmental Plan 2015 (CLEP). • Campbelltown (Sustainable City) Development Control Plan 2015 (SCDCP). • Water Management Act 2000. • State Environmental Planning Policy (Infrastructure) 2007. • State Environmental Planning Policy 55 (SEPP 55) - Remediation of Land.										

List all documents submitted with this report for the Panel's consideration	• Applicant's Clause 4.6 Request • Revised Conditions of Consent
Report prepared by	Grant Rokobauer – Senior Environmental Officer and Strategic Planner
Report date	2 December 2021

Addendum Report

1. Introduction

This application was reported to the Panel on 11 October 2021. An addendum report was provided to the panel for consideration on 10 November 2021 (the first addendum report). The first addendum report concluded:

“All matters between Council and the applicant have been resolved and there were no submissions received in respect of this application. All required agency referrals were positive and all conditions requested by agencies have been included in the draft conditions with the consent of the applicant. There does not appear to be any impediment to the matter being determined electronically without further panel meetings.”

On 19 November 2021 the Panel Secretariat contacted Council to advise:

“The Panel members have identified two issues where Council’s comment, and potentially further information from the Applicant, would be appreciated to assist the Panel.

Terrace width

The concept plan and design report seem to propose different minimum dimensions for the terrace housing lots.

The Concept Plan uploaded 10/11 says:

Minimum average allotment width (measured at primary building line)	10m (zero lot) 12m (small detached)	6.0m 8.0m for corner lot
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However, the “September 2021 supplementary information revised urban design statement” says:

CRITERIA	CONTROLS
Minimum Allotment Size	150m ²
Minimum average allotment width measured at primary building line	6.5m 8m for corner lot

This discrepancy needs to be resolved.

Can the Applicant be asked to clarify the proposed minimum lot width.

Second, it is uncertain what is meant by “minimum average allotment width”? If that is to be retained in the concept proposal, the Applicant should clarify how the average is to be measured (e.g. the average of lot widths within each master lot).

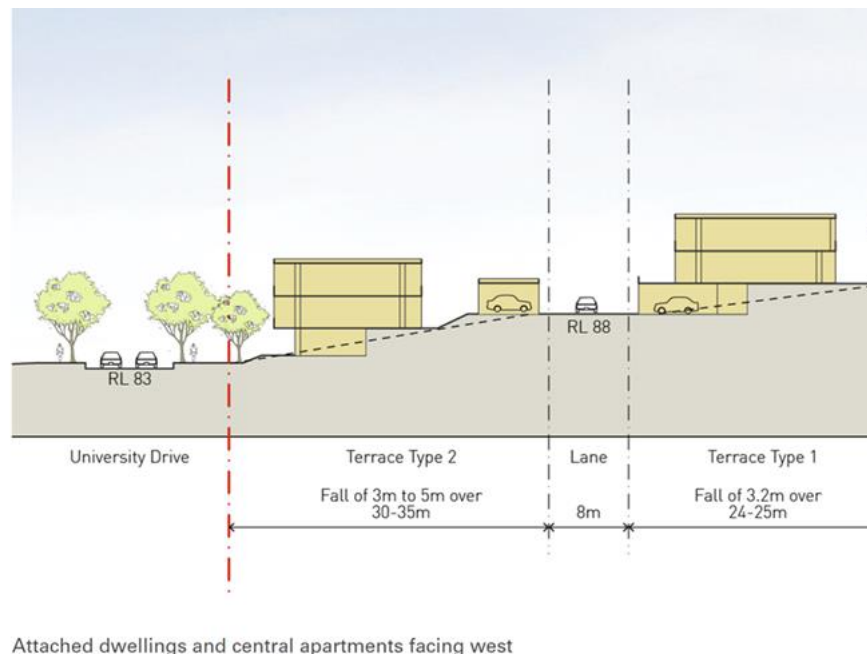
It may be that the planning issues address by minimum allotment width are in fact now regulated by Condition 6 which sets a maximum number of dwellings for each master lot. That seems to be the effective control.

Please clarify.

Three storey height of terraces

The development proposes three storey terraces in the concept plan, whereas Clause 4.3A of the LEP fixes a clear two storey height limit for attached dwellings.

The concept plan includes this diagram:



The three storey form also seems to be inevitable in this development given the textual description in the concept proposal:

The terrace product works with the site's slopes and view potential while sheltering outdoor living spaces from noise on Narellan Road. Terraces which have their formal address on their northern boundary (Terrace Type 1) are planned to have primary open space above their garages directed towards potential views, as well as on ground at the front of the site.

Clause 4.3A of the LEP reads:

4.3A Height restrictions for certain residential accommodation

(1) The objective of this clause is to limit the number of storeys of certain types of residential development.

(2) The following forms of residential accommodation must not be higher than 2 storeys—

- (a) an attached dwelling,**
- (b) a dual occupancy,
- (c) a dwelling house,
- (d) a dwelling that forms part of multi-dwelling housing,
- (e) a semi-detached dwelling,
- (f) a dwelling contained within a residential flat building,
- (g) a dwelling that form part of shop-top housing.

It is not clear that it is lawful to approve a concept plan that explicitly includes three storey attached dwellings (both in drawing and in text) as part of the concept, where that form would be in breach of the LEP.

It is true that “consent (to a concept proposal) does not authorise the carrying out of development on any part of the site concerned unless consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site” (EP&A Act s.4.22(4)). However, s 4.22(5) of the Act requires the Panel to assess the proposal as presented under 4.15 which includes consideration of the provisions of planning instruments.

This is what the assessment report says:

Clause 4.3A Height restrictions for certain residential accommodation

This clause provides that dwellings must not exceed two storeys for the specified residential accommodation.

The concept plan permits three storey dwellings that would contravene this clause. The clause would continue to apply to future development applications in such cases, as the concept plan would not prevail over the control.

The concept plan does not require third storey residential development and the consent authority for a future application would not be fettered in this regard. This would be a matter for future consideration of the built form applications in stage 2 of the concept masterplan.

However, approval of a concept plan including drawings of three storey buildings is likely to be interpreted as approving that form of development on the site as a permissible concept.

A cl 4.6 request seems to be required. Could the applicant be requested to supply one?”

This report has been prepared as an addendum to the previous reports to address the further matters raised by the Panel.

2. The average width provisions in the concept plan

2.1 The inconsistency with the Urban Design Statement

The applicant has advised they wish to press the 6m average width control in the concept plan notwithstanding the recommendation of the Urban Design Statement. The difference between a 6m and a 6.5m average width do not represent a significant change in the design, particularly when the total number of lots is to be regulated in detail through a condition of consent.

If the panel is minded to force the recommendation of the Urban Design Statement for a 6.5m average width, Condition 2A below could be added to the consent with the concurrence of the applicant or the Minister:

2A. The average width of any lot created in Stage 2 of the concept plan shall be no less than 6.5m.

2.2 The meaning of average width

There appears to have been some confusion in relation to the use of the term ‘average lot width’. The intention of this control is to allow articulation of boundaries between lots so that wider spaces can be provided. For example, two neighbouring attached dwellings might be 8m wide for 50% of their depth and 4m wide for the remainder. This would allow each dwelling to have a wider living area in exchange for a narrower kitchen, stairwell etc. The ‘average’ is intended to refer to a weighted average of the lot across its depth.

Average lot width is calculated by dividing the area of the lot by its depth. To make this clear, Recommended Condition 2 has been amended to provide this formula.

3. Campbelltown LEP 2015 Clause 4.3A: Height restrictions for certain residential accommodation

Clause 4.6 of CLEP 2015 provides that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument, where certain matters are met.

The objectives of Clause 4.6 are to:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances

Clause 4.6 provides a degree of flexibility with the application of certain development standards where sufficient justification can be provided that a variation of the standard would not be inappropriate in the circumstances, and the approval of the variation by the consent authority would not result in an unreasonable and detrimental environmental impact.

In this regard, the applicant is seeking a departure from Clause 4.3A Height restrictions for certain residential accommodation of the CLEP 2015. Clause 4.3 provides that the following forms of residential accommodation must not be higher than 2 storeys:

- (a) an attached dwelling,*
- (b) a dual occupancy,*
- (c) a dwelling house,*
- (d) a dwelling that forms part of multi-dwelling housing,*
- (e) a semi-detached dwelling,*
- (f) a dwelling contained within a residential flat building,*
- (g) a dwelling that form part of shop-top housing.*

The objective of Clause 4.3 is *to limit the number of storeys of certain types of residential development.*

Clause 4.6 (3) requires:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

A request pursuant to Clause 4.6 (the request) has been provided by the applicant and is uploaded as an attachment to this report.

In responding to the requirements of Clause 4.6(3)(a) the request argues that compliance with the development standard is unreasonable and unnecessary using the first “Wehbe Method”. To

succeed, the request must demonstrate that the underlying intent of the control is achieved notwithstanding the proposed variation.

The request correctly identifies the underlying intent of the control is stated in Clause 4.3A as being 'to limit the number of storeys of certain types of residential development'.

The request argues:

'The proposed design of dwellings and terraces seeks to respond to the slope of the land and steps down the slope whilst maintaining a general north-south orientation to enable appropriate solar access to dwellings and for development to respond to the site topography. Built form appears as two storey development to the north, whilst the slope requires the envelope to appear as three storeys to the south ... to enable garage access from streets located to the rear of the lots. The proposed envelopes will provide a consistent built form response to site topography and the need to provide vehicular access to lots, and is a logical and proportional interface with surrounding residential development following the slope of the land. In each case, the proposed variation is minor in nature and the three storey portion of the envelope comprises approximately half (or less than half) of the depth of the dwelling or terrace. The specifics of the variation will be confirmed at DA stage for the proposed residential development, however, on balance, the Concept Plan results in envelopes which are generally compliant with the two storey requirement.'

The request has satisfactorily demonstrated that the variation is the result of responding to the constraints of the site with appropriate urban design.

The request then assesses the amenity and infrastructure implications of the variation and successfully demonstrates that there are sufficient planning grounds to justify the contravening the development standard in accordance with Clause 4.6(3)(b).

Clause 4.6 (4) requires:

Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

The matters required to be demonstrated under Clause 4.6(4)(a)(i) have been previously discussed under the consideration of Clause 4.6(3) and are not repeated here.

The request argues that the contravention is minor and the result of appropriate planning and design to respond to site topography. The resulting built form is still limited in height and is consistent with the objective of the control. The zone objectives relevant to the development standard are:

- *To provide for the retention and creation of view corridors.*
- *To maintain the visual amenity of prominent ridgelines.*

The development has been designed to sit within the landscape and the visual impacts are assessed in detail in the urban design and public domain statement. The development is consistent with these zone objectives notwithstanding the contravention of the development standard.

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary prior to the grant of consent under this clause. Planning Circular PS20-002 provides as follows in this regard:

“Sydney district and regional planning panels may also assume the Secretary’s concurrence where development standards will be contravened. The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.”

Accordingly, the Panel may assume the concurrence of the Secretary under this clause as there are no limits on applying this assumption for height related development standards applying to regional development.

It is concluded that the request is well founded and variation identified by the panel has been appropriately justified.

4. Electronic determination

Subject to the panel being satisfied by this report and the applicant’s request pursuant to Clause 4.6 of Campbelltown LEP 2015, there does not appear to be any impediment to the matter being determined electronically without further panel meetings.

6. Recommendations and Conditions

It is recommended that the application be approved subject to the conditions attached.