

OFFICERS REPORTS**15 CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012 (CLEP)
AMENDMENT - MEDICAL CENTRES AND RESIDENTIAL
ACCOMMODATION AS PART OF A MIXED USE
DEVELOPMENT****FILE NO: T-29-165****REPORT BY: ACTING DIRECTOR CITY PLANNING**

Summary:

- This matter was deferred by Council on 23 October 2014 for consideration at its next meeting.
- The Canterbury Local Environmental Plan (CLEP) 2012 was gazetted on 21 December 2012.
- An amendment of the CLEP 2012, Amendment 1, was gazetted 8 November 2013 that amongst other matters, inserted a provision that allowed a medical centre as part of a mixed use development incorporating residential accommodation in the B1, B2 and B5 zones.
- An unintended consequence of this amendment, now apparent, is that the provision is being used in the B1 and B2 business zones to minimise the commercial/business uses at ground floor, by including a medical centre, with the remainder of the development being residential accommodation, both at ground level and above. Shop top housing, which is otherwise the only form of residential accommodation allowed in these zones, is not permitted at ground level.
- It is intended to add an additional provision that does not allow residential accommodation at the ground level where there is a medical centre as part of a mixed use development, thereby ensuring that there is not an incremental loss of business and commercial land within the centres.
- It is recommended that a planning proposal be prepared as an amendment to the CLEP 2012 and forwarded to the Department of Planning for Gateway determination and subsequent exhibition.

Council Delivery Program and Budget Implications:

This report has no implications for the Budget and supports our Community Strategic Plan long term goal of Balanced Development.

Report:

Within the B1 and B2 zones, residential development is only allowed as “shop top housing”. Shop top housing requires the ground floor to be retail or business uses. That is, no residential dwellings are allowed on the ground floor. The Land and Environment Court (Hsro v Canterbury Council No 2 [2014] NSWLEC 121) recently reaffirmed that shop top housing does not allow for residential accommodation on the ground floor.

Council considered that medical centres were an appropriate land use within the B1, B2 and B5 zones, and consequently, Amendment 1 to the CLEP 2012 was gazetted 8 November 2013 which amongst other matters, inserted a provision that allowed a medical centre as part

CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012 (CLEP) AMENDMENT - MEDICAL CENTRES AND RESIDENTIAL ACCOMMODATION AS PART OF A MIXED USE DEVELOPMENT (CONT.)

of a mixed use development incorporating residential accommodation in the B1, B2 and B5 zones. The clause is set out below.

- 6.7 Mixed use development in business zones
- (1) This clause applies to land in the following zones:
 - (a) Zone B1 Neighbourhood Centre
 - (b) Zone B2 Local Centre
 - (c) Zone B5 Business Development
 - (2) Despite any other provisions of this plan, development consent may be granted to a mixed use development, on land to which this clause applies, incorporating residential accommodation and a medical centre,

It is noted that the CLEP 2012, Schedule 1 Additional Permitted Uses identifies sites zoned B5 along Canterbury Road as Key Sites "A" and that development for the purpose of residential accommodation is permitted with consent, but only as part of a mixed use development. As such, Amendment 1 to CLEP 2012, while referring to B5 zones, is only really relevant to the B1 and B2 zones.

Unintended Consequence

Within B1 and B2 zones, residential development is prohibited on the ground level. Residential development is only allowed as "shop top housing". The intention of this is to ensure that the viability of business centres is not eroded by business development being tokenistic in nature, in favour of residential development occupying the majority of the site at ground level.

Within the B1 and B2 zones, in order to maximise residential development on a site within centres, proponents are now using clause 6.7 and including a medical centre as part of their development proposal on the ground floor as well as residential accommodation, rather than the development proposals being for shop top housing. Proponents are attempting to maximise residential development over retail or business development, as this is where the higher profits are usually made.

Should this continue, there is the potential for Canterbury's neighbourhood and local centres incrementally losing retail and business floor areas to medical centres (many of which are likely to remain untenanted when initial demand for medical centres has been met) and increasing residential. This would not be sustainable in the long term and would also be contrary to the objectives within both of these zones included in the CLEP 2012 as follows:

- Zone B1 Neighbourhood Centre Objectives
 - To provide a range of small scale retail, business and community uses that serve the needs of the people who live or work in the surrounding neighbourhood
- Zone B2 Local Centre Objectives
 - To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - To encourage employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To facilitate and support investment, economic growth and development for active and well designed centres.

CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012 (CLEP) AMENDMENT - MEDICAL CENTRES AND RESIDENTIAL ACCOMMODATION AS PART OF A MIXED USE DEVELOPMENT (CONT.)

The objectives for both zones focus on retail and business opportunities within our centres, and for the centres to serve the needs of the local communities. Development which results in the incremental loss of retail, business and community uses would be contrary to the objectives of the B1 and B2 zones and would have a long term adverse impact on the Canterbury neighbourhood and local centres.

Proposed Amendment

The proposed amendment would still permit a medical centre in the B1, B2 and B5 zones, but would only allow a medical centre as part of a mixed use development where there is no residential accommodation provided at ground level. As noted previously, this does not apply to B5 zoned "Key Sites A" identified along Canterbury Road, as these are subject to another clause which does permit residential accommodation at ground level as part of a mixed use development.

Recommended wording for an additional clause to limit the residential component, which will be subject to Parliamentary Counsel drafting, is as follows:

- (3) Development consent must not be granted for residential accommodation, as part of a mixed use development, with dwellings at the ground level.

RECOMMENDATION:

THAT a Planning Proposal be prepared to amend the Canterbury LEP 2012 to clarify that development consent must not be granted for residential accommodation, as part of a mixed use development that includes a medical centre, with a dwelling at the ground level in the B1, B2 and B5 zones.

COUNCIL MEETING

RESOLUTION - 27 NOVEMBER 2014

- 15 **CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012 (CLEP)**
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Min. No. 473 RESOLVED (Councillors Hawatt/Azzi)

THAT a Planning Proposal be prepared to amend the Canterbury LEP 2012 to clarify that development consent must not be granted for residential accommodation, as part of a mixed use development that includes a medical centre, with a dwelling at the ground level in the B1, B2 and B5 zones.

CANTERBURY LOCAL ENVIRONMENTAL PLAN 2012 (CLEP) AMENDMENT - MEDICAL CENTRES AND RESIDENTIAL ACCOMMODATION AS PART OF A MIXED USE DEVELOPMENT (CONT.)

FOR	AGAINST
The Mayor, Councillor Robson	
Deputy Mayor, Councillor F. Kebbe	
Councillor Adler	
Councillor Azzi	
Councillor Eisler	
Councillor Hawatt	
Councillor Nam	
Councillor K. Saleh	
Councillor Vasiliades	