

JRPP No.	2012SYW075
DA No.	DA/116/2011
Proposed Development	Demolition, tree removal and construction of an affordable rental housing development under Division 1 of the Affordable Rental Housing SEPP comprising 5 buildings with a total of 24 units, carparking for 14 vehicles and consolidation of 5 lots into 1 lot
Applicant	NSW Land & Housing Corporation
Report By	Regional Panels Secretariat
Report Date	28 August 2012

Review Report and Recommendation

This Crown development application (DA) has been referred to the Sydney West Joint Regional Planning Panel (regional panel) pursuant to section 89(1)(a) and 89(2A) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The applicant is the Crown for the purposes of Part 4, Division 4, of the EP&A Act, as it is a public authority (not being a council).

Section 89(1)(a) of the EP&A Act states that a consent authority must not refuse its consent to a Crown DA, except with the approval of the Minister.

Section 89(2A) of the EP&A Act requires that a Crown DA for which the consent authority is a council must not be referred to the Minister unless it is first referred to the applicable regional panel.

In this case, council has resolved to refuse the DA and has referred the application to the regional panel, pursuant to Section 89(1) of the EP&A Act.

1. EXECUTIVE SUMMARY

A development application (DA) was lodged on 8 March 2011 by NSW Land & Housing Corporation (the applicant) and proposes the demolition of existing structures, tree removal, construction of an affordable rental housing development (24 units), carparking for 14 vehicles and consolidation of 5 allotments into a single allotment, at 1-5 Chestnut Avenue and 6-8 Burke Street, Telopea (Parramatta local government area).

The application is made under Division 1 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

The Regional Panels Secretariat (secretariat) has reviewed the application for the regional panel's consideration. Elected council's resolution to refuse the development application is not supported as the reasons for refusal are not substantiated, and are in conflict with the council assessment report and the review undertaken by the secretariat.

Accordingly, it is recommended the DA be approved, subject to conditions (attached at **Schedule 1**).

2. BACKGROUND

Council prepared an assessment report on the DA, dated 22 May 2012, recommending approval. The report was considered at a council meeting held on 12 June 2012 where elected council resolved to defer the application, requesting a report be provided with grounds for the possible refusal of the application.

On 29 June 2012, council assessment staff provided a memo to council providing possible reasons for refusal of the application. The memo continued to recommend approval of the application.

At a council meeting held on 9 July 2012, elected council resolved to refuse the application.

The DA was formally referred to the regional panel on 17 July 2012.

3. DOCUMENTS REVIEWED

In preparing this report, the secretariat has reviewed the following documents:

- Statement of Environmental Effects prepared by Housing NSW (dated February 2011) including all attachments;
- Submissions received by Parramatta City Council in response to the public notification of the DA;
- Development drawings submitted with the DA (**Attachment 1**);
- Parramatta City Council's Development Assessment Report – DA/116/2011 - Item 9.6 (dated 22 May 2012) (**Attachment 3**);
- Minutes from Parramatta City Council's Development Committee Meeting on 12 June 2012 (for Item 9.6) (**Attachment 4**);
- Memo to Council from Council's Team Leader, DA Services, dated 29 June 2012 (**Attachment 5**);
- Minutes from Parramatta City Council's Development Committee Meeting on 9 July 2012 (for Item 9.2) (**Attachment 6**); and
- NSW Land & Housing Corporation's Response to Reasons for Refusal letter dated 16 August 2012 (**Attachment 7**).

4. SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is located at 1-5 Chestnut Avenue and 6-8 Burke Street, Telopea, in the Parramatta local government area. Refer to **Figure 1**.

Refer to council's assessment report at **Attachment 3** for a full description of the site and the proposed works. Also, refer to the development drawings at **Attachment 1**, and site photographs at **Attachment 2**.



Figure 1 – Site Location
Source: Google Maps 2012

5. ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)

The DA was lodged under Division 1 (in-fill affordable housing) of the ARH SEPP. At the time of lodgement, the ARH SEPP provisions permitted a residential flat building in residential zones where they were not otherwise permissible. The proposed development complies with Clauses 10 and 11 of the ARH SEPP and is permissible with consent.

Clause 14 of the ARH SEPP lists standards that cannot be used to refuse consent. Council's assessment report considers that the proposed development complies with these development standards.

May 2011 Amendment to ARH SEPP

Amendments made to the ARH SEPP in May 2011 removed certain provisions applying in low-density residential areas. Savings and transitional provisions for the 2011 amendment include the following matters of relevance to the DA:

- Division 1 provisions in force before the amendment continue to apply to development if the land is owned by the Land and Housing Corporation, and development commences not later than 2 years after the amendment (Clause 54A(1)).
- The DA may be determined as if the amending SEPP had not been made (Clause 54A(2)).
- A new local character test is required where *"the consent authority must not consent to the development unless it has taken into consideration whether the design of the development is compatible with the character of the local area"* (Clause 54A(3)).

Parramatta Local Environmental Plan 2001 (LEP 2001)

The site is zoned Residential 2(b) under the LEP 2001. The proposed development is defined as a residential flat building, which is prohibited in the zone.

Parramatta Local Environmental Plan 2011 (LEP 2011)

The LEP 2011 was gazetted on 7 October 2011, after the DA was lodged. Savings provisions for the LEP 2011 state that as the application was lodged but not finally determined before the commencement of the LEP, it must be determined as if the LEP had been exhibited but not commenced.

The subject site is zoned Residential R3 under the LEP 2011. The proposed development is defined as a residential flat building which is prohibited in the zone.

Parramatta Development Control Plan 2005 (DCP 2005)

The DCP 2005 provides development criteria for residential flat buildings. Council's assessment report considers that the proposed development complies with the relevant controls, with the exception of certain design elements which are 'overruled' by the ARH SEPP such as landscaping area, private open space and car parking.

6. PUBLIC EXHIBITION

The application was notified between 23 March 2011 and 13 April 2011 in accordance with council's notification policy. After receiving amended plans, the plans were re-notified between 16 December 2011 and 10 January 2012.

In total, 27 submissions were received (including 2 petitions).

Key issues raised in the submissions include:

- density of the development and intensification of use
- loss of privacy
- insufficient car parking
- traffic congestion
- impact on character of the area
- displacement of existing residents
- impact on flora and fauna

7. CONSIDERATION OF SECTION 79C(1) OF THE EP&A ACT

Council's assessment officer has undertaken an assessment of the application with regard to the provisions of the EP&A Act and all matters specified under section 79C(1).

The views of council assessment staff, elected council and the applicant are summarised below.

Parramatta City Council - Assessment Staff

The council assessment report recommended the application be approved, subject to conditions.

Council considered that the proposed development complies with the provisions of the ARH SEPP and is generally consistent with the aims and objectives of the LEP 2001.

Council's assessment considered the compatibility of the proposed development with the character of the surrounding area and found it to be compatible for a number of reasons, including floor space ratio, building form, height, landscaping, external appearance and impact upon neighbouring properties.

Council considered the proposal to be suitable for the site and to be in the public interest.

Parramatta City Council – Elected Council

After considering the DA at a council meeting on 12 June 2012, elected council requested assessment staff to provide possible reasons for refusal of the DA. Possible reasons for refusal were provided by memo dated 29 June 2012, and elected council resolved to refuse the application at a council meeting on 9 July 2012, for the following reasons:

- *“The proposal fails to satisfy the provisions of State Environmental Planning Policy (Affordable Rental Housing) Amendments 2011 as it does not satisfy the local character provision as the proposed development will not be compatible with the existing and/or the desired future character of the locality.*
- *The proposed development is contrary to the aims and objectives of Parramatta Local Environmental Plan 2001 and Parramatta Local Environmental Plan 2011 and the proposed residential flat building is a prohibited development under the zoning of the site and is out of character with the area.*
- *The proposed development will have an unacceptable acoustic and visual privacy impact upon adjoining properties.*
- *The proposed development will have an unacceptable visual bulk when viewed from adjoining properties.*
- *The proposed development will result in unacceptable social impacts upon the community.*
- *The proposed development will result in the displacement of existing tenants who are part of the community.*
- *The proposed development is not in the public interest.”*

Applicant – NSW Land & Housing

The applicant has provided a detailed response to each of council's reasons for refusal. Refer to **Attachment 7**. The applicant's responses are summarised in **Section 8** of this report.

The applicant has also reviewed the draft without prejudice conditions of consent proposed by council, and have advised that they agree with the proposed conditions. The draft conditions of consent are included in **Schedule 1** for the regional panel's review should the application be approved.

8. DISCUSSION OF KEY ISSUES

The resolution of the elected council to refuse the DA included a number of reasons for refusal. These are considered in the following section, and compared to the conclusions in council's assessment report and to comments provided by the applicant.

Elected Council Reason For Refusal	Council Assessment Report	Applicant Comment	Secretariat Comment
Impact on local character			
<ul style="list-style-type: none"> the proposed development is not compatible with the existing and/or desired future character of the locality the proposed development fails to satisfy the local character test provision of the ARH SEPP 	<ul style="list-style-type: none"> the local area contains a mix of development types, including low and medium density residential development the proposed development is considered to have a floor space ratio, height, setbacks, landscaping and deep soil which is compatible with both the existing character and the future potential character of the area the proposed development is in harmony with the surrounding development, is visually compatible with its context, and contains and responds to the essential elements that make up the character of the surrounding development 	<ul style="list-style-type: none"> the future character of the area will be characterised by higher density developments, due to the R3 zoning under the LEP 2011 the proposed development meets the key development controls for multi-unit housing the DCP permits multi-unit housing of 2 stories with a maximum building height of 11m - the proposed development is 2 stories and 8.5m in height 	<ul style="list-style-type: none"> council's assessment report and comments from the applicant concur that the proposed development is compatible with the existing and intended future character of the area
LEP provisions			
<ul style="list-style-type: none"> the proposed development is contrary to the aims and objectives of the LEP 2001 and LEP 2011 the proposed development is a prohibited development under the zoning of the site 	<ul style="list-style-type: none"> the ARH SEPP permits the proposed development irrespective of the zoning the proposed development is generally consistent with the aims and objectives of the LEP 2001 which applies to the DA 	<ul style="list-style-type: none"> the proposed development is permissible on the site under the transitional provisions of ARH SEPP 	<ul style="list-style-type: none"> Clause 8 of the ARH SEPP states that if there is an inconsistency with any other environmental planning instrument that the ARH SEPP prevails to the extent of the inconsistency – therefore the permissibility provisions

	<ul style="list-style-type: none"> the proposed development is partially inconsistent with the relevant objectives of the LEP 2001 and LEP 2011, as it provides a higher density residential development form than that envisaged in the applicable zonings however, the proposed development meets the development standards (floor space ratio, height) under the LEP 2001 and LEP 2011 		<p>and objectives under the LEP 2001 and LEP 2011 are not applicable to the proposed development</p> <ul style="list-style-type: none"> the proposed development meets the relevant development standards under the LEP 2001 and LEP 2011
Acoustic and visual privacy			
<ul style="list-style-type: none"> the proposed development will have an unacceptable acoustic and visual privacy impact upon adjoining properties 	<ul style="list-style-type: none"> impacts to neighbouring properties have been minimised by the location of adequately screened windows on the first floor and reasonable setbacks to neighbouring properties pedestrian access to the dwellings has been designed to mitigate acoustic impacts on neighbouring properties proposed conditions of consent require that screening be provided to six units, and hi-light windows be provided to the kitchen of one unit, to ensure visual and acoustic privacy between the units 	<ul style="list-style-type: none"> the development has been designed to meet BCA requirements for sound insulation setbacks meet DCP requirements the design of the development has been amended to minimise overlooking (via reconfiguration and screening of balconies and windows) 	<ul style="list-style-type: none"> any potential privacy issues can be adequately mitigated by the privacy measures already proposed by the applicant (including screen plantings, privacy screens to first floor balconies, window locations) and the additional measures (including screening and hi-light windows) required as part of the proposed conditions of consent
Bulk and scale			
<ul style="list-style-type: none"> the proposed development will have an unacceptable 	<ul style="list-style-type: none"> the density, setbacks and overshadowing impacts of the 	<ul style="list-style-type: none"> the 2 storey building form and envelope of the proposed 	<ul style="list-style-type: none"> the proposed development meets the standards that

visual bulk when viewed from adjoining properties	proposed development are acceptable	<p>development is similar to multi-unit housing which would ordinarily be permissible within the R3 zone</p> <ul style="list-style-type: none"> the proposed development meets the floor space ratio and height standards for multi-unit housing under the LEP 2011 	<p>cannot be used to refuse consent under the ARH SEPP (including standards for density and scale, site area, landscaped area and solar access)</p> <ul style="list-style-type: none"> the proposed development meets development standards under the LEP 2001 and LEP 2011, including FSR and height the proposed development includes design features which help to break up the bulk of the development - the development is broken up into five buildings, with variation to the rooflines, building materials and architectural treatments of the elevations – landscaping and the retention of trees helps to break up the bulk of the building as viewed from surrounding properties - further, the topography of the site means that the building heights do not appear uniform
Social impacts			
<ul style="list-style-type: none"> the proposed development will result in unacceptable social impacts upon the community, including the displacement of existing tenants who are part of the community 	<ul style="list-style-type: none"> potential benefits of the development include affordable housing for Housing NSW clients, replacement of old stock which is now reaching the end of its economic life and 	<ul style="list-style-type: none"> the majority of negative impacts will fall largely on the five households who will need to relocate a number of mitigation measures have been recommended to reduce the 	<ul style="list-style-type: none"> the proposed development will provide new affordable housing which will have positive social benefits to the local community it is considered that the impacts on displaced tenants

	<p>improvement to Housing NSW stock</p> <ul style="list-style-type: none"> there could be negative impacts for existing tenants who are relocated - however, the submitted Social Impact Assessment includes a number of strategies to minimise impacts, including covering rehousing and moving costs, potential option for tenants to return to the property after redevelopment, relocating tenants as close as possible to the area, and provision of a two offer policy for choice of new dwelling 	<p>potential negative social impact of the development</p> <ul style="list-style-type: none"> positive impacts will be felt by new incoming residents (24 households) who will be allocated a dwelling of appropriate type and a high level of community the displacement of existing tenants is not considered to a valid reason for refusal – it does not derive from a section 79C assessment displaced tenants can express their interest in returning to live at the site after redevelopment - Land and Housing Corporation will consider such requests on a case-by-case basis, taking into account the tenant's housing needs 	<p>can be adequately mitigated through the management practices of the applicant, including a right of return for tenants who must vacate due to redevelopment</p>
Public interest			
<ul style="list-style-type: none"> the proposed development is not in the public interest 	<ul style="list-style-type: none"> after considering the development against section 79C of the EP&A Act and the relevant statutory and policy provisions, the proposal is suitable for the site and is in the public interest potential benefits of the development include affordable housing for Housing NSW clients, replacement of old stock 	<ul style="list-style-type: none"> the existing buildings have reached the end of their economic life the redevelopment of the subject site will provide greater opportunities and housing choices for some of the neediest members of the community - for example, there is a current shortage of 1 and 2 bedroom units within the Parramatta LGA with an 	<ul style="list-style-type: none"> the proposed development will provide additional and improved affordable housing in the area, including 1 and 2 bedroom units which are in shortage in the area it is considered that the proposed mitigation measures included in the draft conditions of consent can adequately mitigate any potential impacts and that the

	<p>which is now reaching the end of its economic life and improvement to Housing NSW stock</p>	<p>average wait time for tenants of 5-10 years</p> <ul style="list-style-type: none"> • there is no discernable impact upon the adjoining neighbours or the future character of the surrounding area as envisaged in the LEP 2011 • the Land and Housing Corporation has a policy which enables a right of return of tenants should they have to vacate due to redevelopment 	<p>proposed development is in the public interest</p>
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9. CONCLUSION

Council has undertaken a comprehensive assessment of the DA, and recommended the DA be approved, subject to conditions of consent.

Elected council's reasons for refusal are not substantiated, and are in conflict with the council assessment report and the review undertaken by the secretariat.

10. RECOMMENDATION

It is recommended that the regional panel:

- (A) **consider** all relevant matters prescribed under the Environmental Planning and Assessment Act 1979, as contained in the DA and its associated documents, Parramatta City Council's assessment report and resolution, the applicant's response to Council's resolution and the findings and recommendations of this report; and
- (B) **approve** the application, subject to conditions set out in Schedule 1, pursuant to section 80(1)(a) and section 89 of the Environmental Planning and Assessment Act 1979, having considered all relevant matters in accordance with (A) above.

Prepared by:

Endorsed by:

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LIST OF SCHEDULES

Schedule 1 - Conditions of Consent

LIST OF ATTACHMENTS

1. Development drawings
2. Site Photographs
3. Parramatta City Council's Development Assessment Report, dated 22 May 2012
4. Minutes from Parramatta City Council's Development Committee Meeting on 12 June 2012 (for Item 9.6)
5. Memo to Council from Council's Team Leader, DA Services, dated 29 June 2012
6. Minutes from Parramatta City Council's Development Committee Meeting on 9 July 2012 (for Item 9.2)
7. NSW Land & Housing Corporation's Response to Reasons for Refusal, letter dated 16 August 2012