

Regional panel reference No.	2013SYW052
DA No.	2012/413/1
Proposed development	Demolition of existing structures, consolidation, construction of 19 dwellings & 12 parking spaces under the Affordable Rental Housing SEPP 2009
Applicant	NSW Land and Housing Corporation
Report by	Regional Panels Secretariat
Report date	25 June 2013

Crown DA Summary Report

This Crown development application (DA) has been referred to the Joint Regional Planning Panel (regional panel) under section 89 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The applicant is taken to be 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. In this case, council has not provided consent to the DA and has resolved to refer the application to the applicable regional panel. The DA seeks consent for the demolition of existing structures and construction of 19 dwellings.

If the regional panel does not determine the DA within 50 days, the DA may be referred to the Minister for Planning and Infrastructure.

1. EXECUTIVE SUMMARY & BACKGROUND

A DA was lodged on 24 October 2012 by NSW Land and Housing Corporation (the applicant) to demolish the existing structures and construct 19 dwellings with 12 parking spaces in accordance with the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (the ARH SEPP). A copy of the applicant's Statement of Environmental Effects and plans are found at **Attachment 1**.

The DA was publicly exhibited from 7 November 2012 until 28 November 2012 and received 6 submissions objecting to the proposed development.

Council engaged independent planning consultant Andrew Robinson Planning Services to assess the application on its merits. A copy of this report is provided at **Attachment 2**.

The DA was recommended for approval on the basis that the proposal is considered to be acceptable infill affordable housing development consistent with the existing and likely future local built form and character. The assessment report also identified that the proposed development complied with the provisions of the ARH SEPP, was consistent with the Holroyd Local Environmental Plan 1991 (LEP), Draft Holroyd LEP 2013 (Draft LEP) and was

considered to be generally consistent with the Holroyd Development Control Plan 2007 (DCP).

On 7 May 2013 the DA was considered by the elected council, and the decision of council was that the application should be refused on the grounds that the proposal was out of character for the streetscape and surrounding vicinity. Council's resolution is found at **Attachment 3**.

On 14 May 2013, the DA was referred by council to the Sydney West Regional Panel under section 89(1)(a) of the EP&A Act.

On 12 June 2013, an additional report prepared by council was provided to the regional panels secretariat (secretariat). This report is provided at **Attachment 4**. The report made note that the DA was no longer considered permissible development, as the DA had utilised the savings and transitional provisions at clause 54A of the ARH SEPP which was applicable to developments, providing they commenced no later than 2 years after the amendment of the ARH SEPP; this being 20 May 2013.

Council procured legal advice from Marsdens Law Group (Marsdens) regarding the expiration of the savings and transitional provisions of the ARH SEPP which were part of a 2011 amendment. A copy of this advice provided on 24 June 2013, is found at **Attachment 5**. The advice concluded that the expiration of the provisions on 20 May 2013 result in the regional panel being unable to approve the DA should it be of the mind to do so.

On 24 June 2013, the applicant provided a letter to the secretariat outlining a schedule of events and comment on the lack of progress with the DA on council's part. A copy of the letter is found at **Attachment 6**. The letter notes that council had ample time to consider the matter. The applicant considers that the DA was lawfully lodged with council and lawfully referred to the regional panel for determination, with the outcome at the discretion of the regional panel.

2. SITE DESCRIPTION AND PROPOSED DEVELOPMENT

The site is located at 4-14 Welsford Street, Merrylands in the Holroyd local government area. The formal description of the site is Lots 40 – 45 of DP 12655. Refer to Figure 1.

The assessment report (**Attachment 2**) provides a full description of the site and surrounding locality and a description of the proposal.



Figure 1 – Site Location

Source: Six Maps, NSW Land & Property Information

3. VIEWS OF COUNCIL

An assessment of the application has been undertaken in accordance with the provisions of the EP&A Act and all matters specified under section 79C(1).

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

3.1 Assessment Report

The initial assessment report recommended that the DA be approved and was then submitted to council for determination.

The report identified that the proposed development is consistent with the aims and objectives of the relevant environmental planning instruments. Please refer to **Attachment 2** for detailed analysis, and **Attachment 7** for the recommended conditions of consent.

3.2 Council – Elected Council

The elected council considered the DA at a council meeting on 7 May 2013. Council voted *that the application be refused on the grounds it is out of character for the streetscape and surrounding vicinity of the proposed development.*

Please refer to **Attachment 3** for detail of the meeting of council on 7 May 2013.

3.3 Council – Additional Report and Legal Advice

Council provided an additional report to the secretariat on 12 June 2013, recommending that the DA be refused with the consent of the Minister on the basis that the savings and transitional provisions of the 2011 amendment to the ARH SEPP expired on the 20 May 2013 resulting in the development proposal becoming prohibited development. Please refer to **Attachment 4** for the additional assessment report.

The council has subsequently provided legal advice on the permissibility of the DA, which considers the proposal for multi dwelling housing and residential flat building under the existing and proposed planning controls for the site, in conjunction with the ARH SEPP as amended in 2011. The legal advice from Marsdens is that the expiration of the savings and transitional provisions renders the proposal prohibited development based on the present enforcement of the ARH SEPP from 20 May 2013. A copy of this advice is provided at **Attachment 5**.

The advice concludes that the regional panel does not have the power to approve the DA and can only refer the DA to the Minister with a recommendation for refusal.

4. VIEWS OF THE APPLICANT

As the applicant, NSW Land and Housing Corporation provided comment to the secretariat on 24 June 2013. The applicant makes note of several issues of importance in their letter. The DA was lodged on 24 October 2012 after a previous DA was withdrawn in response to council and community concerns. The new DA contained fewer units and parking spaces and was lodged with the savings and transitional provisions of the ARH SEPP in mind. Discussions with council indicated an awareness of the expiration of provisions on 20 May 2013. It is noted that council was in receipt of all required information on 25 January 2013 and determination was expected in March/April 2013.

The applicant considers that the DA was lawfully lodged with council and lawfully referred to the regional panel for a determination. The full letter and schedule of events is found at **Attachment 6**.

5. SUMMARY OF KEY ISSUES

1. When the DA was presented to council on the 7 May 2013, it was permissible in its entirety under the savings and transitional provisions of the ARH SEPP. The DA was supported by council's independent assessment report and considered the proposal to be in line with the objectives and desired future character of the zoning and local area. The applicant feels council failed to substantiate its reasons for refusal with evidence.
2. The applicant notes council raised no objection or concern with the DA and delayed its determination without reason.
3. Council's legal advice and the applicant have opposing views pertaining to the ability of the regional panel being able to make a determination for the DA. The expiration of the savings and transitional provisions of the ARH SEPP on 20 May 2013 are raised as an issue of legality. The applicant notes the lodgement and referral of the DA to the regional panel being before the 20 May 2013.

4. Without the savings and transitional provisions of the ARH SEPP, the DA is subject to the zoning requirements of the LEP, the DCP and consideration given to the Draft LEP. Council considers the DA as being part permissible (multi unit housing component) and part prohibited (residential flat building component) under the existing LEP and generally consistent with the DCP. Council considers the DA to be prohibited in its entirety under the Draft LEP.

6. CONCLUSION

The independent assessment report recommended the DA for approval. The elected council reviewed the advice in the assessment report and from council staff and the DA was not granted consent based on a view that the DA is out of character for the streetscape.

The applicant has provided a response to council's decision to refuse the DA and reaffirms its position that at the time of lodgement and consideration before council the DA was fully permissible and sufficiently met the requirements of all planning controls.

Council has provided legal advice pertaining to the ability of the regional panel to determine the DA.

Pursuant to section 89 of the EP&A Act, if the regional panel wishes to impose a condition that is not agreed to by the applicant, or to refuse consent, the regional panel must refer the DA to the Minister for Planning and Infrastructure. Should the applicant agree to the imposition of conditions the regional panel may proceed to determine the application without referral to the Minister.

Should the regional panel determine to approve the application, council has provided draft conditions of consent for consideration by the regional panel (see **Attachment 7**).

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LIST OF ATTACHMENTS

1. DA Documentation: Statement of Environmental Effects and Plans
2. Independent Assessment Report - 17 May 2013
3. Report Recommendation and Council Resolution from 7 May 2013
4. Additional Assessment Report - 12 June 2013
5. Legal Advice to Council from Marsdens Law Group – 21 June 2013
6. Land and Housing Corporation submission to JRPP – 24 June 2013
7. Draft Conditions of Consent as agreed to by the applicant
8. Submissions (Total: 6)