

JRPP No.	2014SYE078
DA No.	276/2013
PROPOSED DEVELOPMENT	Section 96 application to modify condition 37 of Development Consent for the demolition of existing buildings, construction of a seniors living housing development consisting of three (3) buildings (6-12 storeys) containing 137 independent and assisted living units and a residential care facility with 80 beds, basement carpark and subdivision
APPLICANT:	Trustees of Roman Catholic Church
REPORT AUTHOR	Ben Latta, Senior Planner, Kogarah City Council

Assessment Report and Recommendation

Date:	02/09/2014
Development Application No.:	276/2013
Address:	143 - 155 Princes Highway and 38-48 Chapel Street, KOGARAH
Applicant:	Trustees of Roman Catholic Church
Owner:	Roman Catholic Church
Proposal:	Section 96 application to modify condition 37 of Development Consent for the approved demolition of existing buildings, construction of a seniors living housing development consisting of three (3) buildings (6-12 storeys) containing 137 independent and assisted living units and a residential care facility with 80 beds, basement carpark and subdivision
Estimated Cost of Construction:	\$68,116,455.00
Officer's Recommendation:	

Section 96 Approval

- A. That Council, as the consent authority, pursuant to Section 96 (2) of the Environmental Planning and Assessment Act, 1979, grant approval to the requested modifications to Development Consent 276/2013 dated 13 March 2014 for the demolition of existing buildings, construction of a seniors living housing development consisting of three (3) buildings (6-12 storeys) containing 137 independent and assisted living units and a residential care facility with 80 beds, basement carpark and subdivision at 143 - 155

Princes Highway KOGARAH, 38-48 Chapel Street KOGARAH submitted on 10 June 2014 subject to the development consent being modified as follows:

1. Condition/s 37 be modified as follows:

(37) Detailed Construction Management Plan

Prior to the issue of any construction certificate, demolition or earthworks on the site, the applicant shall submit to Council for approval a Construction Management Plan detailing the following:

- The route and number of trucks conveying materials to and from the site.
- Location of loading and unloading areas for trucks with times outside of school drop off / pick up.
- Parking areas for tradesmen and other construction vehicles.
- Traffic Control Plans by an RMS accredited person.
- Demonstration that residential access to nearby properties is maintained during demolition and construction works.
- Construction access for stage 1 is to be via Chapel Street
- Construction access for stage 2 is to be via Chapel Street or Princes Lane.

2. Insert the following additional conditions:

The Construction Traffic Management Plan (*Hutchinson Builders and dated 12th August 2014*) and the requirements contained therein shall be implemented. The following specific measures are to be implemented and include, but are not limited to, the following:

- During demolition and construction works for Stage 2 of the development, trucks shall wait remotely from the site and Princes Lane, standing vehicles legally until they are advised that the site is clear for entry via two-way radio.
- During all stages of the project, all traffic shall enter and exit the site in a forward direction.
- During this stage of the works, the maximum size of vehicles accessing the site shall be classified as HR (Heavy Rigid) ie No semi-trailers
- Prior to commencement of Stage 2, Hutchinson Builders will ensure that the CTMP is certified by an accredited traffic consultant for compliance with the document "Traffic Control at Works Sites, 4th edition" and "Australian Standards 1742 Part 3: Traffic Control for Works on Roads, 2009".
- All access to the site along Princes Lane will be directed by qualified traffic controllers and warning signage will be set up on every exit of the neighbouring properties.
- All neighbouring properties will have access maintained and provided with notification letters at least 48 hours prior to any traffic control being put in place.

Report Summary

Proposal

The approved development involves the construction of an integrated aged care village that incorporates both independent assisted living units and a residential care facility.

The Section 96 Application proposes the modification of condition 37 which states:

(37) Detailed Construction Management Plan

Prior to the issue of any construction certificate, demolition or earthworks on the site, the applicant shall submit to Council for approval a Construction Management Plan detailing the following:

- The route and number of trucks conveying materials to and from the site.
- Location of loading and unloading areas for trucks with times outside of school drop off / pick up.
- Parking areas for tradesmen and other construction vehicles.
- Traffic Control Plans by an RMS accredited person.
- Demonstration that residential access to nearby properties is maintained during demolition and construction works.
- *All construction access is to be via Chapel Street.*

The modification seeks to delete the requirement that all construction is to be off Chapel Street. This element of the condition was imposed by the JRPP in response to concerns by neighbouring residents and the potential impacts to them from using Princes Lane for construction access. The applicant proposes to replace the final dot-point with the following two points:

- *Construction access for stage 1 is to be via Chapel Street*
- *Construction access for stage 2 is to be via Chapel Street or Princes Lane.*

The proposed modification arises as a result of the staging of the project. Buildings 1 and 2 of the development are proposed to be built in the first stage, with all construction access off Chapel Street. The proposed modification pertains only to stage 2, which is for Building 3, closest to Princes Lane.

Site and Locality

The subject site is a regular shaped parcel of land located at the southern end of St Patrick's School and Church. It consists of eight (8) allotments having a total site area of 13096 square metres, with the site of the proposed seniors living development (excluding the church and school) having an area of 5404 square metres post-subdivision. The site has street frontages to Chapel St, Princes Lane and Princes Highway. The land falls gently towards the Princes Highway and a number of trees and disused building exist on the site.

The site is located at the southern edge of the Kogarah Town Centre and is within the St George Hospital Precinct. To the north and west of the site are St Patrick's School and Church, St George Public Hospital and St George Private Hospital. To the south are 3 – 5

storey residential flat buildings and to the east on the opposite side of the Princes Highway is Moorefield Girls High School.

Zoning and KLEP 2012 Compliance

The land is zoned SP 2 – Infrastructure – Educational Establishment and ‘seniors housing’ is a prohibited form of development.

The proposal is a permitted form of development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, subject to a Site Compatibility Certificate being issued by the Minister. A Site Compatibility Certificate has been issued by the Minister, thereby making the proposal a permissible form of development with consent.

Kogarah Development Control Plan 2013 (KDCP 2013)

The proposed development satisfies the relevant provisions of Part E – Kogarah Town Centre in KDCP 2013. The proposed modification does not affect compliance with any provisions of KDCP 2013.

Submissions

The application was placed on neighbour notification for a period of fourteen (14) days.

During this period Council received one (1) petition containing ten (10) signatures was submitted, in addition to nine (9) individual submissions. Two submissions were forwarded to local members of Parliament.

Conclusion

Having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment of the proposal Development Application No. 276/2013 should be approved subject to conditions.

Report in Full

Proposal

The approved development involves the construction of an integrated aged care village that incorporates both independent assisted living units and a residential care facility.

The Section 96 Application proposes the modification of condition 37 which states:

(37) Detailed Construction Management Plan

Prior to the issue of any construction certificate, any demolition or earthworks on the site, the applicant shall submit to Council for approval a Construction Management Plan detailing the following:

- The route and number of trucks conveying materials to and from the site.

- Location of loading and unloading areas for trucks with times outside of school drop off / pick up.
- Parking areas for tradesmen and other construction vehicles.
- Traffic Control Plans by an RMS accredited person.
- Demonstration that residential access to nearby properties is maintained during demolition and construction works.
- *All construction access is to be via Chapel Street.*

The modification seeks to delete the requirement that all construction is to be off Chapel Street. This element of the condition was imposed by the JRPP in response to concerns by neighbouring residents and the potential impacts to them from using Princes Lane for construction access. The applicant proposes to replace the final dot-point with the following two points:

- *Construction access for stage 1 is to be via Chapel Street*
- *Construction access for stage 2 is to be via Chapel Street or Princes Lane.*

Site and Locality

The site is located at the southern end of Kogarah Town Centre, which has been identified in the *Metropolitan Plan for Sydney 2036* as a Specialised Precinct as a hub for medical, educational and financial uses.

The subject site is an irregular shaped parcel of land located at the southern end of St Patrick's School and Church. It consists of eight (8) allotments having a total site area of 13,096 square metres, with the site of the proposed seniors living development (excluding the church and school) having an area of 5,404 square metres, post subdivision. The site has street frontages to Chapel St, Princes Lane and Princes Highway. The land falls gently towards the Princes Highway and a number of trees and disused building exist on the site.

The site is the former Bethany College and currently accommodates a number of disused brick buildings. Part of the site subject to the proposed car parking and driveway works is the currently operating St Patrick's Church Presbytery and St Patrick's Catholic Primary School.

The site is located at the southern edge of the Kogarah Town Centre and is within the St George Hospital Precinct. To the north and west of the site are St Patrick's School and Church, St George Public Hospital and St George Private Hospital. To the south are 3 – 5 storey residential flat buildings and to the east on the opposite side of the Princes Highway is Moorefield Girls High School.



Background

On 13 March 2014 Council granted consent to Development Application No.276/13, subject of the proposed modifications.

On 10 June 2014 the Section 96 application subject of this report was lodged with Council.

From 17 June to 1 July 2014 the Section 96 application was placed on neighbour notification.

On 18 August 2014 the applicant submitted a Construction Management Plan to support the justification for the modification to condition 37 of the consent.

The documentation lodged with the Section 96 Application and Construction Management Plan submitted in August 2014 are relied upon for assessment in this report.

Section 96 Considerations

The application has been made pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No: 276/2013 dated 13 March 2014 and involves the following modifications to the approved development.

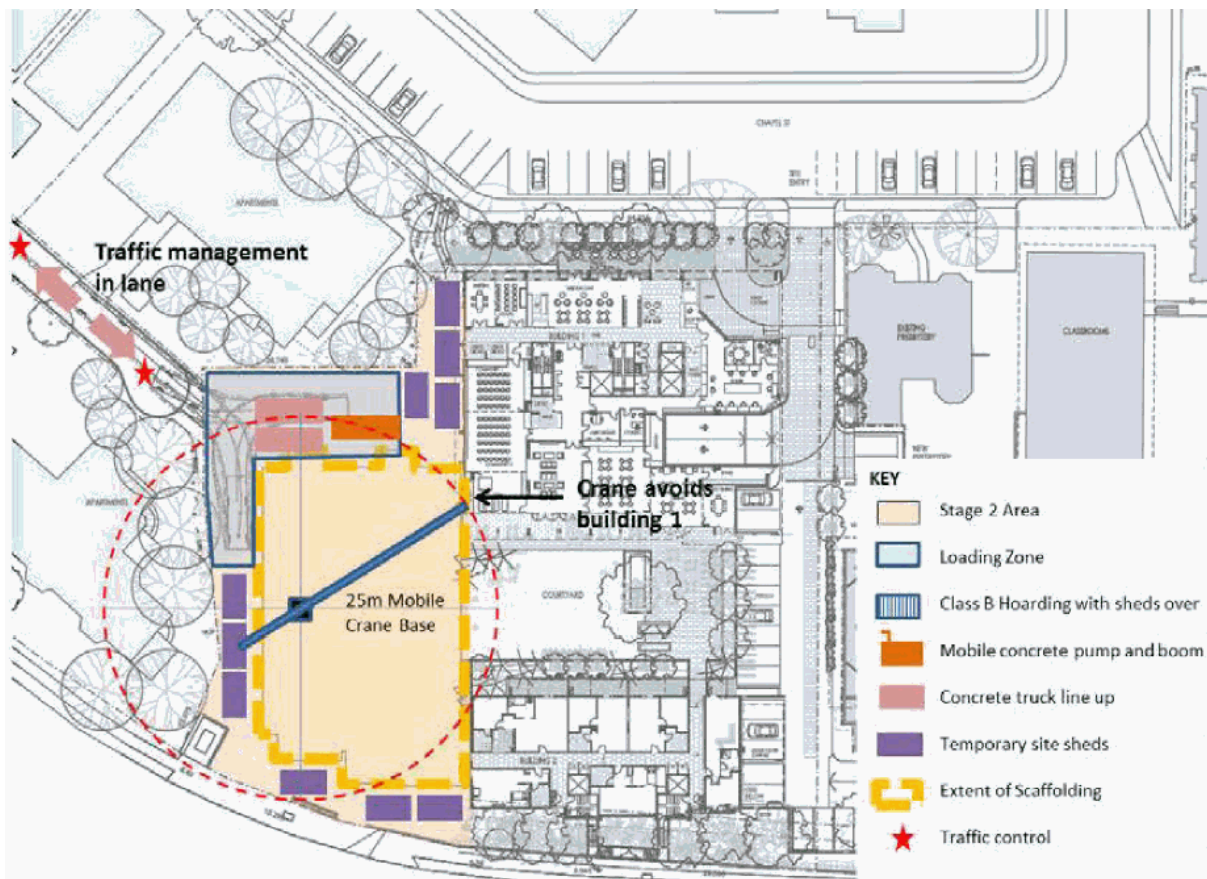
- a) *Modification of the final point of condition 37 which requires all construction access to be provided off Chapel Street.*

Comment

The modification seeks to delete the requirement in condition 37 that all construction is to be off Chapel Street. This element of the condition was imposed by the JRPP in response to concerns by neighbouring residents and the potential impacts to them from using Princes Lane for construction access. The applicant proposes to replace the final dot-point with the following two points:

- *Construction access for stage 1 is to be via Chapel Street*
- *Construction access for stage 2 is to be via Chapel Street or Princes Lane.*

The proponent intends to construct the development in two stages. Stage 1 comprises the construction of the basement level and Buildings 1 and 2. Stage 2 of the project comprises Building 3, which is closest to Princes Lane. The following plan is extracted from the submitted Statement of Environmental Effects for the proposed modification (Mecone, June 2014) that illustrates the location of Stage 2.



The applicant states that the restricted access imposed by condition changes the proposed staging of the development and results in the following constraints and issues to implement the project:

- *Program – Scenario 2 (constructing as per condition 37 with access off Chapel St only) will involve substantial prolongation of the construction program (7 months) with a high risk of additional delays.*
- *Cost – Scenario 2 will incur significant additional costs affecting the viability of the project.*
- *Buildability – Scenario 2 will prevent certain types of construction (eg bathroom pods and precast concrete), slowing the program and innovation. Other load limitations will impact the size of steel, windows and the like.*
- *Safety – Scenario 2 will require a large crane and extensive lifting over occupied buildings which increased safety risks.*
- *Vibration – the proximity of truck loading zone to 50-54 Chapel Street is virtually the same in both scenarios. Scenario 2 will result in slower loading and unloading and greater impact from vibration.*
- *Noise – Scenario 1 will involve a quiet mobile crane whilst scenario 2 will involve a large crane to be located close to neighbours' buildings and result in a slower loading and unloading.*
- *Traffic (Chapel St) – will be more disruptive to Chapel Street and have a greater impact on a greater number of people.*
- *Traffic (Princes Lane) – Scenario 1 will be more disruptive to traffic in Princes Lane, however the laneway is low volume and can be managed.*
- *Parking (Chapel St) – Scenario 2 will be more disruptive to parking in Chapel Street.*
- *Parking (Princes Lane) – Parking is not permitted in the lane. This can be enforced throughout construction.*

The application was referred to Council's Traffic Engineer, who made the following comments:

In reference to a letter received by Council from Mecone Pty Ltd, dated 4 June 2014, the traffic section agrees with the points raised in the letter in that the use of Princes Lane during construction would reduce the time period of the development and the impact on the local community during this phase. Also, it would be beneficial to Chapel Street in the reduction of construction traffic during Stage 2 of the proposal.

The traffic section approves the Section 96 modification to remove the point: "All construction access is to be via Chapel Street" on Condition 37 of the consent. However, a Construction Management Plan shall be submitted to Council for approval prior to any construction vehicles using Princes Lane. The Plan shall indicate appropriate traffic control measures to ensure that residential access is maintained throughout the lane during the construction phase.

The application and the later submitted Construction Traffic Management Plan (Hutchinson Builders and dated 12th August 2014) was referred back to Council's Traffic Engineer, who made the following comment:

In regards to the submitted Construction Traffic Management Plan (CTMP) for Stage 2 of the above development, written by Hutchinson Builders and dated 12th August 2014, I provide the following summary:

- Trucks not able to enter the site immediately shall wait remotely from the site and be advised when the site is clear for access by two-way radio
- During all stages of the project, all traffic shall enter and exit the site in a forward direction.
- During this stage of the works, the maximum size of vehicles accessing the site shall be classified as HR (Heavy Rigid) ie No semi-trailers
- Prior to commencement of Stage 2, Hutchinson Builders will ensure that the CTMP is certified by an accredited traffic consultant for compliance with the document “Traffic Control at Works Sites, 4th edition” and “Australian Standards 1742 Part 3: Traffic Control for Works on Roads, 2009”.
- All access to the site along Princes Lane will be directed by qualified traffic controllers and warning signage will be set up on every exit of the neighbouring properties.
- All neighbouring properties will have access maintained and provided with notification letters.

In my opinion, if the submitted CTMP for Stage 2 of the development is implemented by Hutchinson Builders, there should be minimal impact on neighbouring residents entering or exiting their properties via Princes Lane.

With proper traffic management during construction, Stage 2 of the proposed development may utilise Princes Lane in a safe manner and without significant levels of disturbance to nearby residents that use the lane. It is recommended that an additional condition be imposed to ensure that the Construction Traffic Management Plan (*Hutchinson Builders and dated 12th August 2014*) form part of the consent and that specific measures be listed in the condition that include, but are not limited to, the following:

- During demolition and construction works for Stage 2 of the development, trucks shall wait remotely from the site and Princes Lane, standing vehicles legally until they are advised that the site is clear for entry via two-way radio.
- During all stages of the project, all traffic shall enter and exit the site in a forward direction.
- During this stage of the works, the maximum size of vehicles accessing the site shall be classified as HR (Heavy Rigid) ie No semi-trailers
- Prior to commencement of Stage 2, Hutchinson Builders will ensure that the CTMP is certified by an accredited traffic consultant for compliance with the document “Traffic Control at Works Sites, 4th edition” and “Australian Standards 1742 Part 3: Traffic Control for Works on Roads, 2009”.
- All access to the site along Princes Lane will be directed by qualified traffic controllers and warning signage will be set up on every exit of the neighbouring properties.
- All neighbouring properties will have access maintained and provided with notification letters at least 48 hours prior to any traffic control being put in place.

Based on the submitted report and the above comments, it is recommended that condition 37 be modified to permit stage 2 construction access via Princes Lane or Chapel Street with Stage 1 being permitted from Chapel Street only.

Section 96(2) of the Environmental Planning and Assessment Act 1979 enables consent the authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

1. **Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?**

Comment

The proposed development as modified would represent substantially the same development for which consent was originally granted.

2. **Has consulted with the relevant Minister, public authority or approval body with respect to a condition imposed on the consent or general terms of approval.**

Comment

Not Applicable

3. **Has advertised and or notified the application in accordance with the regulations or a development control plan?**

Comment

The application was neighbour notified in accordance with the provisions of Section A2 – Public Notification of KDCP 2013.

5. **Has considered any submissions made concerning the proposed modification.**

Comment

During this period Council received one (1) petition containing ten (10) signatures, in addition to nine (9) individual submissions. Two submissions were forwarded to local members of Parliament.

Section 79C Assessment

The following is an assessment of the application with regard to Section 79C (1) of the Environmental Planning and Assessment Act 1979.

- (1) ***Matters for consideration – general***

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) ***the provision of:***
 - (i) ***any environmental planning instrument,***

On the 8 February 2013 Kogarah Local Environmental Plan 2012 (KLEP 2012) commenced.

However, the savings provisions contained within clause 1.8A only relate to Development Applications lodged and undetermined prior to the commencement of KLEP 2012.

Accordingly, any application to modify development consent is subject to the provisions of KLEP 2012.

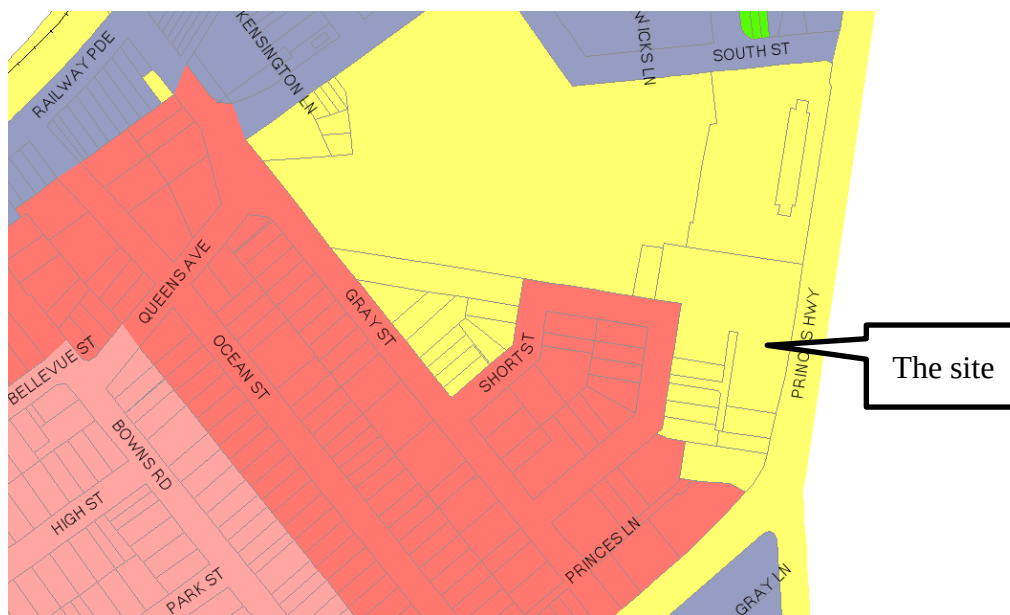
Kogarah Local Environmental Plan 2012 (KLEP 2012)

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The land is zoned SP 2 – Infrastructure – Educational Establishment and ‘seniors housing’ is a prohibited form of development.

The proposal is a permitted form of development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, subject to a Site Compatibility Certificate being issued by the Minister. A Site Compatibility Certificate has been issued by the Minister, thereby making the proposal a permissible form of development with consent.



The proposed modification relates only to traffic management of construction vehicles and does not affect compliance with the provisions of any relevant clause of KLEP 2012.

State Environmental Planning Policy (Infrastructure) 2007

The site adjoins a classified road, Princes Highway, and is therefore subject to the provisions of Clauses 101 and 102 in the Infrastructure SEPP.

The original application was referred to Roads & Maritime Services (RMS) under Schedule 1 of the ISEPP. The Section 96 application was not referred back to RMS as the modifications

relate to activity in Princes Lane only and do not affect any activity or development to Princes Highway.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was issued for the original development and the commitments required by the BASIX Certificate have been satisfied.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposed integrated seniors living and residential aged care development is subject to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The proposed modification does not affect compliance with the provisions of the SEPP.

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP No 65)

The proposed modification does not affect compliance with the provisions of SEPP No.65.

Deemed State Environmental Planning Policy – Georges River Catchment

All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

(ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*

No draft environmental planning instruments are applicable to the proposed development.

(iii) *any development control plan,*

Kogarah Development Control Plan 2013 (KDCP 2013)

The proposed development is subject to the provisions of the Kogarah Development Control Plan 2013 (KDCP2013), in particular, Part E – Kogarah Town Centre.

The proposed modification does not affect compliance with the provisions of KDCP 2013.

(iv) *any matters prescribed by the regulations, that apply to the land to which the development application relates,*

Not applicable.

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

The proposed modification to the approved development does not result in any alteration to construction works and therefore will not result in any additional impact on the natural or built environment. The modifications relate only to construction management.

Subject to proper management and additional conditions to ensure that traffic and site management is properly managed and implemented, the proposed modifications will not result in significant additional impacts to nearby residents of Princes Lane and surrounds.

(c) the suitability of the site for the development,

It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments.

The application is supported by a Site Compatibility Certificate issued by the Minister for Planning and Infrastructure.

(d) any submissions made in accordance with this Act or the regulations,

In accordance with the provisions of Section A2 – Public Notification of KDCP 2013 the application was placed on neighbour notification for a period of fourteen (14) days. Adjoining property owners were notified in writing of the proposal and invited to comment.

During this period Council received one (1) petition containing ten (10) signatures, in addition to nine (9) individual submissions from residents. Two submissions were forwarded to local members of Parliament.

The submissions raise the following concerns:

Traffic and parking impacts

Comment

Residents raise pedestrian and vehicular safety concerns from trucks using the lane and inadequate width of lane to enable vehicular passing.

With respect to pedestrian safety concerns, Princes Lane is not a pedestrian thoroughfare, though it is acknowledged that pedestrians may use the lane when accessing units in the lane. It is noted that all units have alternate pedestrian access off their primary frontages to Gray Street, Princes Highway or Chapel Street and do not require lane access. The CTMP (Hutchinson Builders, (12/08/14) will limit speeds in the lane to 10kph and traffic management personnel situated to advise pedestrians when deliveries or truck movements are occurring.

Further, the CTMP states that all neighbouring properties will have their vehicular and pedestrian access maintained at all times.

The staging of the project will share the impact between Chapel Street and Princes Lane. Chapel Street has a school adjacent to the site. Removal of construction impacts from Chapel

Street has positive amenity and safety outcomes, which if properly managed at the stage 2 access point off Princes Lane as proposed, will limit impacts to an acceptable level.

It is acknowledged that the lane is narrow and does not allow for passing of vehicles where a truck is involved. As discussed earlier in this report the proposed use of Princes Lane for stage 2 of construction works will require proper traffic management. The measures for traffic control specified in the CTMP are considered acceptable.

Noise and other construction impacts

Comment

The objectors are concerned over the impacts from noise generated by trucks and access in Princes Lane.

For those residents adjoining the site having access off Princes Lane, such as No.50-52 Chapel Street, there will be noise and other construction impacts regardless of whether Princes Lane is used for access during Stage 2.

The staging of the project will share the impact between Chapel Street and Princes Lane. The hours of demolition, excavation and construction, hoarding requirements and other impacts are to be managed and limited regardless of whether Princes Lane is used as per the conditions of consent and the CTMP. All loading operations will occur on site and there will be no trucks permitted to wait in the lane.

It is considered that with proper management, the proposed use of Princes Lane for stage 2 only, if well managed, will not result in significant adverse impacts on adjoining residents.

Mediation/Public Meeting

Telephone discussions were held with a number of the objectors from Chapel Street during the notification and assessment process.

No meetings were held with Council Officers and objectors. The issues remain generally unresolved. Should the modification be approved, a condition should be imposed to require the CTMP (Hutchinson Builders, (12/08/14) to be implemented to address the concerns of neighbouring residents.

(e) *the public interest.*

The proposed development is of a scale and character that does not conflict with the public interest.

Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act 1979, the provisions of KLEP 2012 and KDCP 2013.

Following detailed assessment it is considered that Development Application No 276/2013 should be approved subject to conditions.