



DEVELOPMENT APPLICATION ASSESSMENT REPORT

CANTERBURY CITY COUNCIL

Time & Date: 9.30am, Wednesday 3 June 2015

Meeting Location: Christies Conference Centre
3 Spring Street, Sydney

Project & DA No: 1A, 1, 2, 3 Charles Street and 12 Robert Street, Canterbury:
Section 96 modification to amend the layout and design of an approved mixed use development including alterations to fire stairs, re-location of car parking spaces and additional five (5) residential apartments on level three (3).
(Development Application DA-164/2012/C JRPP Ref. 2015SYE031)

Panel Members: John Roseth
Sue Francis
Brian Robson
Gillian Dawson

Council Staff: Miné Kocak

Declarations of interest: David Furlong

Key Issues:

- Building Height – A variation of 55.5% to the maximum building height control under CLEP 2012 is not supported.
- Floor Space Ratio - A variation to the maximum floor space ratio under CLEP 2012 is not supported as the additional floor area will have a negative impact on the bulk and scale of the building within the river foreshore context.
- The proposed modification will bring about noncompliance with the design principles of SEPP 65.

Assessment Report Date: 20 May 2015

Determination Meeting Date: 3 June 2015

Other Matters: Nil

EXECUTIVE SUMMARY

- Council has received a development application for the modification of the approved development which involved the construction of a mixed use development containing five ground level commercial/retail tenancies, 108 residential dwellings with two levels of basement car parking. The proposed modifications involve alterations to the south western side of the building to add five additional units (4 x two bedroom and 1 x 1 bedroom units) including alterations to fire stairs and re-allocation of car parking spaces. The proposed additional units are on that side of the building where the site has an interface with the Cooks River.
- The proposal is a Section 96(2) modification to a development with an original capital investment value in excess of \$20 million and in accordance with Schedule 4A(6)(b) of the *Environmental Planning and Assessment Act 1979*, the development application is referred to the Joint Regional Planning Panel (Sydney East Region) for determination.
- The subject site is zoned B2 – Local Centre under Canterbury Local Environmental Plan 2012. The proposed development as modified is a permissible use in the zone subject to consent.
- The development application has been assessed against the relevant State and Local Instruments and Planning Policies. The proposed development does not comply with the maximum height and floor space ratio standards applicable to the site under Canterbury LEP 2012, whilst also failing to comply with the principles of SEPP 65, and with Canterbury DCP 2012.
- The development application was publicly exhibited and notified to adjoining residents in accordance with the provisions of Council's Development Control Plan 2012 (between 9 January 2015 and 10 February 2015). No submissions were received.
- The applicant was advised of the issues and has lodged amended plans and additional information on 25 March 2015.
- The development application is recommended for refusal.

Background

On 11 October 2012, the Sydney Region East Joint Regional Planning Panel (JRPP) refused development application DA-164/2012 involving the construction of a mixed retail/residential development containing 115 dwellings, two commercial/retail tenancies and a two level basement car park.

On 9 May 2013 Council's City Development Committee provided support in principle to the objection pursuant of State Environmental Planning Policy 1 – Development Standards, to vary Clause 32 (relating to building height) of Canterbury LEP 138 – Canterbury Precinct to permit the proposed development relating to DA 164/2012.

On 22 May 2013, DA-164/2012 was approved in the Land and Environment Court (LEC) subject to conditions of consent and agreement pursuant to Section 34(3) of the Land and Environment Court Act 1979. The LEC gave approval to the construction of a mixed use development comprising 108 residential dwellings, five commercial/retail tenancies and two levels of basement car parking to accommodate 157 vehicles.

On 17 July 2014, Council approved Section 96 modification application No. 164/2012/A to amend the layout and design of an approved mixed use development comprising 108 residential apartments, five commercial tenancies and basement carparking.

On 3 September 2014, Council approved Section 96 modification application No. 164/2012/B to further amend the layout and design of the development.

SITE DETAILS

The subject site consists of five lots identified as Lot A DP 318049, Lot B DP 318049 and Lot C DP 318049 known as 1, 2 and 3 Charles Street, Canterbury respectively. Lot 1 DP 580058 and Lot 2 DP 580058 are known as 1A Charles Street and 12 Robert Street, Canterbury respectively (refer to Figure 1). The site is also known as 1A, 1, 2 and 3 Charles Street which is located on the western side of Charles Street and 12 Robert Street is located on the southern side of Robert Street.

The five allotments have a combined site area of 3529.7 square metres and a frontage of 60.99 metres to Charles Street and 58.31 metres to Robert Street. The approved development is currently under construction at the subject site.

The site adjoins the Cooks River to the south-west. To the south-east is an adjoining 1 and 2 storey brick building which has frontage to Canterbury Road and Charles Street. To the north-west of the site is an existing industrial building which is separated from the site by Robert Street.

Surrounding development in the immediate vicinity of the site is in the form of newly constructed mixed use developments and recently approved similar developments under construction. The precinct is undergoing a major transformation from industrial to commercial and high density residential due to its re-zoning.

Construction work has commenced on the site.



Figure 1. Aerial photograph showing the development site and surrounds

PROPOSAL

Council has received a development application for the modification of the approved development which involved the construction of a mixed use development containing five ground level commercial/retail tenancies, 108 residential dwellings with two levels of basement car parking. The proposed modifications involve alterations to the south western side of the building to add five additional units (4 x two bedroom and 1 x 1 bedroom units) including alterations to fire stairs and re-allocation of car parking spaces. The proposed additional units are on that side of the building where the site has an interface with the Cooks River.

STATUTORY CONSIDERATIONS

The development application has a capital investment value in excess of \$20 million and in accordance with Schedule 4A(6)(b) of the *Environmental Planning and Assessment Act 1979*, the development application is referred to the Joint Regional Planning Panel (Sydney East Region) for determination.

When determining this development application, the relevant matters listed in Section 79C of the *Environmental Planning and Assessment Act, 1979*, must be considered and in this regard, the following environmental planning instruments, development control plans, codes and policies are relevant:

- Section 96(2) of The Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy 65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy 2004 – BASIX

- Canterbury Local Environmental Plan 2012
- Canterbury Development Control Plan 2012

ASSESSMENT

The development application has been assessed under Sections 5A and 79C of the Environmental Planning and Assessment Act, 1979 and the following key issues emerge:

- **Section 96(2) of the Environmental Planning and Assessment Act 1979**

Section 96 of the Environmental Planning and Assessment Act, 1979 allows Council to modify development consent if:

- a) *it is satisfied that the development to which the consent as modified relates is substantially the same development,*

Comments

The development to which the consent as modified relates is substantially the same development with additional units on the south-western elevation.

- b) *it has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval (as it relates to Integrated Development),*

Comments

The application did not require any consultation with a Minister, public authority or other approval body.

- c) *it has notified the Section 96 application (if required under Council's DCP 2012) and d) has considered any submissions concerning the proposed modification,*

Comments

The application was notified in accordance with Canterbury DCP 2012 and no submissions were received.

- **State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)**

The proposed development falls within the definition of a residential flat building under SEPP 65. The policy aims to improve the design quality of residential flat buildings in NSW by addressing the following design principles:

Context

The proposed modification is not in keeping with the desired future character of the area. Higher density residential development that has a lower built form at the interface with the Cooks River foreshore is envisaged by the applicable planning controls for the Canterbury Town Centre and Riverfront precinct.

Scale

The proposed development does not comply with the applicable height controls for that part of the site that adjoins the Cooks River foreshore. The planning controls applicable at the site aim to control the bulk and scale of the developments adjoining the foreshore area so as to achieve a hierarchy of built form that is lower in scale at the interface with the foreshore. The proposed modifications exacerbate an existing non-compliance in this regard.

Built Form

The proposal fails to achieve the built form in terms of building proportion. As mentioned above, the proposed development does not reflect the built form controls applicable at the site, and does not reflect the desired future character of the precinct in terms of the river foreshore area.

Density

The proposed development exceeds the maximum density achievable on the site. Given the impacts of the additional floor areas on the bulks and scale of the building, the proposed variation to Council's density controls are not supported.

Resource, Energy and Water Efficiency

The applicant has submitted a BASIX Certificate for the proposal which indicates the development will achieve the water, thermal comfort and energy related objectives of the SEPP. The proposed additional units will include unit C303 which is proposed with a secondary bedrooms/'study' rooms which will have glass blocks as an opening. This is not considered to be adequate light and ventilation for a habitable room.

Landscape

The proposal does not amend the landscaping on the site and remains as per the original approval. The proposed additional units do not increase the need for landscaped open space on the site.

Amenity

The proposed additional units include two units (C3.5 and C303) which are marked as '1 bedroom + study'. These units can be considered two bedrooms as the 'study' rooms are totally enclosed and capable of being used as second bedrooms. The minimum floor area for a two bedrooms unit is 70sqm under the Residential Flat Design Code's associated 'rule of thumb'. The units are 60sqm in area.

As mentioned previously the development includes units which rely on glass blocks for light with no ventilation to the second bedroom in unit C303 which is not acceptable for a habitable room in terms of amenity for future occupants.

Safety and Security

The safety and security of the development will remain largely unchanged with the proposed modifications.

Social Dimensions and Housing Affordability

The social dimensions and housing affordability in this development will remain largely unchanged with the proposed modifications.


Aesthetics

The design of the proposal in terms of building envelope and building lines is inconsistent with the objectives of Canterbury LEP 2012 and Canterbury DCP 2012.

This proposal, in its current form will not contribute positively to the Canterbury Town Centre and Riverfront Precinct. In particular the scale, density and built form of the development are inappropriate which will have a negative long term impact on the Town Centre and Riverfront Precinct.

The proposal is not consistent with all the design principles of Residential Flat Design Code prepared by the Department of Planning and hence the proposal cannot be supported.

- State Environmental Planning Policy 2004 – BASIX (SEPP BASIX)**
 The applicant has submitted a BASIX Certificate for the proposal which indicates the development will achieve the water, thermal comfort and energy related targets of the SEPP.
- Canterbury Local Environmental Plan 2012**
 On 26 July 2012 Canterbury Local Environmental Plan 2012 was adopted by Council and is an instrument for consideration under Section 79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*. The broad controls applicable to this application are as follows:

Standard	Requirement	Proposal	Complies
Zoning	B2 – Local Centre	Multiple Unit Housing with Office/Shops are permissible in this zone	Yes
Height		Proposed modification is in area marked with 11m height restriction . proposed modification takes the height of the building to 16.7m (55% variation)	No
FSR	1A, 1, 2, 3 Charles St and 12 Robert Street = 2.75:1	2.83:1 (2.8% variation)	No

Height

The height controls under CLEP 2012 aim to transition the visible bulk of the building from 11m along the river front to 21m and 27m toward the north-eastern side of the site. That part of the building that is subject to a maximum height limit of 11m is already approved at 13.8m, which equates to a 25.5% variation. The proposed additional level above this will bring the height of the building to 16.7m which equates to a variation of 55%. Council has allowed some flexibility in built form controls for buildings within the Canterbury Town Centre to overcome unique site constraints and to enable new

laneways and the like, as it had for this particular development. However, a further addition to the building height along the river foreshore at this site will work against Council's objective to present a lower built form to the Cooks River foreshore, which has generally been achieved with developments approved along this corridor.

Floor Space Ratio

The applicant has included an application under Clause 4.6 of the Canterbury LEP to vary the applicable FSR standards arguing that the development standard is unreasonable and unnecessary in the circumstances of this application "as the proposed variation allows for the orderly and economic use of land" and a "better planning outcome having regard to nearby and adjoining development". The applicant also adds that the "proposed FSR adopted on the site combined with the transitional nature of the built form achieves a responsive urban design outcome that is better suited to its context than a proposal with a compliant FSR".

The subject site is subject to a maximum FSR of 2.75:1 under the Canterbury LEP 2012. The proposed modifications will increase the floor space ratio on the site from 2.73:1 to 2.83:1 which equates to a variation of 2.8%. The proposed variation to the maximum floor space ratio on the site is not supported in this instance as the additional floor area will have a negative impact on the developments bulk and scale as viewed from the river. In this regard the development as approved, with a compliant FSR achieves a better urban design outcome and is better suited to the context of the site. As such, the FSR control is not unreasonable or unnecessary in the circumstances of this application.

Canterbury Development Control Plan 2012

The proposed modifications have been compared to the applicable controls under Canterbury DCP 2012 as follows:

Standard	Requirement	Proposal	Complies
Height	11m – 27mm	16.7m	No – refer to previous comments under CLEP 2012.
	2.7m min residential	2.7m	Yes
Depth/ Footprint	Residential: 18m max glass line to glass line	All proposed new apartments have a depth of less than 18m	Yes
Setbacks	Built to site boundary	Built to boundary along Charles Street, 6m setback from "Market Lane" and setback is consistent with RMS requirements for road dedication area.	Yes
Building Separation	Up to 3 storeys = 6m min Fourth storey = 12m min	8m 12m	Yes Yes

Standard	Requirement	Proposal	Complies
Car Parking (Rate for Large Centre in B2 zone)	<u>Residential</u> 0.25 spaces per studio dwelling (2 x 0.25 = 0.5) 0.8 spaces per 1 bedroom dwelling (41 x 0.8 = 33) 1 spaces per 2 or 3 bedroom dwelling (1 x 70 = 70) <u>Visitor parking = 0 spaces</u> Total = 104 spaces	144 spaces	Yes
	Car wash bay = 1 space	1 space provided	Yes
Façade design and articulation	Avoid long spans of blank walls along street frontages and address both street frontages with façade treatment, and articulation of elevations on corner sites.	Remains unchanged. The proposed modification in keeping with approved design in terms of façade treatment.	Yes
	Incorporate contrasting elements in the façade - use a harmonious range of high quality materials	Remains unchanged. The proposed modification in keeping with approved design in terms of façade treatment.	Yes
	Express building layout or structure in the façade - architectural features such as columns, beams, floor slabs, balconies, wall opening and fenestration, doors, balustrades, roof forms and parapets are elements that can be revealed or concealed and organised into simple or complex patterns.	Building layout adequately expressed through use columns, beams, floor slabs and balconies.	Yes
	Design facades to reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows.	Façade design reflects the orientation of the site by using sun shading devices	Yes
	Modulate the wall alignment with a step in of at least 1m	Wall alignment adequately modulated	Yes
Frontage types	Provide the frontage type identified on the relevant public structure diagrams	Public structure diagrams indicate a 3 storey built form to the river foreshore. The proposal involves a new level on that elevation where, as viewed from the river foreshore will appear as a 5 th floor. 	No

Standard	Requirement	Proposal	Complies
Visual and Acoustic Privacy	Locate and orient new development to maximise visual privacy between buildings on and adjacent to the site, and to minimise direct overlooking of rooms and private open space.	Proposed new Unit C306 second bedroom window is located only 2m from communal open space with direct visual interface. There will be an unreasonable impact on the visual and acoustic privacy of this unit.	No
	Orient windows of new living areas, and balconies or terraces, towards the street and rear of the lot, particularly on narrow sites, to use the street width and rear garden, or podium depth, to increase the separation distance, and avoid directly overlooking neighbouring residential properties.	Windows of new living areas, and balconies or terraces are orientated towards the river foreshore.	Yes
	Locate the position of windows facing the noise source and ensure that total unprotected window area is minimal (and following Building Code) so as to limit the amount of airborne noise entering the built fabric. Ensure that the detailing of the window types addressing the corridors are designed and constructed to attenuate excessive noise - (double and triple glazing and insulated to manufacturers standards). Ensure that balcony parapet walls are constructed of solid masonry or materials of similar sound attenuating qualities	Proposed new Unit C306 second bedroom window is located only 2m from communal open space with direct visual interface. There will be an unreasonable impact on the visual and acoustic privacy of this unit.	No
	Consolidate communal open space into recognisable areas with reasonable area, facilities and landscape for the uses it will accommodate and design to generate a variety of visible pedestrian activity Minimum of 10% of site area as communal open space on redevelopment sites larger than 500sqm.	21.4% of the site is available for communal open space. Provided on the rooftop of level 4 with landscaped elements and along the south-eastern end side of the site.	Yes
	Screen walls surrounding any communal area are no higher than 1.2m, although screens with 50% transparency may be up to 1.8m high.	Screen walls not higher than 1.2m. Appropriate landscaping provided within and around communal area.	Yes
Internal dwelling design	Each living area and principal bedroom has a minimum width of 3.5m. Secondary bedrooms to have minimum 3m dimension.	Each living area and main bedroom of new units have a minimum width in excess of 3.5m. Second bedrooms in Units C305 and C303 marked as 'study – do not meet minimum 3m dimension.	No

Standard	Requirement	Proposal	Complies
	Provide general storage in addition to bedroom wardrobes and kitchen cupboards is provided in each dwelling and/or as lockable spaces within parking areas	Adequate storage provided has been provided for each unit. To be imposed as a condition of consent.	Yes
	The minimum amount of storage required is 6m ³ for one bedroom dwellings 8m ³ for two bedroom dwellings, or 10m ³ for dwellings with three or more bedrooms.	Adequate storage provided	Yes

NOTIFICATION

The development application was publicly exhibited and notified to adjoining residents in accordance with the provisions of Council's Development Control Plan 2012 (between 9 January 2015 and 10 February 2015). No submissions were received.

PUBLIC INTEREST

The proposed development does not satisfactorily comply with the relevant requirements contained within the Canterbury LEP 2012, and is not consistent with SEPP 65, and Canterbury DCP 2012 as discussed in earlier sections of this report. The proposed development is not considered to be the most appropriate, orderly and economic use of the land and is expected to have an unreasonable impacts on the river foreshore in terms of bulk and scale. Refusal of the application is therefore considered to be in the public interest.

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979 and all relevant development control plans, codes and policies. The proposed modification includes a row of the new units to be added to the south-western elevation of the building, which forms the interface between the subject site and the Cooks River. Council's planning instrument and associated Development Control Plan envisage a lower built form at the river front. The proposed 55% variation to Council's height requirements will mean the building will no longer achieve the expected built form controls and will not be in keeping with the context of the site. As such, the proposed modifications will be a significant impediment in achieving Council's vision for the Canterbury Town Centre and Riverfront Precinct in terms of the scale of development envisaged at this location.

The proposed modification will put this development outside of being able to achieve the Context, Scale, Built Form and Aesthetics principles of SEPP 65 as discussed in the body of this report.

It is recommended that the application be refused.

RECOMMENDATION:

THAT the Joint Regional Planning Panel **refuse** Modification Application 164/2012/C to amend the layout and design of an approved mixed use development including alterations to fire stairs, re-location of car parking spaces and additional five (5) residential apartments of level three (3), for the following reasons:

1. The proposed development, pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, is not consistent with the provision of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development as the development will not achieve the context, scale, built form and aesthetics related principles of the SEPP.
2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the specific objectives contained in the Canterbury Local Environmental Plan 2012 as follows:
 - a. Clause 4.3: Height of Buildings
The objectives of this clause include '(a) to establish and maintain the desirable attributes and character of an area', and '(d) to reinforce important road frontages in specific localities'. The proposed development fails to achieve these objectives.
3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012 relating to maximum height of buildings as shown on the Height of Buildings Map.
4. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.4 (2) of the Canterbury Local Environmental Plan 2012 relating to maximum floor space ratio of buildings as shown on the Floor Space Ratio Map.
5. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the provisions of the Canterbury Development Control Plan 2012 ,including:
 - a. Part 3, Clause 3.1.6 height:
 - i. The proposal is inconsistent with the maximum permitted height.
 - b. Part 3, Clause 3.3.1 Visual Privacy and 3.3.2 Acoustic Privacy:
 - i. The proposed development does not provide a reasonable level of acoustic and visual privacy to future residents.
 - c. Part 3, Appendix 3.2 Canterbury Town Centre:
 - i. The proposed development is inconsistent with the Canterbury Town centre heights in storeys map.
6. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the river foreshore and adverse impact on the surrounding natural and built environment.
7. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk and scale.



8. Having regard to the previous reasons noted above and the number of submissions received by Council against the proposed development, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.