

**PROPOSED IN-FILL AFFORDABLE RENTAL HOUSING
47-51 CHAPEL STREET, ROSELANDS**

Clause 4.6 - Exceptions to development standards - Accessible Area

The proposed development is made pursuant to the provisions of Division 1 – In-fill Affordable Housing of State Environmental Planning Policy (Affordable Rental Housing) 2009.

Clause 10(2) of the SEPP states that:

Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.

Under Clause 4 of the SEPP an accessible area means:

accessible area means land that is within:

- (a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or
- (b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or
- (c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the [Passenger Transport Act 1990](#)) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

In this regard it is submitted that:

1. The site is located within 400m of a bus stop (Route 487) serviced by compliant bus services at all times other than between 8pm to 9pm – Monday to Friday and 5pm to 6pm – Saturday & Sunday.

Council's attention is directed to the accompanying legal advice received from Hall & Wilcox Lawyers dated 19th May 2016 and which in summary states that:

Based on the information provided, and our analysis of the issues as discussed above, clause 10 is a development standard and not a prohibition.

On this basis it is submitted that the non-compliance with Clause 10(2) of the SEPP is capable of being varied via a Clause 4.6 submission.

In this regard this Clause 4.6 submission has been prepared having regard to the recent judgment of Justice Pain in *Four2Five P/L v Ashfield Council* [2015] NSWLEC 90 and the more recent decision of Commissioner Brown in *Starby P/L v The Hills Shire Council*.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6 of the Canterbury Local Environmental Plan 2012.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

On the basis of the accompanying legal advice from Hall & Wilcox Lawyers dated 19th May 2016 it is submitted that Clause 10(2) of the SEPP is a development standard.

It is considered that two mechanisms exist for the variation of a development standard contained within a SEPP, being either SEPP No.1 or Clause 4.6 of the applicable local environmental planning instrument.

In the circumstances of this case it is proposed that the variation be made under Clause 4.6 of the Canterbury Local Environmental Plan 2012.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that strict compliance with the requirements of Clause 10(2) of the SEPP is unreasonable in the circumstances of this case for the following reasons:

- a. The subject site is located within 400m (approximately 250m) of a bus stop (Route 487) serviced by compliant bus services at all times other than between 8pm to 9pm – Monday to Friday and 5pm to 6pm – Saturday & Sunday.
- b. The above non-compliance equates to a shortfall 1 bus service per day with the site being serviced by 83 of the 90 required bus services.
- c. Bus services between the shortfall hours (8pm to 9pm – Monday to Friday and 5pm to 6pm – Saturday & Sunday) are available from bus stops located adjacent to the corner of Canterbury Road and Burwood Road (Route 415) and which is located approximately 650m from the subject site.
- d. The applicant is willing to be subject to a condition of consent requiring the creation of a restriction as to user on the title of the affordable dwellings requiring the owner to pay all reasonable transport costs for residents between 8pm to 9pm – Monday to Friday and 5pm to 6pm – Saturday & Sunday.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard in the circumstances of this case is justified given that:

- The proposal seeks to provide for 10 affordable dwellings upon the site under the provisions of SEPP (Affordable Rental Housing) 2009 and which will provide for additional housing choice and affordability within this locality in a location which other than for a shortfall of 1 bus service per day is located in a compliant location

and is considered to otherwise be highly accessible and suitable for this form of development.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is in my opinion in the public interest because it will provide for 10 affordable dwellings upon the subject site and which will assist in addressing issues of housing choice and affordability.

It is also my opinion that the proposal is consistent with the applicable zone objectives and the objectives of the particular standard.

In this regard it is submitted that in relation to the objectives for the R3 – Medium Density Residential zone that:

- The proposal seeks to provide for a combination of conventional medium density housing as well as affordable housing upon the site.
- The proposal provides for a range of medium density dwellings upon the site.
- The third objective is not applicable.

In relation to the objectives of the standard to be varied it is noted that there is no stated objectives within the actual clause however it is considered that the underlying objective is to ensure that affordable housing is provided within accessible locations so that residents do not need to rely upon private vehicles and the like.

It is considered that for the reasons as set out within this submission that the subject site does meet this objective and as such does provide for a development outcome which is in the public interest.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in requiring strict compliance with the development standard as it would prevent the provision of 10 affordable dwellings upon the subject site in what is a highly accessible location. And which in my opinion is suited to this form of development.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the accessible area provisions of Clause 10(2) of State Environmental Planning Policy (Affordable Rental Housing) 2009 is appropriate in this instance.

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