

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2016SYE070
DA Number	DA-104/2016
Local Government Area	City of Canterbury-Bankstown
Proposed Development	Demolition of all existing structures and construction of an Affordable Infill Housing multi dwelling development totaling 20 units including ten affordable with associated landscaping over basement parking, as permitted by State Environmental Planning Policy (Affordable Rental Housing) 2009.
Street Address	47, 49 & 51 Chapel Street, Roselands (Lot 30 DP 555773, Lot 40 DP 561045 & Lot 5 DP 37301)
Applicant / Owner	Mssrs J & P Katerinis, C/- Minto Planning Pty Ltd V & M Halias
Number of Submissions	2 submissions received
Recommendation	Refusal
Report by	Shona Porter – Development Assessment Officer Jim Davies – Consultant Planner

Assessment Report and Recommendation

EXECUTIVE SUMMARY

- Council has received a Development Application (DA-104/2016) for the demolition of all existing structures and construction of an Affordable Infill Housing multi dwelling development totaling 20 units including ten affordable with associated landscaping over basement parking, as permitted by State Environmental Planning Policy (Affordable Rental Housing) 2009.
- This application has been referred to the Sydney East Joint Regional Planning Panel as per Schedule 4A (3) of Environmental Planning and Assessment Act 1979 as the application seeks consent for “Community Private Infrastructure and Community Facilities” with a capital investment value of more than \$5 million.
- The subject land is zoned R3 Medium Density Residential by Canterbury Local Environmental Plan 2012 (CLEP 2012). The proposed development is defined as “multi dwelling housing”, which is permissible with consent. However the proposal is inconsistent with the CLEP 2012 as follows:
 - The proposal fails to meet the relevant zone objective: “To provide a variety of housing types in a medium density residential environment”, primarily due to the density, bulk and scale of the proposal. Put simply, the proposal is an overdevelopment of the site.

- The development exceeds the maximum building height standard of 8.5m, at several points by 100mm. No written request has been made in accordance with clause 4.6 to justify variation of this standard.
- Stormwater plans submitted with the application do not satisfy clause 6.4 of the LEP.
- An assessment of the proposal with regard to Part 2, Division 1 of State Environmental Planning Policy (Affordable Rental Housing) 2009, has revealed a number of non-compliances:
 - The site is not within an “accessible area”, as defined by clause 4 and required by clause 10(2) of the SEPP. The applicant has submitted Senior Counsel’s opinion that these provisions entail ‘development standards’ as defined by section 4 of the Environmental Planning & Assessment Act, 1979, and has subsequently written a request to vary requirements relating to bus-services of the policy’s “accessible area” definition.
 - It is contended that subject site cannot trigger the incentives provided in the SEPP as a result of its location outside of an accessible area.
 - Notwithstanding, an assessment against the provisions of the SEPP has been undertaken for completeness.
 - Less than the required 70% (40%) of the proposed dwellings’ living rooms and private open space receive at least three hours of direct sunlight between 9.00am and 3.00pm in mid-winter.
 - The application has not addressed nor satisfies the Design Requirements of clause 15.
 - As per clause 16A, Council is not satisfied that the proposal’s design is compatible with the desired character of the locality, as established by the LEP and the Canterbury Development Control Plan 2012 (CDCP 2012).
- The proposal fails to comply with a number of requirements of CDCP 2012:
 - The development is visually incompatible with the intended character of the zone.
 - Maximum building heights of one storey in the rear 35% of the site and two storeys in the front 65% of the site are exceeded.
 - The building depth of the town houses is 34.5m, in excess of the maximum of 20m.
 - 0.7m deep soil is provided on the northern boundary, instead of the 1m minimum.
 - Only 3.4m and 2.2m separate the buildings adjacent Chapel Street and the two rows of three storey townhouses towards the site’s rear, failing to comply with the minimum 5m building separation requirement.
 - Visitor parking is not readily accessible, being located in the basement behind a security grille.
 - The car wash bay is too narrow and is obstructed by a visitor parking space.
 - Regarding the buildings fronting Chapel Street, their entries are illegible from the street and their front doors are not visible from the street.
 - The dwellings facing the street do not have direct access from the

- street.
 - 14 of 20 dwellings' private open space is inadequate, none of these satisfying the 40m² minimum area requirement.
 - Communal open spaces receive inadequate solar access in mid-winter.
 - Second bedrooms of units 13, 18, 15, 16, 19 and 20 do not satisfy the minimum dimension control of 3m.
 - Units 13-20 have inadequate storage.
- The development application was publicly exhibited and adjoining land owners notified in accordance with Part 7 of the DCP and two submissions were received, raising the following concerns:
 - Excessive traffic and inadequate parking in the locality.
 - Bus services to the site are inadequate.
 - Deep soil zones are inadequate.
 - The proposed number of dwellings and likely population are excessive.
 - Increased noise from additional traffic and population.
 - The proposal will reduce views and outlooks in an already "dense and congested neighbourhood".
 - Privacy of neighbouring properties will be affected.
 - The increased population will increase "public safety impacts".
 - The affordable dwellings only being affordable for 10 years, which is a short-term solution to the housing affordability issue.
- The development application is recommended for refusal, in light of the foregoing non-compliances with the SEPP, the CLEP 2012 and CDCP 2012.

BACKGROUND

- The application was made to Council on 9 March 2016.
- Between April 2016 and August 2016, several adjustments have been made to the application and additional information provided, including:
 - Legal opinion (from the applicant) regarding the permissibility of the development as "multi dwelling housing", the development is not characterised as a "residential flat building" as per *Mount Annan 88 Pty Ltd v Camden Council* [2016].
 - Legal opinion that the requirements concerning public transport services of the SEPP's "accessible area" definition are development standards. Council does not accept this position.
 - Reducing the amount of excavation, to improve the outlook, amenity and ventilation of the ground level of units 1-6 in particular.
 - Detailed solar access analysis for units 7-12, together with design modifications of units 1-6's roof, in an attempt to improve solar access to units 7-12.

SITE & LOCALITY DETAILS

- Comprised of three allotments, each with a dwelling and various outbuildings erected on them, the site has an area of 2,651m² and a frontage to Chapel Street of 37.85m and a depth of 68.42m on the north western side and 73m on the southern side of the site.

- The subject site has a slope from the rear to Chapel Street of 6% (along the northern boundary), with a slight cross-fall from north to south of 1% (along the frontage).
- The site is located on the south western side of Chapel Street, Roselands, between Phillip Street and Garden Street.
- Vegetation on site is domestic in nature and unlikely has any conservation value, noting landscaping is proposed to replace existing trees and shrubs. A large part of the site, about half, is fenced off from the dwellings and appears unused. This open, grassed area is accessible from the garage at the rear of 51 Chapel Street.
- The locality is predominantly characterised by low density single and two storey houses and multi dwelling housing. Some examples of historical residential flat buildings exist within the locality, in particular at 43-45 Chapel Street. The four storey residential flat building is located adjacent to the subject site and to the north west.
- Existing medium density forms of housing in the locality are between one and two storeys in height.



Figure 1: Aerial view of the site (yellow outline) and surrounding locality.

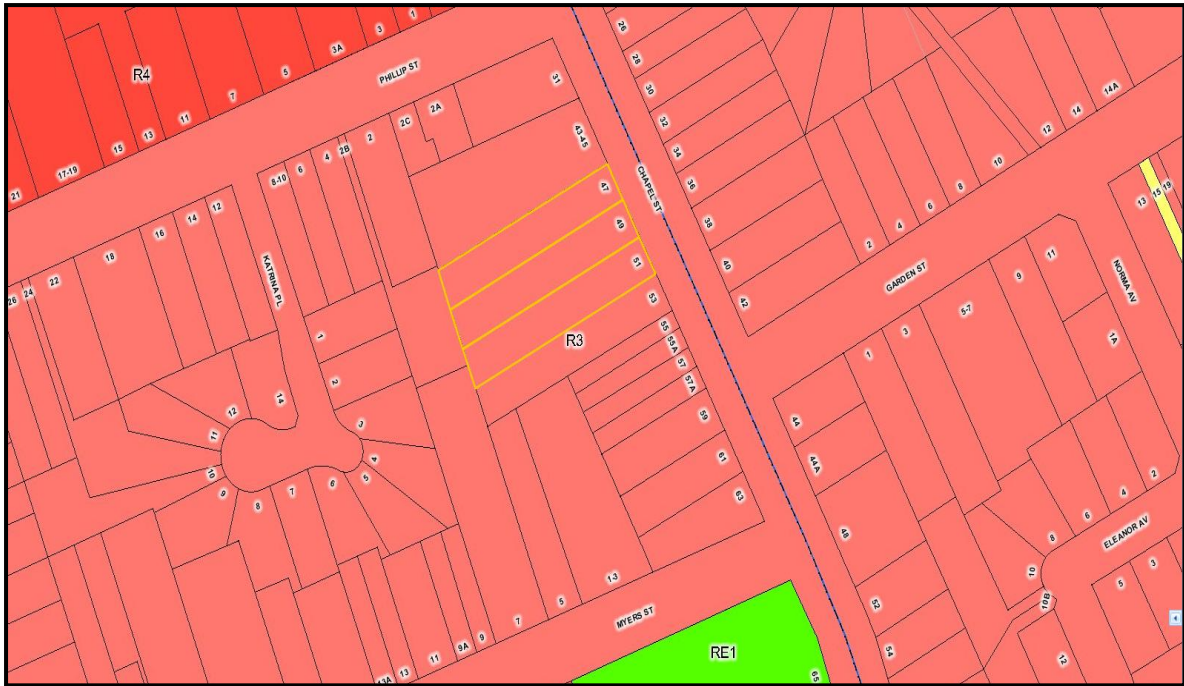


Figure 2: Extract of Zoning Map LZN_005 of the Canterbury Local Environmental Plan 2012 Site outlined in yellow.

PROPOSAL

The proposed development involves demolition of all existing structures and construction of a multi dwelling housing complex of four buildings containing 20 units, ten of which are proposed to be affordable, within the meaning of the SEPP. Associated with the development is landscaped communal and private open space, access paths and a central driveway leading to a single level basement with parking, storerooms, laundries, a bin room, a lift and stairwells. All units have direct access to ground level, either at grade or via individual staircases (to units 15, 16, 19 & 20).

STATUTORY CONSIDERATIONS

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

- State Environmental Planning Policy 55 – Contaminated Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Canterbury Local Environmental Plan 2012
- Canterbury Development Control Plan 2012
- Canterbury Development Contributions Plan 2013

ASSESSMENT

The development application has been assessed with regard to s79C of the Environmental Planning & Assessment Act 1979, as detailed below:

- **State Environmental Planning Policy 55 – Contaminated Land**
The site has been likely used for residential purposes since the land was first subdivided. The risk of contamination is also probably low. No information has been received to verify this or otherwise. As consent is not recommended, the SEPP's requirements regarding land contamination and remediation need not be addressed.
- **State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004**
A BASIX Certificate accompanied the application. The Certificate makes a number of energy and resource commitments in regard to water and energy consumption and thermal comfort. These commitments have been shown on the DA plans, and satisfy the policy's requirements.
- **State Environmental Planning Policy (Affordable Rental Housing) 2009**
The application seeks consent for in-fill affordable housing development as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP). The SEPP provides incentives for affordable rental housing, including floor space ratio bonuses and other 'varied' development standards. Critically for the subject application, the below assessment of Clause 10(2) finds that the subject site is not within an "assessable area". As such, the subject site is ineligible for the incentives provided by the SEPP.

The proposal is assessed with regard to the relevant provisions of the SEPP as follows:

Clause 10 Development to which this Division applies

Division 1 of Part 2 of the SEPP enables development of in-fill affordable housing, provided the type of development proposed, in this case 'multi-dwelling housing', is permissible with consent. Each of the Division's provisions is addressed below.

Clause 10(1) The subject site is zoned R3 Medium Density Residential by the Canterbury Local Environmental Plan 2012 (CLEP 2012), where multi dwelling housing is permissible with consent. Therefore, the SEPP applies to the site, subject to certain locational requirements. The Applicant has supplied a legal opinion that asserts the proposal is for "multi dwelling housing" and not a "residential flat building" as per *Mount Annan 88 Pty Ltd v Camden Council* [2016].

Clause 10(2) of the SEPP requires in-fill affordable housing in the Sydney Region to be located in an "accessible area", for Division 1 of Part 2 to apply. The proposal fails to meet these requirements and the policy therefore does not apply to the site, as this clause states (*emphasis added*):

*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.***

Clause 10(3) only applies to land outside the Sydney Region and is irrelevant to the application.

Non-compliance with Clause 10(2)

In this case, to qualify as being within an “accessible area” (cl.4 of the SEPP), the site must be within a 400m walk of a bus stop that is served by buses of at least an hourly frequency, between 6.00am and 9.00pm on weekdays and 8.00am and 6.00pm on weekends.

“accessible area means land that is within:

“(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.”

The compliance table below shows the site fails one of the three criteria of the “accessible area” definition, meaning the site is not in an “accessible area”:

1. Distance of the site from the bus stop,
2. The periods in which bus services are available at that stop, and
3. The frequency of those bus services at that stop.

Table 1: Compliance with “Accessible Area” Definition’s Criteria

Criteria	Required	Proposed	Complies
1. Distance	400 metres	65m & 120m (route 946) 270m & 290m (route 487)	Yes
2. Bus Service Periods			
Weekdays	6.00am – 9.00pm	See tables 2 & 3	No
Weekends	8.00am – 6.00pm	See tables 2 & 3	No
3. Service Frequency	60 minutes	See tables 2 & 3	Yes

Bus service analysis

The site is located within 400m of four bus stops on two routes which provide services to regional centres of Bankstown, Canterbury and Hurstville; and several local centres.

While the SEPP only requires proximity to a stop, in practical terms two stops, or a pair of stops, should be considered as together they allow passengers to board and alight from buses in either direction the route takes. Despite the SEPP’s requirement, this is considered a logical approach, as access to other forms of public transport, such as light rail or a railway station, enables travel in both directions.

In the circumstances of this application, to strictly comply with the SEPP there are two pairs of bus stops that could be selected for the purposes of determining compliance.

There is a pair of bus stops on Chapel Street (‘Pair 1’). On its western side is stop 219668, 65m from the site. Its paired stop, Stop 219253, is on the other

side of the street, 120m from the site. This pair of stops gives access to Route 946 between Bankstown and Hurstville, operated by the Punchbowl Bus Company. This route also provides access to Beverly Hills and Lakemba railway stations and shopping centres, several schools and parks, and other centres including Roselands and Greenacre.

Another two stops ('Pair 2') are 270m (bus stop 219219) and 290m (bus stop 219218) from the site, located on Canterbury Road near its intersection with Chapel Street. Bus stop 219218 is located on the northern side of Canterbury Road and bus stop 219219 is on the southern side.

This pair of stops is serviced by Route 487, operated by State Transit, between Bankstown Square shopping centre and Canterbury railway station. This route provides transport to these centres as well as Bankstown town centre and railway station, Roselands shopping centre, a number of parks and schools, Canterbury Hospital and Campsie shopping centre and railway station.

The next closest pair of bus stops to the site is also on Canterbury Road, for Route 415 between Campsie and Chiswick. These stops are 680 metres and 760 metres from the site, too far away to consider any further.

Residents of the proposed development without access to a private vehicle would be reliant on two bus routes, the 487 and the 946.

These services are summarised and compared with the SEPP's "accessible area" definition's criteria in the tables below. Table 2 contains data regarding route 946 between Bankstown and Hurstville. Table 3 addresses route 487 between Bankstown and Canterbury.

Following each table is a brief qualitative analysis of each service, noting that, depending on the service from each stop, the service provides one or two services less than required each day (Monday to Friday), one less on Saturdays and two less on Sundays.

Table 2: Punchbowl Bus Company Route 946 Bus services to and from Bus Stops 219253 & 219668, on Chapel Street near Canterbury Road, Roselands (Pair 1)

Bus Services	Clause 10(2) ARH SEPP	Bus Stop 219253 Bankstown to Hurstville	Compliance & Variation	Bus Stop 219668 Hurstville to Bankstown	Compliance & Variation
Weekdays					
First Bus	6.00am	6.50am	Yes	6.22am	Yes
Last Bus	9.00pm	7.18pm	No 1hr 42min	6.50pm	No 2hr 20min
Daily service deficit			1 of 15 (6.6%)		2 of 15 (13.2%)
Frequency	60min	60min (30min peaks)	Yes	60min (30min peaks)	Yes
Saturday					
First Bus	8.00am	8.33am	Yes	8.32am	Yes

Last Bus	6.00pm	5.33pm	Yes	5.32pm	Yes
Daily service deficit			0		0
Frequency	60min	60min	Yes	60min	Yes
Sunday					
First Bus	8.00am	9.13am	No 1hr 13min	9.11am	No 1hr 11 min
Last Bus	6.00pm	5.13pm	Yes	5.11pm	Yes
Daily service deficit			1 of 10 (10%)		1 of 10 (10%)
Frequency	60min	60min	Yes	60min	Yes

Below is a brief analysis of route 946:

- All services do not operate for the full daily periods required by the SEPP; a number of services start or finish within the first and last hours of the required service period.
- There are considerable periods on weekday evenings, when bus services are unavailable.
- The times without buses during specified periods each day equate to a deficit of three services on each weekday and two services on Sundays.
- Based on this assessment Saturday services comply and Sunday's services are relatively poorer. During the week the overall number of services is better, although the lack of services in the evening would limit travel options for people reliant on public transport, especially those travelling in the Hurstville-Bankstown direction.

Table 3: State Transit Route 487 Bus services to and from Bus Stops 219218 & 219219, on Canterbury Road near Chapel Street Roselands (Pair 2)

Bus Services	Clause 10(2) ARH SEPP	Bus Stop 219219 Bankstown to Canterbury	Compliance & Variation	Bus Stop 219218 Canterbury to Bankstown	Compliance/ Variation
Weekdays					
First Bus	6.00am	6.48am	Yes	5.42am	Yes
Last Bus	9.00pm	7.09pm	No 1hr 51min	6.34pm	No 2hr 26min
Daily service deficit			1 of 15 trips (6.6%)		2 of 15 trips (13.3%)
Frequency	60min	40min (approx.)	Yes	40min (approx.)	Yes
Saturday					
First Bus	8.00am	7.52am	Yes	7.31am	Yes
Last Bus	6.00pm	4.58pm	No 1hr 2min	5.31pm	Yes
Daily			1 of 10 trips		0 trips

service deficit			(10%)		
Frequency	60min	30min	Yes	30min	Yes
Sunday					
First Bus	8.00am	9.38am	No 1hr 38min	9.16am	No 1hr 16 min
Last Bus	6.00pm	5.38pm	Yes	5.16pm	Yes
Daily service deficit			1 of 10 trips (10%)		1 of 10 trips (10%)
Frequency	60min	60min	Yes	60min	Yes

Below is a brief analysis of route 487:

- All services do not operate for the full daily periods required by the SEPP, a number of services start or finish within the first and last hours of required service.
- As with the Bankstown to Hurstville service, weekly services are good except for in the evenings, when there is a lack of one service from Bankstown to Canterbury and two services between Canterbury and Bankstown. This would be especially limiting for people on later shifts or those travelling for shopping, social or cultural purposes.
- While the level of service provided on Saturdays is acceptable, Sunday services do not comply in the morning, commencing over an hour after the required starting time of 8.00am.

Conclusion: bus service analysis

The two pairs of bus services within walking distance (400m) of the site when considered together offer a suitable choice of local and regional centres as destinations, which provide a range of urban services and amenities to meet peoples' needs (including employment and social opportunities) and potential to connect with other public transport services.

However, in terms of the "accessible area" definition, the pairs fail in providing the level of service required to qualify for the SEPP, being in the morning and evening on weekdays and on Sundays; noting one service finishes before 5.00pm on Saturday afternoons.

On weekday mornings, the first Route 487 bus to Canterbury is at 6.48. The relative lateness of the service may mean missing a connection or arriving late for work. If the first bus arrived at the stop near the site say half an hour earlier, this could make the difference.

The last Route 487 bus that services the pair of stops from Canterbury to Bankstown arrives at the stop near the site 2 hours and 26 minutes before 9.00pm, meaning there are no buses in this direction for this period. By setting the criteria for daily bus services, it is reasonable to expect that services would start and end as close to those times as possible. For this route, 16.2% of the 15 hour period in which buses should be available has no service during weekday evenings.

Merely stating a route lacks two services at the end of each weekday does not fully convey the potential impact of the period in which the service is unavailable. Examining the per-hour shortage of trips is only part of the picture, providing services during the daily period required by the SEPP to the fullest extent possible, is equally important.

Critically, the two pairs of bus services do not cover the time periods which the other does not meet.

The bus services available to the site are not considered adequate to meet the needs of people likely to reside in affordable rental accommodation.

Non-compliance with Clause 10(2) Affordable Rental Housing SEPP:

Council has consistently applied the Division 1 Clause 10(2) requirements in that the SEPP does not apply to a particular site when that site is not in an accessible area.

The applicant has submitted a legal opinion that the requirements of Clause 10 (with reference to the “accessible area” definition) are development standards. On this basis, the applicant has submitted a Clause 4.6 request to vary Clause 10(2).

However, Council's position is that “accessible area” is not a development standard and cannot be varied. An analysis of the applicant's Clause 4.6 submission has therefore not been undertaken as it is considered that Clause 4.6 cannot be used in this instance.

As raised above, Clause 10(2) of the SEPP stipulates that the infill affordable housing incentives do not apply to a development unless all or part of the development is within an accessible area.

Whilst the development type is a permissible use as per the CLEP 2012, the incentives offered by the SEPP cannot be invoked as the proposal does not trigger the necessary development location requirements stipulated for in fill affordable housing.

The provisions of Division 1 of the SEPP therefore do not apply to the subject site.

Clause 13 Floor Space Ratio

Had the subject site been located within an accessible area, the SEPP provides an FSR incentive for in fill development comprising at least 20% floor area for the purposes of providing affordable rental housing. The FSR incentive is applied in addition to the existing FSR allowed by an LEP.

The CLEP 2012 permits a maximum FSR of 0.5:1 for the subject site. The proposal has a FSR of 0.96:1, 0.47:1 of which is to be used for providing 10 affordable dwellings from a total of 20 dwellings.

According to the architectural drawing A002, prepared by McCullum Ashby Architects, the combined gross floor area of the proposed affordable units (units 1 – 6 and units 13, 14, 17 & 18) is 1,224m² which equates to a FSR of

0.47:1.

Had the proposed development triggered the SEPP, the proposal is considered to comply with Clause 13.

Clause 14 Standards that cannot be used to refuse consent

The proposed development is assessed having regard to the standards of clause 14 set out in the table below:

Standard	Requirement	Proposal	Complies
Site Area	Minimum 450m ² .	2,650m ² .	Yes.
Landscaped Area	Min 30% of the site area (795m ²).	34.5% of site area (915m ²).	Yes
Deep Soil Zone	15% of the site area (397.5m ²).	407m ² (15.4% of site area)	Yes.
	3m min. dimension.	3m min. dimension.	Yes.
	Min two-thirds (10% of site area, 265m ²) is located at the rear of the site, when practical.	185m ² (7% of site area).	No. See Comment [1] below.
Solar Access	Living rooms and private open space areas for a minimum of 70% of the dwellings are to receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.	8 of 20 (40%) units (units 13-20) will have 3 hours of direct sunlight in mid-winter, into their living rooms and private open spaces.	No. See Comment [2] below.
Car Parking	0.5 spaces per 1 bedroom unit. 1 space per 2 bedroom unit. 1.5 spaces per 3 bedroom unit. 2 x 1 bed = 1 space. 6 x 2 bed = 6 spaces. 12 x 3 bed = 18 spaces. Total = 25 spaces.	40 spaces. 39 resident spaces and 1 visitor space (incl. 7 stacked & 2 accessible spaces & 1 car wash bay).	Yes. See Comment [3] below.
Minimum Dwelling Size	Min unit sizes: Bedsit/studio - 35m ² 1 bed – 50m ² 2 bed – 70m ² 3 bed – 95m ²	Min. proposed unit sizes: 1 bed – 70m ² 2 bed – 74m ² 3 bed – 158m ²	Yes.

Two standards of the SEPP are not satisfied by the proposed development, as examined below. In relation to parking, the excessive amount proposed may adversely affect housing affordability and brings into question whether the proposed site is genuinely accessible, in addition to the matters discussed earlier.

1. Minimum 10% of site area is not a deep soil zone at rear of site

Providing sufficient area to allow trees and shrubs to grow and for rain-water infiltration are key objectives of deep soil zones. Locating the majority of deep soil in one area at the rear of the site is intended to allow this area to be enjoyed by residents as open space and, as submitted by the applicant, to contribute to the landscape character of the area.

The main deep soil area proposed is in the south eastern site corner, which has space for trees and shrubs, around the perimeter of a lawn of around 14m x 5.5m.

This arrangement is considered satisfactory in terms of providing adequate deep soil, having regard to the purposes of the standard.

2. 70% of units do not receive 3hrs sunlight in mid-winter

Insufficient evidence has been submitted to substantiate the claim of 70% of units receiving adequate mid-winter sun. Shadow diagrams and solar access studies submitted indicate units 1-12 will receive less than 3 hours sunlight on the winter solstice, between 9am and 3pm.

Originally submitted shadow diagrams indicated most units' open space (courtyards and balconies) will receive early morning sun and that shading will begin in early to mid-morning, between 9.00am and 10.00am. Based on these plans a conclusive assessment was impossible.

However, it was possible to ascertain that units 13-20 (facing north-east and Chapel Street, unaffected by the four storey development to the north-west of the site) have acceptable solar access, exceeding 3 hours of direct sun onto their terraces and into their living rooms. It was also clear that due to the impact of the adjoining four storey unit complex, acceptable solar access for units 1-6 would be extremely difficult to achieve.

Hourly shadow diagrams or 'view-from-the-sun' diagrams were requested and the latter were subsequently provided, in three iterations. The latter two involved design revisions, to reduce the amount of overshadowing, especially on units' 7-12 indoor living rooms and north-west facing courtyards.

At best, based on the third set of view-from-the sun diagrams submitted, only 8 of the 20 (units 13-20) or 40% of the proposed units' living rooms and private open space would receive at least three hours of direct sunlight on the winter solstice. This assessment adopted the principles provided by the Land and Environment Court, in *The Benevolent Society v Waverley Council* [2010] NSW LEC 1082.

The proposal fails to achieve adequate solar access, as required by this provision of the SEPP.

3. Parking exceeds SEPP's minimum requirements: impact on housing affordability

Forty (40) spaces are proposed (7 spaces are in a 'stacked' arrangement) where the SEPP only requires 25 spaces in total. A surplus of 15 spaces have been provided, which also exceeds the CDCP 2012 requirements for this type of development, being 37.2 spaces.

Two issues arise around the provision of additional car parking. Firstly, the purpose of the SEPP's minimum parking requirements is to increase affordable housing stock. The provision of car parking can generally impact both the purchase price and rental price of a property, thereby potentially impacting on the affordability of a property.

Secondly, the provision of excess parking indicates that the subject site is not located in a truly accessible area. The car parking provided, well in excess of both the SEPP and CDCP 2012, demonstrates that the area is reliant on private transportation. 10 of the 20 units proposed are designated as affordable. All of these units are provided with two parking spaces, instead of one space per two bedrooms and 1.5 spaces per three bedrooms. The reliance on private transport may also increase the living costs for those within the nominated affordable housing units, contrary to the aims of the SEPP.

Either way, the purpose of facilitating affordable housing through modest parking incentives is to take the fullest-possible advantage of lower private travel demand that being in a genuinely accessible area offers.

Accordingly, whether the overall price point and/or rents of these 'affordable' dwellings will be any less than that of the 'non-affordable' dwellings is questionable when viewed in light of the parking provided. The accessibility of the site's location, by means other than private vehicle, is therefore considered to be low as demonstrated by the proposed excess car parking and reliance on Clause 4.6 in order to meet the public transport requirements.

Clause 15 – Design requirements

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004, apply to the extent that those provisions are consistent with the SEPP. They must be considered for consent to be granted.

The applicant has not addressed Clause 15's requirements, contending that SEPP 65 arguably applies, due to the proposal containing more than 4 dwellings and two buildings of three storeys.

SEPP 65 does not apply, as clause 4 of the policy relevantly states (emphasis added):

4 Application of Policy

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

(i) the erection of a new building,

(ii) the substantial redevelopment or the substantial refurbishment of an existing building,

(iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

For SEPP 65 to apply clause 4 sets three preconditions. If the development proposed is not for a residential flat building, shop top housing or mixed use development, then whether it meets the remaining preconditions is irrelevant.

SEPP 65 does not apply as consent is sought for multi dwelling housing, not a residential flat building, shop top housing or mixed use development.

The *Seniors Living Policy: Urban Design Guidelines for Infill Development* sets out five sections, each corresponding to a key issue when designing infill development. Sections of the guidelines addressing these issues are:

1. Responding to (neighbourhood) context
2. Site Planning and Design
3. Impacts on streetscape
4. Impacts on neighbours
5. Internal site amenity

The proposed development is assessed having regard to relevant provisions of the guidelines.

1. Responding to (neighbourhood) context

Two of the four proposed buildings fronting Chapel Street respond well to neighbourhood character. They affect a transition between the 2 storey dwelling at 53 Chapel Street and the 4 storey residential flat complex north west of the site at 43-45 Chapel Street. The other two buildings running parallel to the rear of the site do not respond well to the built character planned for the area as demonstrated by the deficient landscaping, deep soil, private open space and solar access afforded to the site.

2. Site Planning and Design

Key objectives according to the guidelines are listed and responded to below:

- *Minimising impact on neighbourhood character*
As discussed above, part of the development is compatible with the streetscape. However, the remainder of the development is distinctly out of character with that envisaged by the planning framework, an issue examined below in relation to the CLEP 2012 and CDCP 2012.
- *Retaining natural features of the site that contribute to local character*
Four of five native shrubs and trees on the street and in the front yard of the site are to be retained, thus conserving some of the streetscape's vegetation.
- *Providing high amenity for new dwellings*
The amenity afforded to the eight dwellings fronting the street would be acceptable. However the siting and layout of the two rows of three storey townhouse buildings behind the two buildings facing Chapel Street are provided unacceptable amenity for their intended occupants. This issue is addressed in detail below with regard to the CDCP 2012.
- *Maximising deep soil areas*
Deep soil zones are discussed elsewhere in the report.
- *Minimising visual dominance of parking and vehicle manoeuvring*
The 13.1m length of the driveway, it being ramped down below street-level, the two buildings on either side being sited forward of the garage entrance, the enclosed bin and letterbox structure being adjacent the site boundary and suitably scaled landscaping, all combine to acceptably reduce the visual impact of the driveway and the garage entry.
- *Providing a range of dwelling sizes to promote housing choice*
A range of dwelling sizes is provided, with the larger proportion consisting of three bedroom town houses, being 60% of the total. Two bedroom town houses comprise 30% and one bedroom dwellings make up the remainder.

3. *Impacts on streetscape*

The impact of the proposal on the local streetscape would be acceptable.

4. *Impacts on neighbours*

The effect of the proposal on neighbours is discussed below in relation to the CDCP 2012. In summary, impacts on neighbours' privacy, to the south west and south east, appears to be satisfactory, as bedrooms occupy the upper levels of the townhouses and living rooms of units fronting Chapel Street face the street.

Solar access to dwellings south west of the site appears to be acceptably maintained.

As discussed in relation to the SEPP's standards, solar access to the development does not comply with relevant requirements.

5. Internal site amenity

Internal amenity created by the proposal is addressed in detail, in relation to the CDCP 2012. Key issues include inadequate direct sunlight to the internal living spaces and private courtyards of the 12 townhouses. Further, the size of the private open space areas proposed for 14 units does not satisfy the CDCP 2012's minimum requirements.

Clause 16 – Continued application of SEPP 65 – Design Quality of Residential Apartment Development

As discussed, this SEPP does not apply to this application.

Clause 16A – Character of local area

For consent to be granted, Council must be satisfied that the design of the proposal is compatible with the character of the local area.

The two buildings containing four units each facing Chapel Street are compatible with existing and future characters of the locality, as discussed. However, as examined below the proposal's overall built form, as reflected in its density, overall size and dimensions is incompatible with that envisaged for the locality.

Clause 17 – Affordable housing must be used for this purpose, for 10 years

This clause requires Council, when granting consent to impose conditions to ensure that:

- Proposed affordable housing will be used for this purpose for 10 years,
- All affordable housing will be managed by a registered community housing provider, and
- A restriction is registered against the property's title under section 88E of the Conveyancing Act 1919 to ensure these requirements are met.

Were consent recommended, a condition would have been imposed to ensure compliance with these provisions.

Clause 18 – Subdivision

Subdivision of development carried out under this Division, for in-fill affordable housing, may be subdivided.

Subdivision is not proposed by the subject application.

• Canterbury Local Environmental Plan 2012

This site is zoned R3 Medium Density Housing under the CLEP 2012.

As discussed in relation to the SEPP, the proposal is inconsistent with one zone objective: *"To provide a variety of housing types within a medium density residential environment."*

The controls applicable to this application are:

Provision/ Standard	Requirement	Proposal	Complies
Part 2 Permitted or Prohibited Development			
2.1-2.4 Land Use	Multi dwelling housing	Satisfies definition of “multi dwelling housing” and is permitted with development consent.	Yes.
Part 4 Principal Development Standards			
4.3 Height of Buildings	8.5 metres max.	According to the Site Analysis prepared by the architect, (Drawing No. A002, Ref F) the max. height proposed is 8.6m.	No. See Comment [1] below.
4.4 Floor Space Ratio	0.5:1 (1,325sqm)	0.96:1. (2,544sqm)	No. See comment [2] below.
Part 5 Miscellaneous Provisions			
5.9 & 5.9AA Preservation of Trees & Vegetation	Requires approval to remove or damage trees or vegetation, when prescribed (cl 5.9) or not (cl 5.9AA) by a DCP.	Three trees require removal as part of the application. Development consent would authorise removal of the trees.	Yes.
Part 6 Local Provisions			
6.2 Earthworks	Before granting consent to development including earthworks, the following must be considered: (a) drainage patterns and soil stability	A geotechnical engineer’s report was submitted with the application, which subject to recommendations and limitations of that report; found the site to be suitable for the proposed earthworks.	Yes.

Provision/ Standard	Requirement	Proposal	Complies
	b) the likely future use or redevelopment of the land, (c) quality of the fill or the soil to be excavated, or both, (d) effect of development on existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.		
6.4 Stormwater Management	Consent must not be granted unless: (a) Water permeable	Our Development Engineer advises that before consent is granted, the proposed	No. See comment [3] below.

Provision/ Standard	Requirement	Proposal	Complies
	surfaces are maximized having regard to soil characteristics affecting on-site stormwater infiltration (b) Includes on-site detention if practical as an alternative means of water supply (c) Avoids significant impacts of run-off on adjoining land or the environment or minimises and mitigates impacts.	method of draining stormwater from the development must be amended to address: i. Site area bypassing OSD system must be limited to 25% of the total site area in accordance with Council DCP 2012 part 6.4 ii. OSD system size capacity must be designed for the whole site in accordance with Council DCP 2012 part 6.4. The OSD volume provided is undersized. iii. The stormwater plans must include a maintenance schedule of the detention structure to confirm that the structure is maintainable. iv. The detention structure must have an overflow away from the site in accordance with Council DCP 2012 part 6.4. v. Additional pit opening is required for the basement pump out system to facilitate maintenance. vi. Additional pits are required to address trapped areas that cannot be drained. vii. Subsoil drainage of retaining structures is to be considered in the design.	

Provision/ Standard	Requirement	Proposal	Complies
6.6 Essential Services	Consent must not be granted unless Council is satisfied access to or is able to be provided to the development: (a) Water supply (b) Electricity supply (c) Sewage disposal (d) Stormwater drainage or on-site conservation (e) Suitable vehicular access.	All services are available to the site.	Yes.

Non-compliance with provisions of the CLEP 2012

[1] Building height

The proposed development exceeds the 8.5m maximum building height standard by 0.1m. No submission has been made to request this variation (cl. 4.6) as the height of any building is not to exceed (cl. 4.3 (2)).

As the proposed development exceeds this standard, amongst other matters, refusal is recommended.

[2] Floor space ratio

The proposed development exceeds the 0.5:1 floor space ratio development standard by 92%. The breach to the FSR standard is a direct result of the subject site being ineligible for the relevant development incentives of the SEPP as per Division 1 Clause 10(2) In fill affordable housing.

The proposed breach is not supported and has not been accompanied with a Clause 4.6 variation as the applicant has relied upon the incentives of the SEPP.

[3] Stormwater drainage

The proposed method of stormwater drainage proposed is unsatisfactory. The applicant was made aware of these shortcomings. However a revised stormwater management plan has not been received.

Canterbury Development Control Plan 2012

The proposed development has been assessed against the relevant requirements of the Canterbury Development Control Plan 2012 (CDCP 2012) as follows:

Assessment Table – Canterbury Development Control Plan 2012 - Part 2 - Residential Neighbourhoods

Control	Requirement	Proposed	Complies
2.1.1 Avoid Isolating Under-developed Sites	No isolation of neighbouring properties so that it is incapable of being reasonably redeveloped.	Development of the site would not prevent development of adjoining land.	Yes.
2.1.2 Site Requirements	20m min site frontage, Chapel Street not being a main road.	37.49m.	Yes.
2.1.3 Height	O1 New buildings have a scale that is visually compatible with adjacent buildings and the intended character of the zone.	The proposal is incompatible with the intended character of the zone.	No. See Comment [1] below.
	Basement parking is permitted.	Proposed vehicle-parking and access arrangements, including a basement and access ramp, are acceptable in terms of streetscape impact.	Yes.
	1m max retaining wall height.	1.5m max.	No. See comment [2] below.
2.1.4 Maximum Heights	One storey maximum height when a building is located more than 20m (in addition to front setback) or 65% of the site's depth, measured from the front boundary, whichever is the greater.	3 storeys, in the rear 35% of the site's depth.	No. See comment [3] below.
	ix) 3.8m maximum wall height, where the one storey restriction applies.	8.2m maximum wall height.	No. See comment [4] below.
2.1.5 Depth/Footprint	O1 Promote improved residential amenity for new and existing development and to preserve sunlight, privacy and general amenity for existing dwellings O2 Ensure buildings have a scale and mass that would be visually compatible with the zone's desired character.	The proposal is inconsistent with these objectives, as discussed below.	No. See comment [5] below.

Control	Requirement	Proposed	Complies
	20m maximum building depth.	34.5m.	No. See comment [5] below.
2.1.7 Minimum Setbacks	6m min from street. 3m min rear (or 5m when an attic proposed).	8.7m. 4.5m.	Yes.
	Sides: 1.5m min when building adjacent street. 2.5m min when building behind building adjacent street.	1.8m. 3.2m.	Yes. Yes.
	Deep soil zones: 5m min at front. 3m min at rear. 1m on sides.	7.4m. 4.4m. 3m on south east side. 0.7m on north western side.	Yes. Yes. Yes. No. See comment [6] below.
2.1.9 Building Separation	5m min between buildings on one lot.	2.2m & 3.4m	No. See comment [7] below.
2.1.11 Car Parking	Minimum parking is required by the ARHSEPP.	Addressed in relation to the SEPP.	
2.2.1 Context	Facades should be layered and stepped to avoid building forms that are bland, bulky and overcalled. Stepping of facades should be provided by balconies, staggered alignments for exterior walls and by contrasting design elements.	Facades are designed in accordance with this requirement.	Yes.
2.2.2 Street Address	Design entries to residential buildings so they are clearly identifiable by a porch or awning and pathways.	Entries to dwellings facing the street are not clearly identifiable from the street.	No. See comment [8] below.
	Provide main common entry and separate private ground floor apartment entries.	Separate ground level entries are provided to each dwelling.	Yes.

Control	Requirement	Proposed	Complies
	Face at least one habitable room widow(s) towards the street, and face at least one habitable room's window(s) or private open space, towards a communal space, internal driveway or pedestrian way.	Habitable rooms face the street and internal footpaths.	Yes.
	Do not obstruct sight lines to the street or internal spaces, from habitable rooms or entrances.	Sight lines between dwellings and the street are not obstructed.	Yes.
	Courtyards that would be located within the front setback should be setback at least 1m from the street boundary to accommodate a landscape strip which should remain in communal ownership	Terraces of units facing the street are setback 5.4m from the street.	Yes.
	Screen walls around private open space shall not be taller than 1.2m, although screens with 50% transparency may be up to 1.8m in height.	Screen walls are not included, although terraces of street-facing units are elevated between 1.2m and 2.0m above street level.	Yes.
	The combined width of front fencing is not to occupy more than 50% of the frontage of the site.	No fence is provided on the street frontage, although the bin enclosure is centrally sited on the boundary.	Yes.
	Dwellings which face the street should have private entrances direct from the street footpath	Dwellings facing the street do not have paths providing direct access to the street.	No. See comment [8] below.
2.2.3 Façade Design and Articulation	Avoid long flat walls along street frontages and with façade treatment, and articulation of elevation on corner sites by stagger the wall alignment with a step of at least 1m.	No long flat walls face the street.	Yes.

Control	Requirement			Proposed	Complies
	Use non-reflective materials, do not randomly mix light and dark coloured bricks, and treat publicly accessible wall surfaces with anti-graffiti coating.			No reflective materials are used.	Yes.
	Design facades to reflect the orientation of the site using elements such as sun shading devices, light shelves and bay windows.			Orientation addresses the street and climate control is suitably provided for, despite sub-standard solar access for units 1-12.	Yes.
	Visible facades should be designed as a series of panels modulated to be consistent with the scale and rhythmic design character of buildings:			Modulation of street-facing facades is sufficient to reflect the scale of nearby buildings.	Yes.
	Buildings of	Facades that face the street	Side elevations	Glazing and doors face the street and area integrated with the physical separation of units in the front façade by masonry columns and beams, give effect to the desired 'panelling' dimensions.	Yes.
	Up to 3 storeys	4—8m	10-15m		
	4 or more storeys	6-8m	10-15m		

Control	Requirement	Proposed	Complies
	Layer or step facades in order to avoid building forms that are bland, bulky, or over-scaled by complying with setback control and incorporating architectural elements for external walls.	The difference between the overall height of the building and the street-level (9.0m) is adequately offset by an increased setback of 8.7m. This prevents the façade being over-bearing when viewed from the street.	Yes.
	Locate and proportion windows to minimise scale and bulk	Glazing is used to optimise solar access facing the street (north-east orientation). Windows are in proportion with the wall in which they are located.	Yes.
2.2.4 Roof Design	Use a simple pitched roof that accentuates the shape of external walls, the size and scale of building with a pitch of 30° or less in up to 3 storey buildings and 10° or less for 4 or more storey buildings. Respond to the orientation of the site by using eaves and skillion roof to respond to solar access. Integrate service elements into the design of the roof including lift over-runs, service plant, chimneys, vent stacks, telecommunication infrastructure, gutters, downpipes and signage.	Roof design is consistent with these requirements. Skillion roofs are used, with a low pitch of 5 degrees.	Yes.

Control	Requirement	Proposed	Complies
2.2.5 Fences	Provide boundary definition by construction of an open fence or hedge to the street boundary. Fences within the front boundaries or around courtyards or where the façade of building present to two street frontages on corner sites are no higher than 1.2m. Side fences may be 1.8m high to the predominant building line.	A hedge is proposed to the street. No fencing is proposed along the street. Side fencing is proposed, which is consistent with existing 1.8m high side fences.	Yes.
2.2.6 Services and Utility Areas	Integrate services and utilities through their integration with the design of buildings and landscaped areas so they are not visually obtrusive.	Services and utilities are or are capable of being integrated into the development and screened from view from the street.	Yes.
2.3.1 Visual Privacy	Provide adequate building separation, and side and rear setbacks. Orient windows towards the street and the rear of the lot and vary window levels to avoid or minimise direct views between dwellings Use suitable screening when required.	Acceptable privacy is achieved by different floor levels of the buildings and appropriate window design and placement for habitable and non-habitable rooms.	Yes.

Control	Requirement	Proposed	Complies
2.3.2 Acoustic Privacy	Protect sensitive rooms, such as bedrooms, from likely sources of noise of roads, railway, neighbours' living areas and building lobbies. Aboveground access to new dwellings does not include communal balconies that would be located close to a bedroom window. Bedroom windows in new dwellings that would be located at or close to ground level are to be raised above, or screened from any shared pedestrian pathway. Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp.	Acoustic privacy is adequate noting the site's location not being near a significant noise-source and bedrooms being above ground level, or screened when at ground level.	Yes.
2.3.3 & 2.3.4 Open Space and Balconies	40m ² min. private open space for each dwelling.	Individual courtyards for each dwelling range between 24m² and 26m². Units 7-12 have two courtyards, of 24m² and 26m². All other units have one courtyard each.	No. See comment [9] below.
	5m min. dimension for private courtyards.	All courtyards have minimum dimensions of 5m.	Yes.
	Courtyards may be partly covered by a balcony, verandah or pergola.	Covered decks are provided directly from each living room.	Yes.
	Ensure private open space is private.	Open space is not directly overlooked within the development.	Yes.

Control	Requirement	Proposed	Complies
	Locate private open space adjacent indoor living areas.	Each deck is directly outside the main indoor living area of each unit.	Yes.
	Allow an area 2.5m x 2.5 for a table and chairs.	Decks or paved areas are provided, with a minimum depth of between 1.5m and 2.3m.	No. See comment [9] below.
	Provide a screened/separate area for clothes drying.	Outdoor laundry drying is not made available. Laundries are provided in the basement of units 1-12 and within units 13-20.	No. See comment [9] below.
6.2.6 Daylight Access and Sun Access	Min. 2 hours sunlight on 21 June from 9am till 3pm, for main living rooms and principal open spaces. Min. 2 hours sunlight on 21 June from 9am till 3pm, for main living rooms and principal open space of neighbouring dwellings.	Addressed in relation to the SEPP. Shadow diagrams indicate unacceptable overshadowing of private open space, of the dwelling adjacent the site to the south east.	No, this is addressed in relation to the SEPP. No. See comment [10] below.
2.3.5 Internal dwelling space and design	3.5m min width of primary living rooms and main bedrooms. 3m min width other bedrooms	All principle living areas and bedrooms comply. 2.7m or 2.8m min width in second bedrooms of units 13, 15, 16, 18, 19 & 20.	Yes. No. See comment [11].

	Storage: 6m ³ for 1 bedroom dwellings 8m ³ for 2 bedroom dwellings 10m ³ for 3 bedroom dwellings	Units 13-20 have no storage apart from wardrobes and kitchen cupboards.	No. See comment [11].
6.2.7 Ventilation	60% of dwelling to have cross-ventilation. 25% of kitchens to have natural ventilation.	All units and their kitchens have adequate ventilation, due to building siting and dwelling layout.	Yes.
6.8 Vehicle Access & Parking	Only matters not addressed by the SEPP are considered: 4 visitor spaces 1 car wash bay required 2 x bike spaces.	Visitor parking is stacked with resident parking. Car wash bay too narrow and obstructed by visitor parking space. Storage for 3 bikes.	N/A – ARHSEPP prevails.

Variations to the CDCP 2012

[1] Height

While the height of the two proposed buildings is visually compatible with the adjoining unit complex and dwelling-house at the front of the site, the height and scale of the other two buildings at the rear of the site is incompatible with the intended character of the zone.

Council's planning framework clearly establishes a certain character for residential development, axiomatically not reflected in the older development to the north. The planning framework firmly guides new designs away from this form of historical development, instead promoting two storey residential buildings addressing the street, with smaller, single storey development at the rear of sites. The intent underpinning this built form is complemented by other controls to ensure adequate building separation, setbacks, deep soil areas and landscaping, to maintain a degree of openness and the leafy backyard character of Canterbury's residential areas.

Overall, the proposal is incompatible with the intended character of the zone and is inconsistent with this DCP objective.

[2] Retaining wall height

Clause 2.1.3 vii requires retaining walls to be no higher than 1m, when not on steep land (the site is not steep, as defined by the CLEP 2012). The proposed retaining wall heights (as amended) vary between 1.0m and 1.5m, forming the courtyard

edges of units 1-6, adjacent to the north-western site boundary. In the originally submitted design these walls were up to 2.7m in height, which were unacceptable in terms of unit and courtyard amenity. The revised design is reasonable as it provides acceptable amenity in relation to outlook and openness for these units.

[3] Building height

Clause 2.1.4 vii allows two storey buildings to occupy the site for up to 65% of the site, in this instance allowing approximately 45.9m (the two side boundaries are unequal). Beyond this measurement, buildings are only to be single storey.

The proposal has six complete and two partial three storey townhouses beyond this measurement, which is out of character and incompatible with the type of built form envisaged by the DCP. This excessive bulk at the rear of the property has unacceptable impacts on the southern neighbour, due to unacceptable overshadowing.

The proposed variation to this standard is unacceptable.

[4] Wall height

The maximum wall height proposed is 8.2m rather than the required 3.8m, a result of the proposed three storey buildings at the rear of the site. This is unacceptable for the same reasons as discussed above in relation to building height and envisaged character of the area.

[5] Building depth/footprint

The non-compliance with several DCP requirements indicates the three-storey townhouse buildings are not of a form envisaged by the DCP. To reiterate, the amenity problems caused by the two townhouse buildings, especially poor solar access and sub-standard open space stem from their dimensions, siting and overall density.

The proposed rear building's depth is 34.5m, in excess of the maximum 20m depth, another contributing factor of the proposal's poor performance in terms of amenity, impact on the southern neighbour and being incompatible with the intended character of residential development in the locality and more broadly in the R3 Medium Density zone.

[6] Setbacks/deep soil zones

Although the townhouses are compliant with the minimum 2.5m side setback, this setback is predicated on single-storey buildings (based on the above maximum building height for single storey within the rear 35% of the site). This setback is clearly inadequate, evidenced by the non-compliant solar access (of the SEPP) and inadequate private open space. The two buildings at the rear of the site are inconsistent with several objectives of the clause, in that:

- *O2. Limit the scale and bulk of new building, appropriate to the location and use, by retaining landscaped open space around.*

Comment: The setbacks do not limit (reduce the impact of) the bulk and scale of the proposed buildings.

- *O3. Contribute to the green landscape by retaining adequate space for new trees and conserving any existing trees that are visually prominent.*

Comment: The setbacks do not provide for sufficient landscaping by retaining space for large trees.

- *O4. Provide sufficient separation between buildings and adjacent land to limit the visual, environmental and likely impacts of new development.*

Comment: The setbacks do not provide sufficient space between buildings and adjacent land to limit their likely visual and environmental impacts.

The deep soil zone along the northern boundary is only 0.7m adjacent to units 1-6, which is inadequate to plant canopy trees to screen the development from the adjoining four-storey residential building.

For the three storey buildings proposed at the rear of the site, the side setbacks are inadequate, as outlined in respect of the clause's relevant objectives.

[7] Building separation

The space between the front pair and rear pair of buildings is too narrow, at 2.2m and 3.4m. The communal area between the front and rear buildings, is built over the basement and does not provide a genuine deep soil area. This area also offers poor amenity, not enjoying acceptable solar access in mid-winter.

[8] Street address

The proposal fails to comply with three requirements of clause 2.2.2:

- i) Building entries are clearly identifiable by a porch or awning and pathways.*
- ii) Front doors to dwellings are clearly identifiable.*
- iii) Provide common and individual-dwelling entries to activate a street or reinforce a rhythm along a street.*

When considered together, these variations compromise the performance of the two buildings' fronting Chapel Street.

Specifically, front doors are at the rear of these buildings and their entries are not visible or identifiable from the street. Pedestrian accessibility and promoting social interaction between residents and other members of the community on the street are also compromised, although the buildings do provide good informal surveillance of the street.

These variations to the DCP are unacceptable.

[9] Private open space

As noted in the table, each unit's private open space has an area between 24m² and 26m², well short of the minimum required of 40m². Units 7-12 have two courtyards at their front and rear, which exceed 40m² when combined.

Within the courtyards of the town houses (units 1-12) and the terraces/courtyards of units in the buildings facing Chapel Street (units 13-20), no paved area of 2.5m x 2.5m is provided for tables and chairs.

While a smaller open space and a smaller paved area for outdoor seating and dining may be acceptable for smaller (1 & 2 bedroom) units, a larger dwelling should have a larger courtyard and accommodation for a higher number of people to sit or dine outside.

Based on these principles, the terraces/courtyards for units 13-20 (1 & 2 bedroom) are acceptable. However for the 3 bedroom town houses (units 1-12) the proposed private open space is unsatisfactory, exacerbated by poor solar access to these courtyards.

[10] Neighbours' solar access

Clause 6.2.6 iii of our DCP requires "...2 hours minimum sunlight between 9am and 3pm on June 21 to indoor living areas and at least 50% of the main private open space and clothes drying areas, or when less than this standard is available, existing available sunlight shall not be reduced."

Shadow diagrams submitted with the application indicate the proposal will have unacceptable impacts on the private open space and possibly indoor living areas of the dwelling-house immediately south of the site, at No.53 Chapel Street, despite these diagrams not allowing a conclusive assessment. A more detailed and accurate solar access study was requested to assess the proposal's impact on this dwelling, none was provided.

The proposal is not supported on this basis, namely that information submitted did not permit a comprehensive evaluation of its impact on neighbouring development.

[11] Room sizes & storage

As the table notes, several of the proposed second bedrooms are too small. Despite the applicant being advised of this, no alteration has been made to correct this non-compliance. The case is the same with respect to the units without storage in the basement.

These non-compliances are not supported.

Part 6.3 Crime Prevention Through Environmental Design

A CPTED assessment was not submitted with the development application. In view of the other, significant issues arising from the application's assessment, one was not requested.

Part 6.4 Development Engineering, Flood and Stormwater

As noted, the application has not satisfied our DCP or CLEP 2012's requirements with respect to stormwater management. The applicant has been advised of this and has not addressed the issues raised by our Development Engineer.

Part 6.6 Landscaping & Part 6.7 Preservation of Trees or Vegetation

The Landscape Plan for the proposal illustrates the planting regime for the site, which includes street tree planting, boundary planting and landscaping throughout the site. This landscaping allows for surveillance of the common areas and pedestrian paths; as well as privacy to the ground level private open space. The proposed landscaping is in proportion with proposed buildings. Earthworks are limited to the basement parking level which is located underneath the building footprint.

The landscaping proposal has been reviewed by our Landscape Architect who requested amendments to the proposal. However, due to other matters raised in this assessment which preclude its approval, these details were not conveyed to the applicant for attention.

Part 6.9 Waste Management

The development application was referred to our Waste Services team who advised that several matters would need to be addressed before consent could be granted.

In view of the other matters preventing consent being granted, the applicant has not been advised of these requirements.

Part 7 Notification

The development application was notified and advertised, with public submissions invited in accordance with Part 7 of our DCP. Two submissions were received and the issues raised are summarised below:

1. Additional density will generate greater traffic volumes, noting several traffic incidents have occurred involving parked cars and vehicles making a right-hand turn from Chapel Street into Phillip Street.
2. The proposal does not have access to bus services (6am - 9pm, weekdays and 8am – 6pm, weekends) and rail services (the site is 1.5km from Belmore Station) as required by the Affordable Rental Housing SEPP.
3. The site only provides 7% deep soil zone, not 15%, as required by the SEPP.
4. The proposal increases the site's density from 3 to 20 dwellings, an increase of 567%.
5. A minimum of 50 new residents could live on the site, a 733% increase on the approximately 6 people who presently live in the three existing dwellings.
6. The development will generate significant traffic from 39 resident spaces and one visitor space proposed, noting the site is not in an accessible area (as defined by the SEPP). Nor is it within walking distance of shops and services. Roselands, the main shopping centre, is 2.8km from the site.
7. Traffic would increase from 2.6 vehicle trips/hour to 11.6 vehicle trips/hour, an increase of 346%. This increase may be even greater due to people having more complex family and work related travel requirements; work trips, taking children to school, shopping and so on.

8. The number of spaces provided on-site is insufficient to accommodate resident and visitor demand, pressure will be increased for on-street parking, which is already in high demand due to the number of units in the area.
9. Noise will increase due to additional population and traffic.
10. Additional 2-3 storey “bulky” buildings will reduce views and outlooks in an already “dense and congested neighbourhood.” A view of the city skyline was once available from west of the site, which has been built out.
11. The proposal will reduce privacy, overlooking neighbouring properties.
12. There will be an increase in “public safety impacts”, which are a concern.
13. The proposal’s density (0:98:1) maximises floor space and provides for 20 dwellings by developing the whole site (under the SEPP). “Normal” floor space ratios would “equate to 0.5:1 and allow for up to 10 dwellings.” 20 dwellings “...is excessive and not conducive to quality residential amenity for residents of the proposal or surrounding the proposal.”
14. With the proposed 10 affordable dwellings only remaining affordable for 10 years, this is a “relatively short term solution to the affordable housing issue and hardly seems fair and reasonable to existing residents given the area does not have capacity to support such an increase in population and traffic...”

Comment on issues raised by submissions

A number of matters raised by the two submissions have been borne out by this assessment, with regard to:

- Adequacy of bus services and remoteness from rail services
- Inadequate deep soil zones
- The site is not accessible and is remote from shopping, a submission noting that the closest main shopping centre, Roselands, being 2.8km from the site
- Over development of the site, enabled by the SEPP, and evidenced by this assessment’s key findings, that the proposal offers poor amenity for the majority of units (12 of 20) and is incompatible with the medium density character envisaged by the CLEP 2012 and CDCP 2012 for the site and locality

The remaining issues raised by submissions are duly noted, while acknowledging that the traffic and parking study that accompanied the application found the proposal’s impacts to be satisfactory, despite the observations made in these submissions, regarding road safety and already high on-street parking demand.

With regard to matters of increased housing and population, these are within the parameters envisaged and permitted by the affordable housing policy. However in this instance, the increased density (nearly double the CLEP 2012 allowable gross floor area) beyond that permitted by Council’s planning controls is achieved at the unacceptable expense of the amenity of future occupants and adjoining residents.

Notwithstanding the subject site's inability to trigger the infill housing division of the SEPP, the amenity impacts for both future and adjoining residents as a result of the proposed development is unacceptable in its current form.

- **Canterbury Development Contributions Plan 2013**

Our development contributions plan would require payment of a contribution, were consent recommended and subsequently granted.

Other considerations under s79C, Environmental Planning & Assessment Act

To complete this evaluation, remaining applicable provisions of s79C (1) are now addressed.

Likely environmental impacts

Apart from those matters already addressed, there are no other likely environmental impacts to arise from the proposed development. In summary, the key impacts include:

- A development which fails to trigger the requirements of the SEPP.
- A development which is out of character with that envisaged in the R3 Medium Density Zone, by the Canterbury Local Environmental Plan 2012 and relevant provisions of the Canterbury Development Control Plan 2012.
- Unacceptable social impacts, as it would likely accommodate low or middle income or other socially disadvantaged households without adequate access to public transport; thereby limiting employment and opportunities for other forms of economic and social exchange.
- Unsatisfactory overshadowing of land immediately south-east of the site.
- Poor amenity provided to 12 of the proposed 20 dwellings, in terms of solar access and inadequate private open space.
- Inadequate stormwater drainage. Neither is the proposal, in its present form, satisfactory with regards to landscaping and waste management.

Suitability of the site for the development

In view of the non-compliances with provisions of applicable environmental planning instruments and the environmental impacts summarised above, the site is inherently and fundamentally unsuitable for the development for which consent is sought.

Submissions

Discussed above under Part 7 of the CDCP 2012.

The public interest

The site is not accessible as defined and the provisions that enable development for the purposes of affordable rental housing and increased floor space ratio do not apply to the site. In view of the above amenity impacts created by the excessive FSR sought for the subject site, contravention of these requirements as proposed is not 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 environmental planning instruments, and the Canterbury Development Control Plan 2013.

The proposal is unsatisfactory, failing to satisfy the requirements of the Canterbury LEP 2012 and the SEPP (Affordable Rental Housing) 2009, which must be satisfied to enable consent to be granted.

Refusal of the development application is accordingly recommended.

RECOMMENDATION

THAT the Joint Regional Planning Panel refuse Development Application DA-104/2016, for the demolition of all existing structures and construction of multi dwelling housing, comprising 20 dwellings including ten (10) affordable dwellings and associated landscaping, over basement parking, as Affordable Infill Housing, for the following reasons:

1. The site is not within an “accessible area”, as defined by clause 4 and required by clause 10(2) of State Environmental Planning Policy (Affordable Rental Housing) 2009. Part 2, Division 1 of the policy therefore does not apply to the site.
2. The proposal is inconsistent with the aims of clause (3) (f) & (g) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
3. The minimum solar access requirements of clause 14 (1) (e) of State Environmental Planning Policy (Affordable Rental Housing) 2009 are not complied with by the proposed development.
4. The application did not address and the proposed design fails to satisfy the design requirements of Clause 15 of State Environmental Planning Policy (Affordable Rental Housing) 2009.
5. The proposed development is incompatible with the desired character of the locality, having considered the requirements of clause 16A of State Environmental Planning Policy (Affordable Rental Housing) 2009.
6. As the proposal fails to meet the criteria of State Environmental Planning Policy (Affordable Rental Housing) 2009, the proposed development exceeds the maximum floor space ratio standard of Clause 4.4 of the Canterbury Local Environmental Plan 2012.
7. The proposed development exceeds the maximum building height standard of Clause 4.3 (2) of the Canterbury Local Environmental Plan 2012.
8. The proposed development fails to meet the R3 Medium Density Residential zone objectives in that the proposed density is uncharacteristic of the anticipated medium density environment as per Clause 2.3 (2) of the Canterbury Local Environmental Plan 2012.
9. The proposed development does not satisfy the requirements of Clause 6.4 – Stormwater Management of the Canterbury Local Environmental Plan 2012.

10. The proposed development does not comply with the following provisions of the Canterbury Development Control Plan 2012:
- a. Clause 2.1.3 Height, Objective 1, in that the scale of the proposed development is incompatible with the intended character of the zone.
 - b. Clause 2.1.4 Maximum Heights – the maximum building heights of two storeys for buildings in the front 65% of the site's depth, measured from the street boundary, and one storey for buildings in the rear 35% of the site, are exceeded by the proposed development of three storey buildings in the rear 35% of the site.
 - c. Clause 2.1.4 Maximum Heights – the maximum wall height of 3.8m is exceeded with the proposed maximum wall height being 8.2m.
 - d. Clause 2.1.5 Depth/Footprint – the maximum building footprint/depth of 20m is exceeded by the two buildings at the rear of the site, which both have a building footprint/depth of 34.5m.
 - e. Clause 2.1.7 Minimum Setbacks – Despite the numerical compliance with the requirements of this clause, the proposed development does not satisfy Objectives 2, 3 and 4 of this clause.
 - f. Clause 2.1.9 Building Separation – the minimum separation of 5m is not complied with, as the distances between the two buildings fronting the street and the two buildings at the rear of the site are 2.2m and 3.4m.
 - g. Clause 2.2.2 Street Address – the proposed dwellings facing Chapel Street do not have clearly identifiable pedestrian entry-points when viewed from the street and neither do those dwellings have direct access to the street from their main entrances.
 - h. Clause 2.3.4 Minimum Open Space Requirements – units 1-6 and 13-20 do not have private open space of 40m² and no units have an area of at least 2.5m x 2.5m suitable for outdoor seating or an additional area suitable for clothes drying.
 - i. Clause 2.3.5 Internal Dwelling Space and Design – the second bedrooms of units 13, 15, 16, 18, 19 & 20 do not have a minimum dimension of 3.0m and units 13-20 do not have storage in addition to wardrobes, kitchen and bathroom cupboards.
 - j. Clause 6.2.6 Solar Access – the application has not demonstrated that the development would provide adequate solar access to the indoor living areas and private open space of the adjacent dwelling at 53 Chapel Street, Roselands.

WE ALSO ADVISE

- 1. Our decision was made after consideration of the matters listed under Section 79C of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
- 2. If you are not satisfied with this determination, you may:

- 2.1. Apply for a review of a determination under Section 82A of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination; or
- 2.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 97 of the Environmental Planning and Assessment Act 1979.