

## Clause 4.6 DA-70/2019 – 677-687 Canterbury Road and 48 Drummond Street, Belmore

### The proposed height of the affordable housing concept

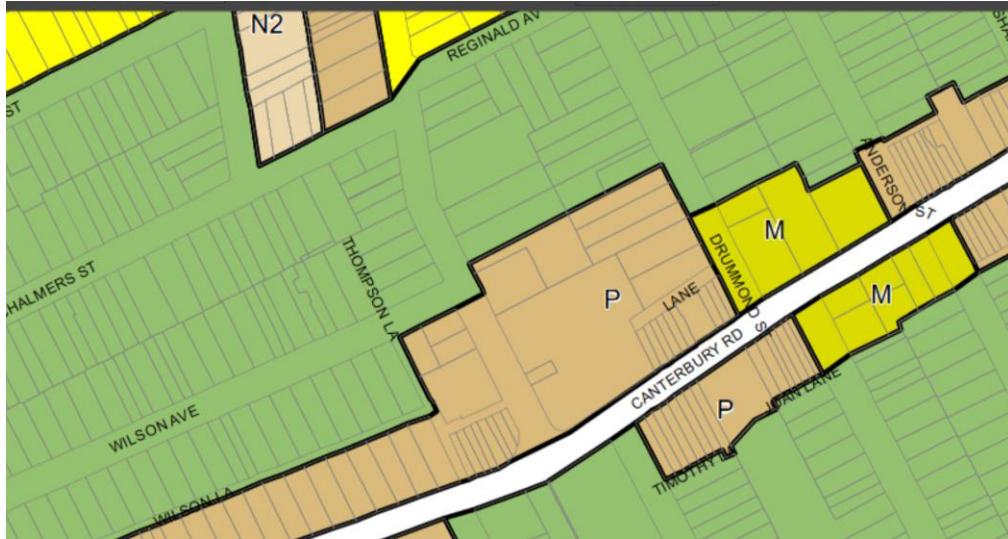
- 1 DA-70/2019 (the 'DA') is a 'concept development application' within the meaning of Division 4.4 of the EP&A Act. It proposes a concept proposal for the site known as 677-687 Canterbury Road and 48 Drummond Street, Belmore for a new affordable housing development under State Environmental Planning Policy (Affordable Rental Housing) 2009 (the 'SEPP').
- 2 Specifically, the development described in the DA is:

*“The demolition of all existing buildings on the site and the construction of a mixed-use development comprising three (3) buildings, with ground floor commercial space along Canterbury Road and residential development pursuant to the provisions of the State Environmental Planning Policy (Affordable Housing) 2009”.*
- 3 The DA relies upon a site compatibility certificate (SCC) issued as provided for by clause 37(1) of the SEPP on 15 July 2014.
- 4 The certificate certified that “the development of the site described in Schedule 1 is compatible with the surrounding land uses, having had regard to the matters specified in clause 37(6)(b), only if it satisfies certain requirements specified in Schedule 2 of this certificate; and is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land”.
- 5 In substance, the SCC allows for the additional permitted use for the purposes of 'residential flat building' “by or on behalf of a public authority or social housing provider”.

Under clause 36 of the SEPP the Director General (or in this case his delegate) could not issue the certificate unless first satisfied that the form of development described in the certificate and subject to any requirements in the certificate development is *“compatible with the surrounding land uses”*.

- 6 The Application which described those 3 buildings at the time the certificate was issued is nominated in the certificate to be that made by HBO+EMTB Architecture and Design, as part of the application made by Stimson Consultant Services on behalf of Evolve Housing – a nominated not-for-profit-provider of social housing which satisfies the SEPP requirement. Written confirmation has been provided to confirm the development is to be occupied by that entity.
- 7 This included two buildings, of seven storeys and one building on Drummond Street of six storeys.
- 8 As provided for by clause 34(7) of the SEPP, the development has been certified to be ‘compatible with surrounding land uses’ if it meets the following 4 requirements:
  - (1) It must be configured to ensure a transition in height between Canterbury Road and the detached dwelling houses in the low density residential zone to the north.
  - (2) The final dwelling number and unit mix must be to the satisfaction of the consent authority which determines a DA for that development.
  - (3) The building design and height of the development (and specifically its impact on solar access, overshadowing, and amenity of the surrounding residential development) must satisfy assessment by the consent authority when determining a DA for the development.
  - (4) The specific uses of the ground level commercial tenancies within the development are to be to the satisfaction of the consent authority when determining the DA.
- 9 The careful design of the concept has been targeted to meet each of those 4 requirements.
- 10 The principal effect of certification under clause 37 of the SEPP, is that as the development complies with the requirements of the SCC, it is to be assessed as “development that needs consent” to which section 4.2 of the EP&A Act applies, even though the outdated B6 and R3 zonings of the site identifies residential development as “development which is prohibited” (within the meaning of section 4.3 of the EP&A Act).

- 11 An issue arises as to whether the development standard for height applying to this site in the B6 Enterprise Corridor applies to this DA.
- 12 The concept proposal for which development consent is sought proposes 6 storey development, comprising 1 storey of ground floor commercial fronting to Canterbury Road, with 5 storeys of residential development above, plus a lift overrun and roof features. Allowing for standard height dimensions expected in metropolitan Sydney of 4 metres for a commercial level and 3.1 metres for a residential level, that equates to 4m + 15.5 m + lift overrun and roof features. Assuming a flat roof pitched only as sufficient to efficiently drain water, a reasonable minimum height for a building of that form would therefore equate to approximately 19.5 metres plus roof features.
- 13 This concept DA seeks concept approval for a building envelope for the site which has approximate maximum heights (noting the transitions in the scheme and uneven topography attributes of the site) ranging in the concept scheme from 19.1m (building c), 20.3m (building b) and 20.6m (building a). These heights facilitate a mixed use scheme with ground floor commercial, residential and above ground floor residential uses as contemplated by the SCC. Those heights are consistent with the heights to be expected of the form of building for which the site compatibility certificate has issued.
- 14 The applicable development standard which would apply to development which is not proposed under a site compatibility certificate is 12 metres for the land within the B6 Enterprise Corridor zoning and 8.5 metres within the adjacent R2 Low Density Residential. However, those maximum heights are a poor indication for the Council's planning for the area. To both the east and west along Burwood Road, the LEP zoning map proposes a maximum 18 metre height limit attributable to a zoning which anticipates 6 levels of mixed use with permissible residential development, (and includes recently approved development applications) as shown in the brown areas marked P in this extract:



15 Recent development approvals have also reinforced the change in Council's planning for the area as discussed below.

16 The development concept has not been designed to comply strictly with the mapped height development standard. Instead, the concept has been conceived to produce a development which meets the requirements of the site compatibility certificate in order to enable the proposed affordable housing scheme that is the subject of the certificate to proceed. That affordable housing scheme was conceived and was recognised by Departmental Secretary as the Director General's delegate to respond appropriately to the surrounding zonings, recent approvals and the likely form of future development for the area.

17 Significantly, the certificate could not have issued under clause 37 of the SEPP unless the delegate of the Director General had first determined that it:

- “(b) is of the opinion that the development concerned is compatible with the surrounding land uses having regard to the following matters:
  - (i) the existing uses and approved uses of land in the vicinity of the development,
  - (ii) the impact that the development (including its bulk and scale) is likely to have on the existing uses, approved uses and uses that, in the opinion of the Director-General, are likely to be the preferred future uses of that land,
  - (iii) the services and infrastructure that are or will be available to meet the demands arising from the development, and

- (c) is of the opinion that the development concerned is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land.”

- 18 The anomalous heights mapped in the LEP Height maps for the site have plainly assumed an Enterprise use which is why those heights are significantly lower than the permissible heights on adjacent properties.
- 19 With the site compatibility certificate permitting a form of development and use that are prohibited in that historical zoning, with express permission for a different form of building to accommodate the affordable housing scheme, it is questionable whether the mapped height development standard would apply the in fact apply at all.
- 20 A barrister’s opinion from Mr Justin Doyle of Frederick Jordan Chambers dated 5 April 2019 (supplied separately to Council) concludes that the development standard does not apply but suggested that for abundance of caution a written request under clause 4.6 of the LEP be made to seek departure from the underlying development standard.
- 21 This document makes such a request in adoption of that advice.
- 22 To that end, this 4.6 variation request firstly identifies the precise contravention of the “Height of Buildings” development standard stipulated by clause 4.3 of Canterbury LEP (if that standard applies) which the applicant requests be permitted to allow approval of the concept DA.
- 23 It then justifies the proposed “contravention” by identifying the particular relevant objectives of the EP&A Act, of the applicable zones, and of the development standard.
- 24 The requirements of 4.6(3) and (4) are then addressed. In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191*, Moore J addressing the requirements of those subclauses says there are 4 things an Applicant needs to establish before a 4.6 request to permit contravention of a development standard. They are that:

- (1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and
- (4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)).

Each of those matters is addressed below.

25 and particularly the request:

- (a) sets out why compliance is unreasonable or unnecessary in the circumstances of the concept DA,
- (b) explains why there are sufficient environmental planning grounds to justify contravening the development standard (as required by clause 4.6(3)); and
- (c) describes why it is in the public interest to allow the development standard to be contravened 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 variation request**

26 The specific variation request made is to vary the applicable mapped heights to permit the development for which a compatibility certificate has issued, and specifically the following variation of the height development standard:

**Development standard:** Mapped heights of 12 metres applying to the B6 Enterprise Corridor portion of the site and 8.5 metres applying to the R3 Medium Density Residential portion, applying under clause 4.3 of Canterbury LEP 2012.

**Concept proposal:** Maximum height of 21 metres (plus lift overrun and roof features)

## **Relevant objectives and principles**

### **Environmental Planning & Assessment Act 1979**

#### **1.3 Object of the Act**

The objects of this Act are as follows:

- (d) to promote the delivery and maintenance of affordable housing.
- (g) to promote good design and amenity of the built environment

#### **B6 Enterprise Corridor Objectives**

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.
- To facilitate the revitalisation of Canterbury Road and create an attractive streetscape supported by buildings of a high standard of design.
- To support urban renewal and a pattern of land use and density that reflects the existing and future capacity of the transport network.
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#### **R3 Medium Density Residential Objectives**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

### **Objectives of Clause 4.3 Height of Buildings**

#### **Response to clause 4.6 principles**

#### **“unreasonable or unnecessary” and “sufficient environmental planning grounds”**

- (1) ***The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and***



**(2) *The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).***

- 27 The *State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Housing SEPP)* applies to land in the Sydney region within 800 metres of a public entrance to a railway station of light rail station “*but not if development for the purposes of a residential flat building is permissible on the land under another environmental planning instrument*”.
- 28 The site is zoned part R3 Medium Density Residential and part B6 Enterprise Corridor. “*Residential flat buildings*” are prohibited in both zones. The maximum height for R3 zoned land is 8.5 metres and 12 metres for the B6 zoned land. No FSR applies to the B6 zoned land and 0.5:1 for the R3.
- 29 The aims of the Affordable Rental Housing SEPP are to:
- (a) *to provide a consistent planning regime for the provision of affordable rental housing,*
  - (b) *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
  - (c) *to facilitate the retention and mitigate the loss of existing affordable rental housing,*
  - (d) *to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
  - (e) *to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
  - (f) *to support local business centres by providing affordable rental housing for workers close to places of work,*
  - (g) *to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*
- 30 Point (2) above provides for incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.



- 31 On 15 July 2014, a site compatibility certificate (SCC) was issued under clause 37(1) of State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP) in relation to the subject site.
- 32 The certificate certified that “the development of the site described in Schedule 1 is compatible with the surrounding land uses, having had regard to the matters specified in clause 37(6)(b), only if it satisfies certain requirements specified in Schedule 2 of this certificate; and is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land”.
- 33 In effect, the SCC approved an additional permitted use, being a “*residential flat building*” for the purposes of affordable rental housing. The form of development and the residential flat building certified under Schedule 1 of the SCC included:
- “The demolition of all existing buildings on the site and the construction of a mixed-use development comprising three (3) buildings, with ground floor commercial space along Canterbury Road and residential development pursuant to the provisions of the State Environmental Planning Policy (Affordable Housing) 2009”.*
- 34 The Application which described those 3 buildings at the time the certificate was issued is nominated in the certificate to be that made by HBO+EMTB Architecture and Design, as part of the application made by Stimson Consultant Services on behalf of Evolve Housing – a nominated not-for-profit-provider of social housing which satisfies the SEPP requirement. This included two buildings, of seven storeys and one building on Drummond Street of six storeys.
- 35 As provided for by clause 34(7) of the SEPP, the development has been certified to be ‘compatible with surrounding land uses’ if it meets the following 4 requirements:
- (1) It must be configured to ensure a transition in height between Canterbury Road and the detached dwelling houses in the low density residential zone to the north.
  - (2) The final dwelling number and unit mix must be to the satisfaction of the consent authority which determines a DA for that development.
  - (3) The building design and height of the development (and specifically its impact on solar access, overshadowing, and amenity of the surrounding residential development) must satisfy assessment by the consent authority when determining a DA for the development.
  - (4) The specific uses of the ground level commercial tenancies within the development are to be to the satisfaction of the consent authority when determining the DA.

- 36 The careful design of the concept has been targeted to meet each of those 4 requirements.
- 37 The principal effect of certification under clause 37 of the SEPP, is that as the development complies with the requirements of the SCC, it is to be assessed as “*development that needs consent*” to which section 4.2 of the EP&A Act applies, even though the outdated B6 and R3 zonings of the site identifies residential development as “*development which is prohibited*” (within the meaning of section 4.3 of the EP&A Act).
- 38 Furthermore, the R3 Medium Density zone and B6 Enterprise Corridor zone have numerous objectives that facilitate development in that zone in accordance with the permitted uses. As “*residential flat buildings*” are not permitted and the development application is for a residential flat building, it is difficult to achieve an objective for an employment use, such as a “*warehouse or distribution centre*” and achieve the development control that applies to this use.
- 39 As previously stated, the purpose of the Affordable Rental Housing SEPP is to expand zoning and permissibility. The maximum building height of 12 metres (B6) and 8.5 metres (R3) apply to those uses permitted which does not reflect or contemplate a “*residential flat building*” or the urban form of the concept endorsed by the Secretary in the Department’s SCC.
- 40 The existing zones do not permit the use (residential flat building) permitted by the SCC and the height control reflects the permitted uses under those zones (12 metres and 8.5 metres). Further, the concept and height contemplated by the SCC are for a 7 storey and 6 storey development. Therefore, **compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development.**
- 41 Further, given the permissibility of the land use through the SCC, which determined that “*the development of the site described in Schedule 1 is compatible with the surrounding land uses*”, **the written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard.**

### **The public interest**

- (3) ***The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and***

**(4) *The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)).***

42 It is considered that the development will **be in the public interest** for the following reasons:

- The Development will directly achieve the objectives of Section 1.3 of the EP&A Act 1979 to promote the delivery and maintenance of affordable rental housing. It does this by facilitating the development of 174 dwellings, of which 87 will be affordable homes in accordance with the Affordable Housing SEPP in an area of Sydney with significant housing stress.;
- The development is considered compatible with the surrounding land uses, as determined by the SCC;
- The development aligns with the council staff recommendation for the site in relation to the recently determined planning proposal, which sought to amend the planning controls to B5 Business Development, 18 metres height or 6 storeys, and no FSR;
- The Canterbury LEP 2012 contemplates provisions of a SEPP that may prevail over the LEP under Section 3.38 of the EP&A Act 1979. In this context, the SEPP has provided for a development that is not permitted by the two subject zones (B6 and R3). The development is consistent with the objectives of the SEPP as follows:
  - (a) *to provide a consistent planning regime for the provision of affordable rental housing,*
  - (b) *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
  - (c) *to facilitate the retention and mitigate the loss of existing affordable rental housing,*
  - (d) *to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
  - (e) *to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
  - (f) *to support local business centres by providing affordable rental housing for workers close to places of work,*

- (g) *to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*
- The development is also consistent with the objectives of the Canterbury LEP 2012. The following in particular are of relevance:
  - (a) *to provide for a range of development that promotes housing, employment and recreation opportunities for the existing and future residents of Canterbury,*
  - (b) *to promote a variety of housing types to meet population demand,*
  - (c) *to ensure that development is of a design and type that supports the amenity and character of an area and enhances the quality of life of the community,*
  - (d) *to create vibrant town centres by focusing employment and residential uses around existing centres and public transport nodes,*
  - (e) *to revitalise Canterbury Road by encouraging a mix of land uses that does not detract from the economic viability of existing town centres,*
- Of the two zones that currently apply to the site, the development proposal is consistent with relevant objectives as follows:

<b>B6 Enterprise Corridor</b>	
<ul style="list-style-type: none"> <li>• To promote businesses along main roads and to encourage a mix of compatible uses.</li> </ul>	The site is on Canterbury Road, a classified main road. The ground floor uses along Canterbury Road are proposed business uses, compatible with mixed use developments along and envisaged on Canterbury Road.
<ul style="list-style-type: none"> <li>• To provide a range of employment uses (including business, office, retail and light industrial uses).</li> </ul>	Employment generating uses are to be located on Canterbury Road. While the subject DA is a concept and does not stipulate the actual employment uses, it is proposed to work with council on the types of employment uses desired for this location.
<ul style="list-style-type: none"> <li>• To maintain the economic strength of centres by limiting retailing activity.</li> </ul>	Retail activity is limited to 938sq.m or 6 units along Canterbury Road. Further it is open to the consent authority to apply a restriction to certain forms of retail activity as required to assist meeting the objective.
<ul style="list-style-type: none"> <li>• To facilitate the revitalisation of Canterbury Road and create an</li> </ul>	The existing use is a vacant and underutilised commercial/warehouse. It is a

attractive streetscape supported by buildings of a high standard of design.	blight on the streetscape and does not contribute in any way to the existing streetscape and urban environment. The development will facilitate the revitalisation of Canterbury Road and create an attractive streetscape.
<ul style="list-style-type: none"> <li>To support urban renewal and a pattern of land use and density that reflects the existing and future capacity of the transport network.</li> </ul>	The DA facilitates the urban renewal of the site consistent with the pattern of mixed use development occurring in the corridor and envisaged by the Canterbury Road Review (i.e. the 'new vision for Canterbury Road' on page 17 states: " <i>a new vision for Canterbury Road would see... An indicative built form with a maximum of 6 storeys, the basis of which is set out in the Urban Design Study</i> ". The application has adopted the proposed maximum height of 6 storeys and, noting the proposed FSR in the corridor of up to 2.5:1 (1.9:1 residential and 0.6:1 commercial), we have achieved a FSR of 2.16:1 achievable under the Concept DA.

<b>R3 Medium Density Residential</b>	
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> </ul>	The objective is achieved by the concept scheme seeking to providing key affordable housing and general housing to meet the needs of the community. The scheme concept design in seeking to achieve the conditions of the SCC is lower in scale of the R3 zoned lot as it transitions the built form to the adjacent land uses. Greater setbacks of 6 metres are applied to the adjacent boundary and the dwelling typology of terraces has been implemented in the R3 lot zone land to provide a dwelling typology consistent and similar to that anticipated and present in R3 development in the locality that is not subject to the provisions of Division 5 of the AHSEPP. The scale of the terrace development at 2

	and transitioning to 4 levels is in keeping with the density and scale of an R3 zone.
<ul style="list-style-type: none"> <li>To provide a variety of housing types within a medium density residential environment.</li> </ul>	The provision of a terrace style dwelling in the R3 lot with adjoining home units creates a variety of dwelling type as contemplated by the objective.
<ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	The develop scheme is not in conflict with this objective as the entire scheme includes a mix of uses.

#### 43 Clause 4.3 Height of Buildings (part 8.5 metres (R3) and part 12 metres (B6))

(a) to establish and maintain the desirable attributes and character of an area,	Similar mixed use development, and permitted mixed use development in the area is 6 storeys in height with retail and commercial uses fronting Canterbury Road. The concept application is consistent with the desired attributes and character of the area in that the proposal has a maximum height of 6 storeys, retail uses fronting Canterbury Road and a density of 2.16:1, less than the 2.5:1 envisaged by the Canterbury Road Review for mixed use development.
(b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,	<p>The architectural plans that accompany the concept DA include shadow analysis at 9am, 12pm and 3pm on 21<sup>st</sup> June. This illustrates that the majority of overshadowing only effects Canterbury Road to the south.</p> <p>At 9am, there is minor impact on development to the west, and for the majority of the day the impact is only to the road with no adjoining development being effected.</p> <p>Further, of the 1,117sq.m of open space within the site, 63% achieves 2 or more hours of solar access.</p>
(c) to support building design that contributes positively to the streetscape and visual amenity of an area,	The proposed development seeks a massive height of 6 storeys. This includes a recess for levels 5 and 6 to minimise the visual impact on Canterbury Road. The

	<p>Canterbury Road frontage is broken by a laneway forming two separate buildings, of which both contain retail and commercial uses along the frontage of Canterbury Road.</p> <p>The heights and built form are consistent with the existing and future desired character for mixed use development and contributes positively to the streetscape and visual amenity of the area.</p>
(d) to reinforce important road frontages in specific localities.	<p>The Canterbury Road Review provides a platform for sympathetic and desirable urban renewal along the corridor. The proposal acknowledges the importance of the Canterbury Road frontage and has been prepared in accordance with the urban design principles and built form outcomes envisaged for mixed use development.</p>

#### Clause 4.4 Floor Space Ratio (R3 Medium Density Residential ONLY)

(a) to provide effective control over the bulk of future development,	<p>Under the Canterbury LEP 2012, the maximum floor space ratio (FSR) control does not apply to the land zoned B6 Enterprise Corridor. An FSR of 0.5:1 applies to the part of the site zoned R3 Medium Density Residential.</p> <p>The proposed development is subject to a site compatibility certificate under the Affordable Rental Housing SEPP, the aims of which seek to <i>“facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, <b>floor space ratio bonuses</b> and nondiscretionary development standards”</i>. In issuing the certificate, the proposed development was supported subject to conditions. This included Condition 2, which states <i>“the final dwelling number and unit mix are to be to</i></p>
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	<p><i>the satisfaction of the consent authority in determining the development application</i>".</p> <p>The number of units contemplated by the Department of Planning and Environment under the site compatibility application was 222 units: 36 studios; 104 1 bed; 70 2 bed; and 12 3 bed.</p> <p>Following the issuing of the site compatibility certificate, the consideration of conditions, and the refinement of the scheme in accordance with the conditions, including height transition, the total number of units facilitated by the Concept Plan development application is <b>174</b>: 1 studio; 53 1 bed; 103 2 bed; and 17 3 bed. That equates to a reduction by 38 units following the issuing of the site compatibility certificate.</p> <p>The FSR control only applies to 48 Drummond Street, which equates to approximately 1000m<sup>2</sup> of the 7000m<sup>2</sup> site. To control the bulk of future development the SCC required a <i>"transition in height between Canterbury Road and the surrounding single storey dwelling houses to the north"</i>.</p> <p>Development on the R3 zoned land is lower in bulk and scale as it seeks to transition and be sympathetic to adjacent development.</p> <p>Greater setbacks of 6 metres are applied to the adjacent boundary and the dwelling typology of terraces has been implemented in the R3 zoned lot to provide a dwelling typology consistent and similar to that anticipated and present in R3 zoned development in the locality. The scale of the terrace development at 2 levels and transitioning to 4 levels is in keeping with the density and scale of an R3 zone. The concept has adopted council's height plane for transitional development.</p>
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<p>(b) to protect the environmental amenity and desired future character of an area,</p>	<p>The bulk and scale of the development is consistent with the existing and envisaged character of the area. Land either side of the site is zoned B2 Local Centre. While no FSR applies, the future envisaged FSR is 2.5:1. The concept delivers an FSR of 2.16:1. The proposed mixed use development is therefore consistent with the future character of the area.</p>
<p>(c) to minimise adverse environmental impacts on adjoining properties and the public domain,</p>	<p>The density promoted by the Canterbury Road Review for mixed use development is up to 2.5:1 (1.9:1 residential and 0.6:1 commercial). While the Concept DA does not seek consent for development, it does facilitate a concept against which future DA's will be lodged, the density of which will be approximately 2.16:1.</p> <p>Adjoining properties are zoned B2 Local Centre and similar forms of development are anticipated for these sites.</p> <p>The public domain is enhanced through active frontages at ground level, where commercial and retail uses are proposed.</p>
<p>(d) to optimise development density within easy walk of the railway stations and commercial centres.</p>	<p>The site is within 800 metres of the entrance to the Belmore railway station. This formed the basis for the issuing of the SCC, which promotes density in locations within easy walking distance of public transport. This equates to approximately a 9-minute walk.</p> <p>Further, the site is approximately 400 metres from the edge of the commercial district, or a 5 minutes walk, of the Belmore town centre.</p> <p>The proposal therefore optimises density within easy walking distance to the Belmore town Centre and train station, achieve the objectives.</p>

## **Conclusion**

- 44 Therefore, in conclusion, the development reflects the primary objective of the EP&A Act 1979, which through a recent important change to the Act introduces “affordable housing” as a key objective of the Act.
- 45 The Canterbury LEP 2012 assist to achieve the objective of the EP&A Act 1979. The Canterbury LEP 2012 contemplates provisions of a SEPP that may prevail over the LEP under Section 3.38 of the EP&A Act 1979. In this context, the State Environmental Planning Policy (Affordable Rental Housing) 2009 has provided for a development that is not permitted by the two subject zones (B6 and R3).
- 46 The State Environmental Planning Policy (Affordable Rental Housing) 2009 is a EPI which is specifically utilised to implement the objective of the EP&A Act 1979. At Clause 8 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 it is advised that whether made before or after the commencement of the Policy, the Policy prevails to the extent of the inconsistency.
- 47 The development standards are historical, and relate to a past use of the site which contrasts inappropriately with recent planning approvals for adjoining sites.
- 48 The variation of the development standards is necessary in this case to give effect to the site compatibility certificate and its requirements, and in that way to encourage the form of development which the *Affordable Rental Housing SEPP* encourages.