

14 June 2019

Pacific Planning Pty Ltd  
PO Box 8  
CARINGBAH NSW 1495

<b>Application Number:</b>	<b>DA-70/2019</b>
<b>Proposal:</b>	<b>Concept development application for a high density mixed use development. The concept development application is for three x six storey building envelopes (as amended) with retail/commercial tenancies and basement car parking. This application is made pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 with 50% of apartments to be dedicated as affordable housing.</b>
<b>Property:</b>	<b>677-687 Canterbury Road and 48 Drummond Street, Belmore</b>

Dear Mr Matthews,

I refer to your application on the subject property. I have completed an assessment of your original application and amended plans and have identified the following matters for your attention. There are several matters raised that pose significant hurdles to the concept application, as identified in 'Part A' of this letter. These issues need to be resolved before seeking to address the components raised in 'Part B' of the letter.

## **Part A**

### **1. Lapsing Site Compatibility Certificate**

The subject concept application relies on Division 5 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH). Clause 36(2)(a) of Division 5 provides that a consent authority cannot grant development consent without a site compatibility certificate issued by the Director-General.

The site compatibility certificate (SCC) that the application relies upon expires five years from 15 July 2014, being the coming 15 July 2019.

On the 6 May 2019 and 8 May 2019, Council was advised that you had formally sought an extension for the SCC. At our meeting on 29 May 2019 it was advised that the Department of Planning and Environment had not determined the request for an extension.

Council has been notified that a new application for an SCC has been lodged. The documentation submitted with that application states that an extension to the existing SCC was not granted.

Given the nature of the issues raised below and likely time required to adequately address these matters, it is unclear how these matters can be resolved before the expiry of the SCC on 15 July 2019.

## 2. **State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)**

The following concerns are raised in relation to Division 5 Residential flat buildings – social housing providers, public authorities and joint ventures of SEPP ARH.

- **Clause 34 Land to which Division applies**

It is noted from the Statement of Environmental Effects that the subject site is within 800m from Belmore Train Station. It appears that this was measured in a straight line (or, as the crow flies), though it is not clear from the documentation submitted.

An informal assessment of the walkable distance from the subject site and the public entrance of Belmore Train Station indicates that the site is either just under 800m or just outside of 800m walking distance.

As Division 5 does not apply to land that is more than 800m from a public entrance to a railway station, please provide a survey that the site meets the required distance. The survey must be undertaken by a qualified, registered surveyor. As a precondition to access the provisions of Division 5, if the subject site falls outside of a walkable 800m, Division 5 cannot be relied upon.

- **Clause 35 Development to which Division applies**

The documentation accompanying the concept development application includes a letter dated 20 February 2019 from Evolve Housing that, in part, states:

*'This letter confirms that, **subject to a Property Management Agreement with Pacific Planning Pty Ltd, Evolve Housing agrees to manage** 677-687 Canterbury Road and 48 Drummond St Belmore for 10 years in accordance with the State Environmental Planning Policy (Affordable Rental Housing) 2009.'*

The key matter is highlighted in bold. This letter demonstrates that the proposed application is not made pursuant to Clause 35(1), '**by or on behalf** of a public authority or social housing provider'.

Division 5 only applies to certain social housing providers, public authorities or the Land and Housing Corporation. The current proposal before Council does not fall within any of the categories prescribed in Clause 35. The subject application therefore cannot access the provisions of Division 5 and is a prohibited form of development.



- **Clause 36 Development may be carried out with consent**

Clause 36(2)(a) Director-General's opinion that the site is compatible with the surrounding land uses

The SCC refers to the Director-General / Acting Secretary's opinion that a mixed use development comprising three buildings with ground floor commercial along Canterbury Road is compatible with surrounding land uses subject to satisfaction of the requirements specified in Schedule 2. Concerns relating to addressing the requirements of Schedule 2 are set out below.

Requirements 1-3 of the SCC revolve around height, building transitions, amenity impacts and final dwelling mix; with the key issue being height. As part of the SCC assessment, the Director-General / Acting Secretary was required to consider the impact of the development's 'bulk and scale' (37(6)(b)(ii)).

That consideration was deferred to the consent authority to determine the ultimate height of the final scheme.

The issue of height has two separate considerations, being:

- Satisfaction of the SCC's Schedule 2 requirements (1 and 3);
- Merits assessment pursuant to Section 4.15 of the EP&A Act 1979 and Clause 36(3) of SEPP ARH of the Canterbury Local Environmental Plan 2012.

In assessing the proposed height against the development described in Schedule 1 of the SCC and the requirements of Schedule 2, there is no explicit or implicit reference to an approved height or dwelling numbers in the SCC. Further, the plans considered by the DPE do not form part of the SCC.

The justification put forward in the SEE and various emails to satisfy these requirements primarily revolves around the subject application proposing a reduction in height and dwellings than the density considered as part of the SCC. Reference is also made to the Canterbury Road Review and six storey development in the general vicinity of the site to support the proposed height.

**Requirement 1** seeks an appropriate transition in height to the north low density residential sites which are subject to an 8.5m height limit. The SCC does not make any reference to achieving a compatible height or transition with the land uses to the east and west or approved development in the vicinity, of which are subject to an 18m height development standard. The information provided in the SEE and other supporting documents seeks a comparison with the incorrect sites, which have not been referred to in the SCC.

Therefore, there is no requirement to consider height on the basis of the east and west located sites through the SCC. As the state of satisfaction has been deferred to the consent authority, it is considered that requirement 1 is to be achieved through a development that is consistent with development standards applicable to the respective B6 and R3 zoned parts of the site. This would also create an appropriate transition to the northern residential sites, as determined by the Canterbury Local Environmental Plan 2012.

In adequately addressing requirement 1, it is likely that **requirement 2** would also be addressed, which has deferred the final dwelling number and unit mix to the satisfaction of the consent authority.

**Requirement 3** relies on the consent authority's assessment of the building design and height, the proposal's impact on solar access and overshadowing, as well as the amenity of surrounding residential development.

The height above the development standard has created additional solar access impacts within the development and additional overshadowing on the adjoining B2 sites on Drummond Street in the morning period (where shop top housing is permitted). The solar access achieved within the site is below the ADG design criteria, at 58%. Building A performs at 42% and Building C performs at 61%.

The proposed additional height also creates additional visual bulk and privacy impacts to the northern residential properties.

**Requirement 4** has been addressed through provision of retail along Canterbury Road.

Based on the above, requirements 1-3 of the SCC and 36(2)(a) of SEPP ARH have not been satisfactorily resolved.

#### Clause 36(2)(b) Ground floor use

Clause 36(2)(b) requires that for land zoned primarily for commercial purposes (i.e – B6 Enterprise Corridor), no part of the ground floor of the building that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.

The application comprises three buildings which all face a street, being Canterbury Road, Drummond Street and Anderson Street. Accordingly, all three buildings cannot contain ground floor residential where the land is zoned B6 Enterprise Corridor, as they all front a street.

#### Clause 36(3) Assessment of application

36(3)(a)-(c) facilitate an assessment of the proposed development with regard to site and design features that are more stringent than those in the SCC, an assessment of the compatibility of the development with the surrounding land uses and any other matter in the determination of an application.

To avoid unnecessary duplication, concerns relating to (a) and (c) are detailed throughout this letter.

#### - **Canterbury Local Environmental Plan 2012**

#### Height and FSR

On 29 March 2019, Council raised the requirement for a Clause 4.6 written request for the proposed breach to height and FSR that is sought by the proposed application.



An opinion on the matter was provided to Council through a memorandum of advice from Justin Doyle, Barrister, with regard to a development made within the scope and requirements of an SCC and the relevance of development standards within the CLEP 2012.

After a review of the advice, Council's view is that there are no provisions within Division 5 SEPP ARH or the SCC that specifically state that the height of building, floor space ratio or any other development standard of the Canterbury Local Environmental Plan 2012 has no effect or to disregard the development standards of other EPI's.

The SCC permits flexibility in land use only and therefore the Canterbury Local Environmental Plan 2012 development standards apply.

A Clause 4.6 written request was submitted on 20 May 2019 (for the stated purpose of the 'abundance of caution'). The written request contains a significant preamble relating to the history and documentation provided as part of the SCC.

In assessing the written request, the request inadequately details the proposed height. It instead seeks a 'maximum height of 21 metres (plus lift overrun and roof features)'. The request should identify what height it is actually seeking, particularly noting that the height variation for the 8.5m will be different to the 12m height. The height **including** lift overruns should also be stated, and not a generic statement. There is no statement relating to the proposed breach of FSR.

The written request for both height and FSR addresses Clause 4.6 (3)(a) and (b) together, primarily relying on the following justification:

- The plans considered as part of the SCC were 6-7 storeys in height.
- The B6 zone and R3 zone development standards are outdated and should not apply.
- It is difficult to achieve the objectives relating to employment uses (such as a 'warehouse or distribution centre') for a residential flat building reliant on an SCC.
- The height development standard only reflects permissible uses and therefore should not be applied to the subject development.
- The proposal results in the provision of affordable housing.
- There is an inconsistency between SEPP ARH and the CLEP 2012.
- Approvals issued for sites in the locality are six storeys.

In response to the key planning grounds relied upon, there is little relevance of the plans considered as part of the SCC process as they do not form part of the SCC for reasons previously detailed.

In relation to the argument that the CLEP 2012 is inconsistent with SEPP ARH, as there are no height development standards provided within Division 5 of SEPP ARH, there is no inconsistency for SEPP ARH to prevail against.

The argument stating that the development standards are outdated and should instead reflect surrounding heights or approvals is not supported. There are a variety of uses permissible on the site which are capable of construction at an increased

height; including hotel or motel accommodation, community facilities, hospital, education establishment, function centre and other uses identified as being permitted with consent in the zone. The height has therefore not been solely derived from the potential height constraints of a warehouse development. Further, it is noted that residential development along Canterbury Road varies in height.

A clause 4.6 written request is not the correct mechanism for seeking a more desirable development standard from nearby properties. If the application seeks to affect general planning change through adoption of surrounding sites height limits, the appropriate mechanism is through a planning proposal.

Below are further issues with the inadequacy of the written request:

- As per clause 4.6(3)(b), it is the extent of the variation that is required to be addressed, not the benefits of the development as a whole. The written request makes no distinction in this regard.
- The written request has mixed the height and FSR written requests. Accordingly 4.6 (3)(a) and (b) has not been adequately addressed for the relevant development standard.
- Due to the layout, it is unclear if a request to vary the FSR development standard has been completely incorporated into the submitted written request.
- Without being indirectly satisfied that the written request has achieved 4.6(3)(a) and (b), Council is unable to consider that the proposed variations achieve the requirements of clause 4.6 (4)(a)(ii).

It is considered that the written request has not sufficiently addressed the matters of 'unnecessary or unreasonable' or established 'sufficient environmental planning grounds' to justify the contravention of the development standard. The proposed breaches to the height and FSR therefore cannot be supported.

### **3. Roads and Maritime Services (RMS)**

The RMS have considered the application (including the submitted additional information and amended plans) and do not support the application for the following reason:

1. *It is understood that Council is undertaking a comprehensive traffic and transport study to assess the cumulative impacts of mixed use developments within the Canterbury Road Corridor. It is noted the subject proposal seeks variation to the LEP height limits (using a clause 4.6 variation) which would result in additional units over and above what is permissible under existing controls. Roads and Maritime is of the view that Council should give consideration to not supporting such applications until the outcome of the broader traffic and transport study, determination of any mitigation works (including road widening requirements for the corridor) and funding mechanisms are finalised.*



## Part B

### 1. Apartment Design Guide

#### Part 3F Visual Privacy

The visual privacy conditions between Building A and C on levels 5 and 6 have not achieved the 18m separation distance as per Part 3F-1. Notwithstanding that these storeys are not supported, should you pursue the current envelopes, an 18m separation is required. Blank wall conditions along the southern elevation of Building C for likely corner apartments is an inadequate design response to Part 3F.

To the north and north east, Building C had not had adequate regard to the addition 3m building separation when adjacent to a different zone that permits lower density residential development. Where Building C adjoins 37-39 Anderson Street (partial to the north-east) and 44 Drummond Street, the relevant design criteria requires an additional 3m.

The configuration of Building C also results in a ziggurat appearance, contrary to the design guidance of Part 3F. Removal of the parts of the building above the height limit should resolve this issue, however it is raised that any amendment will still need to be within the CDCP 2012 setback controls.

#### Part 4A Solar Access

The following assessment is based on the indicative drawings provided, and acknowledges that the final design will be subject to future detailed applications. Notwithstanding, the ability to achieve solar access is critical in the assessment of the concept application.

- The view from the sun diagrams do not show the two storey development at 44 Drummond Street. It is likely that the indicative two storey apartments may receive the two hours solar access, however detailed view from the sun diagrams are required to demonstrate solar access to these apartments, particularly the living spaces.
- Solar access to all of the nominated apartments on the lower four levels of building A along the northern and eastern façades of building A have not been demonstrated to **both** living areas and private open space. The heights proposed for building C and A significantly contribute to this issue.
- Overall, Council's assessment shows the development only achieving 58% solar access. Building A achieves 42%, Building B achieves 74% and Building C achieves 61%. Part 4A requires a minimum of 70%.

The proposal also demonstrates additional overshadowing to the adjoining B2 sites, which permits residential accommodation.

#### Part 4B Cross Ventilation

In order to reduce separation distances within the development and to adjoining R3 Medium Density residential zoned sites, the indicative proposal has incorporated blank wall conditions. This has resulted in many potential corner apartments having a

single aspect. There is also a reliance on ventilation from the same aspect for the two storey apartments. Please refer to the definition of cross ventilation within the ADG.

The proposal overall performs at 48%, well below the minimum 60% sought by the design criteria.

#### Amenity

Notwithstanding that the apartments are indicative, it is raised that two ground floor apartments are single aspect apartments fronting the basement driveways. Despite being indicative, these centrally located apartments lack amenity and would not be supported in a detailed DA. Similarly, ground floor apartments with bedroom windows located on the basement ramp are unacceptable.

### **2. Canterbury Development Control Plan 2012**

#### Part D1.3.4 Setbacks

Whilst the additional storeys that this control relates to are not supported, it is advised that the upper element setbacks along Drummond Street and Anderson Street requires an 8m setback for levels 5 and 6.

Further, this control also states that ziggurat built forms are not permitted, consistent with the ADG provisions of Part 3F.

#### Easements / Services

Could you please provide information regarding the terms of the electrical easement shown on the survey. It is not clear, but it appears Building B may be located on part of it. Please provide further details regarding the future of this easement.

### **3. State Environmental Planning Policy 55 – Remediation of Land**

Council's Environmental Health Officer has reviewed the application and requires the following information:

#### Contaminated Site Audit of the Contaminated Land Process

1. A NSW Environment Protection Authority accredited Site Auditor must be appointed to Audit reports compiled as part of the contaminated land assessment, remediation, and validation process.
2. Prior to consideration of development consent, a Site Audit Statement and Site Audit Report must be provided to Council from the Site Auditor that clearly states that the site is, or can be, made suitable for the intended use. The Site Audit Statement and Site Audit Report must include any restrictions or management requirements for the site.

The Site Audit Statement and Site Audit Report must be submitted to Council in writing.

### **4. Traffic**



Council's Traffic section have reviewed the application and require the following information. Some of the design details may impact on the size of the basement, and have therefore been included:

#### Traffic Report

The counts for the "existing" traffic volumes were taken in 2014 and 2015, more than 4-5 years ago which is not acceptable. New counts are to be undertaken on school days to ensure peak traffic volumes are captured.

The traffic report provided as part of the submission has identified a traffic generation of 77.5 veh/hr and 65.1 veh/hr in the AM and PM peak respectively. This will add approximately 713 veh/day to the existing traffic volumes on the surrounding streets and local road network.

In the traffic report Figures 5A and 5B do not show all the traffic flows. The distribution of future traffic needs to be clearly shown on a network diagram and intersection analysis be provided.

An updated report is to be submitted.

#### Car Parking Layout

The below issues are raised in the event it affects the basement layout to ensure that future applications will not be inconsistent with the concept application.

- Clearance height of the ramp and circulation roadways must accommodate the largest vehicle (MRV, according to the report) accessing the site in accordance with AS2890.2.
- Vehicular conflict may occur between light vehicles and MRVs from shared use of the access driveway and ramp.
- Visitor spaces are User Class 3 and require a minimum width of 2.6m in accordance with AS2890.1 Fig 2.2.
- Basement 1:
  - Building A – The space at the base of the ramp appears to encroach onto the circulation roadway.
  - Building C – The aisle width adjacent to the waste storage is insufficient as it is a single sided aisle.
- Basement 2:
  - Building C – The aisle width adjacent to the waste storage is insufficient as it is a single sided aisle.

#### Access Driveway

- The width of both access driveways on Drummond Street and Anderson Street is 6.5m. As the largest vehicle accessing the site, according to the report, is a MRV, the access driveway width is to be a minimum of 9m in accordance with AS2890.2 Fig 3.1.

## **5. Waste**

It is also noted that the proposed method of waste collection does not accord with the Canterbury Development Control Plan 2012, where a waste storage area is required within 15m of the street and integrated into the building design. Notwithstanding, this

detail could be submitted in a detailed DA. Please note that waste collection is not permitted from Canterbury Road.

## **6. Landscape Architect**

Council's Landscape Architect has reviewed the application. Most of the issues raised are more appropriate for the detail that would be found in a detailed application. However the following matters require your attention during the concept application to ensure the building envelopes are not impacted by the requests:

- The survey is to be reviewed. One tree is missing from the street tree group at Anderson Street - Canterbury Road corner. This tree is to be shown on plan and retained and protected during demolition and construction.
- The design proposes removal of two significant trees at Drummond Street corner with Canterbury Road as well as on Drummond Street at the southern western boundary of the site.

These trees are to be retained and protected during demolition and construction in accordance with all recommendations, advice and guidelines provided in a Tree Management Plan, to be prepared by an AQF Level 5 Registered Consulting Arborist with a minimum 5 years industry experience.

## **7. Engineering**

Council's Development Engineer has reviewed the application and raised various matters, some of which would be addressed as part of a detailed application. All comments have been provided, however only a few are relevant to the concept envelopes and are raised for your response or noted:

1. The OSD tank located under the driveway ramp on Drummond Street frontage does not provide for safe overflow of excess stormwater runoff. The driveway profile above the tank is required to have a partial positive fall to the street so that the overflow does not inundate the basement.
2. The aboveground onsite detention facilities are not coordinated with the landscape plans provided. The above ground OSD basins need to be integrated in the landscape overall plans.
3. All stormwater outlets connecting to the kerb must not exceed 100mm in height so that it can achieve 50mm cover in the footpath.
4. The outlets from the OSD systems are to be sized for the 10y ARI, so that no overflow occurs within the site for smaller storm events.
5. The orifice plate sizes shown on plans are to be checked as they do not correlate to the site discharge.
6. The traffic report indicates that 3 spaces are required to be provided for loading and unloading. Only two spaces have been provided.
7. The two loading and unloading spaces provided require 4.5m headroom in accordance with AS2890.2:2018. The provided headroom is 3.2m approximately considering a 300mm slab thickness.
8. Swept paths are to be provided for loading and unloading spaces, intersection areas, and aisle end spaces.



9. The commercial parking arrangement is recommended to have a continuous traffic flow arrangement to reduce 5 point turns in closed aisle ends.
10. Accessible parking spaces in Building B basement 2 are to be located closer to the accessible lifts.

Council will provide an opportunity for you to address the matters raised in relation to the subject concept development application. Information sufficient to adequately address the matters raised must be submitted to Council within 21 days from the date of this letter, by the close of business. Should the information not be received, your application will be determined on the basis of the information before Council at that time.

If you should require any further information, please do not hesitate to contact me on 9789 9843 Monday to Friday.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'S. Porter', with a long horizontal flourish extending to the right.

Shona Porter  
**ACTING EXECUTIVE PLANNER**