

6 December 2019

Brett Whitworth
Acting Deputy Secretary
Greater Sydney, Place and Infrastructure
Department of Planning, Industry and Environment

Dear Mr Whitworth,

Application for a site compatibility certificate for 677, 687 Canterbury Road and 48 Drummond Street, Belmore – State Environmental Planning Policy (Affordable Rental Housing) 2009

I refer to your letter of 8 November 2019 in relation to an application for a site compatibility certificate at 677, 687 Canterbury Road and 48 Drummond Street, Belmore., which is supported by a development concept that demonstrates compatibility with neighbouring land.

Thank you for the communication. We appreciate the opportunity to assist and respond to your questions.

1. Is the Canterbury Road Review and the South District Plan, as well as the draft Canterbury-Bankstown Local Strategic Planning Statement appropriate to determine what the future use of the land might be?

I note that recent amendments to the EP&A Act (the Act) recognise the critical role of strategic planning in the planning system to set the vision and priorities for land-use across local government areas. The amendment to Part 3 of the Act provides a platform for Councils to implement the actions of the District Plan and realise council's own priorities.

In this context, while I note the importance of strategic planning in the Act to guide the development of land, I also note two key objectives of the Act that underpin the Act's requirements:

- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*

To achieve these objectives, the EP&A Act sets out the laws under which planning in NSW takes place. Part 3 of the Act therefore outlines laws in relation to strategic planning, environmental planning instruments and development control plans.

The changes to the Act commenced on 1 March 2018 and according to the Department for Planning and Environment the changes are the '*culmination of the biggest overhaul of the Act since the legislation's inception almost 40 years ago.*'

One significant change to Act included a change to the objectives of the Act found in Part 1. The DPE advises that the objects of the Act are *'to reflect the Government's commitmentare guiding principles that need to be considered by planning authorities, such as councils and Local Planning Panels, when making decisions under the Act.'*

As mentioned, a specific objective under Part 1.3 of the Act reads: *'(d) to promote the delivery and maintenance of affordable housing,'*

Promoting social equity through the provision of affordable housing and directly dealing with the issues of housing stress in Sydney is already a relevant consideration for decision-makers. Having an affordable housing object elevates the importance of promoting and facilitating the provision of affordable housing as part of the planning system as a whole and will ensure that affordable housing provision is considered and balanced with the other objects of the EPA Act.

Therefore, to answer your question, it is the Act that is the appropriate document to determine what the future use of the land might be, and this includes taking into consideration the adopted and draft strategic planning framework, relevant environmental planning instruments and development controls. This includes the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). The objectives of the SEPP include:

- (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.*

These objectives are consistent with and deliver directly the objectives of the Act.

As stated on the Department's website, the purpose of the ARH SEPP is to facilitate the increased supply and diversity of affordable rental and social housing in NSW. To achieve this, the SEPP provides for incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards. Therefore, the SEPP only applies to the land the subject of this site compatibility certificate (SCC) application because *'residential flat buildings'* are not permitted.

There is a deliberate planning approach applied about the practical application of the objectives of the Act and the use of the ARH SEPP to achieve the objective. Interestingly, and clearly in the minds of the legislature, despite the fact that the new Act objectives postdate by many years the already existing ARH SEPP, it is deliberate that the ARH SEPP is the means to achieve the affordable housing objective at (d), in addition to the emerging strategic planning framework.

Therefore, the intent and key critical criteria for consideration in assessing an application for a SCC under clause 36 of the ARH SEPP is compatibility with surrounding land uses, as stated in the *Director General's SCC Guideline for Applications (October 2009)*. This document goes on to clarify the purpose, being:

“The purpose of introducing site compatibility certification under the Affordable Rental Housing SEPP is to facilitate redevelopment of land near key railway stations and nominated cities and towns without the need for a rezoning, if the proposed development is compatible with surrounding land uses. The site compatibility certificate process is a mechanism to ensure that any additional uses or redevelopment of these sites is in keeping with (vis. compatible with) the surrounding land use.”

It is within this context that the strategic planning framework is relevant, which should complement the role and objectives of the SEPP as a legal planning pathway under the broader framework of the Act.

So how can the SCC application be considered in the context of the South District Plan, the Canterbury Road Review, and the draft Canterbury-Bankstown Local Strategic Planning Statement?

The South District Plan, the draft Canterbury Road Corridor Review, and the draft Canterbury-Bankstown Local Strategic Planning Statement are relevant to determine the future land use of the site. However, in the context of the application for the SCC they are relevant so far as to determine compatibility with the surrounding land uses and the broader facilitation of the Act.

Therefore, I note the following consistency with the strategic planning framework as it relates to an application for a SCC that provides for expanded permissibility under an EPI:

Greater Sydney Plan and South City District Plan

Direction 4 “Housing the City” of the Greater Sydney Plan seeks to provide housing choice for people, which can be achieved through “greater housing supply”, “increased housing completions” and “more diverse and affordable” housing. Council does not have an Affordable Rental Housing Target Scheme. It is not surprising that the council does not have such a target. Historically the state legislature has determined and maintains that the issue of housing affordability is such a significant social policy relevance that is appropriate for the facilitation and delivery of affordable housing to be regulated by the state directly through provisions of the EPA Act and state planning policies. Further relevant agencies are responsible for the management of state policy for affordable housing being in the case of planning policy the Department of Planning and in the case of registration of providers and assistance to users the Department of Family and Community Services. The SCC administered by the state will facilitate a considerable supply of affordable dwellings to an area with severe housing stress.

The site is also within the 30-minute city objective. Firstly, the site is a 9-minute walk from the Belmore train station, which connects Belmore to the Harbour CBD and Greater Sydney. The Belmore station is part of the future Sydenham to Bankstown Sydney Metro City and Southwest rail upgrades to provide faster and more frequent services. Under existing timetables (i.e. prior to metro rail services) from Belmore, the Harbour CBD metropolitan centre is accessible within 22 minutes; Bankstown strategic centre and health and education precinct within 9 minutes; and Campsie strategic centre within 2 minutes. With more frequent and faster trips these times are anticipated to further reduce.

It is noted that Objective 23 of the Greater Sydney Plan states “industrial and urban services land is planned, retained and managed”. It is also noted that Objective 11 states “housing is more diverse and affordable”. The purpose of the ARH SEPP is to provide for expanded permissibility on sites that are compatible with their surroundings and context. While the Greater Sydney Plan seeks to retain and manage industrial and urban services land, this type of land generally does not permit residential flat buildings and is usually the subject of the ARH SEPP.

In that context, the subject site does not form part of an important corridor or cluster of B6 Enterprise Corridor zoned land. The development permitted by the previous SCC was supported because the site is surrounded by uses and controls envisaged by the SCC. Therefore, while Objective 23 is important in the

context of valuable employment lands, the objective needs to be considered in the context of objective 11; that seeks to provide more affordable housing; the location of the site to transport and services; the existing use on the site, being a vacant factory; and compatibility with surrounding zones and land uses; and the role of Division 5 under the ARH SEPP.

The site is adjoined by mixed use and residential zones with similar controls to that contemplated by the development sought through this SCC process. Therefore, while objective 23 is not to be undermined, on balance the application for an SCC meets a key objective of the Act, meets the objectives of the SEPP, and is consistent with the provisions of the LEP which contemplates provisions of a SEPP that may prevail over the LEP under Section 3.38 of the Act.

Further, it is noted that Section 3.8 Implementation of strategic plans of the Act, requires that in the preparation of a planning proposal the “planning proposal authority is to give effect to any district strategic plan applying to the local government area to which the planning proposal relates”. In this case, the application for a SCC is not through the Gateway process, rather is considered through an effective delivery mechanism for new affordable rental housing, in accordance with a key aim of the Act, by providing incentives by way of expanded permissibility.

Draft Canterbury Road Corridor Review

I note that the key findings of the draft Review include to concentrate mixed use development with multi-unit housing in 7 identified junctions – locations where streets connect north to the railway line form a junction with Canterbury Road, and additional mixed-use housing in a further 11 localities. These locations are on land that provides for housing in a mixed-use development. The subject site is not located within one of the 7 junctions or 11 localities identified along the Canterbury Road corridor. It does however adjoin Centre E – Burwood Road Neighbourhood Centre.

The draft Canterbury Road Corridor Review, while only being endorsed “in-principle” by Council and having not been endorsed by the NSW Government, Greater Sydney Plan or South District Plan, seeks to retain the existing B6 Enterprise Corridor zone on the site. This ensures that the site will remain eligible for the provisions of the ARH SEPP and a SCC. However, it is important to consider any changes to the surrounding context of the site from a strategic point of view when considering its compatibility with surrounding land uses.

While the site is proposed to be retained as B6 Enterprise Corridor, it borders the proposed Burwood Road Neighbourhood Precinct, one of the 7 junctions, which is immediately to the west of Drummond Street. This land is already zoned B2 Local Centre where mixed use development up to 5 to 6 storeys is already permitted. Further, land immediately to the east on Anderson Street, is also zoned B2 Local Centre and is part of the block that forms one of the 11 localities, being the Kingsgrove Road locality.

Land to the north is zoned R3 Medium Density Residential and this is not impacted by the Review. The conditions of the previous SCC are relevant however, in that there needs to be an appropriate transition in height to this land. The concept that supports this SCC application provides a 2 storey interface of terraces, with height increasing in accordance with Council’s 45° height plane to a maximum of 6 storey (as opposed to the 7 storeys in the previous SCC application) consistent with the future built form within the vicinity.

The ‘new vision for Canterbury Road’ on page 17 states: *“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...”*. A height of 6 storeys has therefore been promoted in the concept supporting this SCC application as it most closely aligns with existing controls, the emerging character and the vision of the Review as quoted above.

Draft Canterbury Bankstown Local Strategic Planning Statement

The Draft Canterbury Bankstown Local Strategic Planning Statement (LSPS) guides the growth of the region over the next 20 years and reflects how the City will evolve accommodating an additional 136,000 residents and 155,000 workers by 2036. The LSPS “*features 10 directions that focus on the City’s metropolitan and local interactions, and 10 Evolutions to build on the City’s assets, character and opportunities*”. It is noted that the Greater Sydney Commission has not endorsed Council’s LSPS and there is no assurance that they will.

There is a focus throughout the document on affordable housing, particularly through the Housing the City Evolution. The LSPS notes in this regard:

“While Canterbury-Bankstown is expected to contribute up to 40,000 new dwellings to Greater Sydney’s housing stock by 2036, we will aim to create capacity for 50,000 new homes to match the aspirations of the South District Plan and to create flexibility for additional take-up. In aiming for diverse, accessible and affordable housing, we will focus new housing in established centres. This will protect and enhance attractive, low-density suburban areas; offer more housing choice close to public transport; and encourage vibrant centres across our City”.

The subject site is adjoined on both sides by B2 Local Centre land and this is recommended for retention through Council’s draft Canterbury Road Corridor Review and LSPS. This is important in ensuring that the SCC and supporting concept will be compatible with the surrounding future context and character of the locality. While the LSPS will therefore play an important role in determining the future use of the site and land throughout the LGA, it will achieve this through the broader planning framework, enacting the objectives of the Act and the broader legislative framework under Part 3, which importantly includes the incentive provisions under the ARH SEPP.

There seems to be an assumption that because of the Canterbury Road Corridor Review and the LSPS that Division 5 of the ARH SEPP does not apply and affordable housing cannot be facilitated on the site through this legal pathway. The point of the SEPP is that such locations where Division 5 and affordable housing provision apply, being surrounded by residential land uses is land targeted by the ARH SEPP and supported by the more recent housing study review undertaken by the Department in 2012.

The concept has been prepared to ensure compatibility with its surroundings, by reducing the height to 6 storeys, consistent with that identified by the Canterbury Road Corridor Review and the adjoining existing heights. A 3.7 metre setback has been provided to Canterbury Road to allow for potential future road widening and/or a green edge. A further 5 metre setback is provided above the four-storey podium. Retail land use front Canterbury Road. We felt we addressed all the criteria associated with the future character of Canterbury Road under the Canterbury Road Corridor Review for similar mixed-use development (i.e. B2 zoned land) that is identified and will occur either side of the site.

Conclusion

The NSW planning system provides a logical process to deliver specific outcomes to achieve the objectives of the Act. The Act, setting an objective for a specific social need, is implemented by specific statutory state policy enabling a different pathway and set of planning rules to deliver the social outcome of affordable housing.

The renewed focus on the strategic planning framework to guide the development of land is an important aspect to provide certainty and inform investment decisions. While the strategic planning framework is important to inform the future use of the land 677, 687 Canterbury Road and 48 Drummond Street, Belmore, it must be applied in conjunction with the broader provisions of the Act and it cannot be used to undermine the legal pathway of an EPI that seeks to provide for a social need under the Act. Therefore, should the draft

Canterbury Road Corridor Review identify the subject land for B2 Local Centre or a similar mixed use zone, then the ARH SEPP would not be a legal planning pathway to achieve the social benefit as “residential flat buildings” would be prohibited, and this application would be for a planning proposal, not an SCC.

As it happens, there is a great need for affordable housing in Canterbury Bankstown, being one of the worst areas in Sydney and the nation for housing stress. The key consideration therefore is whether the proposed use is compatible. I note the following in this regard:

- On 15 July 2014, a SCC was issued under clause 37(1) of the ARH SEPP. 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”*. This is the main criteria to determine an SCC under the ARH SEPP.
- The subject site is adjoined by B2 Local Centre land on both sides with a height of 6 storeys (18 metres). According to the draft Canterbury Road Review, no change is proposed to the surrounding built form and land uses.
- The concept supporting the SCC application provides for a 6-storey frontage to Canterbury Road with ground floor commercial/retail, as per the existing and future character of adjoining land.
- The concept has been refined in accordance with the previous SCC for the site (expired): *“(1) the proposed development is to be configured to ensure a transition in height between Canterbury Road and the surrounding single storey dwelling houses to the north. Higher buildings should be located along Canterbury Road, stepping down in height towards the low-density residential zone to the north”*.
- Residential land adjoins to the north, to which the proposed development transitions in height with a similar 2 storey direct interface.

2. Are the cumulative traffic issues of the proposed development capable of being managed to the satisfaction of Roads and Maritime Services?

I note that the application for an SCC does not seek approval for development which will be subject to a detailed development assessment process. The concept presented and submitted with the SCC application is supported by a detailed Traffic and Parking Impact Assessment prepared by Lyle Marshall & Partners Pty Ltd, and provides a worst-case, maximum parking traffic generation scenario.

The maximum parking scenario provides for 290 car parking spaces associated with a future development. This includes 261 spaces associated with the residential units and 29 spaces associated with the business and retail premises.

The Canterbury DCP 2012 specifies parking rates for residential units in residential flat buildings and for shops, business and retail premises in the table to Clause B1.3.1 in Part B of DCP 2012 General Controls. As stated in Canterbury DCP Part B1.2.2, Belmore is classified as a ‘Large Centre’. Therefore, parking rates for Large Centres have been used in the calculation of parking requirements. The rates in the RMS Guide to Traffic Generating Developments for high density residential are lower than Canterbury Councils DCP 2012.

I note that under this scenario generates a Peak Hour volume of 77.5 vehicles in the AM and 65.3 vehicles in the PM. Developments of less than 30 vehicles an hour is considered low volume traffic generators as in Section 3.3.2 of AS/NZS 2890.1.

Notwithstanding the above, I note that Clause 36(4) of the ARH SEPP does provide that *“car parking is not required to be provided in relation to development to which this Division applies”*, however the worst case

scenario was modelled and considered, in order to ascertain the impact on the road network and demonstrate that the potential development is compatible with the surroundings having regard to the services and infrastructure that are or will be available to meet the demands arising from the development.

Therefore, should no parking be provided in accordance with the ARH SEPP then there would be no cumulative traffic impacts associated with the development. In fact, based on the existing land use and permissible uses, a no parking scenario would be a considerable improvement on the cumulative traffic impact. However, it is noted that the intention of Division 5 is to incentivise delivery of affordable housing and to facilitate an expanded role for not for profit providers. The scheme proposed is to be a 50% mix of housing outcome; that is affordable and normal market housing. Without expanding into a detailed discussion into an economic scenario for the scheme and the logic of the AH SEPP to promote the ability to provide the social benefit by the market through a profitable delivery of the development where gains can be delivered to the social component of the development to expand the opportunity for non-profit providers; it is considered that there will be a commercial need for the delivery of car parking in the scheme to ensure financial stability of the project on merit.

Further, a response to cumulative traffic impacts has been provided by Lyle Marshall & Partners and is attached. The response illustrates a number of parking generation scenarios and corresponding cumulative impacts. These additional scenarios model a reduction in parking numbers associated with the future development and distribute these to the road network. The scenarios demonstrate a significant reduction in traffic generation, concluding that when distributed to the road network will have little cumulative impact.

These scenarios should be considered in the context of the existing traffic generated from the existing and permissible land uses on the site. This was contemplated by the GHD Canterbury Road Corridor – Traffic and Transport Study which allocated this to the road network when considering cumulative impact and making recommendations on the Canterbury Road Corridor Review. In recommending that the existing zone be retained, the site could generate approximately 160-220 car spaces associated with an employment generating development. It is also noted that under the relevant RMS guide on traffic greater development that the trip rates for industry development are considerably greater (by up to 4 times) than that of residential. It is noted that this scheme can only be considered if it is within walking distance to major public transport.

This traffic generation is greater than the additional scenarios tested as part of this submission and therefore demonstrate a reduction in cumulative impact. I suggest that RMS would respond positively to this, but this should be part of a merit-based assessment process involving working with the RMS on a satisfactory outcome. Should a scenario be advanced that requires the maximum parking numbers of 290, then the increase from that generated by the existing zone and considered through the Canterbury Road Corridor Review process is actually quite small. This difference would be assessed on merit through the DA process as to the additional cumulative impact it would have.

RMS comments on Concept DA

The RMS provided comment on the Concept Development Application which was lodged with Council on 22 March 2019 and provided for the building footprints and elevations to support the SCC application with the Department and more accurately illustrate compatibility. The RMS made the following comment:

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.

It is clear that the RMS had not been clearly briefed on the legislative framework within which applications under Division 5 of the ARH SEPP are considered and advanced and the context and planning pathway that a Concept DA which does not include development can be assessed.

The Concept DA did not seek a variation to the LEP height limits as these apply to land uses permitted in the B6 zone not for affordable housing in the form of residential flat development, which would be facilitated through the incentive provisions associated with the ARH SEPP. Applying the existing controls would not constitute incentive provisions and not facilitate affordable housing on the site, which is the purpose of the ARH SEPP implementing a key objective of the Act.

Further, as previously stated, consideration to final parking numbers can be negotiated and discussed with RMS and Council through a DA process, noting that the ARH SEPP does not require any parking to be provided under Clause 36 (4): *“Car parking is not required to be provided in relation to development to which this Division applies”*.

Further, it is understood that the comprehensive traffic and transport study referenced by the RMS in its communication was undertaken by GHD to inform the recommendations of the draft Canterbury Road Corridor Review and the draft LSPS. It is noted that GHD modelled scenarios that included mixed use development in centres and localities as part of its assessment of cumulative impact in making its recommendations.

It is therefore important to note and consider the assumed traffic generation and parking from the site under existing permissible land uses when considering the cumulative impact, should parking be provided on a traffic generation scenario for development facilitated by the SCC. This has been supported and advanced through the broader Canterbury Road Corridor Review.

As discussed above, the Canterbury Road Corridor Review and LSPS have already allocated car parking and traffic impacts to the local road network through the cumulative impact GHD study. The cumulative impact of future development facilitated by the SCC could be reduced depending on the final parking number and trip generation consideration of the use against the RMS requirements. What is clear however, is that most scenarios associated with an affordable housing development actually reduce the cumulative impact, with the exception of a maximum parking scenario, which provides a minor increase. There are opportunities to mitigate this impact however, but this can be negotiated with Council and the RMS through the DA process.

Therefore, in conclusion, the Secretary can be satisfied and confident that a certificate can be issued because a detailed cumulative traffic study has been undertaken to inform the Canterbury Road Corridor Review. The Review ensures that the services and infrastructure are or will be available to meet the demands arising from the recommendations, and in doing so allocates the traffic generation to the road network. This is the basis to compare the cumulative impacts of a future development on the site under the ARH SEPP, which will be determined through the DA process, but will either be minor or reduced.

I trust that this has adequately responded and answered the questions you raise. I note that applications under Division 5 are not that common, but the Act and the ARH SEPP is clear on the outcome sought.

As discussed in this letter, the purpose of the ARH SEPP is specifically: *‘(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, and*

(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing'

It is contended that the progression of this application, will not undermine a wider draft strategic policy framework. The progression of the application will however, directly and deliberately assist to deliver the before mentioned draft strategies and responds completely to the objectives of the ARH SEPP by delivering more affordable housing locally in an area that is in the council's own numerous statements and policy is of urgent need and therefore delivers the primary relevant objective in the EPA Act '*(d) to promote the delivery and maintenance of affordable housing.*

If you have any questions, please do not hesitate to contact me on 0437 521 110.

Yours sincerely



James Mathews
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