

**Report to the Secretary on an application for a site compatibility certificate.  
State Environmental Planning Policy (Affordable Rental Housing) 2009**

**SITE:** The subject site is located at 21A Tucks Road, Toongabbie (Lot 2 DP 1129995) (**Figure 1**). It has an area of 4864m<sup>2</sup>, is regular in shape and has road frontages to Tucks Road and Rausch Street. The site contains unused tennis courts, minor shade structures and a car park associated with the tennis courts. The site is zoned R2 Low Density Residential under Parramatta Local Environmental Plan 2011.

The maximum height of building on the site is currently 9 metres and the maximum Floor Space Ratio (FSR) is 0.5:1. Immediately to the north of the site is an existing gymnasium complex zoned B1 Neighbourhood Centre. The maximum building height on this site is 12 metres and the maximum FSR is 1.5:1. Shop top housing is permissible in the B1 zone.



Figure 1: Site aerial - 21A Tucks Road, Toongabbie (outlined in red).

**APPLICANT:** Community Housing Ltd

**PROPOSAL:** Approval is sought for a site compatibility certificate (SCC) under State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP) to enable the

erection of 2 residential flat buildings, 2-4 storeys in height, containing 68 dwellings and basement parking. The proposal identifies that half of the future dwellings (34) will be provided as affordable housing for at least 10 years and managed by a registered community housing provider.

A reference design (**Attachment D**) has been provided outlining the following potential design outcome for the site:

- two separate buildings, running north-south, that are two to four-storeys high consisting of a total of 68 dwellings;
- a dwelling mix of 10 one-bedroom dwellings, 54 two-bedroom dwellings and 4 three-bedroom dwellings; and
- basement-level car parking.

**LGA:** City of Parramatta

## **PERMISSIBILITY STATEMENT**

Division 5 of the Affordable Rental Housing SEPP enables the construction of a residential flat building in a zone where it would be otherwise prohibited, provided at least 50% of the housing stock is affordable housing managed by a community housing provider. Clauses 34 and 35 of the SEPP outline the requirements to be met for development under Division 5 to be carried out.

### Clause 34

The subject site satisfies the requirements of Clause 34 of the SEPP as:

- the land is zoned R2 Low Density Residential under the Parramatta Local Environmental Plan (LEP) 2011. Residential flat buildings are prohibited in this zone;
- the land is in the Sydney region; and
- the property is within 800m of Toongabbie train station (**Figure 3**).



Figure 2: Site location in relation to Toongabbie Railway Station - approximately 750m

There is no requirement in the SEPP for the site to be 800m walking distance from the station. The application of a linear distance is consistent with the consideration of other SCC applications under the Affordable Rental Housing SEPP. It is noted that the site is 1.1km walking distance from the Station via the existing road network.

#### Clause 35

Clause 35 allows for the development of a residential flat building by or on behalf of a public authority or social housing provider.

The applicant, Community Housing Ltd, is a Tier 1 registered community housing provider.

### **AFFORDABLE RENTAL HOUSING SEPP CONSIDERATIONS**

Clause 37 of the SEPP outlines the matters that are required to be considered in the issuing of the SCC. Provided the criteria established within clause 37 is met, the application is eligible for the SCC that will make a residential flat building permissible in the R2 Low Density Residential zone and enable the lodgement of a Development Application.

#### Clause 37(1)

An application for an SCC may be made by the owner or another person with the consent of the owner.

The landowner provided consent for the SCC application to be lodged, which was formally received 13 August 2019.

#### Clause 37(2)

The application must be supported by an application form, the relevant supporting documents/plans and the prescribed fee.

The application is consistent with this clause.

#### Clause 37(3)

The Secretary may request further documents and information to be provided to support the application.

No further documents have been requested in the consideration of this application.

#### Clause 37(4)

Council must be notified of the application within seven days and invited to make comment.

The application was received on 9 July 2019 and Council was notified of the application on 10 July 2019 and invited to comment. This clause has been satisfied.

#### Clause 37(5)

The Secretary may determine the application by issuing a certificate or refusing to do so.

It is recommended that the SCC be issued with conditions, which is discussed further in this report.

### Clause 37(6)

Clause 37(6) requires consultation with Council. It is noted that at the time Council's comments were provided, there was an active Planning Proposal (**Attachment G**) that applied to the subject site and the adjoining B1 zoned land (**Figure 4**).



**Figure 43:** Area subject to a planning proposal

The planning proposal sought to rezone the entire site to B4 Mixed Use (which would make a residential flat building permitted with consent), increase the maximum permissible floor space ratio (FSR) from part 0.5:1 and part 1.5:1 to 1.25:1 across the entire site and increase the maximum permissible height of buildings from part 9m and part 12m to part 9m and part 15m (four storeys).

The following provides a summary of the proposed development controls associated with the SCC application and the planning proposal.

Matter	Existing (21A Tucks Road)	SCC proposed (21A Tucks Road)	Planning Proposal (including land zoned B1 at 21 Tucks Road)
Site Area	4864m <sup>2</sup>	4864m <sup>2</sup>	7428m <sup>2</sup>
Zone	R2 Low Density Residential	No change - R2 Low Density Residential	B4 Mixed Use
FSR	0.5:1	1.24:1 (approx.)	1.25:1
Height	9m HOB	Maximum 12m (from reference design – 2-4 storeys high).	part 9m (adjoining low density residential) and part 15m

Indicative number of Dwellings	No dwellings	68	81
Permissibility of residential flat buildings	Not permitted	Permissible through the Affordable Rental Housing SEPP (see permissibility section below).	Permitted under Parramatta LEP 2011

Table 1: Comparison of existing, proposed and proposed as part of the active planning proposal for the site.

On 18 September 2018, the Parramatta Local Planning Panel considered the planning proposal. The panel recommended Council not support the planning proposal because:

- the proposal would result in a large increase in the maximum height of buildings;
- the proposal would result in multi-storey residential flat buildings situated away from public transport;
- there is concern about the possibility of the land being subject to flooding; and
- it is considered inappropriate to have higher-density residential development in this location.

On 29 October 2018, Council considered the panel's recommendation. The matter was deferred to enable Council to receive advice from State Government on the Site Compatibility Certificate.

On 17 May 2015 the Department refused to issue a previous SCC on the site due to concerns regarding the proposed bulk and scale of the proposal and inconsistency with local character. The subject SCC was subsequently submitted with a reduced bulk and scale that had greater consistency with the planning proposal outcomes on 9 July 2019.

The planning proposal was reported at a Council meeting 12 August 2019 and it was resolved not to proceed. As the Council were the local plan making authority, the Council is the final determining authority for the planning proposal and therefore, the planning proposal will not proceed to finalisation.

As part of the assessment of the current SCC, Council were requested to provide comments, and these were provided on 23 July 2019 (**Attachment B**), noting these were made prior to the Council determination on the planning proposal. Council's comments are summarised below, along with a Departmental response:

Council comment	Department assessment response
<i>The proposed scheme under the SCC application presents a high number of dwellings on a smaller portion of land than the land under the planning proposal.</i>	Noted. The SCC must be assessed on its individual merit, subject to the criteria identified in the SEPP. The Department supports Council in its concerns relating to dwelling density proposed by the SCC, as well as the height of the development. The issuing of an SCC enables a development application to be lodged and will be subject to further assessment. Conditions have been

	included on the SCC to further reduce the height and density of the proposed development for further consideration at the DA stage.
<i>The SCC indicates a 9m setback from the southern boundary, whereas the draft DCP associated with the planning proposal is 22m</i>	The draft DCP will not progress. The required setback to the southern boundary will depend on the height of the building. The SCC conditions recommend a maximum height of 9m for the majority of the site, which is consistent with the surrounding locality. The privacy and overlooking controls in Council's existing DCP would apply in this instance. The Parramatta DCP contains provisions for the transition of height and side setbacks.
<i>The proposed reference design contains balconies overlooking the southern boundary and beyond into neighbouring private open space, Under Part 2F of the Apartment Design Guide (ADG) a minimum of 12m building separation is required.</i>	Overlooking and privacy concerns of this nature are best examined through a development application. As the maximum height is proposed to be 9m, the ADG would not apply. The Parramatta DCP requires minimum setbacks that can be assessed as part of a DA.
<i>The front setback of the development is 4m, whereas Parramatta DCP (2011) has a front setback requirement of 5m.</i>	The Department supports Council in its concern relating to the proposed street setback. The Department encourages a setback that is consistent with the surrounding locality and the Council's DCP and a condition has been imposed accordingly. This will be subject to further assessment at the DA stage.
<i>The SCC scheme depicts a basement car park that extends most of the site, with limited deep soil to the north and frontages to Rausch and Tucks Road. PDGP requires a minimum of 30% of the site to be deep soil, with the SCC having 13.4%.</i>	The Department supports Council in its concerns regarding the lack of deep soil. A condition has been imposed requiring compliance with the Parramatta DCP controls for deep soil zones.
<i>The planning proposal that has been issued a gateway determination has a proposed FSR of 1.25:1.0 whereas this SCC proposal has an FSR of 1.24:1.0 on a smaller portion of land, which leads to an increased development than that of the planning proposal.</i>	The planning proposal has been determined not to proceed. The SCC has been recommended to be issued with conditions to reduce the scale of the proposed development and ensure it is compatible with the surrounding character, noting the land immediately adjoining is able to be redeveloped as a

	neighbourhood centre with shop top housing to a height of 12m.
<i>Other than the 50% affordable housing (proposed 34 dwellings), the SCC report identified no further public benefit, whereas the planning proposal contains a draft VPA.</i>	Comparison of the planning proposal and this SCC is not a requirement of assessment. The SEPP is clear in its intent to incentivise affordable housing in appropriate locations, which is a public benefit in and of itself.
<i>The planning proposal attracted 700 submissions, whereas the SCC process has no community consultation (and relies on community consultation once a DA has been submitted).</i>	The issuing of an SCC does not preclude the proper assessment of a development application, which includes public notification and consideration of submissions. It is noted that of the 700 submissions, 457 supported the proposal, with 242 objecting. A future development application is required to be notified in accordance with the relevant provisions of the Environmental Planning and Assessment Act 1979.
<i>The site has previously submitted a request for an SCC to be issued, which was refused. This SCC presents a similar scheme, albeit a reduction in dwelling yield. Both schemes are considered inconsistent with the ADG and PDCP built form controls.</i>	Clause 36(3) of the ARHSEPP gives the consent authority (of a future development application) further opportunity to refine the built form outcome. While the SCC has been recommended to be issued, conditions have been imposed to ensure a more place-based design outcome.
<i>The proposed planning proposal results in a better built form outcome than this SCC, as it has a site specific DCP that further guides development of the site</i>	Clause 36(3) of the ARHSEPP gives the consent authority (of a future development application) a further opportunity to take into consideration the Parramatta DCP.

#### Further Department comment

The Department believes that the concerns identified by Council are design related and may be addressed through conditions imposed on the SCC and through a subsequent DA process. In this regard, the Department's assessment has highlighted that compatibility can be established through the imposition of conditions to reduce the bulk and scale of the proposal and to require compliance with the development controls in the Parramatta DCP. The SCC has been recommended to proceed with conditions.

## **PROPOSED HOUSING DIVERSITY STATE ENVIRONMENTAL PLANNING POLICY (HOUSING DIVERSITY SEPP)**

The Explanation of Intended Effect (EIE) for a new Housing Diversity SEPP was placed on exhibition on 29 July 2020 and proposes to consolidate the following existing SEPPs:

- State Environmental Planning Policy (Affordable Rental Housing) 2009;
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004; and
- State Environmental Planning Policy - Affordable Housing (Revised Schemes).

It also amends some planning provisions for boarding houses, group homes, and seniors housing and provisions to support social housing. New definitions and planning provisions are being introduced for three new types of housing – build-to-rent housing, student housing and co-living.

Proposed amendments to the Affordable Rental Housing SEPP relate to group homes, retention of existing affordable housing and secondary dwellings in rural zones. There are savings provisions proposed within the Housing Diversity SEPP that enable SCC applications lodged under the Affordable Rental Housing SEPP to be considered and determined under the existing legislation.

A future development application for the site will need to consider the proposed Housing Diversity SEPP.

## **COMPATIBILITY WITH SURROUNDING LAND USES (CLAUSE 37(6)(B)(I))**

The SEPP requires the current and approved uses of land near the development to be considered when considering if an SCC is appropriate.

### Current planning controls

The Parramatta LEP 2011 contains the following controls relevant to the site and surrounding area:

- FSR – 0.5:1 (**Figure 4**)
- Maximum height of building – 9m (**Figure 5**); and
- Land zone – R2 Low Density Residential (**Figure 6**).

The LEP contains the following controls relevant to the property immediately to the north of the site:

- FSR – 1.5:1 (**Figure 4**);
- height – 12m (**Figure 5**); and
- zone – B1 Neighbourhood Centre (**Figure 6**).

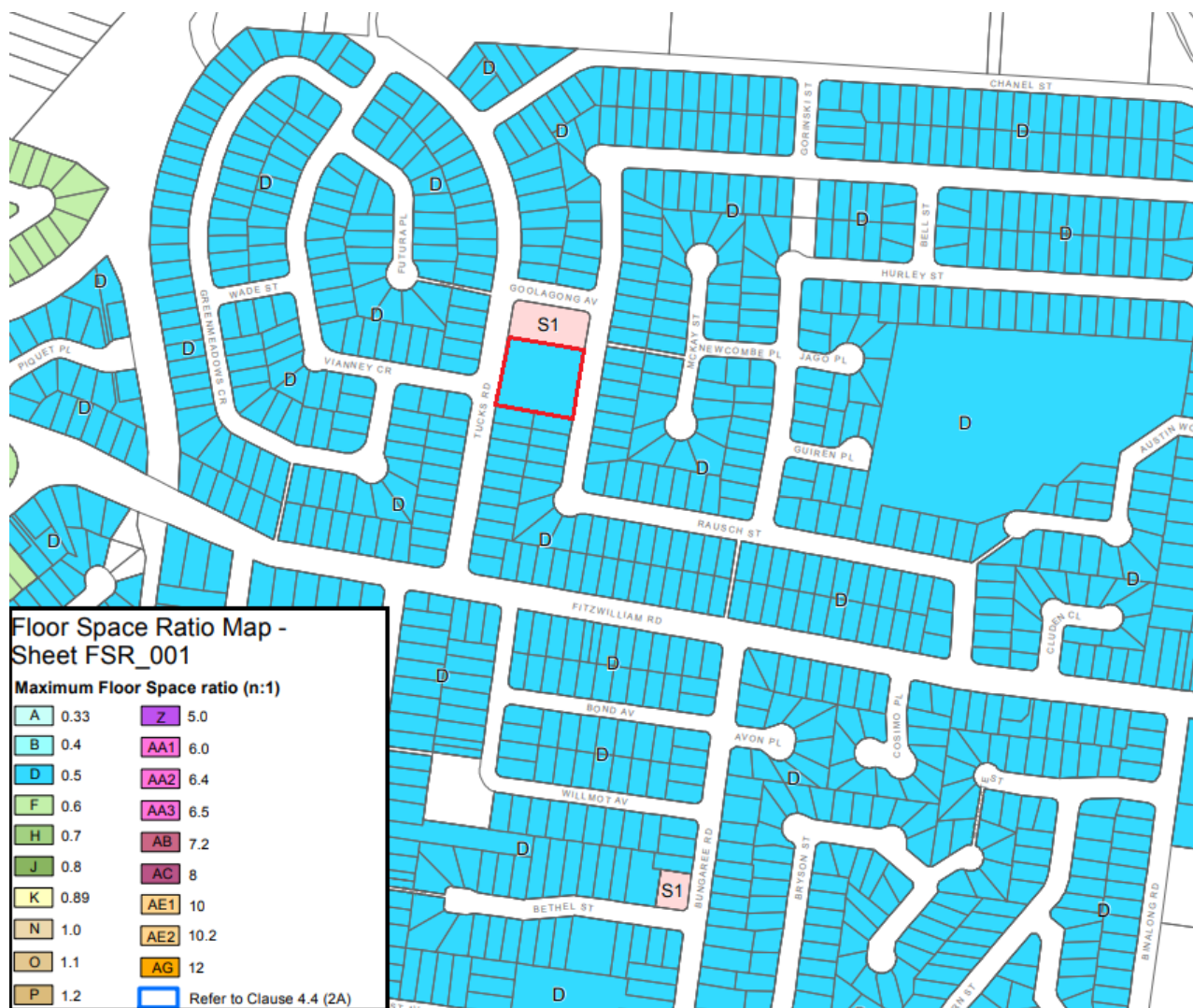


Figure 4: Existing FSR - 0.5:1 and adjoining FSR of 1.5:1.

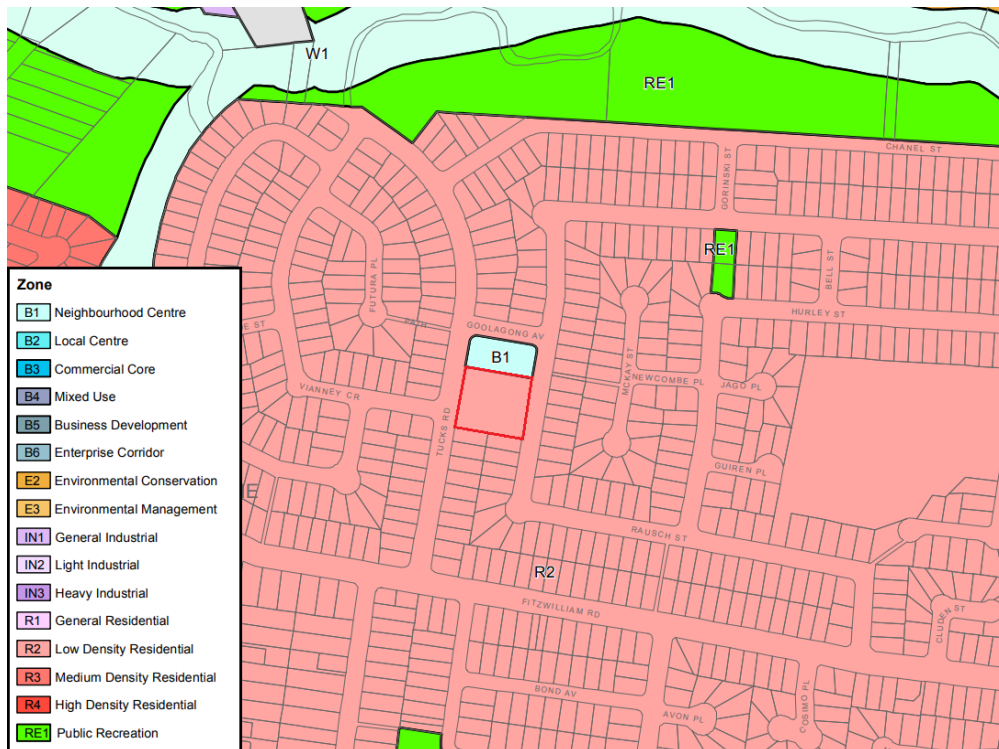


Figure 5: Existing land zone under Parramatta LEP 2011 - R2 Low Density Residential



Figure 6: Existing maximum height of building - 9m.

## Site Visit

A site visit was undertaken by Department staff 6 August 2019. It was noted that at the time of the inspection, the roads either side of the site were quiet with limited use of the on-street parking (**Photos 1, 2, 4 and 5 below**). The site is not in use and adjoins an existing gymnasium (**Photos 3-5 below**).



Photo 1 - looking north-west over the site from the far side of Rausch Street. The existing walkway is paved on either side of the street, with generous tree and shrub coverage lining residential boundaries. Street setbacks are well landscaped with mostly garden settings.



Photo 2 is looking south-west from the far side of Rausch Street, showing the current interface of the southern portion of the site and the existing dwellings to the south.



Photo 3 is looking north from the site boundary along Rausch Street. The background shows the existing gymnasium in the B1 zoned land, at approximately 3 storeys high.



Photo 4 is looking south-east from the far side of Tucks Road. It shows the side of the site, current interaction of the B1 land to the north and interface of existing dwellings to the south.



Photo 5 is a closer view of the site looking south along its western boundary.



Street View 1 - The above street view is along Tucks Road, showing the typical setback of residential dwellings in the area. Tucks Road is relatively wide (approximately 20m) with limited on-street parking in use.

### Character analysis

The site and surrounds are predominantly low density residential, characterised by single and two-storey detached dwellings. The generous setbacks given to each dwelling allows for increased landscaping and tree planting (**Photo 1, 2 and Street View 1 above**). The character is typical of a low density residential neighbourhood, noting the site itself appears degraded in the context of the surrounding locality.

The B1 zoned land contains a leisure facility and squash courts that presents as 2-3 storeys to Goolagong Avenue and Tucks Road (**Photo 1 and 3 above**). The eastern side of the land is an open at-grade car park. This site is able to be developed under the existing planning controls for a number of different uses, including shop-top housing.

The concept design submitted with the SCC application identifies a large section of the development which will be 3 and 4 stories. A four storey development is not considered to be compatible in the context of the existing zoning and character. However, given the subject site adjoins land that can potentially accommodate a mixed-use 3-storey development within a height of 12m, 3-storeys is compatible provided it is limited to only the north end of the site to assist transition.

The transition of a maximum 3 storeys to a maximum 2 storeys for the remainder of the site is considered as a place-based response to the character of the area, while recognising the existing context of the B1 zoned land to the north.

The SCC is recommended to be issued with conditions addressing the above matters.

### **IMPACT OF DEVELOPMENT ON THE LOCALITY (CLAUSE 37(6)(B)(II))**

The Affordable Rental Housing SEPP requires that the likely impact of the development on the locality (existing uses, approved uses and likely future uses) is considered when reviewing if an SCC is appropriate.

#### Reference design (bulk, scale, setbacks, height)

The reference design indicates two separate buildings over a common basement, each addressing a road frontage (Tucks Road and Rausch Street). Each building contains a four-storey element to the north (adjoining the B1 zoned land), a three-storey middle element transitioning to a two-storey element adjoining R2 zoned land to the south. A deep soil setback of 6m to the north and 9m to the south is provided for each building to the respective boundaries. The 9m southern setback contains communal open space on the south-east corner, and the basement car park entry on the south-west corner. The combined FSR identified in the reference design is 1.24:1.

#### Likely future uses

There is no indication that Council is seeking to alter the planning controls of the broader R2 Low Density Residential locality that will result in a varied future character of the locality. As stated earlier in the report, the site was subject to a planning proposal to rezone the site and 21 Tucks Road to B4 Mixed Use but this has been refused by Council. There are no state-led initiatives to rezone the locality. The existing character, being low density residential, is likely to be maintained.

The adjoining B1 Neighbourhood Centre zone permits a range of uses which are not permitted within the R2 Low Density Zone that would create more opportunities for redevelopment of this site in the future, including increased height and density.

#### Department comment

The adjoining land zoned B1 Neighbourhood Centre is able to be developed as a mixed-use site up to 12m. The subject site is relatively large, which provides the

opportunity to consider a site-responsive design that responds to local character. The reference design submitted is considered compatible with the likely future uses of the surrounding land, only if it responds to, among other things:

- Height: A four storey development is not appropriate considering the zoning and existing character. An appropriate design response would be limited to two storeys across the site (in line with the existing 9m height of building control), with consideration of 3 storeys only where dwellings are directly fronting/abutting the B1 zoned land to the north;
- Street Setbacks: The proposal can be compatible with the surrounding locality if it is consistent with the prevailing low-density setback. For reference, the prevailing setbacks of dwellings are 5m-8m.
- Deep Soil: Deep soil zones should be increased, consistent with Council's DCP to encourage environmental outcomes, including tree planting.

In accordance with Clause 37(7), the site compatibility certificate is recommended to be issued with conditions that address the above site-specific issues. The overall density will be determined by a future building envelope that demonstrates compatibility with the surrounding character, as proposed by the SCC conditions.

### **SERVICES (DEMAND AND PROVISION) CLAUSE 37(6)(B)(III))**

The Affordable Rental Housing SEPP requires consideration of whether there are services within the locality to meet the demands of the development.

#### Transport

The site is approximately 200m from a bus service (Route 711) on Fitzwilliam Road. The bus service stops at several train stations including Westmead, Seven Hills, Toongabbie and Wentworthville. The bus service runs along the T-Way, which connects Parramatta to Rouse Hill.

The site is within 800m of the entrance of Toongabbie train station (which is a requirement of the SEPP). Access to the station is available via footpaths and pedestrian crossings (at a walking distance of approximately 1.1km).

The site has an appropriate level of access to public transport and is consistent with the requirements of the SEPP with respect to proximity to the entry of a train station.

The additional residents from the development are unlikely to place significant pressure on the availability of public transport in the locality.

#### Services (water, power, sewer and telecommunications)

The site is within an established low-density residential area. The services required to support residential development (water, power, sewer and telecommunications) will be available either via the existing service network or services on the advice of the relevant service provider.

#### Shops (and other services)

The nearest local centre is Toongabbie, which contains several services (shops, medical services, etc). Other centres are available via bus/rail services or private vehicles.

### Local government services/infrastructure

The development would place increased demand on the services/infrastructure provided by Council. Such services and/or infrastructure include, but are not limited to, local roads, open space, sporting fields, community facilities and libraries.

The following local government services/infrastructure are present:

- public open space – six locations in Toongabbie, with the closest being 200m to the north-east;
- a sports field (Binalong Park) containing a car park, cricket nets, a cricket wicket, a netball court, a playground and tennis courts is 700m to the south-east;
- a community facility (Toongabbie Community Centre) is 1km to the south-west within the Toongabbie local centre; and
- a library (Constitution Hill Branch Library) is 1.5km to the south-east in the suburb of Constitution Hill.

Council may also collect section 7.11 or 7.12 fees to contribute to the increase in demand the development is likely to have on these services should redevelopment of the site proceed.

### Traffic

This SCC application is not supported by a traffic study, however the submitted report concludes that the local road network can readily absorb the additional traffic movements that will be generated by the proposal. It is expected that any future development application would be supported by a traffic study.

### *Conclusion*

The site has reasonable access to a range of services and infrastructure.

The scale of the development is unlikely to place significant pressure on the provision of services.

### **ENVIRONMENTAL IMPACTS (CLAUSE 37(6)(C))**

In issuing the SCC, it must be demonstrated that the proposed development is not likely to have an adverse impact on the environment and will not cause any unacceptable environmental risks to the land.

The site is not mapped or known to contain any threatened or endangered ecological communities or items of flora or fauna. The site contains a limited number of trees.

The site is not bushfire prone.

The site is not near a noise source such as an arterial road or train line that would cause significant noise or vibration concerns.

The property and locality are flood affected. The Parramatta LEP 2011 contains controls related to flood-prone land that must be met with any development of the site. It is known that the State Emergency Service objected to the planning proposal on the basis of potential flood impacts in a Probable Maximum Flood (PMF), which could potentially result in flood waters 4-5 metres deep on the site and in the surrounding locality.

### Department comment

It is anticipated that a detailed flood assessment will be required for the future development of the site, regardless of whether this occurs consistent with the existing zoning or in accordance with a site compatibility certificate. It is recognised that the site is affected by the PMF and the SCC would result in an increase in density over and above that permitted in the R2 Low Density zone. It is noted that Parramatta City Council permits basement car parking in areas that are subject to flooding, with any future development application required to address how risk to life may be addressed and mitigated.

### **OTHER CONSIDERATIONS**

*Clause 37(7) - A certificate may certify that the development to which it relates is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate.*

The reference design submitted shows a residential flat building transitioning from 4 storeys adjoining the B1 zoned land to the north, to 3 storeys through the middle section of the site and then 2 storeys adjoining R2 zoned land to the south. Given the surrounding character of predominantly low-density dwellings, further emphasis on how the proposal transitions and demonstrates compatibility is conditioned in the certificate. Specifically:

1. Development is to be a maximum three storeys (12m) for dwellings directly adjoining the B1 zoned land to the north, and a maximum two storeys (9m) for the remainder of the site;
2. The consent authority must be satisfied that overlooking into adjacent private open space from the site will be minimised, having regard to Council's DCP controls;
3. Amendments to the deep soil zone are required. Deep soil zones are to be increased in accordance with Council's DCP which requires a minimum of 30% deep soil zone and a minimum of 40% landscaped area (which includes deep soil zone);
4. Setbacks from Tucks Road and Rausch Street are to be increased to be consistent with the existing low-density dwellings and DCP requirements; and
5. Any future Development Application is to appropriately address and mitigate flood risks in accordance with the Parramatta Local Environmental Plan 2011 and DCP.

It is considered that if the above conditions are not met, the site will be at risk of unacceptable overdevelopment. It is not proposed to establish a maximum floor space ratio control or density as the conditions imposed above will determine an appropriate building envelope that is compatible with the surrounding locality.

As such, the final number of dwellings permitted on the site can be determined by City of Parramatta Council through the assessment of a Development Application under section 4.15 of the Environmental Planning and Assessment Act 1979.

### **CONCLUSION**

The site is within 800m of a train station entrance as required by the Affordable Rental Housing SEPP. Furthermore, the application has been made by a community housing

provider with the aim of providing 50% of dwellings for affordable rental housing for at least 10 years. There is a social benefit in a development providing community housing in the locality, and there is a need for affordable housing, subject to a place-based assessment and design response.

The SCC application has demonstrated that the reference design can be consistent and compatible with the predominantly low-density character of the locality, provided it responds to conditions prescribed in Schedule 2 of the certificate.