

Memo to the Waverley Local Planning Panel

To: Chair and Panellists of the Waverley Local Planning Panel

From: Kylie Lucas, Senior Development Assessment Planner
Bridget McNamara, Manager, Development Assessment

Subject: DA-268/2020/A – 79-103 Wellington Street BONDI BEACH
Addendum to the Assessment Report (Affordable Rental Housing SEPP)

Date: 23/11/2022



1. PREAMBLE

The development application, known as DA-268/2020/A, was lodged with Council on 25/05/2022 for modifications including design refinement, services, apartment reconfiguration and new roof terraces to an approved residential flat building development containing affordable housing apartments.

The application is recommended for approval by Council's Development and Building Unit (DBU) in a report to the Waverley Local Planning Panel (WLPP).

On 18/11/2022, the applicant raised a query regarding the application of State Environmental Planning Policy (Housing) 2021 (the Housing SEPP).

The savings provisions of the Housing SEPP state (emphasis added in bold for those provisions which relate to the subject development):

2 *General savings provision*

(1) *This Policy does not apply to the following matters—*

- (a) *a development application made, but not yet determined, on or before the commencement date,*
- (b) *a concept development application made, but not yet determined, on or before the commencement date,*
- (c) *a staged development application made subsequent to a concept development application approval granted on or before the commencement date,*
- (d) *a development consent granted on or before the commencement date,*
- (da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not determined, on or before the commencement date,**
- (e) *an environmental impact statement prepared in compliance with an environmental assessment requirement that is—*
 - (i) *issued by the Planning Secretary on or before the commencement date, and*
 - (ii) *in force when the statement is prepared,*
- (f) *the carrying out of an activity after the commencement date if—*
 - (i) *notice of the activity has been given to the council under the repealed ARH SEPP, clause 40A(2), and*

(ii) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 26 November 2022.

(2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).

The original consent was assessed under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP). Given the savings provisions contained within the Housing SEPP, the modification application must also be assessed under the ARH SEPP as outlined in Section 2 below. The main change between the two SEPPs relates to the provision that the apartments are to remain as affordable rental housing for 15 years under the Housing SEPP and 10 years under the ARH SEPP. In this regard, this addendum recommends changes to conditions contain in the original report as detailed in Section 3 of this addendum.

2. SEPP (Affordable Rental Housing) 2009

Part 2 Division 1 – In-fill affordable housing

Part 2 division 1 of SEPP (Affordable Rental Housing) 2009 (the ARHSEPP) relates to development for the purposes of in-fill affordable housing.

The subject site is zoned R3 *Medium Density Residential* and residential flat buildings are permissible with development consent. The site does not contain a heritage item or draft heritage item.

The site is located within an ‘accessible area’ being within 400m walking distance of a bus stop used by a regular bus service (within the meaning of the [Passenger Transport Act 1990](#)) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday. As detailed within the Traffic and Transport Report submitted with the application there are 13 bus stops within 400m of the site which meet the definition of a regular bus service.

Accordingly, this Division, and the following clauses, apply to the development application.

Table 1: Clause 13 Floor space ratios

| Development Standard | Compliance | Planning Comment |
|---|------------|---|
| 13 - Floor space ratios: | | |
| (1) 20% of GFA to be used for affordable housing; | Yes | A minimum of 20% of the floor space must be affordable. The original approval provided 939m ² or 23% of the development as affordable housing (14 apartments) with an FSR bonus of 0.23:1 (1.13:1). The modified application increases the affordable housing provision to 1,067m ² equating to 26.6% of the development (16 apartments). The modified proposal provides 26.6% of the floor space as affordable housing and therefore the bonus allowable equates to |
| (2) (a) if the existing maximum floor space ratio is 2.5:1 or less: | Yes | |
| (i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or | | |

| Development Standard | Compliance | Planning Comment |
|--|------------|---|
| <p>(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 percent, where:</p> <p>AH is the percentage of the gross floor area of the development that is used for affordable housing.</p> <p>Y = $AH \div 100$</p> | | 0.266:1. Given the applicable FSR under the LEP is 0.9:1, the maximum FSR with bonus under the SEPP is 1.166:1. The proposed development has an FSR of 1.163:1 complying with the development standard. |

Clause 14 - Standards that cannot be used to refuse consent

Clause 14 of the SEPP outlines that if the proposal complies with set standards, the application cannot be refused on the grounds of those standards. If the proposal does not comply with the standards of Clause 14, the consent authority reserves the right to refuse the application on those grounds, if warranted. An assessment of the proposal has been carried out according to these standards as outlined in the table below.

Table 2: Clause 14 – Standards that cannot be used to refuse consent

| Development Standard | Compliance | Planning Comment |
|--|------------|---|
| Site area: At least 450m ² | Yes | The site is 3493m ² |
| Landscaped area: <ul style="list-style-type: none"> 30% of the site | Yes | The modified proposal provides 38% of the site as landscaped area, increased from 34% (approved development). |
| Deep soil zone: <ul style="list-style-type: none"> 15% of site; Min dimension of 3m; If practicable, at least 2/3 at rear. | Yes | The modified proposal does not alter the deep soil approved at 16%. |
| Solar access: <ul style="list-style-type: none"> Living rooms and POS of 70% of units receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter | No | <p>The development provides 63% (10 of 16) of affordable housing apartments with a minimum of 3 hours direct sunlight between 9am and 3pm mid-winter.</p> <p>The approved development provides 57% of the apartments with the required level of solar access. Given the modification represents an improvement upon the approved solar access, the variation is minor and that the development overall meets the requirements of the ADG in terms of solar access, the variation is accepted.</p> |
| Parking: | Yes | The minimum parking based on the affordable housing apartments is: |

| Development Standard | Compliance | Planning Comment |
|--|------------|---|
| <ul style="list-style-type: none"> At least 0.5 parking spaces for each dwelling containing 1 bedroom and at least 1 parking space for each dwelling containing 2 bedrooms and at least 1.5 parking spaces for each dwelling containing 3 or more bedrooms. | | <ul style="list-style-type: none"> 8 x 1-bed: $8 \times 0.5 = 4$ 8 x 2-bed: $8 \times 1 = 8$ <p>A total of 12 spaces are required for the affordable housing units. A condition to this effect is provided in Appendix A.</p> |
| <p>Dwelling size:</p> <p>50sqm – 1-bed 70sqm – 2-bed</p> | Yes | The affordable housing units comply with these requirements. |
| 16 – Continued application of SEPP 65 | Yes | SEPP 65 applies and is discussed in detail in Tables 1 and 2 of this report. |
| 16A – Character of local area | Yes | <p>The modified proposal is considered to continue to appropriately respond to the emerging character of the local area.</p> <p>The amended proposal is consistent with the height, bulk and scale of surrounding recent development continuing to present to Wellington and O’Brien Streets with a three-storey built form (four-storeys are contained to the rear). This is consistent with the desired future character of the area given the zoning of the site for medium density development.</p> |
| <p>17 – Must be used for affordable housing for 10 years</p> <p>(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that—</p> <p>(a) for 10 years from the date of the issue of the occupation certificate—</p> <p>(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and</p> <p>(ii) all accommodation that is used for affordable housing will be managed by a registered</p> | Yes | A condition to this effect is provided in the Recommendation which will supersede the condition in the original report. |

| Development Standard | Compliance | Planning Comment |
|---|------------|----------------------------|
| community housing provider, and (b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i> , that will ensure that the requirements of paragraph (a) are met. | | |
| 18 – Subdivision | N/A | No subdivision is proposed |

3. CONCLUSION

This addendum to the Assessment Report provides an assessment of the ARH SEPP. The assessment finds that the proposed development is consistent with the relevant provisions of the ARH SEPP. The application, known as DA-268/2020/A, at 79-103 Wellington Street BONDIE BEACH is recommended for APPROVAL by Council’s Development and Building Unit (DBU) in a report to the Waverley Local Planning Panel (WLPP).

Furthermore, new Condition 5A recommended in Appendix A should be deleted and condition 5 modified as follows:

5. AFFORDABLE HOUSING

The following condition is imposed in accordance with Clause 17 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*:

For 10 years, commencing from the date of issue of an Occupation Certificate;

- (a) A minimum of 23% of the floor space of the development shall be allocated for affordable housing. In this regard, Units A.UG01, A.UG02, A.UG03, A.UG04, A.UG05, A.UG06, A.UG07, A.UG08, A.UG09, A.101, A.106, A.107, A.108, A.109, **A.103 and A.104** as nominated on the approved plans contained in condition 1 of this consent is to be used for the purposes of ‘affordable housing’, as defined in the *State Environmental Planning Policy (Affordable Rental Housing) 2009*,
- (b) All accommodation that is used for affordable housing must be managed by a registered community housing provider,

A restriction as to user must be registered against the title of the property in accordance with section 88E of the *Conveyancing Act 1919* which restricts the use of any accommodation to which this development consent relates. The cost of preparation and registration of any legal agreement(s) and all other documentation is to be met by the Registered Proprietor.

(AMENDED DA-268/2020/A)

Memorandum prepared by:



Kylie Lucas

Senior Development Assessment Planner

Date: 23/11/2022

**Memorandum reviewed and agreed upon
(on behalf of Council's Development and
Building Unit):**



Bridget McNamara

Manager, Development Assessment

Date: 23/11/2022