

The affordable housing 'local character' test

This paper reports on a recent refusal by the Land & Environment Court of an affordable infill housing project at Newport in Sydney's northern beaches.

Building on our earlier paper "Lessons from Beatrice Street", this paper draws further insights on applying the local character compatibility test of the Affordable Rental Housing State Environmental Planning Policy. The decisions suggest this will continue to be a crucial test in determination of affordable housing projects.

Background

On 19 August 2011, the Land & Environment Court handed down its decision on an infill affordable housing residential flat building at 9-11 Beaconsfield St, Newport in the case of *Peninsula Developments Australia Pty Ltd v Pittwater Council* [2011] NSWLEC 1244.

When introduced in July 2009, the Affordable Rental Housing SEPP (ARHSEPP) permitted low-rise infill affordable housing residential flats in residential zones where they were not normally permissible (as was proposed in this case).

Amendments to the ARHSEPP in May 2011 removed this provision, so it now applies to infill developments that are permissible in the zone. As this DA was lodged before the amendments, the savings and transitional provisions require that it be considered under the old infill provisions of the ARHSEPP – but subject to the new requirement to consider whether the design of the development is compatible with the character of the local area.

This 'local character' test applies to all future infill housing under the ARHSEPP and was the key issue in the case.

The project

DA 594/2010 was for a two and three storey residential flat building with basement parking on a 2,892m² site. It proposed 24 units, 12 of which were for affordable housing (9 of them adaptable).

The surrounding area is predominantly developed with detached houses of varying age and style, with some older style residential flat buildings and a school nearby and a local shopping centre surrounded by medium density development at the end of the street.

Assessing local area compatibility

In "Lessons from Beatrice Street", we noted that incompatibility with local area character was a ground of refusal of an infill residential flat project in Clontarf. In that application, consideration was given to the Planning Principles set down by



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the Land & Environment Court on compatibility of a proposal with surrounding development in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. We saw that a proper local character analysis considers not only the immediate context (the site and adjoining properties) but also the street context and the wider suburb context. But just how wide is this context?

In this case, the Court also considered the Planning Principle case as well as the design principles in SEPP 65 for Context, Scale and Density and the Desired Character for the Newport locality in Pittwater Council's DCP.

A key area of disagreement between the experts for Council and for the applicant was the extent of local area to be considered.

The applicant noted that the development was not consistent with the Desired Character for Newport which is essentially for low density detached houses in landscaped grounds. But in view of the types of development in the local area – including the school, other flats, the shopping centre and surrounding medium density housing – the applicant considered that the development was nonetheless compatible in this wider context.

Council's experts thought that local area should be primarily confined to the site's visual catchment. While there were flats and a school in this area, they were not consistent with the desired character and should not be seen as setting a precedent for the type of residential development that should be approved in the area. In particular, they saw the 60 metre length of the two and three storey development as a greater scale than would be expected in the area.

The Court noted at [67] *"...that to be compatible, the proposal does not have to be the same as the predominant form of development which creates the character of the 'local area' but it must respond to the desirable elements. The design of the proposal has sought to do this through its setbacks, articulation, materials and landscaping. This has reduced its impact and the disparity between its built form and that of surrounding development but not to the extent that ... it is compatible or achieves the desired character sought for the 'local area'."*

In applying the Planning Principles set down in *Project Venture Developments*, the Court noted that the task was to evaluate whether the proposal 'responds to', 'contributes to' and 'complements' its surrounding area.

The Court held that the physical impacts were generally acceptable, although the extent of overlooking of neighbours from several apartments was another uncharacteristic and undesirable aspect of the proposal.

The long, unbroken length of the building combined with its height and width were the main features which made it visually incompatible and contributed to its failure of the design principles of SEPP 65 and the compatibility test.

Lessons from the case

The case highlights the importance of carefully considering the Planning Principles in *Project Venture Developments*, the design principles of SEPP 65 and any statements of Desired Character for the zone and locality.

It is not enough to point to other developments of similar bulk and scale nearby. Consider whether the proposal makes a positive contribution to development in the visual catchment. Will it exist in harmony with the character that is sought for the zone and locality or does it emulate developments that do not set a good precedent?