

Affordable housing lessons from Beatrice Street

This paper reports on the latest affordable housing project to be determined by a Joint Regional Planning Panel, the independent planning experts appointed by State Government to determine more significant development applications.

The Panel's refusal of the DA has some important lessons for future projects using the Affordable Rental Housing State Environmental Planning Policy following amendments to that Policy in May 2011.



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The project

DA 64/2011 was lodged with Manly Council in March 2011 for an infill affordable housing development at 23 Beatrice St, Clontarf under the Affordable Rental Housing SEPP (ARHSEPP). With a project value of over \$10 million, Council was required to refer the DA to the Sydney East Region Joint Regional Planning Panel (JRPP) for decision.

The proposal was for two residential flat buildings stepping down a 2,910m² site that falls steeply from the road. The front building was for 9 affordable housing units (4 studios, 3 one-bedroom and 2 two-bedroom) while the rear building had 8 luxury three-bedroom apartments, some with study and media rooms, swimming pools and elevated views over Middle Harbour.

Access to 27 basement parking spaces was provided via two mechanical car stackers. Three visitors car spaces at ground level were accessed by a sloping and curved driveway.

Manly Council's report to the JRPP noted that the floor space ratio of the project was 0.7:1.0 compared to 0.4:1.0 permitted under Council's planning controls.

The DA was lodged before amendments to the ARHSEPP in May 2011 which removed the provisions that allowed infill affordable housing in zones where it was not normally permissible. However, the zoning of the site under Manly LEP 1988 permits residential flat buildings, so affordable residential flats remain permissible under the amended ARHSEPP.

Hundreds of local resident objections were received. Opposition was well organised by the local precinct committee through regular meetings, street rallies attended by the local MP, leaflet distribution, hiring a planning consultant to review the DA and coordinating resident presentations to the JRPP meeting.

Assessment of the DA

Council's comprehensive planning report to the JRPP recommended refusal on numerous grounds including:

- Incompatibility with the character of the locality;
- Poor location with respect to services and poor public transport;
- Unsatisfactory safety and security in terms of disabled access, vehicle access and egress and pedestrian safety;
- Limited social benefit for people in housing need;
- Overdevelopment - excessive size, scale and density;
- Non-compliance with SEPP65 Residential Flat Code;
- Excessive excavation and disturbance of natural landform and vegetation;
- Visual and amenity impacts.

At its meeting on 28 July 2011, the JRPP refused the DA on the first three of these grounds.

Lessons for future affordable housing projects

This private development is not the sort that community housing providers would normally propose. The average cost of over \$750,000 per unit reflects a very difficult site in an expensive harbourside location. Nonetheless the Panel's decision does provide some pointers on how the amended ARHSEPP will be interpreted by councils, JRPPs and possibly the Land & Environment Court in considering future infill developments.

1. The "new" local compatibility test

One of the May amendments to the ARHSEPP was including a requirement to consider whether the development's design is compatible with the character of the local area. In fact this is not a new requirement. The ARHSEPP always required low rise projects to consider the Seniors Living Urban Design Guidelines (and still does). The first criteria in the Guidelines under the broad heading of "Responding to Context" is compatibility with neighbourhood character. And for flats of three storeys or more, the first principle to be considered under SEPP65 – Design Quality of Residential Flat Development is also responding to context.

In Sterling Projects Pty Ltd v The Hills Shire Council, (an affordable housing case pre-dating the ARHSEPP amendments), the Land & Environment Court considered the Seniors Living Guidelines and noted that "...context or character is not limited to a consideration of streetscape but includes the wider context of the site."

A thorough analysis of local compatibility was made in Manly Council's report on the Beatrice St project. It addressed the Planning Principle cases set down by the L&E Court on medium density seniors housing in low density zones and on compatibility of a proposal with surrounding development. These cases would have been familiar to the JRPP, the chair of which was formerly the Court's Senior Commissioner who decided them. A number of compatibility tests are set out in those cases, requiring assessment of compatibility with adjoining development, other development in the street and the wider urban context of the suburb.

The lesson for future affordable infill is that while compatibility with local character is not really a new test, it is a very important one that must be considered carefully in the design and addressed thoroughly in the DA having regard to the planning principles set down by the Court and in planning guidance documents such as the Seniors Living Guidelines (up to two storeys) and SEPP65 (three or more storeys). 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.

2. Community understanding of target resident group

Resident submissions and Council's report did not show a good level of understanding of the tenant group likely to be accommodated in the affordable units. It didn't help that the applicant had yet to nominate a community housing provider to manage the affordable housing. While this was not a reason for refusal, it may have contributed to the view expressed by objectors that the project was exploiting the planning concessions offered by ARHSEPP without giving back a commensurate social benefit.

The JRPP was told by one resident objector that this was not a suitable area for affordable housing, that there is no need for it here. It would of course be totally repugnant to suggest that an existing local should move out if their income fell below the median level due to changing employment or business circumstances or retirement. So is it acceptable to suggest that people with lower incomes should not be able to move in? International research has suggested that rather than enclaves of rich or poor, the most socially sustainable and highly valued communities have a mix of income and household types.

The lesson here is to make early contact with local precinct reps, councillors, council planners and MPs to avoid any misunderstandings about the objectives of the development, the housing need it is trying to meet, the intended target resident groups and the benefits of mixed income developments and localities – and of course to learn of any local issues of particular concern.

3. Location to services and public transport

The ARHSEPP requires infill housing to be located within walking distance of public transport (train, ferry, light rail or bus). The amendments to the ARHSEPP in May require buses running over a greater time period (a bus stop within 400m walking distance with at least one bus per hour between 6am and 9pm weekdays and 8am – 6pm weekends).

As the DA was lodged prior to the May amendments, the old bus service criteria applied (a bus stop within 400m walking distance with at least one bus per hour between 6am and 6pm weekdays).

Walking distance is defined the same way in the old and new ARHSEPP – a route that can be safely walked using, as far as practicable, public footpaths and pedestrian crossings. Although the nearest bus stop is only 60m up Beatrice St, the road is fairly steep and narrow and there is no footpath outside the site. The project met the old bus service criteria but not the amended criteria.

Unlike the Seniors Housing SEPP, the ARHSEPP does not require projects to be accessible to services such as shops, medical and community facilities. Nonetheless, given the steep and narrow street and discontinuous footpath, Council's report stated that access to public transport and the nearest shopping centre (nearly 800m up Beatrice St) was not sufficient.

So it shouldn't be assumed that satisfaction of the numerical criteria of the public transport requirements is enough. The safe walking route test also needs to be considered having regard to the likely access requirements of the resident group. That said, the May amendments to the ARHSEPP now set a higher benchmark for public transport access which could make it harder to refuse a DA on this ground if those tougher standards are met. And caution is required in characterising the access requirements of low and moderate income households which make up over 50% of renting households.

It will be interesting to see how the Land & Environment Court deals with these issues if an appeal is lodged.