

**LIVERPOOL CITY COUNCIL**  
**JOINT REGIONAL PLANNING PANEL**

**2014**

<b>ITEM No.</b>	<b>2014SYW073</b>
<b>Application Number</b>	<b>DA-183/2014</b>
<b>Proposed Development</b>	<b>Construction of 132 bed residential aged care facility with basement car park, landscaped gardens and associated signage</b>
<b>Property Description</b>	<b>Lot 50 DP 1126740, 9 Melaleuca Place, Prestons</b>
<b>Applicant</b>	<b>Melaleuca Ventures Pty Ltd</b>
<b>Land Owner</b>	<b>Melaleuca Ventures Pty Ltd</b>
<b>Cost of Work</b>	<b>\$21,807, 090.00</b>
<b>Recommendation</b>	<b>Approval</b>



## **1. EXECUTIVE SUMMARY**

### **1.1 Reasons for the Report**

Pursuant to the requirements of Schedule 4A of the Environmental Planning and Assessment (EP&A) Act 1979, the proposed development is referred to the Sydney West Joint Regional Planning Panel (JRPP) for consideration and determination as the Development Application has a Capital Investment Value over \$20 million.

This report summarises the key issues in consideration of the proposal in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979.

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**1.2. The Proposal**

Council has received a Development Application for the construction of a 132 bed residential aged care facility with basement car park, landscaping and associated signage.

**1.3 The Site**

The subject site is legally identified as Lot 50 DP 1126740 and is located at 9 Melaleuca Place, Prestons. The site has an area of 6658m<sup>2</sup> and a frontage of 45.4m to Melaleuca Place. The site is currently vacant with some vegetation present.

**1.4 The issues**

The key issues in relation to the proposal relate to the outstanding objections to the proposal and the proposed variations to State Environmental Policy (Housing for Seniors or People with a Disability) 2004. The applicant has submitted requests pursuant to SEPP 1 to vary development standards relating to the height of the development to the rear of the site and location requirements.

**1.5 Exhibition of the proposal**

The proposal was exhibited from 9 April 2014 to 28 April 2014. Five submissions including a petition with 21 signatures were received opposing the development. Twenty-four submissions were received supporting the development. Issues raised in relation to the proposal include concerns regarding traffic, safety during construction, acoustic impact, amenity impact, and car parking.

**1.6 Conclusion**

The application has been assessed pursuant to the provisions of the *EP&A Act 1979*. Based on the assessment of the application and the consideration of the written requests to vary development standards, it is recommended that the application be approved subject to the imposition of conditions.

**2. SITE DESCRIPTION AND LOCALITY**

**2.1 The Site**

The subject site is known as Lot 50 DP 1126740 and is located at 9 Melaleuca Place, Prestons. The site is irregular in shape and has an area of 6658m<sup>2</sup> and a frontage of 45.4m to Melaleuca Place. The site adjoins residential properties to the north and the M7 Motorway to the west and south. A cycleway within the motorway reserve adjoins the site immediately to the south. The subject site is shown below in Figure 1.





**Figure 1: Aerial view of site.**

Photographs of the site are shown below in Figures 2-4.



**Figure 2: View from Melaleuca Place to the west.**





**Figure 3: View of site from south**



**Figure 4: View from western corner**

## **2.2 The Locality**

The surrounding locality to the north is characterised as a residential area containing mostly detached two storey dwellings with some residual blocks that are yet to be developed.



### **3. HISTORY**

#### **3.1 Pre DA Meeting**

A pre lodgement meeting with Council was held on 15 January 2014. The advice notes from the meeting identify the issues in regards to the height of the development to the rear of the site and the location requirements outlined within development standards contained within the Seniors Housing SEPP.

#### **3.2 Design Review Panel**

The proposal was considered at a Design Review Panel (DRP) meeting on 1 May 2014. In summary, the comments made by the Panel are as follows:

- The Panel's appreciation of this development and likely impacts was assisted by the applicant's detailed explanation of residents, their needs and likely behaviour.
- Interior layouts and design of garden areas would meet the needs of high care residents.
- The proposed development would achieve reasonable compatibility with the surrounding residential neighbourhood due to extensively-articulated building forms which result in a variety of setbacks and garden areas; and landscaping which is proposed along the eastern and northern boundaries of the subject site.
- Restriction of development to a single storey upon the rear 25% of the site would be unnecessary in terms of existing streetscape character in Mondovi Place, which is defined by closely-spaced two storey dwellings.

The panel recommended a number of minor changes and conditions be applied to minimise the impact of the development on the surrounding area:

- A condition to limit large outdoor gatherings to specified events and ceremonies should be applied.
- Increased setbacks and / or additional screening for specific upper storey terraces, balconies and wintergardens.
- Adjustments to reduce the scale of roof forms and exterior walls that would be prominent from the head of Mondovi Close.

Revised architectural plans were submitted following the DRP meeting. It is considered that the above recommendations have been incorporated into the revised plans.

### **4. DETAILS OF THE PROPOSAL**

The development application seeks consent for the construction of a residential aged care facility as follows:

- Site works, excavation and removal of vegetation.
- Construction of residential aged care facility consisting of:
- Two storey building divided into seven wing elements including two dementia wards with 32 beds; 100 single aged care rooms, dining areas, lounge areas,

office and administration rooms and consulting rooms for health professionals.

- Basement with car parking, kitchen, laundry, storage rooms and amenities.
- Porte-cochere drop off / pick up area and service bay.
- Landscaping.
- Site works.
- Fencing.

Copies of the architectural plans are contained in attachments. Extracts of the plans for the proposal are shown below.



Figure 5: Roof plan



Figure 6: Ground floor plan



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Figure 7: South Elevation

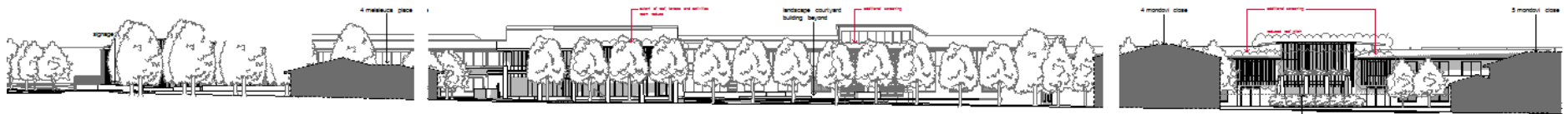


Figure 8: North Elevation



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## 5. STATUTORY CONSIDERATIONS

### 5.1 Zoning and Permissibility

The subject site is zoned R2 Low Density Residential Zone pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008). The proposal is described as 'seniors housing' which is defined in LLEP 2008 as follows:

**seniors housing** means a building or place that is:

- (a) a residential care facility, or
  - (b) a hostel within the meaning of clause 12 of [State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) 2004](#), or
  - (c) a group of self-contained dwellings, or
  - (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),
- and that is, or is intended to be, used permanently for:
- (e) seniors or people who have a disability, or
  - (f) people who live in the same household with seniors or people who have a disability, or
  - (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,
- but does not include a hospital.

Seniors housing is not permissible in the R2 Low Density Residential Zone pursuant to LLEP 2008.

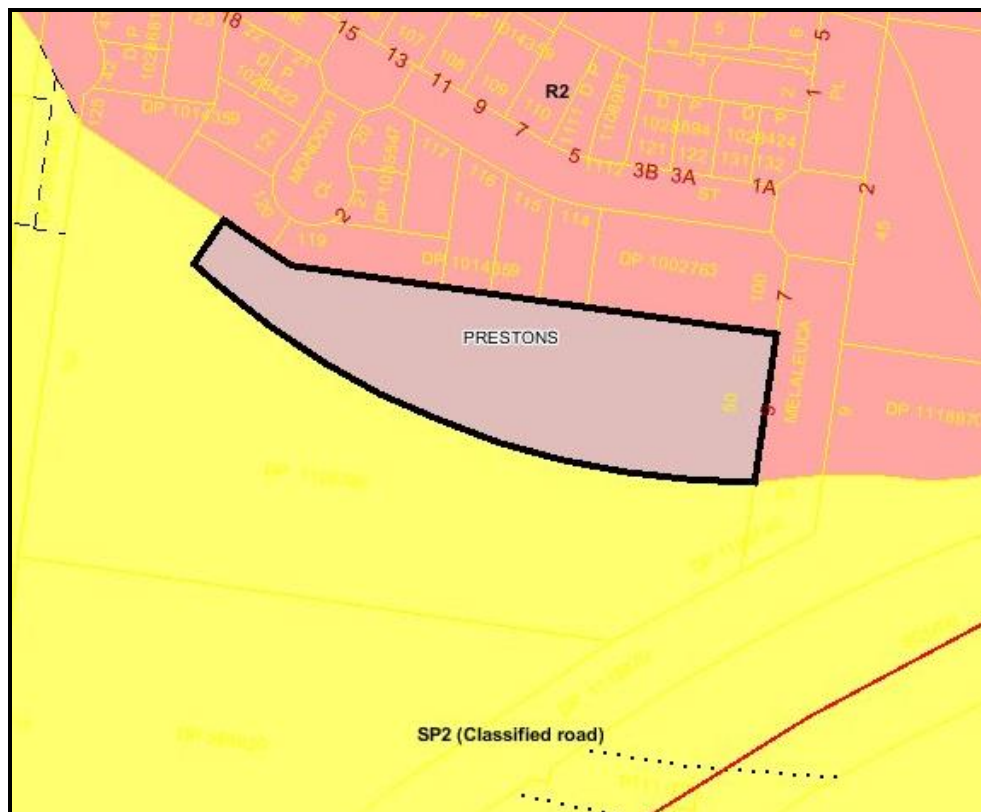


Figure 9: Extract from LLEP 2008 Zoning Map



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The application has been proposed pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP). Pursuant to Clause 15 of the Seniors Housing SEPP, seniors housing is permitted on land zoned primarily for urban purposes despite the provisions of any other environmental planning instrument.

Therefore, despite the zoning provisions of LLEP 2008, the proposal is a permissible development pursuant to Seniors Housing SEPP with consent.

## **5.2 Relevant matters for consideration**

The relevant planning considerations for the proposed development are listed below and are discussed in further detail in this report:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- State Environmental Planning Policy No.1 – Development Standards;
- Liverpool Local Environmental Plan 2008; and
- LDCP 2008;
  - Part 1: General Controls for All Development.

## **6. ASSESSMENT**

### **6.1 Section 79C(1)(a)(1) – Any Environmental Planning Instrument**

#### **(a) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now deemed SEPP).**

It is considered that the proposal satisfies the provisions of the GMREP No.2. subject to appropriate sedimentation and erosion controls during construction, the development will have minimal impact on the Georges River Catchment.

#### **(b) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)**

The objectives of SEPP 55 are:

- *to provide for a state wide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to the above SEPP, the consent authority must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

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The proposal involves a change of use of land with the potential (*agricultural/horticultural activities*) under the SEPP 55 guidelines to be a site that could be contaminated.

The applicant has submitted a stage one preliminary contamination investigation for the site as part of the application. The report has assessed the potential of contamination for the site and the following findings have been made:

- A review of the known previous uses of the site has been undertaken. There is a history of agricultural activities on the site.
- Eight test pit samples have been taken from the site.
- There is evidence of filling within the topsoil on the land.
- There was no buried rubbish found from samples, however there is a risk of building debris in top layer.

Accordingly, Council is required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application (Clause 7).

<b>Clause 7 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	A preliminary contamination assessment has been submitted as part of this application and reviewed by Council's Environmental Health Staff.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The submitted assessment identified that there are small amounts of fill within the topsoil layer. This material will be removed as part of the excavation process for the proposed basement and taken to a place licensed to receive the material.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Land is to be remediated if any rubbish or asbestos is encountered (during construction) as required, prior to use.

Therefore based on the above assessment, the subject site is suitable for the proposed development subject to remediation works being undertaken where required.

**(c) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

The Seniors Housing SEPP applies to the proposal. The application has been made



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for seniors housing as a 'residential care facility' as defined in the SEPP. An assessment of the proposal against the applicable provisions contained in the Seniors Housing SEPP has been undertaken and is detailed in the table below.

PROVISIONS	PROPOSAL	COMPLIANCE
<p><b>26 Location and access to facilities</b></p> <p>Site must have access to shops, banks and commercial services, medical services, community and recreation facilities.</p> <p>Access must be within 400m via a suitable access with gradient of no more than 1:14.</p> <p>Bus services within 400m must be available to and from the site at least once between 8am to 12 noon per day and at least once between 12 noon and 6pm on weekdays.</p>	<p>Site is approximately 765m from bus stop on Kurrajong Road to the north.</p>	<p>Does not comply. See discussion and variation pursuant to SEPP 1 below.</p>
<p><b>27 Bush fire prone land</b></p> <p>Land in the vicinity of bush fire prone land or vegetation buffer to consider general location of development, means of access to and egress from the general location and matters listed in (a) to (i).</p>	<p>Site not bush fire affected.</p>	<p>N/A</p>
<p><b>28 Water and sewer</b></p> <p>Written evidence to demonstrate that housing will be connected to a reticulated water system and will have adequate facilities for sewage disposal.</p>	<p>Site is fully serviced for water and sewerage. Upgrades may be required for installation of sprinklers to ensure compliance with the BCA.</p>	<p>Complies</p>
<p><b>29 Site compatibility criteria</b></p> <p>A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).</p>	<p>(i) Land is not mapped as</p>	

<p>(i) the <b>natural environment</b> (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,</p> <p>(ii) the impact that the proposed development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the <b>future uses of that land</b>,</p> <p>(iii) the <b>services and infrastructure</b> that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</p> <p>(iv) in the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development,</p> <p>(v) without limiting any other criteria, the <b>impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development</b>,</p> <p>(vi) if the development may involve the clearing of native vegetation that is subject to the requirements of section</p>	<p>ESL, nor does it contain any threatened species or protected habitat. The land is zoned for residential development and is adjacent to residential development to the north and a motorway to the south.</p> <p>(ii) Future uses of land likely to remain as motorway and residential land.</p> <p>(iii) Some upgrades to water services may be required for the installation of fire sprinklers as advised by Sydney Water.</p> <p>(iv) Not on land zoned open space or special uses.</p> <p>(v) Impact of the proposal is minimised due to its location with adjoining residential development to the north only. Setbacks and screening are provided to minimise impacts. See more detailed discussion below regarding the merits of the application in respect to exceeding height standards to the rear of the site.</p> <p>(vi) No native vegetation proposed to be removed.</p>	
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12 of the <a href="#">Native Vegetation Act 2003</a> —the impact that the proposed development is likely to have on the conservation and management of native vegetation.		
<b>30 Site analysis</b>  Submission of a site analysis and supporting statement identifying how the development has been designed having regard to site analysis required.	A site analysis has been included as part of the application.	Complies
<b>32 Design of residential development</b>  A consent authority must not consent to a DA unless it is satisfied that the development demonstrates adequate regard to the principles of Division 2 (Clauses 33 to 39).	Each element discussed below.	
<b>33 Neighbourhood amenity and streetscape</b>  Development should: recognise desirable elements of current character and desired future character; maintain reasonable amenity and residential character by building setbacks to reduce bulk and overshadowing, building form and siting relative to the land form; compatible building heights; consistent front setback; and consistent landscaping.	The proposed development relates to the character of the locality and provides a varied form to reduce the bulk of the building. Appropriate setbacks are provided to maximise amenity for residents of the proposal and adjoining properties. There is no overshadowing of adjoining residential properties.	Complies
<b>34 Visual and acoustic privacy</b>  Appropriate site planning, location and design of windows and balconies, screening devices.  Locating bedrooms away from	Windows facing towards adjoining properties are setback 4m from the boundary. Small balconies are setback 4m, and larger balconies setback approx. 8m.	Complies

driveways, parking areas and footpaths to ensure acceptable noise levels.	Two dwellings near driveway on ground floor. Acoustic report identifies measures for all dwellings to comply with acoustic requirements to ensure acoustic impacts are mitigated.	
<b>35 Solar access and design for climate</b>  Ensure adequate daylight to main living areas of neighbours and residents; and sunlight to private open space. Site planning to reduce energy and maximise use of solar energy and natural ventilation.	Proposal does not overshadow adjoining residential properties.  Sunlight to gardens, patios and balcony areas	Complies
<b>36 Stormwater</b>  Control and minimise disturbance and impacts of stormwater runoff. Include on-site detention or re-use for second quality water uses.	Stormwater design assessed by Council's Engineering officers.	Satisfactory
<b>37 Crime prevention</b>  Provide personal property security for residences and visitors and encourage crime prevention.	The building would be a secure facility with a reception desk at the entry and CCTV cameras around the site. Casual surveillance opportunities to adjoining cycleway.	Complies
<b>38 Accessibility</b>  Provide obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.  Provide attractive and safe pedestrian and motorist environments with convenient access and parking.	Accessibility report submitted with application provides recommendations to achieve access in accordance with DDA and BCA.	Satisfactory
<b>39 Waste management</b>  Provide waste facilities that	Recycling facilities proposed	Complies



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maximise recycling.		
<b>40 Development standards minimum sizes and building height</b>  Site size: 1,000m <sup>2</sup> minimum.  Site frontage: 20m minimum.  Height in residential zones where residential flat buildings are not permitted: 8m maximum (and maximum 2-storeys).  Building located at rear 25% of the site must not exceed 1-storey.	Site size: 6658m <sup>2</sup>  Frontage: 45.4m to Melaleuca Place  Height: 8m (2 storeys).  Whole of buildings 2-storey	Complies  Complies  Complies  Does not comply. Variation pursuant to SEPP 1 discussed below.
<b>48 Development standards that cannot be used to refuse development consent for residential care facilities</b>  Building height: if all buildings are 8m or less in height. Buildings exceed 8m in height but are satisfactory and comply.  Density and scale: if density and scale when expressed as FSR is 1:1 or less.  Landscaped area: if minimum 25m <sup>2</sup> of landscaped area per bed.  Parking for residents and visitors: if at least: 1 space per 10 beds 1 space per 2 staff, 1 ambulance space.	Height: 8m  FSR 0.9:1  3,331m <sup>2</sup> landscaping proposed = 25.6m <sup>2</sup> per bed.  36 car spaces and 1 ambulance space	Complies  Complies  Complies  Complies
<b>55 Fire sprinklers</b>  A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire	Sprinkler system proposed. Details to be provided prior to construction certificate.	Complies

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sprinkler system.		
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The applicant has made a written request to vary two development standards as noted above. The request to vary the development standards pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) is discussed below at Item 5 (e).

**(d) Seniors Living Policy: Urban Design Guidelines for Infill Development**

The *Seniors Living Policy: Urban design guidelines for infill development*, sets out a range of design principles which are to be considered in the design and assessment of seniors housing development under the Seniors Housing SEPP. An assessment of the proposal against the design guidelines is detailed below.

**(i) Responding to context**

PRINCIPLES	COMMENT
Street layout and hierarchy: Development be of an appropriate scale and character to reinforce existing road patterns	Existing road pattern. Development fronts towards Melaleuca Place.
Block and lots: Have regard to block and lot patterns and suitability for intensification of use.	Residual allotment that has only one frontage to street and limited opportunity to match the pattern of development to the north.
Built environment: Consider pattern and massing of existing buildings and neighbourhood character.	Development responds to pattern by breaking up the bulk of the building into smaller elements.
Trees: Consider the existing patterns of plantings in front and rear gardens of area.	Extensive landscaping proposed.
Policy environment: Consider desired character of area as described in Council's planning instruments.	While the proposal represents a higher density of development than permitted in the surrounding area, the proposal seeks to minimise impacts on amenity of neighbouring properties through use of setbacks, landscaping and building design.

**(ii) Site planning and design**

PRINCIPLES	COMMENT
<b>General:</b> Optimise internal amenity and minimise impacts on neighbours. Optimise solar access to private open space. Buffer quiet areas.	Garden lounge areas, patios and balconies provided throughout site to increase amenity. Setbacks provided to adjoining development. Good solar access to gardens and patios

	and balconies.
<b>Trees, landscaping and deep soil zones:</b> Retain existing trees; use new mature or semi mature trees. Provide deep soil areas, at least 10% of site area as a single area at rear. Use of onsite detention and retain stormwater for re-use.	Extensive landscaping across site. Deep soil areas across site. Two main areas of deep soil provide buffering. Rainwater tanks proposed on site.
<b>Parking, garaging and vehicular circulation:</b> Consider centralised parking. Maintain existing crossing and driveway location on the street.	Centralised basement parking. No existing crossing.
<b>Rules of thumb:</b> Proportion of site given to landscaped area should be increased in less urban areas, on large lots, and in areas already characterized by a high proportion of open space and planting.	Urban area. Landscaping exceeds required amount.

**(iii) Impacts on streetscape**

PRINCIPLES	COMMENT
<b>General:</b> Respond the desired streetscape by designing development to be sympathetic to existing streetscape.	Building addresses Melaleuca Place.
<b>Built form:</b> Reduce visual bulk.	Buildings screened by vegetation and broken up into separate elements.
<b>Trees landscaping and deep soil zones:</b> Retain existing trees and planning in front and rear setbacks and road reserve.	Tree removal proposed. Extensive landscaping proposed over site.
<b>Residential amenity:</b> Define threshold between public and private space. Provide a high quality transition between the public and private domains. Provide pedestrian entry and is separate from vehicular entries. Locating and treating garbage storage areas and switchboards to visual impact is minimized.	Front entry clearly defines private space. Porte-cochere provides high quality transition between the public and private domains. Garbage storage in separate screened bays.
<b>Parking, garaging and vehicular circulation:</b> Avoid long straight driveways. Use planting to soften edges. Vary materials. Limit width. Use screening.	Driveway at front of site. Landscaping along porte-cochere driveway. Materials varied.
<b>Rules of thumb:</b> Respond to Council planning instruments that specify the character or desired	Proposal not permissible under LLEP 2008. Character assessed against LLEP zone

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character for the area.	objectives below.
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**(iv) Impacts on neighbours**

PRINCIPLES	COMMENT
<b>Built form:</b> Relationships between buildings and open space to be consistent with the existing patterns in the block. Maintain existing orientations. Setting upper stories back behind side or rear building line. Broken roof lines to reduce bulk. Minimise overlooking.	Broken roof lines in design.
<b>Trees, landscaping and deep soil zones:</b> Use vegetation as buffer. Use species that are characteristic of the local area.	Landscaping along boundaries to act as buffer. Mix of native and exotic species.
<b>Residential amenity:</b> Protect sun access and ventilation by ensuring adequate separation. Design dwellings so they do not directly overlook neighbour's private open space.	Separation between buildings and adjoining properties provided. Some windows overlooking neighbours private space
<b>Parking, garaging and vehicular circulation:</b> Provide planting and trees to screen noise and reduce visual impacts.	Screening provided along driveway.
<b>Rules of thumb:</b> Living rooms of neighbouring dwellings should receive minimum of 3 hours of direct sunlight between 9am to 3pm mid-winter. Solar access to the POS of neighbours should not be unreasonably reduced.	Over 3 hours of solar access to living rooms of neighbouring dwellings maintained. Solar access to POS of neighbours not reduced.

**(v) Internal site amenity**

PRINCIPLES	COMMENT
<b>Built form:</b> Maximise solar access to living areas and POS Clearly define entries.	Good solar access to garden areas, patios and balconies.
<b>Parking, garaging and vehicular circulation:</b> Locate habitable rooms away from driveways and parking areas. Use physical separation where not possible. Avoid large areas of hard surface. Screen parking. Single driveways with passing bays	Short driveway at front of site. Basement car parking.



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rather than double driveways throughout.	
<b>Residential amenity:</b> Provide distinct separate pedestrian circulation to the site. Minimise opportunities for concealment. Provide POS. Provide communal open space that is accessible and includes facilities. Locate service facilities such as garbage storage to reduce visual prominence.	Separate pedestrian access to site. Circulation around site from within buildings.  Communal open space areas across the site. Garbage storage screened.
<b>Rules of thumb:</b> Separation of 1.2m from habitable rooms and driveways or car park of other dwellings, or screen.	Basement car parking.

**(e) State Environmental Planning Policy No. 1 – Development Standards**

The applicant has made a written request to the vary development standards contained in the Seniors Housing SEPP, pursuant to SEPP 1. The standards proposed to be varied are the location and access to facilities standard contained in Clause 26 and the height of buildings standard contained in Clause 40(4)(c), requiring a building located in the rear 25% area of the site to not exceed one storey.

The applicant has provided justification for the variation of the standards in accordance with the five question test in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 46. The proposed variations are addressed separately below as follows:

**Height of building Standard**

Clause 40(4)(c) of the Seniors Housing SEPP requires that where development is proposed in a zone where residential flat buildings are not permissible, that a building located in the rear 25% of the site must not exceed one storey in height.

1. Is the planning control in question a development standard?

**Submission:** The height control contained in Clause 40(4)(c) is a numerical control and is a development standard.

2. What is the underlying object or purpose of the standard?

**Submission:** The objectives of the height standard although not expressly stated can be assumed to relate to preservation of amenity, avoidance of overshadowing, overlooking and to maintain a low scale residential form towards the rear of properties.

3. Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?

**Submission:** Compliance with the policy is inconsistent with the aims of the

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policy as the height, bulk, scale and characteristics of the proposal, including the rear part of the proposal are all appropriate and acceptable. The proposed development is consistent with the objects of the Act and represents the orderly and economic use of the land which is justified in terms of building form and scale, and the absence of adverse impacts on residential amenity.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

**Submission:** Compliance is unreasonable given the following:

- There are no adjoining residential properties to the rear area (i.e. western part).
- The proposal provides a low scale residential form.
- There are no overshadowing impacts to the rear 25% of the site.
- Significant setbacks have been provided to the properties to the north.

5. Is the objection well founded?

**Submission:** The objection is well founded when considering the following:

- The development is appropriate in the location.
- The development does not undermine the underlying objective of the standard.
- There are no dwellings to the west (i.e. rear) of the site.
- The non-compliance does not result in any significant adverse environmental impacts on the amenity of the surrounding area in general, or on the amenity of nearby residential properties in particular; and
- The scale of the proposal, notwithstanding the non-compliance is compatible with the surrounding development.

In a subsequent matter *Wehbe v Pittwater Council* [2007] NSWLEC, Preston CJ listed the requirements to uphold SEPP 1 objections:

1. The consent authority must be satisfied that the objection is well founded, be in writing, be an objection that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specify the grounds of that objection.
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* which are to encourage: *"(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, (2) the promotion and coordination of the orderly and economic use of developed land."*
3. The consent authority must be satisfied that a consideration of the matters in

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Clause 8(a) and (b) justifies the upholding of the SEPP1 objection. These matters are: *“(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument”*.

Preston CJ lists five ways of establishing that compliance is unreasonable or unnecessary.

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

From the submitted information, it would appear that the applicant's submissions in general, would best fit in reference to Question 1 in establishing that compliance is unreasonable or unnecessary.

Upon consideration of the submitted information in support of the variation to height of the building development standard to the rear 25% of the site, the following is noted:

- The objectives of Clause 40(4)(c) are not explicitly stated; however, the site analysis and design principles that apply to seniors housing provide a good guide as to what the overall objectives of the controls are seeking to achieve.
- The site is an irregular shape lot that adjoins the motorways to the south and west.
- The site adjoins the motorway to the rear.
- Insisting that the development be restricted to one storey to the rear 25% of the site would provide no increased amenity for neighbouring properties.

It is therefore considered that applying flexibility to the control is justified in the circumstances of this case and strict compliance would be unreasonable and unnecessary. The granting of a variation would provide flexibility in the planning controls, and would support the objectives specified in 5(a)(i) and (ii) of the Act, and outweighs the public benefit that would be achieved by maintaining the planning control. It must be noted that the recommendation for support of the variation is based on the individual circumstances of the proposal including the attributes of the site. The approval of the variation is not intended to set a precedent for further

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applications.

**Location and access to facilities standard**

Clause 26(2)(b) of the Seniors Housing SEPP, states that the consent authority must not consent to a DA made pursuant to the Seniors Housing SEPP on land within the Sydney Statistical Division unless there is a public transport service available to the residents who will occupy the proposed development that is located at a distance of no more than 400 metres from the site of the proposed development; which is accessible by means of a suitable access pathway (of specified gradients) and that the public transport service will provide access to shops, bank service providers, community services and a General Practitioner.

Preliminary discussions were held with the applicant prior to the lodging the DA, and it was requested that as the application is seeking to vary this clause, that the applicant clarify that the clause is in fact a development standard that can be varied; rather than a prohibition if the requirement cannot be met.

The applicant has provided a legal opinion that in summary notes the following:

- The term 'development standard' is defined under the Environmental Planning and Assessment Act 1979 (EP&A Act) as follows:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
  - (b) the proportion or percentage of the area of a site which a building or work may occupy,*
  - (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...*
- In *Strathfield Municipal Council v Poynting* (2001) LGERA, Giles JA, adopted a two-step approach in determining whether a provision is a development standard. The first step was to ask whether the relevant provision prohibited a development under any circumstances; the second step (only relevant if the first step is answered in the negative) was to ask whether the provision specified a requirement or a fixed standard in relation to an aspect of the development.
  - In *Georgakis v North Sydney Council* [2004] NSWLEC, McClellan CJ, adopted this two-step approach in considering whether Clause 12 of the now repealed State Environmental Planning Policy No. 5 – Housing for Older People of People with a Disability (SEPP 5).
  - The provisions of Clause 12 of SEPP 5 are similar to wording of Clause 26(2)(b) of the Seniors Housing SEPP. SEPP 5 was the predecessor to the Seniors Housing SEPP.

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- McClellan CJ, held that *“It follows that although the development is not absolutely prohibited, by a combination of Clauses 12(1) and 12(2) of SEPP 5 it is subject to a requirement that access to the relevant facilities be within 400 metres. This is an aspect of the development and, accordingly, a development standard amenable to dispensation pursuant to SEPP 1.”*

Council’s legal officer has reviewed the submitted opinion and is generally in agreement with the conclusions drawn. On this basis, consideration of the variation to the standard pursuant to SEPP 1 is considered as follows:

1. Is the planning control in question a development standard?

**Submission:** As detailed above, Clause 26(2)(b) is considered to be a development standard.

2. What is the underlying object or purpose of the standard?

**Submission:** The objectives of the standard are to provide access to services and facilities.

3. Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?

**Submission:** Future residents of the proposed facility will require a higher level of care (such as dementia patients). They will not independently leave the facility to access services and facilities. Some services will be provided on site, and some service providers including GPs will come directly to the facility and therefore the aims of the policy will be met, notwithstanding the site’s location from public transport services.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

**Submission:** Compliance is unreasonable given the following:

- The proposal will accommodate residents who need a high level of care and who will not be capable of independently leaving the facility.
- There will be no practical need to utilise public transport services.
- GPs and other health professionals will visit the site where required.

5. Is the objection well founded?

**Submission:** The location of the proposal is appropriate in the circumstances of the case and the objection to the development standard is well-founded.

In a subsequent matter *Wehbe v Pittwater Council* [2007] NSWLEC, Preston CJ listed the requirements to uphold SEPP 1 objections:

1. The consent authority must be satisfied that the objection is well founded, be in writing, be an objection that compliance with a development standard is unreasonable or unnecessary in the circumstances



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of the case and specify the grounds of that objection.

2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* which are to encourage: *"(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, (2) the promotion and coordination of the orderly and economic use of developed land."*
3. The consent authority must be satisfied that a consideration of the matters in Clause 8(a) and (b) justifies the upholding of the SEPP1 objection. These matters are: *"(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument"*.

Preston CJ lists five ways of establishing that compliance is unreasonable or unnecessary.

6. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
7. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
8. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
9. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
10. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land; and compliance with the standard would be unreasonable or unnecessary.

From the submitted information, it would appear that the applicant's submissions in general would best fit in reference to Question 1 in establishing that compliance is unreasonable or unnecessary.

Upon consideration of the submitted information in support of the variation to location and access to facilities standard the following is noted:

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- The objectives of Clause 26 are not specifically stated; however, it is evident that the objectives of the clause are to ensure that residents have suitable access to services and facilities.
- It is generally accepted noting the floor plan and the information submitted by the applicant that the facility is not providing independent living accommodation, but rather a higher care assisted living, and that a proportion of the residents will be high care dementia patients.
- The facility provides for the care of residents on site and has allocated areas for health professionals to utilise.

It is therefore considered that applying flexibility to the control is justified in the circumstances of this case and strict compliance would be unreasonable and unnecessary. The granting of a variation would provide flexibility in the planning controls, and would support the objectives specified in 5(a)(i) and (ii) of the Act, and outweighs the public benefit that would be achieved by maintaining the planning control. It must be noted that the recommendation for support of the variation is based on the individual circumstances and characteristics of the proposal. The approval of the variation does not set a precedent for further applications.

**(f) Liverpool Local Environmental Plan 2008**

**(i) Permissibility**

The subject land is zoned R2 Low Density Residential Zone under the provisions of LLEP 2008. Seniors housing is not a permissible development in the R2 Low Density Residential Zone. As discussed above, the proposal is a permissible development pursuant to the provisions of the Seniors Housing SEPP.

**(ii) Objectives of the zone**

Objectives of the R2 Low Density Residential Zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide a suitable low scale residential character commensurate with a low dwelling density.
- To ensure that a high level of residential amenity is achieved and maintained.

The proposed development has been assessed in regards to its suitability in the location and the impact it may have on the amenity of the surrounding area. As detailed above, it is considered that the proposal will not have an unreasonable impact in the locality due to the design of the proposal and the unique characteristics of the site in terms of its location.

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**(iii) Principal Development Standards**

The following principal development standards are applicable to the proposal when assessed against the LLEP 2008:

DEVELOPMENT PROVISION	REQUIREMENT	PROPOSED	COMMENT
4.3 Height of Buildings	Maximum height 8.5m	11m	Does not comply.
4.4 Floor Space Ratio	0.5:1	0.9:1	Does not comply.
5.9 Preservation of trees or vegetation	Provides when consent is required to be granted subject to the provision of this clause to remove trees or vegetation	Landscaping plan and arboricultural report identifies trees to be retained and removed	Complies
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	Provided by conditions of consent	Complies
7.31 Earthworks	Council to consider matters listed (a)-(g)	Matters addressed by applicant and considered by Engineers – conditioned as required	Complies

The provisions of Seniors Housing SEPP are relied upon to the extent of the inconsistency with LLEP 2008 controls with respect to the Height of Buildings and Floor Space Ratio controls. The Seniors Housing SEPP controls prevail to the extent of the inconsistency.

**6.2 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument**

No applicable draft planning instruments apply to the proposal.

**6.3 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan**

Liverpool Development Control Plan 2008 (LDCP 2008) applies to the site. Part 1 General Controls for all Development is relevant to the proposed development. An assessment of the proposal against the controls contained within LDCP 2008 are outlined in the table below:

CONTROLS	COMMENT	COMPLIES
<b>PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT</b>		

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2.TREE PRESERVATION	Preliminary tree assessment submitted.	Yes
3.LANDSCAPING	Trees to be retained where possible.	Trees to be removed as outlined within the endorsed arborist report submitted with the application.
4.BUSHLAND AND FAUNA HABITAT PRESERVATION	Land not ESL or contain threatened species.	Yes
5.BUSH FIRE RISK	Not in bushfire affected area.	N/A
6.WATER CYCLE MANAGEMENT	A Stormwater Concept Plan submitted.	Yes
7.DEVELOPMENT NEAR CREEKS AND RIVERS	Site is separated from Creek.	N/A
8.EROSION AND SEDIMENT CONTROL	An Erosion and Sediment Control plan has been submitted as part of the Soil and Water Management plans.	Yes
9.FLOODING RISK	Subject land not within flood affected area.	Yes
10.CONTAMINATION LAND RISK	A Contamination Assessment has been provided. Investigation concludes site suitable for residential development.	Yes
11.SALINITY RISK	The salinity assessment submitted with the application identifies management practices to be undertaken during earthworks and construction.	Yes
12.ACID SULFATE SOILS RISK	The subject site is not identified on the Acid Sulfate Soils Map.	Yes
13.WEEDS	Noxious plants to be removed.	Yes
14.DEMOLITION OF EXISTING DEVELOPMENT	No demolition proposed.	N/A
15.ON-SITE SEWERAGE DISPOSAL	No on-site sewage disposal proposed.	N/A
16.ABORIGINAL ARCHAEOLOGY	No items of significance in area.	N/A
17.HERITAGE AND ARCHAEOLOGICAL SITES	No heritage sites.	N/A
18.NOTIFICATION OF APPLICATIONS	The proposal was notified in accordance with LDCP & regulations.	Yes
20.CAR PARKING:	3 accessible spaces per 100 spaces. 1 accessible space provided.	Yes
21.SUBDIVISION OF LAND AND BUILDINGS	No subdivision proposed.	N/A
22.WATER CONSERVATION	BCA report provided. BASIX requirements also required.	To be conditioned.

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23.ENERGY CONSERVATION	BCA report provided. BASIX requirements also required.	To be conditioned.
24.LANDFILL	To be in accordance with LDCP requirements.	Yes
25.WASTE DISPOSAL AND RE-USE Applies to Subdivision and excavation of land.	Soil and water management plan submitted.	Yes
26.OUTDOOR ADVERTISING	Description includes consent for associated signage, however no plans or details are included.	Consent only for exempt business identification signage

#### **6.4 Section 79C(1)(a)(iv) – The Regulations**

No additional items for consideration.

#### **6.5 Section 79C(1)(b) – The Likely Impacts of the Development**

##### **Natural and Built Environment**

The impacts of the development on the natural environment have been assessed and the development is considered to be acceptable and unlikely to cause adverse impacts. Issues considered included, but were not limited to: soil contamination; earthworks; stormwater management; erosion and sediment control; and landscaping.

The impacts on the built environment have also been assessed and are also considered to be acceptable and unlikely to have significant negative impacts. Issues considered included, but were not limited to: the traffic impacts; adequacy of car parking; built form (height, bulk, scale); streetscape and visual impacts; overshadowing; compatibility with the future character of the locality; design; acoustic impacts; access; site layout; compliance with Building Code of Australia (BCA) and Australian Standards (AS); fire safety requirements; adequacy of site services; waste management; and potential impact on amenity of locality.

##### **Social Impacts and Economic Impacts**

The proposal is unlikely to cause any adverse social impacts in the locality. Overall, the proposal is likely to contribute positively to the locality by providing beneficial aged care services to the local and wider community and is acceptable with respect to any potential social impacts.

The potential economic impacts of the development in the locality are acceptable. The development is likely to have a positive contribution to the local economy via the capital investment value associated with the proposal and ongoing employment opportunities.

#### **6.6 Section 79C(1)(c) – The Suitability of the Site for the Development**

The site location and size is considered to be suitable for the proposed development given its characteristics and design.



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**6.7 Section 79C(1)(d) – Any submissions made in relation to the Development**

**(a) Internal Referrals**

The following comments have been received from Council's Internal Departments:

DEPARTMENT	COMMENTS
Engineering	Approval subject to conditions
Building	Approval subject to conditions
Environmental Health	Approval subject to conditions
Strategic Planning	Approval subject to conditions
Traffic	Approval subject to conditions
Floodplain engineering	Approval no issues raised

**(b) External Referrals**

DEPARTMENT	COMMENTS
RMS	General Terms of Approval issued
Sydney Water	Comments and advice received
Westlink M7	Comments provided to RMS
Design Review Panel	Comments received

**(c) Community Consultation**

The proposal was exhibited from 9 April 2014 to 28 April 2014. Five submissions including a petition with 21 signatures were received opposing the development. Twenty-four submissions were received supporting the development. The range of issues which were raised in the submissions, and a response to each, are summarised below:

**Issue 1 - Traffic**

Concerns have been expressed that the proposal would result in an increase in traffic to the local road network during construction and operation of the proposed development.

**Comment**

The applicant has submitted a traffic report with the application that has been reviewed by Council's Traffic and Transport Section. The increase in traffic to the street network has been assessed as being acceptable to the network which will be able to accommodate the increased traffic.

**Issue 2 – Safety and noise during construction**

Concerns have been expressed that any vehicles involved with the construction of

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the facility would have to travel via Gascogne Street to the site and this would result in increased noise pollution and cause a risk to the safety of children in the street.

**Comment**

Any vehicles that would visit the site during construction would be required to comply with road rules and registration requirements regarding noise emissions.

**Issue 3 – Acoustic impact**

A concern was expressed that the proposal would result in an unacceptable noise impact from the location of the driveway and the use by delivery vehicles thereof.

**Comment**

The applicant has amended the design to include a 2.1m high masonry wall along the boundary of the adjoining property along the driveway. It is understood the adjoining owner is agreeable to this amendment.

**Issue 4 – Amenity impact**

Concerns have been expressed that the proposal may impact on the amenity and lifestyle of existing residents in the area.

**Comment**

The proposal whilst being a more intensive use in terms of floor area than the surrounding development; provides for appropriate setbacks, will not overshadow the adjoining properties and will not generally generate noise impacts on the adjoining properties.

**Issue 5 – Car parking**

Concerns have been expressed that visitors to the site may park in the surrounding streets when visiting the site.

**Comment**

The proposal has provided parking (including visitor and staff parking) to the site that exceeds the relevant requirements under the Seniors Housing SEPP. Any visitors to the site that choose to park in the surrounding street network would be required to comply with the local parking restrictions.

**Issue 6 – Letters of support**

Council has received twenty four letters of support in response to the proposal. The letters have indicated that they support the proposed type of development in the locality.

**6.8 Section 79C(1)(e) – The Public Interest**

The proposal is considered to be in the public interest as will provide a significant

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community benefit. The merits of the proposal and the potential impacts have been assessed and it is considered that the objects of the planning controls can be achieved whilst applying flexibility to the numerical controls.

## **7. DEVELOPMENT CONTRIBUTIONS**

The Liverpool Contributions Plan 2009 identifies a levy of **\$674,499** to be paid to Council for the proposed development. The requirement for payment of the contribution has been imposed as a draft condition of consent and may be adjusted to account for changes to the CPI at the time of payment.

## **8. CONCLUSION**

Development Application DA-183/2014 has been assessed under the provisions of the *EP&A Act* 1979. The subject site is zoned R2 Low Density Residential Zone pursuant to LLEP 2008. Seniors housing is not permissible in the R2 Low Density Residential Zone.

The application has been proposed pursuant to the provisions of the Seniors Housing SEPP. Pursuant to Clause 15 of Seniors Housing SEPP, seniors housing is allowable on land zoned primarily for urban purposes despite the provisions of any other environmental planning instrument.

Therefore, despite the zoning provisions of LLEP 2008, the proposal is a permissible development pursuant to Seniors Housing SEPP and consent may be considered for approval subject to assessment.

Written applications have been submitted pursuant to SEPP 1 to vary two standards contained within the Seniors Housing SEPP. The standards proposed to be varied are the location and access to facilities standard contained in Clause 26 and the height of buildings standard contained in Clause 40(4)(c), requiring a building located to the rear 25% area of the site to not exceed one storey in height. The justification for the variations as provided by the applicant has been reviewed and is supported on the basis that it has been demonstrated in each instance that strict compliance with the standard in this instance is unreasonable and unnecessary.

The application has been assessed against the relevant development controls; the impact and suitability of the site for the development has been considered and the submissions of objectors and those in support of the proposal have been considered in the assessment of the application. The proposal is considered to generally accord with the objectives of the relevant planning instruments and represents an orderly development of the land that is generally in the public interest. Approval of the application is therefore recommended subject to conditions.

## **9. RECOMMENDATION**

- 9.1 That the report for Development Application DA-183/2014 for the construction of a 132 bed residential aged care facility with basement car park, landscaping and associated signage be approved subject to conditions contained in Attachment 10.2.

# **10. ATTACHMENTS**

- 10.1 Architectural Plans**
- 10.2 Recommended Conditions of Consent**
- 10.3 Clause 4.6 Variations to development standards**
- 10.4 Submissions**



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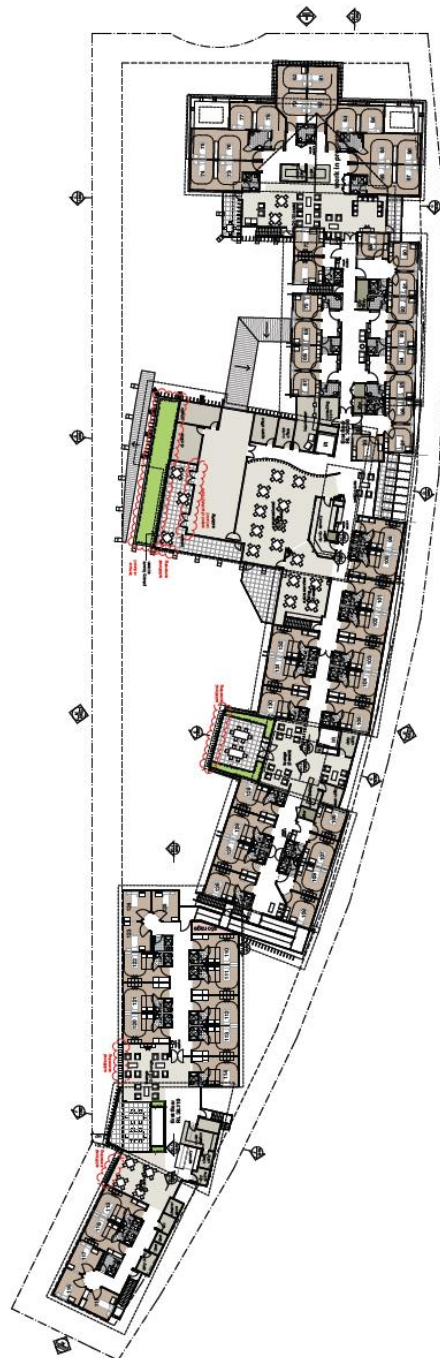


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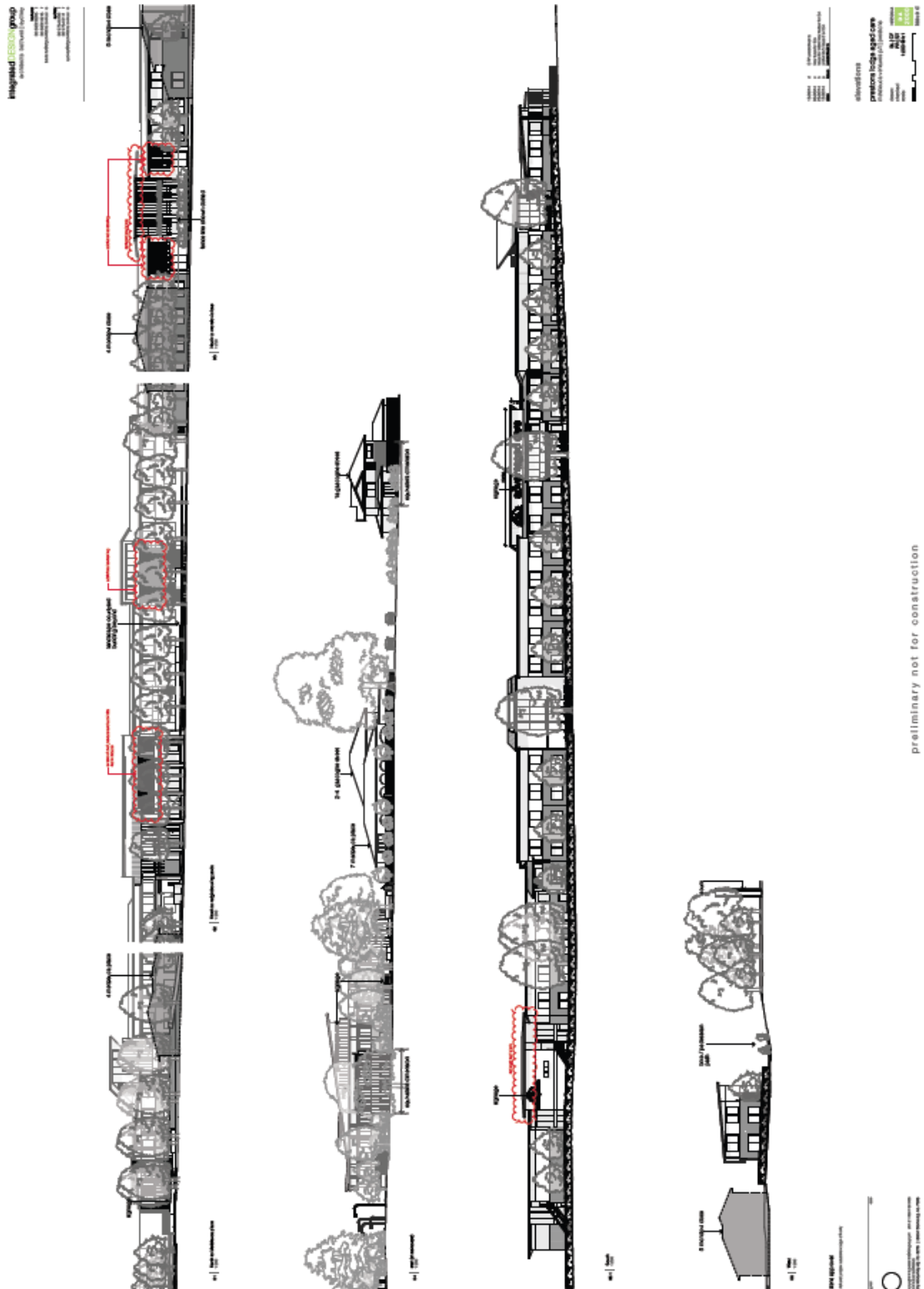
Short approach

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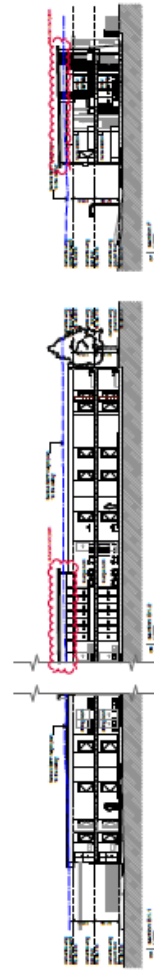
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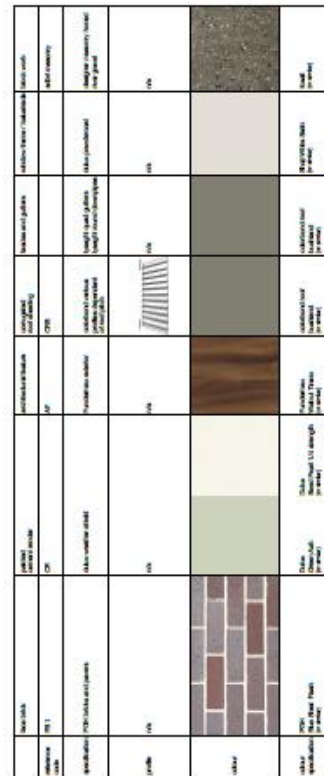


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**10.2 Recommended conditions of consent**

**DEFINITIONS**

AEP	Annual Exceedance Probability
NCC	National Construction Code (formerly Building Code of Australia)
Council	Liverpool City Council
DCP	Liverpool Development Control Plan 2008
DECC	Department of Environment and Climate Change and Water
CC	Construction Certificate
1% AEP Flood	The 1 in 100 year flood
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
LPI Service	Land and Property Information Service
OC	Occupation Certificate
PCA	Principal Certifying Authority
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
RMS	Roads and Maritime Services

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**A. THE DEVELOPMENT**

**Approved Plans**

1. Development the subject of this determination notice must be carried out strictly in accordance with the following plans/reports marked as follows:
  - (a) Architectural plans prepared by Integrated Design Group, Ref: KRE 12044, Rev D, Dated 16.06.14, Sheets 0100, 0101, 1100, 1101, 2000, 3000, 9600.
  - (b) Landscape plan prepared by Site Design Studios, Ref: 13-578, Rev B, Dated 11.03.14
  - (c) Stormwater plans prepared by abc Consultants, reference 13503, drawing number C04.01 rev F, dated 10.09.14 and drawing number C04.11 rev D, dated 10.09.14
  - (d) Erosion and sediment control plan prepared by abc Consultants, Ref: 13503, Rev A, Dated 17.02.14
  - (e) Waste management plan prepared by Advantage Care (No reference).
  - (f) BCA report prepared by Blackett Maguire + Goldsmith, Ref: 140002, Dated 26.02.14
  - (g) Evacuation management plan prepared by Advantaged Care (No reference).
  - (h) Acoustic report prepared by Renzo Tonin & Associates, Ref: TG531, Rev 1, Dated 19.02.14
  - (i) Arborist report prepared by Jacksons Nature Works, Dated 30.01.14
  - (j) Contamination, salinity and geotechnical investigation prepared by GeoEnviro, Ref: JC1417, Dated Feb 2014.
  - (k) Traffic Impact Assessment prepared by Traffix, Ref: 12.332r01v4, Dated 06.03.14

except where modified by the undermentioned conditions.

**General Terms of Approval**

2. All Terms of Approval issued by Roads and Maritime Services, shall be complied with prior, during, and at the completion of construction, as required in accordance with the General Terms of Approval dated 9 May 2014. A copy of the General Terms of Approval are attached to this decision notice.
3. All roadworks, drainage works and dedications, required to effect the consented development shall be undertaken at no cost to Liverpool City Council.



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**B. PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

The following conditions are to be complied with or addressed prior to issue of a Construction Certificate by the Principal Certifying Authority:

**SECTION 94 PAYMENT (Liverpool Contributions Plan 2009)**

4. As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in accordance with Liverpool Contributions Plan 2009 as amended.

The total contribution is \$ 674,499.

A breakdown of the contributions payable is provided in the attached payment form.

**Whitlam Centre Extensions, Liverpool Central Library and Local Land - Early acquisition (Middleton Grange)**

Contributions, with the exception of those for the Whitlam Centre Extensions, Liverpool Central Library and Local Land - Early acquisition (Middleton Grange) will be adjusted at the time of payment.

**Capital Works, Administration, Professional and Legal Fees Components**

Capital works, Administration, Professional and Legal Fees components will be adjusted quarterly in line with the Consumer Price Index (all groups index number for Sydney) using the following formula:

$$\text{Contribution at the time of payment} = \frac{C \times CPI_2}{CPI_1}$$

Where:

**C** = Original contributions as shown on the consent

**CPI<sub>2</sub>** = Latest "Consumer Price Index: All Groups Index Number" for Sydney available from the Australian Bureau of Statistics at the time that the contribution is to be paid

**CPI<sub>1</sub>** = Latest "Consumer Price Index: All Groups Index Number" for Sydney available from the Australian Bureau of Statistics as at the time of granting the development consent

**Land Component**

The value of the land component will be adjusted quarterly in line with the latest average land value estimate published by Council. The average land value estimate will be reviewed on a quarterly basis and determined by averaging residential land values per square metres with the relevant catchment, over the previous quarter.

$$\text{Contribution at the time of payment} = \frac{C \times L_2}{L_1}$$

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Where:

- C** = Original contributions as shown on the consent
- L<sub>2</sub>** = Latest Average Estimated Land Acquisition Cost per square metre published by the Council at the time that the contribution is to be paid
- L<sub>1</sub>** = Latest Average Estimated Land Acquisition Cost per square metre published by the Council at the time of granting the development consent

Where a developer undertakes to transfer land or provide a work which is included in the Contributions Plan, the appropriate payments may be reduced accordingly.

The Contributions Plan may be inspected at Council's Administration Centre, 33 Moore Street, Liverpool or at [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au).

Please note. Payment must be accompanied by the attached form.

This contribution involves contributions for Local Streets and Traffic Facilities and Local Drainage. It should be noted that any further development consents for the development of a particular site will contain a condition requiring contributions for the following facilities.

- (i) District Roads and Traffic Facilities
- (ii) District Drainage Basins
- (iii) Landscape Buffer Land
- (iv) Landscape Buffer Embellishment
- (v) Professional and Legal Fees
- (vi) Tree Planting

**Fee Payments**

5. Unless otherwise prescribed by this consent, all relevant fees or charges must be paid. Where Council does not collect these payments, copies of receipts must be provided. For the calculation of payments such as Long Service Levy, the payment must be based on the value specified with the Development Application/Construction Certificate.

The following fees are applicable and payable:

- (a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery.
- (b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve.
- (c) Long Service Levy – based on 0.35% of the cost of building work where the costing of the CC is \$25,000 or more.

These fees are reviewed annually and will be calculated accordingly.

6. All fees associated with a road opening permit required for the connection, extension or amplification of any services within Council's road reserve must be paid to Council and receipts provided to the PCA. A separate form must be submitted in conjunction with payment of the fees. The fees include the



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standard road opening permit fee and any restoration fees that may be required as a result of the works.

7. Prior to the issue of a Construction Certificate a S138 Roads Act application/s, including payment of fees shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to the following:

- Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- Road opening for utilities and stormwater (including stormwater connection to Council infrastructure)
- Road occupancy or road closures

All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Liverpool City Council's specifications.

Note:

Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.

8. All retaining walls shall be of masonry construction and must be wholly within the property boundary, including footings and agricultural drainage lines. Construction of retaining walls or associated drainage works along common boundaries shall not compromise the structural integrity of any existing structures.

Where a retaining wall exceeds 600mm in height, the wall shall be designed by a practicing structural engineer and a construction certificate must be obtained prior to commencement of works on the retaining wall.

9. Prior to the issue of a Construction Certificate for building or subdivision works the Certifying Authority shall ensure that a S138 Roads Act application, including the payment of application and inspection fees, has been lodged with, and approved by Liverpool City Council (being the Roads Authority under the Roads Act), for provision of Road Construction half width full formation 5.5m wide including cul-de-sac head in Melaleuca Place.

Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works, Austroad Guidelines and best engineering practice.

Note:

Where Liverpool City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.

10. A Stage 3 (detailed design) Road Safety Audit (RSA) shall be undertaken on the proposed roadworks by an accredited auditor who is independent of the

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design consultant. A copy of the RSA shall accompany the design plans submitted with the Construction Certificate or Roads Act application.

Prior to the issue of the Construction Certificate or Roads Act approval, the Certifying Authority shall ensure that the recommendations of the RSA have been addressed in the final design.

11. A line marking and sign posting plan is to be submitted to Council for endorsement.
12. Car parking area is to be designed in accordance with latest Australian Standard AS-2890.1.

**Notification**

13. The certifying authority must advise Council, in writing of:
  - (a) The name and contractor licence number of the licensee who has contracted to do or intends to do the work, or
  - (b) The name and permit of the owner-builder who intends to do the work.

If these arrangements are changed, or if a contract is entered into for the work to be done by a different licensee, Council must be immediately informed.

14. A schedule specifying all of the essential fire safety services, both existing and proposed, which are required for the building, shall be attached to the CC and submitted to Council, in compliance with the provisions of the EP&A Regulation.
15. The schedule must distinguish between the measures that are currently implemented in the building premises; and
  - (a) The measures that are to be proposed to be implemented in the building premises; and
  - (b) The minimum standard of performance for each measure.

**Recommendations of Acoustic Report**

16. The recommendations provided in the approved acoustic prepared by Renzo Tonin & Associates, Ref: TG531, Rev 1, Dated 19.02.14 report shall be implemented and incorporated into the design and construction of the development and shall be shown on plans accompanying the CC application.
17. Stormwater drainage from the site shall be discharged to the:
  - a) Street drainage system
  - b) Common drainage line
  - c) Liverpool City Council's trunk drainage system within the property
  - d) Existing site drainage system
  - e) Level spreader system
  - f) Other

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

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The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

18. A stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by abc Consultants, reference 13503, drawing number C04.01 rev F, dated 10.09.14 and drawing number C04.11 rev D, dated 10.09.14.

The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.

Engineering plans and supporting calculations for the stormwater drainage system are to be prepared by a suitably qualified engineer and shall accompany the application for a Construction Certificate. The plan shall indicate the method of disposal of all stormwater and must include rainwater tanks, existing ground levels, finish surface levels and sizes of all pipes.

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the stormwater drainage system has been designed in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

19. On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by by abc Consultants, reference 13503, drawing number C04.01 rev F, dated 10.09.14 and drawing number C04.11 rev D, dated 10.09.14.

The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.

Engineering plans and supporting calculations for the on-site detention system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification.

20. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS3500.3:2003 and Council's Stormwater Drainage Design Specifications for pump out systems for basement car parks.
21. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the foundations of proposed structures adjoining the drainage and/or services easement have been designed clear of the zone of influence.
22. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that details of a stormwater pre-treatment system have been provided

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on the stormwater plans and that the design meets pollutant retention criteria in accordance Council's Development Control Plan.

The Construction Certificate must be supported by:

- Specification & installation details of the stormwater pre-treatment system
- The approval of an operation and maintenance manual/ schedule for the stormwater pre-treatment system

A copy of the approved operation and maintenance manual/ schedule shall be submitted to Liverpool City Council with notification of the Construction Certificate issue.

23. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Liverpool City Council's Development Control Plan.

**C. PRIOR TO WORKS COMMENCING**

The following conditions are to be complied with or addressed prior to works commencing on the subject site/s:

24. Any CC that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.
25. Work on the subdivision shall not commence until:
- a Construction Certificate (if required) has been issued,
  - a Principal Certifying Authority has been appointed for the project, and
  - any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement is to be submitted to Liverpool City Council two (2) days prior to commencement of engineering works or clearing associated with the subdivision.

26. Prior to commencement of works sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997 and Landcom's publication "Managing Urban Stormwater – Soils and Construction (2004)" – also known as "The Blue Book".

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

27. Written notice of intention shall be given to the owner of the adjoining allotments of land, outlining the particulars of the proposed work, which involves:

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- (a) Any excavation, below the base of the footings of a building on an adjoining allotment of land.
  - (b) The notice shall be given seven (7) days prior to the commencement of work.
28. In the event the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the following is to be undertaken at full cost to the developer:
- (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.

**Facilities**

29. Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

**Site Facilities**

30. Adequate refuse disposal methods and builders storage facilities shall be installed on the site. Builders' wastes, materials or sheds are not to be placed on any property other than that which this approval relates to.

**Site Notice Board**

31. A sign must be erected in a prominent position on the premises on which work is to be carried out. The sign is to be maintained during work, and removed at the completion of work. The sign must state:
- (a) The name, address and telephone number of the principal certifying authority for the work; and
  - (b) The name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - (c) Unauthorised entry to the premises is prohibited.

**Traffic**

32. Prior to commencement of works a Traffic Control Plan including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Traffic Authority's publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

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Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Liverpool City Council.

33. Prior to the Commencement of Works a dilapidation report of all infrastructure fronting the development in Melaleuca Place is to be submitted to Liverpool City Council. The report is to include, but not limited to, the road pavement, kerb and gutter, footpath, services and street trees and is to extend 40m either side of the development.

**Waste Classification**

34. Prior to the exportation of waste (including fill or soil) from the site, the material shall be classified in accordance with the provisions of the POEO Act and NSW DECCW, (EPA) 'Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes'. The classification of the material is essential to determine where the waste may be legally taken. The POEO Act provides for the commission of an offence for both the waste owner and transporters if waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or Group A liquid and non liquid waste advice should be sought from the DECCW (EPA).
35. Adequate soil and sediment control measures shall be installed and maintained. Furthermore, suitable site practices shall be adopted to ensure that only clean and unpolluted waters are permitted to enter Council's stormwater drainage system during construction/demolition. Measures must include, as a minimum:
- (a) Siltation fencing;
  - (b) Protection of the public stormwater system; and
  - (c) Site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

**D. DURING CONSTRUCTION**

The following conditions are to be complied with or addressed during construction:

**Building Work**

36. In the case of a class 5, 6, 7, 8 or 9 building, critical stage inspections must be carried out by the appropriate person in accordance with EP&A Regulation, with Compliance Certificates issued for each inspection. The last critical stage inspection must be carried out by the PCA. The following components of construction are relevant:
- (a) after excavation for, and before the placement of, any footings, and
  - (b) prior to covering any stormwater drainage connections; and

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- (c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

**Note:** These certificates or documentary evidence must be submitted to Council with any OC issued for the development

**Identification Survey Report**

37. The building and external walls are not to proceed past ground floor/reinforcing steel level until such time as the PCA has been supplied with an identification survey report prepared by a registered surveyor certifying that the floor levels and external wall locations to be constructed, comply with the approved plans, finished floor levels and setbacks to boundary/boundaries. The slab shall not be poured, nor works continue, until the PCA has advised the builder/developer that the floor level and external wall setback details shown on the submitted survey are satisfactory.

In the event that Council is not the PCA, a copy of the survey shall be provided to Council within three (3) working days.

On placement of the concrete, works again shall not continue until the PCA has issued a certificate stating that the condition of the approval has been complied with and that the slab has been poured at the approved levels.

**Hours of Construction Work and Deliveries**

38. Construction work/civil work/demolition work, including the delivery of materials, is only permitted on the site between the hours of 7:00am to 5:00pm Monday to Saturday. No work will be permitted on Sundays or Public Holidays, unless otherwise approved by Council.

**Security Fence**

39. A temporary security fence to WorkCover Authority requirements is to be provided to the property during the course of construction.

**Note.** Fencing is not to be located on Council's reserve area.

**General Site Works**

40. Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.
41. Any dangerous and/or hazardous material encountered shall be removed by a suitably qualified and experienced contractor, licensed by WorkCover NSW. The removal of such material shall be carried out in accordance with the requirements of WorkCover NSW. The material shall be transported and disposed of in accordance with DECCW (EPA) requirements.
42. All earthworks shall be undertaken in accordance with AS 3798 and Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

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43. Street lighting is to be provided for all new and existing streets within the proposed subdivision to Liverpool City Council's standards.

The developer shall submit a Public Lighting Design Brief to Council for approval for the provision of street lighting on all new public roads dedicated to Council. A street lighting design plan must be prepared by an accredited service provider for approval prior to construction. All street lighting must comply with the electricity service provider Street Lighting Policy and illumination requirements and Council's Street Lighting policy.

44. All cost associated with the installation of street lighting shall be borne by the developer.
45. Driveways shall be constructed to industrial standard in accordance with Council specification.

**Vegetation**

46. Permission is hereby granted for the removal of any tree within 3 metres of the building footprint. Trees located outside this area or not indicate on the plan are not to be removed without the consent of Council.
47. Mulch generated from exotic trees or other weed species cleared shall not be used on site. It shall be removed from the site and disposed of appropriately and in accordance with legislative requirements.
48. Any imported soil and/or mulch shall be free of contaminants, seed and propagules of weeds and undesirable species. Mulch shall not be used on flood liable land.

**Graffiti**

49. A graffiti resistant coating shall be applied to any fences or structures that have frontage to a public area, for example a roadway, public reserve etc.
50. All fill introduced to the site must undergo a contaminated site assessment. This assessment may consist of either:
- (a) a full site history of the source of the fill (if known) examining previous land uses or geotechnical reports associated with the source site to determine potential contamination as per the NSW DECCW 'Waste Classification Guidelines' April 2008; or
  - (b) clearly indicate the legal property description of the fill material source site;
  - (c) provide a classification of the fill material to be imported to the site in accordance with the 'NSW DECCW 'Waste Classification Guidelines' April 2008.
  - (d) a chemical analysis of the fill where the site history or a preliminary contamination assessment indicates potential contamination or contamination of fill material; and
  - (e) must provide Council with copies of validation certificate verifying the material to be used is free of contaminants and fit for purpose re use in residential, commercial or industrial use.



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51. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately after discovery. A Section 96 Application under the EP&A Act shall be made for any proposed works outside the scope of the approved development consent.

**Air Quality**

52. Dust screens shall be erected and maintained in good repair around the perimeter of the subject land during land clearing, demolition, and construction works.
53. Where operations involve excavation, filling or grading of land, or removal of vegetation, including ground cover, dust is to be suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where wind velocity exceeds five knots the PCA may direct that such work is not to proceed.
54. All vehicles involved in the delivery, demolition or construction process departing from the property shall have their loads fully covered before entering the public roadway.
55. Gaseous emissions from the development shall comply with the requirements of the POEO Act and Regulations there under. Processes producing airborne particulate matter shall incorporate a suitable dust collection system.
56. Erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.
57. Vehicular access to the site shall be controlled through the installation of wash down bays or shaker ramps to prevent tracking of sediment or dirt onto adjoining roadways. Where any sediment is deposited on adjoining roadways is shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.

**Water Quality**

58. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface and there shall be measures in place in accordance with the approved erosion and sediment control plan.

**Pollution Control**

59. Building operations such as brick cutting, mixing mortar and the washing of tools, paint brushes, form-work, concrete trucks and the like shall not be performed on the public footway or any other locations which may lead to the discharge of materials into Council's stormwater drainage system.
60. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.

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61. The design, construction, installation and commissioning of the mechanical ventilation systems(s) serving the premises shall be carried out in accordance with Australian Standard 1668 Parts 1 & 2.

The mechanical exhaust discharge point shall be designed and installed by an appropriately qualified person, and shall be positioned to comply with Section 3.7 of Australian Standard 1668 Part 2 – 1991.

**Skin Penetration**

62. The construction, fitout and finishes of the premises shall comply with the requirements of Attachment 3.

**Food Premises**

63. The construction, fitout and finishes of the premises shall comply with the AS 4674, Food Act 2003 and Regulations thereunder, and the requirements of Attachment 4.

**E. PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

The following conditions are to be complied with or addressed prior to issue of either an Interim or Final Occupation Certificate by the Principal Certifying Authority:

**Certificates**

64. The premises must not be utilised until an OC is issued by the PCA. Copies of all documents relied upon for the issue of the OC must be attached to the OC and registered with Council.
65. A final fire or interim safety certificate is to be attached to any OC, except in the case of a Class 1a or Class 10 building(s). This must include all the "essential fire services" installed in the building.

**Disabled Access**

66. Access, parking and facilities for persons with disabilities to be provided in accordance with the provisions of the National Construction Code.
67. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that all works associated with a S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Liverpool City Council.
68. Prior to the issue of an Occupation Certificate, works-as-executed drawings and compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

An original set of works-as-executed drawings and copies of compliance documentation shall also be submitted to Liverpool City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

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69. Prior to the issue of an Occupation Certificate the Principal Certifying Authority shall ensure that the:

- a) On-site detention system/s
  - b) Stormwater pre-treatment system/s
  - c) Basement Carpark pump-out system
- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to been undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.

70. Prior to the issue of an Occupation Certificate a restriction as to user and positive covenant relating to the:

- a) On-site detention system/s
- b) Stormwater pre-treatment system/s
- c) Basement carpark pump-out system

Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

71. Prior to the issue of select (an Occupation Certificate / a Subdivision Certificate) any damage to Council infrastructure not identified in the dilapidation report, as a result of the development shall be rectified at no cost to Liverpool City Council.

Any rectification works within Melaleuca Place will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.

72. Prior to the issue of nominate (an Occupation Certificate/ a Subdivision Certificate) a maintenance bond is to be lodged with Liverpool City Council for Road Construction in Melaleuca Place.

The value of the bond shall be determined in accordance with Liverpool City Council's Bond Policy. The bond will be administered in accordance with this policy.

73. Prior to the issue of a Subdivision Certificate the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Council where Council is not the Principal Certifying Authority:

- a) Work as Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design

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engineer. The Work as Executed drawings shall be prepared in accordance with Council's Design Guidelines. Electronic copies of the WAE shall be provided in PDF format and a DXF format to Council along with two hard copies of the WAE plans.

- b) The WAE drawings shall clearly indicate the 1% Annual Exceedence Probability flood lines (local and mainstream flooding).
  - c) The WAE drawings shall be accompanied by plans indicating the depth of fill for the entire development site. The plans must show, by various shadings or cross hatchings, the depth of any fill within 0.3m depth ranges.
  - d) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within future public roads and public land. Inspections are to be carried out in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2006. Any damage that is identified is to be rectified in consultation with Liverpool City Council.
  - e) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.
  - f) Documentation for all road pavement materials used demonstrating compliance with Council Design Guidelines and Construction Specification.
  - g) A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Council's Design Guidelines and Construction specifications. The report shall include:
    - Compaction reports for road pavement construction
    - Compaction reports for bulk earthworks and lot regrading.
    - Soil classification for all residential lots
    - Statement of Compliance
  - h) Structural Engineer's construction certification of all structures
74. A maintenance bond in the form of a bank Guarantee or cash bond (\$TBA), shall be lodged with Council prior to the issue of an Occupation Certificate. The bond shall cover maintenance and any damage to roads, drainage lines, public reserves or other council property or works required as a result of work not in accordance with Council's standards, and /or development consent conditions. The bond will be held by Council for a minimum period of 12 months from the date of Council acceptance of final works.
75. Line marking and sign posting are to be provided in accordance with the approved plan.
76. An application to obtain a Section 73 Compliance Certificate under the Sydney Water Act 1994, must be lodged with Sydney Water. To facilitate this, an application must be made through an authorised Water Servicing Coordinator.

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Please refer to the "building and developing" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au), or telephone 13 20 92.

Following receipt of the application, a 'Notice of Requirements' will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design. A copy of the 'Notice of Requirements' must be submitted to the PCA.

77. Written evidence (Section 73 Certificate) is to be submitted to the PCA prior to the issue of an occupation certificate.

**Recommendations of Acoustic Report**

78. A Compliance Certificate or other documentation deemed suitable to the PCA is to be submitted to the PCA, detailing compliance with the following:
- (a) Certification is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report and that all recommendations have been adopted.

**Air Conditioners**

79. All air handling, evaporative cooling, humidifying, warm water and water cooling systems installed on the premises shall comply with the Public Health Act 1991 and Public Health (Microbial Control) Regulation 2000, in accordance with the following:
- (a) All water cooling and warm water systems shall be designed, constructed and installed in accordance with AS 3666.1:1995, the Public Health Act 1991 and Public Health (Microbial Control) Regulation 2000 before being commissioned.
  - (b) All cooling towers and warm water systems shall be operated and maintained in accordance with AS 3666.2:1995, (or AS 3666.3:2000 subject to prior notification to Council) the Public Health Act 1991, and Public Health (Microbial Control) Regulation 2000.
  - (c) A true copy of the annual certificate as stipulated in Clause 9(2) of the Public Health (Microbial) Regulation 2000 that certifies the effectiveness of the process of disinfection used for the water cooling system, shall be submitted to Council prior to the period ending 30 June each year.
  - (d) The owner or occupier of the building shall be advised of the need to register and provide particulars of any water cooling, and warm-water systems as required under the provisions of the Public Health Act, 1991 and Regulation thereunder. Registration forms are available from Council.
80. Certificates of design compliance and system performance for the proposed mechanical ventilation system shall be provided to the PCA, certifying the design, and upon commissioning of the mechanical ventilation system(s), certifying performance. The certificate of performance shall be issued to the certifying authority and be accompanied by details of the test carried out in respect of: -

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- (a) Ventilation
- (b) Acoustics

**G. CONDITIONS RELATING TO USE**

The following conditions relate to the ongoing use of the premises:

**Advertising**

- 81. Advertising matter not approved in conjunction with this decision notice, must not be erected, painted or displayed without the prior approval of Council.

**Delivery hours and vehicles**

- 82. Delivery and service vehicles generated by the development are limited to:

Monday to Friday:	7:00am to 5:00pm
Saturdays:	8:00am to 5:00pm
Sundays and Public Holidays	No deliveries

- 83. Signs and line marking at the driveway are to maintained in good condition.
- 84. Any damage to Council's assets is to be reported and repaired to Council satisfaction.
- 85. The owner of the building is obligated under clause 177 of the Environmental Planning & Assessment Regulation 2000 to submit to Council an Annual Fire Safety Statement once each year, in addition a copy of the statement is to be prominently displayed in the building and, a further copy is to be submitted to NSW Fire & Rescue.

**Environment**

- 86. The use of the premises shall not give rise to the emission into the surrounding environment of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.
- 87. The use of the premises including mechanical plant and equipment shall not give rise to the emission of "offensive noise" as defined under the Protection of the Environment Operations Act 1997.

**Skin Penetration (Consulting rooms for health professionals)**

- 88. The use and operation of the premises shall comply with the requirements of Schedule 2 (Part 3, Standards for Beauty Salons) of the Local Government (General) Regulation 2005, under the Local Government Act 1993. Guidance may also be obtained from the NSW Health Department's "Skin Penetration Guidelines" and fact sheets.

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**H. ADVISORY**

- a) If you are dissatisfied with this notice of determination or the conditions contained within this notice of determination, Section 82A of the Environmental Planning and Assessment Act 1979 gives you the right to request a review of the determination within 6 months after the date on which the application is taken to have been determined.
- b) If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which the application is taken to have been determined.
- c) In accordance with Section 95 of the Environmental Planning and Assessment Act 1979, unless otherwise stated by a condition of this consent, this consent will lapse unless the development is commenced within two (2) years of the date of this notice.
- d) In accordance with Section 98 of the Environmental Planning and Assessment Act 1979, an objector who is dissatisfied with the determination of a consent authority to grant consent to a development application for designated development (including designated development that is integrated development), may, within 28 days after the date on which the application is taken to have been determined, appeal to the Land and Environment Court.
- e) The Planning Assessment Commission has not, conducted a review of the application.
- f) These conditions are imposed to control development, having regard to 79C of the Environmental Planning and Assessment Act 1979.
- g) The approval of this application does not imply or infer compliance with the Disability Discrimination Act and that the developer should investigate their liability under the Act.
- h) The requirements of all authorities including the Environmental Protection Authority and the Work Cover Authority shall be met in regards to the operation of the building.
- i) "DIAL BEFORE YOU DIG" DIAL 1100

Underground assets may exist in the area that is subject to your application. In the interest of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contact the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.



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j) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

- k) Letter boxes must be provided in accordance with the requirements of Australia Post. In this regard, the developer is required to obtain approval from Australia Post for address numbering, and letter box positioning and dimensions.
- l) You are advised that the placement of a concrete path around your home may render your home vulnerable to termite attack. To minimise the possibility of any damage, ensure that a minimum of 75mm clearance is provided between the base of the weephole and the level of the path.
- m) The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required by other conditions of this consent.
- n) The Liverpool City Council Local Government area soils and ground water may be subject to varying levels of Salinity. Whilst Council may require applicants to obtain Salinity reports relating to some developments, no assessment may be made by Council in that regard. Soil and ground water salinity levels can change over time due to varying factors. It is recommended that all applicants make their own independent inquiries as to appropriate protection against the current and future potential affect of Salinity to ensure the ongoing structural integrity of any work undertaken. Liverpool City Council will not accept any liability for damage occurring to any construction of any type affected by soil and or ground water Salinity.
- o) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.
- p) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the applicant's agents may be liable to pay compensation to any adjoining owner if, due to construction works, damage is caused to such an adjoining property.



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**ATTACHMENT (1)**



9 May 2014

Our Ref: SYD14/00332/01 (A6688872)  
Your Ref: DA-183/2014

The General Manager  
Liverpool City Council  
Level 2, 33 Moore Street  
LIVERPOOL NSW 2170

Attention: Shannon Rickersey

**AMENDED PLANS FOR CONSTRUCTION FOR RESIDENTIAL AGED CARE FACILITY  
LOT 50 DP 11267409 MELALEUCA PLACE, PRESTONS**

Dear Sir/Madam,

I refer to your letter dated 31 March 2014 (Council Ref: DA-183/2014) with regard to the abovementioned development proposal, which was referred to Roads and Maritime Services (Roads and Maritime) for comment.

Roads and Maritime has reviewed the subject application and provides the following comments to Council for its consideration:

1. All construction activity associated with the proposed development is to be contained on site as no construction zones will be permitted on M7 Motorway in the vicinity of the site.
2. A Road Occupancy License should be obtained from TMC for any works that may impact on traffic flows on M7 Motorway construction activities.
3. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Roads and Maritime for determination prior to the issue of a construction certificate.
4. The swept path of the longest vehicle (to service the site) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
5. Should the post development storm water discharge from the subject site into the Roads and Maritime system exceed the pre-development discharge, detailed design plans and hydraulic calculations of any charges are to be submitted to Roads and Maritime for approval, prior to the commencement of works.

Details should be forwarded to:

Sydney Asset Management  
Roads and Maritime Services  
PO BOX 973 Parramatta CBD 2124

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6. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004.
7. The proposed development should be designed such that road traffic noise from adjacent public roads is mitigated by durable materials, in accordance with EPA criteria for new land use developments (The Environmental Criteria for Road Traffic Noise, May 1999). Roads and Maritime's Environmental Noise Management Manual provides practical advice in selecting noise mitigation treatments.
8. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to RMS for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by RMS.

The report and any enquiries should be forwarded to:

Project Engineer, External Works  
Sydney Asset Management  
Roads and Maritime Services  
PO Box 973 Parramatta CBD 2124.

Telephone 8848 2114  
Fax 8849 2766

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

9. Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

Any inquiries can be directed to Jana Jegathesan by telephone on 8849 2313.

Yours sincerely



Gordon Trotter  
**Manager Land Use & Assessment**  
**Network and Safety, Network Management**

**LIVERPOOL CITY COUNCIL**  
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**ATTACHMENT (2)**

**CONTRIBUTIONS PURSUANT TO SECTION 94 OF THE ENVIRONMENTAL  
PLANNING & ASSESSMENT ACT, 1979**

**Liverpool Contribution Plan 2009**

**Note to the applicant:** When remitting payment as specified in the Conditions of Consent to the approval, this Form must be submitted with your payment.

These figures have been calculated to the current CPI September Quarter 2014 and will be adjusted at the time of payment in accordance with the conditions of consent.

**APPLICATION NO.:** DA-183/2014

**APPLICANT:** Melaleuca Ventures Pty Ltd

**PROPERTY:** 9 Melaleuca Place, Prestons NSW

**PROPOSAL:** Construction of 132 bed residential aged care facility with basement carpark, landscaped gardens and associated signage

<b><u>Facilities</u></b>	<b><u>Amount (\$)</u></b>	<b><u>Job No.</u></b>
Central Library Extensions	\$5,011	GL.10000001870.10112
Powerhouse	\$3,954	GL.10000001870.10114
Whitlam Centre Extensions	\$7,383	GL.10000001869.10110
District Community Facilities - Land	\$2,022	GL.10000001870.10070
District Community Facilities - Works	\$21,920	GL.10000001870.10070
Local Community Facilities - Works	\$5,131	GL.10000001870.10065
District Recreation - Land	\$35,492	GL.10000001869.10064
District Recreation - Works	\$30,053	GL.10000001869.10064
Local Recreation - Land	\$223,139	GL.10000001869.10063
Local Recreation - Works	\$127,738	GL.10000001869.10063
District Transport Facilities - Land	\$12,158	GL.10000001865.10055
District Transport Facilities - Works	\$33,899	GL.10000001865.10055
Local Transport Facilities		
East of Bernera Road - Land	\$27,495	GL.10000001865.10057
East of Bernera Road - Works	\$31,707	GL.10000001865.10057
District Drainage - Land	\$28,429	GL.10000001866.10042
District Drainage - Works	\$8,338	GL.10000001866.10042
Local Trunk Drainage		
Prestons Central - Land	\$17,044	GL.10000001866.10045
Prestons Central - Works	\$29,148	GL.10000001866.10045
Streetscape - Land	\$6,946	GL.10000001871.10074

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Streetscape - Works	\$3,389	GL.10000001871.10074
Administration	\$6,872	GL.10000001872.10073
Professional and Legal Fees	\$7,233	GL.10000001872.10072

**TOTAL** **\$674,499**

----- OFFICE USE ONLY -----

**RECORD OF PAYMENT**

Total Amount paid: \_\_\_\_\_

Date: \_\_\_\_\_

Receipt No.: \_\_\_\_\_ Cashier: \_\_\_\_\_

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**ATTACHMENT (3)**

**Skin Penetration (Consulting rooms for health professionals)**

1. A free standing wash hand basin (as distinct from a sink, hair wash basin or the like, and separate from a basin serving toilet facilities) shall be provided within the work area where hair dressing is being carried out. Wash hand basin's shall be fitted with hot & cold potable water supplied under pressure through an approved mixing device which can be adjusted to enable hands being washed under hot running water at a temperature of at least 40C.
2. A wash basin (as distinct from a free standing wash hand basin, kitchen facilities or the like, and separate from a basin serving toilet facilities) shall be provided within the premises. Wash basins shall be fitted with hot & cold potable water supplied under pressure through an approved mixing device which can be adjusted to enable equipment and utensils to be washed under hot running water at a temperature of at least 40C.
3. The walls and floor of the premises are to be constructed with an approved smooth impervious material capable of being easily cleaned.
4. All shelving, benches, fittings and furniture on which appliances and utensils are to be placed shall be constructed of durable, smooth, impervious material capable of being easily cleaned.
5. The wall at the rear of all wash basins shall be finished with glazed tiles or other smooth and impervious material, and be laid from floor level to a height of 450mm above the top of the basin and from the centre of the basin to a distance of 150mm beyond each side of the basin.
6. The premises must be provided with facilities that are adequate for the purpose of keeping appliances and utensils clean.
7. The premises must be provided with washing, drainage, ventilation and lighting facilities that are adequate for the carrying out of the approved activity.
8. The premises shall be provided with facilities that are adequate for the purpose of storing appliances and utensils in a hygienic manner.
9. Suitable receptacles with close-fitting lids shall be provided and maintained in a clean and serviceable condition for the disposal of soiled towels and trade wastes.
10. All appliances in general use shall be disinfected in accordance with the Skin Penetration Guidelines.
11. A sharps container shall be provided for the storage of used disposable needles in the skin penetration.
12. No other disinfectant other than Hospital grade Disinfectant (as expressed in Regulation 23(f)(1) of the Therapeutic Goods and Cosmetic Regulation) is to be used on the premises.

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**ATTACHMENT (4)**

**Food Premises**

1. All walls (including partition walls) within the kitchen, food preparation, storage and display areas shall be of solid construction (eg., bricks, cement or other approved material). These walls are to be finished with glazed tiles, stainless steel or other approved material adhered directly to the wall to a height of 2 metres above floor level.
2. Walls within the kitchen, food preparation, storage and display areas which are not of solid construction (eg., stud walls) shall be finished in tiles or other approved material from the floor level to the underside of the ceiling.
3. The floors within the kitchen, food preparation, storage and display areas shall be constructed of a suitable material which is non-slip, durable, resistant to corrosion, non-toxic, non-absorbent and impervious to moisture. The floor is to be graded and drain to an appropriate floor waste fitted with a basket arrestor.
4. If the floor in the food preparation and storage areas is constructed of tiles, the joints between the tiles shall be of a material that is non-absorbent and impervious to moisture.
5. The intersection of walls with floors and exposed plinths in the kitchen, food preparation, storage and display areas are to be coved to a minimum radius of 25mm.
6. All plinths are to be constructed of a material which is of solid construction and impervious to moisture. The plinths shall be:
  - (a) at least 75mm high;
  - (b) finished level to a smooth even surface;
  - (c) recessed under fittings to provide a toe space of not more than 50mm;
  - (d) rounded at exposed edges; and
  - (e) coved at the intersection of the floor and wall to a minimum radius of 25mm.
7. The ceiling is to be constructed of a material that is rigid, smooth faced and impervious to moisture. The ceiling over the food preparation, storage and display areas shall be painted with a washable paint of a light colour. The surface finish is to be free of open joints, cracks, crevices or openings (drop ceiling panel is not permitted). The intersections of walls and the ceiling are to be tight jointed, sealed and dust-proof.
8. The drop-in panel ceiling in the food preparation and storage areas shall be replaced with an approved rigid, smooth faced and impervious material which is free of open joints, cracks, crevices or openings. The ceiling is to be painted with a light coloured washable paint.

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9. All service pipes and electrical conduits shall be either:
- (a) concealed in floors, walls, ceiling or concrete plinths, or
  - (b) fixed with brackets so as to provide at least
    - i) 25mm clearance between the wall and the pipe/conduit; &
    - ii) 100mm between the floor and the pipe/conduit
  - (c) pipes so installed are not to run underneath fittings.
10. All architraves, skirting boards, picture rails and the like are not permitted within the kitchen, food preparation and storage areas.
11. All openings in the walls, floors and ceilings through which service pipes and electrical conduits pass through are to be designed and constructed so as to prevent the access of vermin.
12. The internal and external surfaces, including exposed edges to all benches, counters and shelving in the food preparation, storage, display and serving areas are to be finished with a rigid, smooth faced and non-absorbent material (eg laminate, stainless steel or other approved material) that is capable of being easily cleaned.
13. All shelving shall be located at least 25mm off the wall or alternatively, the intersection of the shelf and the wall is to be completely sealed. NOTE: The lowest shelf shall be a minimum of at least 150mm above the floor level.
14. The hot water service unit shall be positioned a minimum of 75mm clear of the adjacent wall surface and mounted a minimum of 150mm above the floor level on a stand of non-corrosive metal construction.
15. A free standing, hands free hand wash basin shall be provided in a convenient position within the food preparation and serving areas. The hand wash basin shall be provided with hot and cold water supplied through a single outlet and fitted with an approved mixing device to enable hands to be washed under hot running water at a temperature of at least 40C.
16. Cavities, false bottoms and similar hollow spaces capable of providing access and harbourage of vermin are not permitted to be formed in the construction of the premises or in the installation of fixtures, fittings and equipment.
17. A double bowl sink or two-compartment tub shall be provided with hot and cold water supplied through a single spout in the kitchen/food preparation area. Double bowl sink or tubs shall be supplied with water of at least:
- (a) 45C in one bowl for washing purposes; and
  - (b) 77C in the other bowl for rinsing purposes, together with a thermometer accurate to 10C.

**10.3 Clause 4.6 Variation to development standards**



**OBJECTION PREPARED PURSUANT TO “STATE  
ENVIRONMENTAL PLANNING POLICY NO. 1 –  
DEVELOPMENT STANDARDS” IN RELATION TO  
THE “DISTANCE TO PUBLIC TRANSPORT”  
STANDARD IN  
CLAUSE 26(2)(b) OF STATE ENVIRONMENTAL  
PLANNING POLICY (HOUSING FOR SENIORS OR  
PEOPLE WITH A DISABILITY) 2004**

**SUBMITTED IN SUPPORT OF A DEVELOPMENT  
APPLICATION FOR A RESIDENTIAL AGED CARE  
FACILITY AT**

**9 Melaleuca Place, Prestons**

Prepared for  
**Melaleuca Holdings Pty Ltd**

By  
**BBC Consulting Planners**

Job No. 12-185  
SEPP 1 objection Public Transport Final.docx  
March 2014



**LIVERPOOL CITY COUNCIL**  
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## **1. INTRODUCTION**

### **1.1 The Relevant Standard**

This SEPP 1 objection has been prepared on behalf of Melaleuca Holdings Pty Ltd ("the Applicant" being a company with the same Directors and Shareholders as Advantaged Care Pty Ltd) in support of a DA for a residential aged care facility at No. 9 Melaleuca Place, Prestons ("the site").

Clause 26(2)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("the Seniors Housing SEPP") states that the consent authority must not consent to a DA made pursuant to the Seniors Housing SEPP on land within the Sydney Statistical Division unless there is a public transport service available to the residents who will occupy the proposed development that is located at a distance of no more than 400 metres from the site of the proposed development which is accessible by means of a suitable access pathway and that the public transport service will provide access to shops, bank service providers, community services and a General Practitioner.

The site is located approximately 765 metres from the bus stop on Kurrajong Road (to the north) and, therefore, does not comply with the above "distance to public transport" development standard in Clause 26(2)(b) of the Seniors Housing SEPP, hence the DA relies on this SEPP No.1 objection to vary the standard in the circumstances of the case. (There is also a bus stop on Pine Road which is approximately 470 metres from the site, however this bus stop is located on the opposite side of the M5/M7 Junction. In addition, there is no level path leading from the site to the bus stop and as such it has not been listed as the nearest bus stop to the site).

### **1.2 Advantaged Care**

Advantaged Care is a specialty aged care provider owned by the Kresner family. After trying to find an appropriate home for one of their own family members in 1996 (and not being able to find a care home that met their expectations), coming from a construction and development background, the family decided to do something about it.

Advantaged Care is a highly experienced operator with four established aged care homes:-

- Minchinbury Manor – opened in 2004;
- Advantaged Care at Georges Manor – opened in 2008;
- Advantaged Care at Bondi Waters – opened in 2011; and
- Advantaged Care at Barden Lodge – opened in 2012.

Advantaged Care has been allocated 112 high care bed places on this site, as part of the round of 2012/13 Aged Care Approvals announced by the Federal Government on 5th July 2013. This was the only allocation to the Liverpool Area in the round, and one of 2 new facilities planned in South West Sydney, the other being in the Fairfield LGA.



New Residential Aged Care Services can only commence if they are allocated bed places, which then entitles them to funding by the Commonwealth Government. Aged Care Approval rounds are carried out annually, via a competitive tender process. The Government considers an operator's history and performance on delivery of quality services in the determination of bed allocations.

As outlined in the details of the facility, prepared by Advantaged Care, residents at Advantaged Care residential aged care facilities require "high care":-

*"Residential aged care has seen a rapid change over the last decade. In line with government policy the elderly have been encouraged to stay in their home longer with the increased services that have been scaled up over recent years.*

*Whilst historically there were two sub sectors in residential aged care being low care (traditionally hostel care) and high care (traditionally nursing home care), recent years have seen a decline in the numbers of low care residents, a significant increase in the acuity of the residents coming in to residential aged care and a shortening of their average stay.*

*In other words the more common residential aged care experience is a more palliative process. Average stays have reduced from a number of years down to 12 or so months, with many residents' stays being significantly less.*

*In recognition of this Government Legislation that was gazetted in June this year that has removed residential low care status effective the first of July 2014.*

*As such all our residents will be high care.*

*Most residents (or their families) seek accommodation after a critical incident at home, or have experienced a rapid decline in health, or have had an acute incident that has left them in hospital for a prolonged period.*

*The majority of our residents are quite elderly averaging ages of 85 through to late 90's. Most have fairly restricted mobility, some are completely immobilised, whilst most cannot manage independent mobility beyond the comforts of the assisted environment the facility provides. The majority of our residents are frail and many have considerable health issues.*

*Nearly all residents have some level of dementia or cognitive impairment, and as such for their safety the site will be secured. We will also have a specific secure dementia wing for the profoundly demented or those whom may be exit seeking.*

*Our highly trained staff will meet all of their holistic needs by assisting in showering and personal grooming, meals, general care, when required transference and toileting, and monitoring and dispensation of all medication.*



*We ensure that all of our residents allied health needs are catered to onsite, arranging GP visits, providing on site physiotherapy, podiatry, pathology, x-ray, dentist, optometry, dietician and speech pathology visits. We arrange specialist appointments, sometimes by internet consultations, or by arranging appointments outside the facility.*

*We have dedicated recreational staffs that are charged with keeping our residents both mentally active and looking after their interests, hobbies, providing social interaction and arranging excursions by bus trips, that take our residents from our front door. They also arrange visiting entertainers, volunteers, spiritual services, and in house services and celebrations, such as ANZAC day ceremonies, and festival celebrations.*

*Sadly, many residents' independence is almost lost and a heavy reliance on our staff is appreciated by residents and their families. Acknowledging this reality, Advantaged Care is proactive in encouraging what forms of independence they can by encouraging the residents and family to be involved in care strategies, encouraging choice and respecting resident's individuality and cultural back grounds.*

*Whilst encouraging resident's independence Advantaged Care staff are always on hand to assist. Staff carefully monitors resident movements and whereabouts. Any events of unknown residents where about are reported to the police. Assisting staff with this is the 24 hour security camera monitoring. Used in external areas and perimeter boundary all cameras can track resident entering or leaving the premises or assist in guarding against any other security breach. Furthermore, all perimeter boundary gates and external entry doors function on a proximity reader card and/or keypad. This added benefit assists in ensuring residents remain within the premises and helps monitor resident movement. The proximity card and keypad codes are not issued to residents as an added security feature. Any dangerous back of house areas such as kitchens and laundries are also kept secure as a safety measure."*

The specific characteristics of the proposed development on the site are particularly relevant in the consideration of this SEPP 1 objection.

## **2. AIMS AND OBJECTIVES OF SEPP No. 1**

SEPP No. 1 "provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act".

## **3. REQUIREMENTS FOR APPLICATIONS**

Clause 6 of SEPP No. 1 states as follows:-





*“(6) Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.”*

The Land and Environment Court, in *Winten Property Group Limited v North Sydney Council*, *Hooker Corporation Pty Limited v Hornsby Shire Council* and *Wehbe v Pittwater Council*, has defined the approach to be taken when considering an objection under SEPP 1. The approach involves answering a number of questions:-

*“First, is the planning control in question a development standard?*

*Second, what is the underlying object or purpose of the standard?*

*Third, is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?*

*Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

*Fifth, is the objection well founded?”*

The questions are addressed in Section 5 below.

#### **4. RELEVANT STANDARD**

The standard relating to the required maximum distance from public transport, to which this SEPP No.1 Objection relates, is contained in Clause 26(2)(b) of the Seniors Housing SEPP which states as follows:-

*“(b) in the case of a proposed development on land in a local government area within the Sydney Statistical Division—there is a public transport service available to the residents who will occupy the proposed development:*

*(i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*

*(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*

*(iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),*



*and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3), or"*

The site is located approximately 765 metres from the bus stop used by the public transport service operating along Kurrajong Road. This does not comply with the "distance to public transport" development standard.

## **5. GROUNDS OF OBJECTION**

Pursuant to the provisions of SEPP No. 1, the Applicant objects to the strict application of the "distance to public transport" development standard in Clause 26(2)(b) of the Seniors Housing SEPP in the circumstances of this case, in accordance with the approach taken in *Winten Property Group v North Sydney, Hooker Corporation Pty Limited v Hornsby Shire Council* and *Wehbe v Pittwater Council*.

### **5.1 Is the Planning Control a Development Standard?**

The predecessor to the Seniors Housing SEPP was State Environmental Planning Policy No. 5 - Housing for older people or people with a disability ("SEPP 5").

Clause 12(2)(b) of SEPP 5 stated:-

*"(2) Access complies with this subclause if:*

- (a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development, or*
- (b) there is a transport service available to the residents who will occupy the proposed development:*
  - (i) that is located at a distance of not more than 400 metres from the site of the proposed development, and*
  - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the relevant facilities or services, and*
  - (iii) that is available both to and from the proposed development during daylight hours at least once per day from Monday to Friday (both days inclusive)."*

Clause 12(2)(b) of SEPP 5 was very similar to Clause 26(2)(b) in the Seniors Housing SEPP.

In *Georgakis v North Sydney Council* [2004 NSW LEC 123] the Land and Environment Court found that Clause 12(2)(b) was a development standard which could be varied by a SEPP 1 Objection. The resolution of *Georgakis v North Sydney* was as follows:-

*"40 Applying the approach adopted by Giles JA in Poynting and applied in Lowy, it is appropriate to ask in the present case whether the*



*proposed development is prohibited under any circumstances. Plainly it is not, for the land could without question be developed for the intended purpose if the nearest bus stop was closer to the site. If the size of the allotment is not a complete prohibition, then the distance from a given point cannot be a complete prohibition.*

- 41 *Turning to the second step, the relevant provision fixes the distance of the land from a specified point, as it happens a bus stop, and provides for the services, facilities and amenities demanded by the development.*
- 42 *Because of the definition of development standards in s 4 of the Environmental Planning and Assessment Act 1979 (NSW) the distance to a bus stop and requirements in relation to services are both aspects of the development. The relevant parts of the definition are as follows:*
- "Development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of the development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*
- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- ...*
- (m) the provision of services, facilities and amenities demanded by development."*
- 43 *It follows that although the development is not absolutely prohibited, by a combination of clauses 12(1) and (2) of SEPP 5 it is subject to a requirement that access to the relevant facilities be within 400 metres. This is an aspect of the development and, accordingly, a development standard amenable to dispensation pursuant to SEPP 1.*
- 44 *But for the decision of the Court of Appeal in Poynting and the approach taken by Giles JA and Mason P in Lowy there may have been force in the submission that, rather than being an aspect of permissible development, cl 12 defines a characteristic of the land without which the development is prohibited on that land. However, I consider that conclusion to be excluded by the necessity to take the "wider view" identified by Giles JA in Poynting and endorsed by Mason P in Lowy.*
- 45 *It is true, as the council points out, that clauses 13 and 13A of SEPP5 are titled "Development Standards" whereas cl 12 is headed "Matters for Consideration". However, the character of the provision for present purposes cannot be determined by its title. All of these*



*provisions are contained within Part 2 of the Policy under the heading "Development Criteria". They all provide elements of potential development on land to which the policy applies by the operation of cl 4.*

46 *For these reasons I am satisfied that cl 12(1) and (2) of State Environmental Planning Policy No 5 contains a development standard."*

The Applicant has obtained legal advice from Wilshire Webb Solicitors, as well as from a Barrister (Philip Clay, of Martin Place Chambers), confirming that the numerical control specifying the maximum distance permitted from a public transport service is a development standard to which SEPP 1 applies. The legal advice has previously been supplied to Council during pre-DA discussions, but is again provided under separate cover.

Council officers, during pre-DA discussions, also noted that the numerical control specifying the maximum distance permitted from a public transport service is a development standard.

Based on the above, Clause 26(2)(b) in the Seniors Housing SEPP is a numerical control specifying the maximum distance permitted from a public transport service, and is therefore a development standard to which SEPP No.1 applies.

## **5.2 What is the Purpose/Object of the Standard?**

The State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 has the broad objective of trying to encourage development of appropriate housing for a variety of different housing forms for the elderly and disabled, these include but are not limited to:

- housing for the disabled;
- independent living units;
- retirement villages; and
- residential aged care facilities.

The aims of the Policy are:-

*"(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:*

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*





(2) *These aims will be achieved by:*

(a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*

(b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*

(c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes."*

As such the SEPP has a clear intention to encourage different forms of senior housing.

Clause 14 of the SEPP states:-

*"The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age."*

Clause 26(2)(b) of the Seniors Housing SEPP is a clause which has been inserted to cover the variety of forms of housing that can be created under the SEPP. The objective is clearly to provide the provision of access to services and facilities. Relevantly, the underlying object of the "distance to public transport" standard is to ensure that residents of seniors housing developments who are independent and capable of using public transport have reasonable access to public transport services to take them to facilities and services that they are likely to want to use. It is not relevant as a standard with highly dependent people who are not capable of walking to and using public transport.

There has been a clear change over time as to the type of residents that occupy residential aged care facilities over the last decade. Government policy and the increase in the provision of services in the home has meant that low care residents are much fewer in general. Advantaged Care sites that its average length of stay is around 12 months and more commonly a palliative process. Specifically in the case of this site it will only accommodate high care and high care demented residents. The frailty of most high care residents will exclude them from being able to walk a distance to a bus stop. The removal of the distinction between low care and high care in aged care and clear policy of the government to keep people in home longer would reduce the likelihood of a change of use to provide care for lower need residents over time.

Further, a report entitled "Pathways to the Future, 2006 and Beyond – Dementia Framework for Victoria" cites, on page 14:-

*"Dementia and residential aged care*

*The then Commonwealth Department of Health and Family Services<sup>36</sup> provided estimates in 1997 of the level of cognitive impairment among*

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*residents of residential aged care facilities. Cognitive impairment was considered a more reliable indicator of cognitive deficits and subsequent care needs, than a reported diagnosis of dementia. The estimated levels of cognitive impairment in all Australian low level care facilities (previously known as 'hostels') were:*

- 34.9% mild,
- 16.6% moderate, and
- 2.9% severe,

*and in all Australian high level care facilities (previously known as 'nursing homes'), levels of cognitive impairment of residents were:*

- 21.9% mild,
- 26.7% moderate, and
- 41.1% severe."

As a high care facility this means that the proposed facility could expect that some 89.7% of the residents will have some level of dementia. This is why the proposed service as well as having secure wings for residents with profound dementia, is also a secure site overall.

As noted in the (former) DIPNR publication "A Guide for Councils and Applicants – Housing for Seniors or People with a Disability" released in May 2004, our population is ageing, with a significant growth in the number of people aged 55 years and over. There is strong demand for developments that offer a range of services. The 2004 DIPNR guide is currently under review. A Planning Circular released by the Department of Planning in September 2007 states:-

*"The population of New South Wales is ageing. There is significant growth in the numbers of people aged 55 years and over and this trend will continue. By 2016, 25% of the population of Sydney, and about 31% of people in the rest of NSW, will be aged 55 and over. By 2028 about one third of the State's population (2.6 million) will be aged 55 and over—there will then be 1 million more seniors than in 2006.*

*For 25 years the State Policy, in different forms, has encouraged and facilitated the provision of housing designed for seniors or people with a disability and it will continue to do so."*

According to the NSW Department of Family and Community Services (Ageing, Disability and Health Care), in 2011 there were estimated to be approximately 92,000 people with dementia in NSW. This is projected to increase to 341,000 people by 2050.

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Access Economics were commissioned by Alzheimer's Australia to prepare the report titled *"Keeping dementia front of mind: incidence and prevalence 2009-2050"* in August 2009. The report states:-

*"The prevalence of dementia is projected to increase over four-fold from 245,400 people in 2009 to around 1.13 million people by 2050. There is some evidence to suggest that there are many more with cognitive impairment.*

*....*

*Incidence of dementia is estimated to increase from 69,600 new cases in 2009 to 385,200 new cases in 2050.*

- *In 2009, 42,000 of the new cases are in capital cities and 28,000 in the balance of states.*

*By 2050, 232,000 will be in capital cities and 153,000 will be in the balance of the states.*

- *Of people with new cases of dementia in 2009, the majority speak English at home (61,000) compared to a CALD language (9,000). The number of people with new cases of dementia speaking English at home increases 5.8 times to 350,000 in 2050, with those speaking a CALD language at home increasing 4.0 times to around 35,000 by 2050.*

*....*

*The year 2010 is significant as it marks the first of the baby-boomer generation turning 65 years of age. By 2020 there will be around 75,000 baby boomers with dementia.*

*With a higher retirement age of 67, it will also be the case that more people will be unable to remain in the workforce due to dementia onset, or due to the need to care for someone with the condition. Consequently, the already high productivity losses due to dementia are expected to grow, reflecting the increase in the pension age as well as population growth.*

*The baby boomer bulge in Australia's demographic profile means that the coming decade will see an acceleration of the impacts of ageing on dementia prevalence greater than previously seen in Australia's history. The rising prevalence of dementia will have dire consequences for our health care system and our quality of life, with the emphasis changing strikingly from cardiovascular disease and cancer to the neurodegenerative conditions, marking an important epidemiological transition."*

The proposed RACF responds to this growing demand for suitable seniors housing and high quality care. The aged care facility will cater for those in the community that can no longer



live at home, and require assistance and care on a 24 hour a day, 7 day a week basis. The proposal will provide additional specialist aged nursing in a homely environment so residents can age with care and dignity in quality surroundings with appropriate support facilities.

Strict application of the standard from 26(2)(b) would not meet the objective of the SEPP as it would exclude (not promote) the provision of housing for the frail on a basis which is not relevant to them.

**5.3 Is Compliance with the Development Standard consistent with the Aims of the Policy? Does compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act?**

**5.3.1 Aims of SEPP No. 1**

The aims of SEPP No. 1 are noted above in Section 2. SEPP No. 1 provides flexibility for development standards where compliance would be unreasonable or unnecessary or hinder the objects in Section 5(a)(i) and (ii) of the Act.

When the proposed development is tested against the underlying objective of the standard, compliance with the standard would be inconsistent with the aims of the policy because the standard aims to ensure that future residents in a seniors housing development have safe and suitable access to a range of services. Future residents of the proposed residential care facility in Melaleuca Place will require a high level of care (such as dementia patients) who need to be housed in a secure facility. They will not independently leave the facility. Service providers, including GPs, will come directly to the residents and therefore the aims of the policy will be met, notwithstanding the site's location relative to public transport services.

**5.3.2 Objects of the Act – Section 5(a)(i) and (ii)**

These objects state as follows:-

*“(5) The objects of this Act are:*

*a) to encourage:*

- i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- ii) the promotion and co-ordination of the orderly and economic use and development of land.”*

Compliance would hinder the attainment of the above objects in that the proposal does not undermine the underlying objective of the standard.





The proposal is consistent with the objects of the Act and represents the orderly and economic use of the site which is justified in terms of the proposed use, building form and scale, and the absence of adverse impacts on residential amenity.

**5.4 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?**

Strict compliance with the “distance to public transport” development standard in Clause 26(2)(b) of the Seniors Housing SEPP is unreasonable and unnecessary in the circumstances of the case for the following reasons:-

- the proposal will accommodate residents who need a high level of care and who will not independently be capable of safely leaving the facility;
- in circumstances where residents are not independently capable of safely leaving the premises, they will have no practical need for, nor will they rely on public transport to access day-to-day services, or for recreation, or for other purposes;
- the residents will not leave the premises, and the retail and commercial services that the residents require will be brought to the facility (e.g. hairdresser, etc.) and the residents will not require access to bank services as residents will be supplied with small amounts of petty cash against their accounts. (Most services will be provided on account which is paid via direct debit and in most cases residents no longer make financial decisions for themselves);
- general medical practitioners and a range of other allied health services will visit the site when required; and
- where residents have no practical need for, nor will they rely on, public transport services, there is no utility or purpose in requiring the site to be within 400m of a public transport service.

**5.5 Is the objection well-founded?**

The location of the proposal is appropriate in the circumstances of the case and this objection to the “distance to public transport” development standard is well-founded.

**6. CONCLUSION**

It can be concluded that the proposed non-compliance with the “distance to public transport” development standard does not undermine or frustrate the underlying objectives of the standard.

The non-compliance will give rise to no adverse environmental impact.

For the reasons set out above in 5.4, strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.



**OBJECTION PREPARED PURSUANT TO “STATE  
ENVIRONMENTAL PLANNING POLICY NO. 1 –  
DEVELOPMENT STANDARDS” IN RELATION TO  
THE “MAXIMUM HEIGHT PERMITTED FOR A  
BUILDING LOCATED IN THE REAR 25% OF THE  
SITE” STANDARD IN CLAUSE 40(4)(C) OF STATE  
ENVIRONMENTAL PLANNING POLICY (HOUSING  
FOR SENIORS OR PEOPLE WITH A DISABILITY)  
2004**

**SUBMITTED IN SUPPORT OF A DEVELOPMENT  
APPLICATION FOR A RESIDENTIAL AGED CARE  
FACILITY AT**

**9 Melaleuca Place, Prestons**

**Prepared for  
Melaleuca Holdings Pty Ltd**

**By  
BBC Consulting Planners**

**Job No. 12-185  
SEPP1 Objection Maximum Height Final.docx  
March 2014**

**LIVERPOOL CITY COUNCIL**  
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## **1. INTRODUCTION**

This SEPP 1 objection has been prepared on behalf of Melaleuca Holdings Pty Ltd ("the Applicant", being a company with the same Directors and Shareholders as Advantaged Care Pty Ltd) in support of a DA for a residential aged care facility at No. 9 Melaleuca Place, Prestons ("the site").

The site comprises Lot 50 in DP 1126740. It has an area of 6,658m<sup>2</sup> and a frontage to Melaleuca Place of approximately 45.385m and a depth of approximately 175 metres. The irregular configuration of the site is shown on **Figure 2** in the SEE.

The aerial photo in **Figure 3A** of the SEE illustrates the immediate context of the site and its relationship to the residential development to the north and the adjacent arterial road system to the south and west. Acoustic walls separate the arterial roads from the site. A bike-way abuts the southern boundary of the site.

The proposed residential aged care facility, involves the construction of a 2 storey building which extends onto the western "rear 25%" area of the site which exceeds the development standard contained in Clause 40(4)(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("the Seniors Housing SEPP"). That development standard states that the maximum height permitted for a building located in the rear 25% area of a site is 1 storey. This SEPP No. 1 Objection has been prepared in relation to the non-compliance with this standard.

A simple interpretation of the clause would be that the rear 25% area is taken to be the westernmost area of the site defined by a line parallel to the street boundary within which 25% of the site area is contained. This results in an irregular rectangular shaped area of land on the western part of the site. As all of the adjoining dwellings are located to the north, with their side or rear boundaries abutting the side boundary on the site, this would not achieve the assumed objective of the standard, which is to protect the amenity of the adjoining neighbours.

## **2. AIMS AND OBJECTIVES OF SEPP NO. 1**

SEPP No. 1 "provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5 (a) (i) and (ii) of the Act".

## **3. REQUIREMENTS FOR APPLICATIONS**

Clause 6 of the SEPP No. 1 states as follows:

- "6. *Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a DA in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.*"





The Land and Environment Court, in *Winten Property Group Limited v North Sydney Council*, *Hooker Corporation Pty Limited v Hornsby Shire Council* and *Wehbe v Pittwater Council*, has defined the approach to be taken when considering an objection under SEPP 1. The approach involves answering a number of questions:-

*“First, is the planning control in question a development standard?”*

*Second, what is the underlying object or purpose of the standard?*

*Third, is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a) (i) and (ii) of the EP&A Act?*

*Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

*Fifth, is the objection well founded?”*

The questions are addressed in Section 5 below.

#### **4. RELEVANT STANDARD**

The standard relating to the maximum building height in the rear 25% area of the site, to which this SEPP No.1 Objection relates, is that imposed by Clause 40(4)(c) of the Seniors Housing SEPP. Clause 40 of the Seniors Housing SEPP provides development standards relating to minimum sizes and building height and Clause 40(4) provides height standards for development which is located in zones where residential flat buildings are not permitted. Under the provisions of Liverpool LEP 2008, residential flat buildings are not permitted on the site and the provisions of Clause 40(4) are thus relevant to the proposed development.

Clause 40(4)(c) states:

*“(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.”*

It is difficult to define and identify the rear 25% area of this site given its shape, context and boundaries and the underlying objectives of the standard. The rear 25% area is therefore taken to be the westernmost area defined by a line parallel to the street boundary within which 25% of the site area is contained. This results in an irregular rectangular shaped area of land on the westernmost part of the site. On this basis, part of the proposed building which is located in the rear 25% area of the site is 2 storeys in height, thus exceeding the 1 storey height limit.

However, as the adjoining dwellings are located to the north of the site (rather than to the west) compliance with the standard would not achieve the assumed objective of the standard, which is to protect the amenity of the adjoining neighbours.

#### **5. GROUNDS OF OBJECTION**

Pursuant to the provisions of SEPP No. 1, the Applicant objects to the strict application of the “maximum height permitted for a building located in the rear 25% area of the site” development standard in Clause 40(4)(c) of the Seniors Housing SEPP in the circumstances



of this case, in accordance with the approach taken in *Winten Property Group v North Sydney*, *Hooker Corporation Pty Limited v Homsby Shire Council* and *Wehbe v Pittwater Council*.

### **5.1 Is the Planning Control a Development Standard?**

Clause 40(4)(c) is a numerical control specifying the maximum building height in the rear 25% of the site. The planning control in Clause 40(4)(c) is a development standard.

### **5.2 What Is the Purpose/Object of the Standard?**

There is no specifically stated purpose or object expressed in Clause 40(4)(c) of the Seniors Housing SEPP. However, it can be assumed that the objective of the standard is to minimise amenity impacts of overshadowing and overlooking of adjoining residential properties including their private open spaces, and to maintain a low scale residential form towards the rear of properties to which the SEPP applies.

### **5.3 Is Compliance with the Development Standard Consistent with the Aims of the Policy? Does Compliance Hinder the Attainment of the Objects Specified in Section 5(a)(i) and (ii) of the EP&A Act?**

#### **5.3.1 Aims of SEPP No. 1**

The aims of SEPP No. 1 are noted above in Section 2. SEPP No. 1 provides flexibility for development standards where compliance would be unreasonable or unnecessary or hinder the objects in Section 5(a)(i) and (ii) of the Act.

When the proposed development is tested against the underlying objectives of the standard, compliance with the standard would be inconsistent with the aims of the policy because the height, bulk, scale and characteristics of the proposal, including the rear part of the proposal, are all appropriate and acceptable.

Therefore, the proposed development is a case where flexibility in the application of the development standard is justified. Strict application of the standard is unreasonable and unnecessary for the reasons noted in Section 5.4 below.

#### **5.3.2 Objects of the Act – Section 5(a)(i) and (ii)**

These objects state as follows:

*"5. The objects of this Act are:*

*(a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*



- (ii) the promotion and co-ordination of the orderly and economic use and development of land"*

Compliance would hinder the attainment of the above objects in that the proposal does not undermine the underlying objective of the standard.

The proposed development is consistent with the objects of the Act and represents the orderly and economic use of the land which is justified in terms of building form and scale, and the absence of adverse impacts on residential amenity.

#### **5.4 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

Strict compliance with the development standard in Clause 40(4)(c) of the Seniors Housing SEPP is considered to be unreasonable and unnecessary in the circumstances of the case.

To the extent that the purpose of the standard is to minimise amenity impacts of overshadowing and overlooking on adjoining dwellings and their private open spaces and to maintain a low scale residential form, it is submitted that the proposed development meets the underlying objective of the development standard for the following reasons:-

- there are no adjoining residential properties to the rear of the rear area (i.e. the westernmost part) of the site therefore non-compliance is reasonable;
- the proposed development still provides a low scale residential form, notwithstanding that it has two storeys;
- as shown in the shadow diagrams submitted with the DA, the two storey part of the proposal in the rear area of the site (or any other part) has no overshadowing impacts on adjoining properties between 9am and 3pm in mid-winter;
- the northern (side) boundary of the site is the most sensitive as there are low scale residential dwellings located to the north of the site, and the proposal deals with this relationship with particular sensitivity; and
- a significant setback has been provided to the northern boundary and landscaping has been proposed within this setback, limiting the potential for overlooking. This in reality is where the proposed development has a relationship to the "rear" private open space areas of adjoining properties. If the side boundary was to be considered as the rear boundary of the site, the proposal would be compliant with the standard.

On the basis of the above, the height of the proposal in the rear 25% area of the site is appropriate in the circumstances of the case.

#### **5.5 Is the Objection Well Founded?**

The objection to Clause 40(4)(c) is well founded for the following reasons:-

- the development is appropriate in this location;



- the development does not undermine the underlying objective of the standard because it satisfactorily addresses and deals with the interrelationship of scale with neighbouring dwellings to the north;
- there are no dwellings to the west (i.e. rear) of the site;
- the non-compliance does not result in any significant adverse environmental impacts on the amenity of the surrounding area in general, or on the amenity of nearby residential properties in particular; and
- the scale of the proposal, notwithstanding the non-compliance, is compatible with surrounding development.

Pursuant to the provisions of SEPP No. 1, the applicant objects to the strict adherence to the above development standard.

## **6. CONCLUSION**

It can be concluded that the proposed non-compliance with the standard which prescribes the "maximum height permitted for a building located in the rear 25% area of the site" does not undermine or frustrate the underlying objectives of the standard.

The non-compliance will give rise to no adverse environmental impact.

Additionally, the proposal displays particular sensitivity to the dwellings to the north (effectively adjacent to the "side" boundary), thereby achieving the intent of this particular standard.

For the reasons set out above in 5.4, strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

