



20 November 2014

Our ref: RJC/JS: 12-185

The Chief Executive Officer  
Liverpool City Council  
Locked Bag 7064  
Liverpool BC NSW 1871

email: [lcc@liverpool.nsw.gov.au](mailto:lcc@liverpool.nsw.gov.au)

Dear Sir,

**re: DA-183/2014 - Proposed 132 bed residential aged care facility with basement car park, landscaped gardens and associated signage at 9 Melaleuca Place, Prestons**

We write on behalf of Melaleuca Ventures Pty Ltd ("the Applicant", being a company with the same Directors and Shareholders as Advantaged Care Pty Ltd), in relation to the abovementioned DA and the Council officer's assessment report which has been prepared for the Sydney West Joint Regional Planning Panel meeting on 28 November 2014 and specifically to recommended Condition No. 4 relating to the payment of Section 94 Contributions.

**1. DA-183/2014**

DA-183/2014 seeks approval for the selective removal of trees, services diversions, excavation, other preparatory site works as required and the erection of a Residential Aged Care Facility ("RACF") comprising 132 beds, including two specialised dementia care wards containing a total of 32 beds, associated basement parking, landscaping, signage, drainage and other related works including visitor parking within the southern prolongation of Melaleuca Place.

Advantaged Care, which will operate the RACF, 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 one that met their expectations), coming from a construction and development background, the Kresner family decided to take positive and pro-active steps to increase the supply of high quality aged care, accommodation.

As outlined in the DA documentation, including the details of the proposal prepared by Advantaged Care, all of the residents at this Advantaged Care facility will 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 backgrounds.*

*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."*

There has been a clear change over the last decade in the type of residents that occupy residential aged care facilities. Government policy and the increase in the provision of services in the home has meant that low care residents are much fewer in number. In general Advantaged Care cites that its average length of stay is around 12 months and more commonly a palliative process. Specifically, the site at Prestons will only accommodate high care residents. The frailty of most high care residents will exclude them from being able to leave the facility. The removal of the distinction between low care and high care in aged care, and the clear policy of the government to keep people in home longer will further reduce the likelihood of the need 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 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.

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.

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.

## 2. Recommended Condition No. 4

The Council assessment report, to be presented to the Sydney West Joint Regional Planning Panel meeting on 28 November 2014, includes recommended conditions of consent.

Condition No. 4 in the recommended conditions of consent states:-

### **“4. Section 94 Payment (Liverpool Contributions Plan 2009)**

*As a consequence of this development, Council has identified an increase 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 for 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 as at the time the contribution is to be paid***

***CPI<sub>2</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.*

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

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

### 3. Liverpool Contributions Plan 2009

Recommended Condition No. 4 is based on Liverpool Contributions Plan 2009. Pursuant to Liverpool Contributions Plan 2009 the site is within the “Hoxton Park, Carnes Hill and Prestons” area.

Section 3.6 of Liverpool Contributions Plan 2009 identifies the types of development to be levied. It states in reference to development pursuant to SEPP Housing for Seniors:-

*Development approved pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 will be levied development contributions in accordance with the Contributions Plan. Self contained dwellings and in-fill self-care housing (as defined in the policy) will be levied.*

The proposed development is not for “self contained dwellings or in-fill self-care housing (as defined in the policy)”. It is for a residential care facility which is separately defined in the policy. The proposed RACF should not be levied as such a contribution is not in accordance with the contributions plan and thus is not in accordance with S94B(1) of the EP&A Act.

Further, it is relevant to consider the basis of developer levies generally. Under Section 94 of the Environmental Planning and Assessment Act, 1979, Council has the power to levy contributions from developers for public amenities and services required because of development. The three general principles when imposing Section 94 contributions are:

1. a contribution must be for, or relate to, a planning purpose;
2. a contribution must fairly and reasonably relate to the subject development; and
3. the contribution must be such that a reasonable planning authority, duly appreciating its statutory duties, could have properly imposed.

One of the fundamental responsibilities of any Council when imposing Section 94 contributions is to ensure that the contributions levied are reasonable. That is, the works and facilities to be provided must be a direct consequence of the development on which the contributions are levied. They must not unnecessarily inflate development costs.

Council is requested to reconsider this contribution on the grounds of the services that will be provided by the development and the very limited increased demand for Council facilities arising from the RACF as:-

- the proposal will accommodate residents who need a high level of care and who will not independently be capable of safely leaving the facility; and
- 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 Council’s community facilities.

As outlined above, the proposed RACF will only accommodate high care residents. The frailty of high care residents will exclude them from being able to leave the facility. As such, there actually will be no demand placed on Council services.

The proposal will have significant positive social and economic effects in that it will provide 132 high care beds within the Liverpool LGA. There is a recognised shortage of aged care



accommodation to comply with current Commonwealth Accreditation requirements and capable of providing 24 hour care for seniors who can no longer remain in their own home. The Plan does not specifically require contributions from Residential Aged Care Facilities and the condition should be deleted.

#### 4. Visitor parking within the southern prolongation of Melaleuca Place

Parking for the RACF will be accommodated in a basement car park which provides 36 vehicle parking spaces. The staff car parking will be separated from the visitor parking via a security gate / swipe card system.

The on-site parking exceeds the requirements of the Seniors Housing SEPP (based on the requirements for 1 space for each 15 beds for residents with dementia) by 7 parking spaces in line with best practice.

Additional visitor parking (5 spaces) is also proposed within the southern prolongation of Melaleuca Place. This will provide an alternate choice to family members (such as visiting spouses) who may prefer street parking to basement parking and provide additional parking provision to the community who use the recreational track adjacent to the site.

Section 94(6) of the EP&A Act states:-

*“(6) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, **the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:***

*(a) a benefit provided as a condition of the grant of development consent under this Act, or*

*(b) a benefit excluded from consideration under section 93F (6).” (our emphasis)*

The additional parking which is being provided within the southern prolongation of Melaleuca Place will provide additional parking provision to the community who use the recreational track adjacent to the site. This material public benefit further reduces the need for any S94 contribution.

#### 5. Summary

Council is requested to reconsider this contribution and delete proposed condition 4 on the grounds that:

- The contribution is not in accordance with the contributions plan and thus the condition is not valid;
- The nature of the development is such that there would be limited demand for council facilities by the RACF given the level of disability of residents and the facilities provided on site or that will be provided to the residents on-site. The proposed facility will only accommodate high care and high care demented residents. The frailty of most high care residents will exclude them from being able to leave the facility;
- The facility provides a community service by the provision of care for frail seniors;



- The development provides a further public benefit in the form of additional car parking being provided within the southern prolongation of Melaleuca Place.

Our client is happy to discuss the concerns outlined above with Council's representative. Please contact Jon Shillito from our office should you wish to organise a meeting with our client.

Yours faithfully

**BBC Consulting Planners**

A handwritten signature in blue ink, appearing to read 'Robert Chambers', with a long, sweeping horizontal line extending to the right.

**Robert Chambers**  
**Director**

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