

LIVERPOOL CITY COUNCIL
JOINT REGIONAL PLANNING PANEL

2014

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

1. EXECUTIVE SUMMARY

1.1 Reasons for the Report

This supplementary report is prepared pursuant to the decision at the Sydney West Joint Regional Planning Panel (JRPP) meeting on 28 November 2014 to defer the determination of DA-183/2014 and to receive a further report addressing issues relating to Section 94 contributions, as raised in a submission made by BBC Consulting Planners (BBC) on behalf of the applicant.

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. The application is proposed pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP).

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 6658m² and a frontage of 45.4m to Melaleuca Place. The site is currently vacant with some vegetation present.

1.4 The issues

The issues addressed in this supplementary report include the matters raised by BBC in their submission (refer to attachment No.6.1) and the statutory framework in regards to levying Section 94 contributions.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Based on the assessment of the application and the consideration of the written requests to vary development standards and the issues raised in regards to Section 94 contributions, it is recommended that the application be approved subject to the imposition of the revised conditions of consent.

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2. HISTORY

- A pre lodgement meeting with Council held on 15 January 2014.
- Application lodged 12 March 2014.
- Design review panel meeting 1 May 2014.
- Application considered at JRPP meeting 28 November 2014.

3. SECTION 94 CONTRIBUTIONS

3.1 Submission from BBC Consulting Planners

A submission from BBC was forwarded to Council and the JRPP prior to the panel's meeting on 28 November 2014 in response to the draft conditions prepared for that meeting and with particular reference to draft condition No. 4 which requires the payment of a Section 94 contribution in accordance with Liverpool Contributions Plan 2009.

An email was also forwarded to Council from BBC requesting that any requirement for the payment of contributions to be imposed prior to the issue of an Occupation Certificate, rather than prior to the issue of a Construction Certificate.

The submission from BBC can be summarised as follows:

- (i) A request is made to delete condition No. 4 requiring the payment for a contribution.
- (ii) Those residing in aged care facilities have are generally of a higher age and lower mobility.
- (iii) The development will not place demand on Council's community services due to the low mobility of the residents of the facility.
- (iv) The proposed contributions are not appropriate as there is no nexus between the development and the contribution proposed to be levied, as there is no demand generated from the development on the facilities identified.
- (v) The contribution proposed is not in accordance with Council's Contribution Plan.
- (vi) The development provides a public benefit in the form of additional parking being provided in excess of the requirements of the Seniors Housing SEPP.

A response to this submission is detailed in Section 3.4 below

3.2 Statutory Considerations

3.3 Environmental Planning and Assessment (EP&A) Act 1979

The EP&A Act and its associated regulations contain provisions in regards to applying contributions to developments and the preparation of contributions plans. The relevant provisions in the Act are contained in Sections 94 to 94EC, and in regulations 25I to 38.

Those provisions relevant to this application are extracted as follows:

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“94 Contribution towards provision or improvement of amenities or services

(1) If a [consent authority](#) is satisfied that [development](#) for which [development consent](#) is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the [area](#), the [consent authority](#) may grant the [development consent](#) subject to a condition requiring:

- (a) the dedication of [land](#) free of cost, or
- (b) the payment of a monetary contribution, or both.

(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.

(3) If:

- (a) a [consent authority](#) has, at any time, whether before or after the date of commencement of this Part, provided public amenities or public services within the [area](#) in preparation for or to facilitate the carrying out of [development](#) in the [area](#), and
- (b) [development](#) for which [development consent](#) is sought will, if carried out, benefit from the provision of those public amenities or public services, the [consent authority](#) may grant the [development consent](#) subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the [regulations](#)).

(4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.

(5) The [consent authority](#) may accept:

- (a) the dedication of [land](#) in part or full satisfaction of a condition imposed in accordance with subsection (3), or
- (b) the provision of a material public benefit (other than the dedication of [land](#) or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).

(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)."

“94B Section 94 or 94A conditions subject to contributions plan

(1) A [consent authority](#) may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

(2) However, in the case of a [consent authority](#) other than a [council](#):

- (a) the [consent authority](#) may impose a condition under section 94 or 94A even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but

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(b) the [consent authority](#) must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the [area](#) in which [development](#) is to be carried out.

(3) A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the [Court](#) on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the [Court](#) to disallow or amend the contributions plan or direction.

(4) A condition under section 94A that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Division) may not be disallowed or amended by the [Court](#) on appeal.”

3.4 Council Response

The submission made by BBC, and other relevant matters have been considered and the following comments are made in response:

- Liverpool Contributions Plan 2009 seeks to levy contributions for the proposed development.
- Council's Contribution Plan has been prepared in accordance with the EP&A Act and associated regulations.
- Based on the information submitted by BBC and the Applicant, there is agreement that the proposed residential aged care facility would not create a demand for Council recreation or community facilities, accordingly it would seem that there is no justification to levy for these facilities.
- There would be a nexus to levy contributions for other infrastructure under the contributions plan including transport, drainage and streetscape works for which the development would create a demand. The revised contribution is considered to be a reasonable contribution for the provisions identified within the Liverpool Contributions Plan 2009, based on the demand generated by the facility.
- The provision of off street parking for visitors is considered to be a public benefit to only a small number of persons. The parking spaces are likely to be more of a private benefit to the facility.
- Pursuant to Sections 4(8) and 94E of the EP&A Act a ministerial direction was issued on 14 September 2007.

The ministerial direction states:

“2. Pursuant to section 94E of the Act, direct consent authorities that there are no public amenities or public services in relation to which a condition under Division 6 of Part 4 of the Act may be imposed on the class of development consents identified in Schedule A granted to a social housing provider as defined in the SEPP. This direction applies to development applications made by such a social housing provider on or after commencement of the SEPP.

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Schedule A

- *Development consents to carry out development for the purposes of any forms of seniors housing as defined in State Environmental Planning Policy (Seniors) Living 2004."*

While the proposed development is a form of seniors housing as defined within the SEPP, no information has been provided to indicate the applicant is a 'social housing provider' as defined under the Seniors Housing SEPP.

- Council is amenable to moving the condition requiring the payment of a contribution prior to the issue of an Occupation Certificate.
- It is considered that contributions have been applied in accordance with the relevant provisions of the EP&A Act and that the JRPP can determine the application and grant approval with the imposition of a condition requiring the payment of the recommended monetary contribution.
- The Operational Procedures (dated September 2012) for the JRPP include the following relevant provisions in regards to Section 94 contributions:

At item 4.7 - "The regional panel cannot impose any additional contributions that are inconsistent with council's contributions plan."

At Item 5.6 - "A regional panel must not make a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council."

A decision of the JRPP to approve this application subject to the revised conditions of consent would not have a significantly adverse financial impact on Council.

4. Updated recommended conditions of consent

Pursuant to the minutes of the JRPP meeting on 28 November 2014, the recommended conditions of consent are amended as follows:

- Former condition 12 is deleted.
- Former condition 23 (now condition 21) is amended to read as follows:
 - 21. 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, where relevant, AS 2890.1, AS2890.2, AS2890.6 and Liverpool City Council's Development Control Plan.
- Former condition 73 (now condition 72) has been amended to remove references to 'subdivision' and replaced with 'occupation'.
- A condition (condition 80) has been included requiring the provision of an accessible footpath between the site and the bus stops on Kurrajong Road.

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- A condition (condition 68) has been included requiring a restriction as to user be registered on the property title in accordance with Clause 18 of the Seniors Living SEPP.
- A condition (condition 90) has been included limiting the occupation of the accommodation to seniors or people who have a disability (high care residents only) and to staff employed at the site in accordance with the requirements of the Seniors Living SEPP.
- Condition 4 requiring the payment of a contribution has been removed and replaced with condition 81 requiring the payment of a contribution prior to the issue of an Occupation Certificate. The condition reads as follows:

SECTION 94 PAYMENT (Liverpool Contributions Plan 2009)

81. 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 **\$236,760**

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

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
CPI₂ = 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
CPI₁ = 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

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L_2 = Latest Average Estimated Land Acquisition Cost per square metre published by the Council at the time that the contribution is to be paid

L_1 = 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.

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

5. CONCLUSION

Development Application DA-183/2014 was deferred by the JRPP at its meeting on 28 November 2014 to allow for the preparation of a supplementary report to respond to the issues in relation to Section 94 contributions raised by BBC.

The submissions raised by BBC and other matters for consideration have been discussed within this report. Based on the points raised for discussion in this supplementary report and the assessment report previously considered by the panel at its meeting on the 28 November 2014, it is considered that the application should be approved subject to the revised recommended conditions of consent.

6. ATTACHMENTS

- 6.1 Submission from BBC Consultant Planners**
- 6.2 E-mail from BBC Consultant Planners**
- 6.3 Revised recommended conditions of consent**
- 6.4 JRPP Report for Meeting dated 28 November 2014**