

SUPPLEMENTARY INFORMATION REPORT

JOINT REGIONAL PLANNING PANEL HUNTER AND CENTRAL COAST

Panel Reference	2018HCC003DA
DA Number	DA2016/00654.03
Local Government Area	Newcastle
Approved Development	Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 74 seniors living units, two levels of parking (91 cars), ground floor retail space and associated site works
Notice of Determination	7 December 2016
Modified Development Description	Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works
Street Address	Lots 6 & 7 DP95174 and Lot 8 DP95173 500 King Street Newcastle West
Applicant/Owner	RSL Lifecare c/o TSA Management
Date of DA lodgement	21 December 2017
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria	The development is to be determined by the Joint Regional Planning Panel (JRPP) pursuant to Section 2.15 of the <i>Environmental Planning and Assessment Act 1979</i> , as the proposal involves a modification to an approved development for which the JRPP was the consent authority. The cost of the original development was \$44,002,639 and the subject application has been lodged as a Section 4.55(2) modification.
List all documents submitted with this report for the panel's consideration	Appendix A - Amendments to conditions of consent Appendix B - Documents submitted by applicant relating to supplementary report Appendix C - Assessment Report dated 17 May 2018
Report by	Newcastle City Council
Report date	18 June 2018

The JRPP considered a report in relation to the above referenced development application on 17 May 2018 and deferred their decision for the following reasons:

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution. Following the adjournment the Panel advised the applicant that it was unable to determine the proposal as submitted for 97 car spaces as the application had not sought any modification to Condition 6 of the original approval which includes a lower maximum number of parking spaces (and was based on a lower FSR). Council had advised the Panel during the course of the meeting that the proposed number of car parking spaces in excess of Council's requirements would be calculated as GFA for the purpose of calculating FSR and accordingly based on the proposal's increased residential GFA, car parking spaces above 92 spaces required to meet the DCO provisions would likely result in a non-compliance with the FSR under Clause 7.10 of the LEP. Should the applicant wish to pursue this change, further details and justification would need to be provided to Council and Council would need to assess the additional parking and prepare a supplementary assessment report to the Panel. The alternative offered to the applicant was for the Panel to determine the application on the basis of the information submitted, assessed and presented to the Panel and for the car parking condition to be modified to reflect the DCP requirements thereby not triggering any additional GFA.

The applicant requested that the Panel not determine the application at the meeting to provide additional time to submit further information regarding the proposed car parking spaces and FSR. This was the only aspect of the application the Panel had concerns with that could not otherwise be addressed via conditions of consent.

Accordingly, the panel unanimously resolved to defer the determination for the matter until the required information is provided by the applicant and an assessment is completed by Council as:

- *The proposal does not satisfy condition 6 of DA2016/00654. The increase in extra car parking spaces needs to be justified and assessed in the context of FSR.*

The Panel also discussed discrepancies between approved landscape plans and architectural plans which will need to be resolved. The Panel was of the view that matters relating to landscaping could be satisfactorily addressed through appropriate additional conditions of consent. The Panel notes that the application does not include any modification to the approved landscape plan and the report referenced in the original approval and accordingly it is expected that the extent of landscaping and key design concepts referenced in the approved landscape concept plan will remain. Some minor updates will be needed prior to the works to align the minor built form changes referenced in the architectural plans to be incorporated into the approved landscape concept plans. The Panel reaffirmed in particular that the proposed public domain to the east of the building (to be incorporated in a future site through link) is in the public interest and that the approved landscape concept for this space is to remain, with only a modification to incorporate the Council's Urban Design Consultative Group's recommendation that a bend in the walkway on the eastern side of the site be softened with a curve in the path and further landscaping to create a less abrupt change in direction in the area of the proposed substation. The applicant confirmed that this public domain would be completed at the same time as the building.

The Panel discussed proposed new condition 111A which relates specifically to the modification application request for an exemption from the payment of Section 94A

on the basis that RSL Lifecare has provided evidence to Council that confirms it is defined as a social housing provider due to it being a not-for-profit organisation that is a direct provider of rental housing for tenants. The Panel raised concerns with proposed condition 111A requiring the seniors housing component to be managed by a social housing provider for only a ten year period. The definition does not provide a time frame on how long a not-for-profit organisation should be a direct provider of rental housing to tenants for, however given in this case the applicant is seeking exemption from paying Section 94A levy on this basis, it is considered that this should not be restricted to a minimum period and rather it should be in perpetuity.

The Panel raised concerns with two of the additional apartments on Level 13 including internal studies with no windows, which is inconsistent with the ADG. Accordingly, the Panel is of a view that a condition could be imposed to require the removal of the wall and door between the study and the living room of apartment 74 and 75, retaining part wall and part opening also to the kitchen.

TERMS OF THE DEFERRAL

The development application was deferred. The applicant is invited to submit additional information and justification relating to the proposed number of car spaces and FSR requirements.

Once the additional information and supplementary report has been received, the Panel will reconvene for an electronic meeting to determine the application.

In response to the terms of deferral, the applicant has provided additional information. The details of the revised assessment are outlined in the below table:

DEFERRAL MATTER	ASSESSMENT COMMENT
Amendment Condition 6 and floor space ratio implications	<p>The applicant has provided additional information, addressing the proposal's compliance with car parking and FSR (see Appendix B).</p> <p>In summary, the applicant acknowledges that Council's DCP Section 7.03 Traffic, Parking and Access refers to the SEPP (Housing for Seniors or People with a Disability) 2004 for the applicable car parking rates. The terms of the SEPP, as it relates to car parking provision, contains '<i>standards that cannot be used to refuse development consent</i>' rather than requiring compliance with a development standard.</p> <p>The applicant has demonstrated that the car parking provision is less than the city centre residential rate, and accordingly, have justified that the proposal is not providing car parking that is surplus to the '<i>requirements of the consent authority</i>', and therefore in this instance car parking is not required to be calculated in the GFA for the purposes of FSR.</p> <p>Notwithstanding, having regard to the proposed modifications as they relate to FSR, it is considered that the bulk and scale of the amended proposal remains satisfactory. As detailed in the comparison plans included in the original Assessment Report, the additional car parking spaces have been achieved</p>

	<p>through improvements in the use of space, rather than through amendments that create any additional bulk and scale impacts.</p> <p>Similarly, the additional apartments 74 and 75 have been accommodated through amendments to the plant and services design, with minimal external changes to bulk and scale.</p> <p>An amended condition 6 is proposed, consistent with the proposed modification (see Appendix A).</p>
Landscaping details and treatment of 'future site through link'	<p>The applicant has provided additional information, addressing the concerns raised in relation to landscaping (see Appendix B).</p> <p>In summary, the applicant has proposed an additional condition 22A, requiring the resolution of the design of the 'future site through link'. It is considered that the proposal is satisfactory in this regard.</p>
Condition 111A - restriction relating to social housing provider	An amended condition 111A is proposed, consistent with the terms noted in the 'Record of Deferral' (see Appendix A).
Apartment 74 and 75 internal studies	<p>In response to the concerns raised by the Panel, the applicant has submitted amended architectural plans. The internal walls separating the studies from the living rooms have been deleted in apartments 74 and 75.</p> <p>An amended condition 2 is proposed, to be consistent with the plan versions included in the amended architectural plan set.</p>

CONCLUSION

The proposal is considered to be acceptable against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

It is considered that information that has been provided adequately addresses the reasons for deferral subject to the relevant conditions of the consent.

RECOMMENDATION

A. That the description of the development be modified from:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 74 seniors living units, two levels of parking (91 cars), ground floor retail space and associated site works.

to:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works.

B. THAT the Hunter and Central Coast JRPP, as the consent authority, determine to grant a modified development consent to DA2016/00654.03 (2018HCC003) for

'Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works' at 500 King Street Newcastle West, pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* subject to the modified conditions in **Appendix A**.

APPENDIX A - Amendments to consent conditions

Amendment to Condition 2

The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	A44 Rev A	EJE Architecture	May 2016
Floor Plans	A45-52 Rev A	EJE Architecture	May 2016
Elevation Plans	A53-57 Rev A	EJE Architecture	May 2016
Section Plans	A58-63 Rev A	EJE Architecture	May 2016
Material Palette Plan	A80 Rev A	EJE Architecture	May 2016
Landscape Design Report and Plans	L01-L08 Rev C	Terras Landscape Architects	9 June 2016
Erosion and Sediment Control Plan	C02DA Rev A	Northrop	13 May 2016
Stormwater Management and Levels Plan Ground Floor	C03DA Rev A	Northrop	13 May 2016
Statement of Environmental Effects	N-01629	City Plan Services	June 2016
Remedial Action Plan		Regional Geotechnical Solutions	28 October 2016
Noise Impact Assessment		Reverb	May 2016
Acid Sulfate Soil Assessment		Regional Geotechnical Solutions	14 April 2016

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

Proposed Condition:

The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	A44 Rev A	EJE Architecture	May 2016
Ground Level Floor Plan	A45 Rev E	EJE Architecture	June 2018
Level 1 Carparking Plan	A46 Rev D	EJE Architecture	June 2018
Level 2 Floor Plan	A47 Rev D	EJE Architecture	June 2018
Level 3 Floor Plan	A48 Rev D	EJE Architecture	June 2018
Level 4 Floor Plan	A49 Rev D	EJE Architecture	June 2018

Level 5-12 Floor Plan	A50 Rev D	EJE Architecture	June 2018
Level 13 Floor Plan	A51 Rev E	EJE Architecture	June 2018
Roof Plan	A52 Rev D	EJE Architecture	June 2018
Elevation Plans	A54-57 Rev C	EJE Architecture	December 2017
Section Plans	A58 Rev D	EJE Architecture	June 2018
Material Palette Plan	A80 Rev C	EJE Architecture	June 2018
Landscape Design Report and Plans	L01-L08 Rev C	Terras Landscape Architects	9 June 2016
Level 4 - Landscape works	WD L04	Terras Landscape Architects	9 February 2018
Erosion and Sediment Control Plan	C02DA Rev A	Northrop	13 May 2016
Stormwater Management and Levels Plan Ground Floor	C03DA Rev A	Northrop	13 May 2016
Statement of Environmental Effects	N-01629	City Plan Services	June 2016
Remedial Action Plan		Regional Geotechnical Solutions	28 October 2016
Noise Impact Assessment		Reverb	May 2016
Acid Sulfate Soil Assessment		Regional Geotechnical Solutions	14 April 2016

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

Amendment to Condition 3

Existing Condition:

A total monetary contribution of \$880,053 is to be paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals

and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

Proposed Condition:

A total monetary contribution of \$8,000 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of The City of Newcastle S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

Amendment to Condition 6

Existing Condition:

The current car park shall be redesigned to accommodate a minimum of 5 designated disabled car spaces, designed to meet applicable Australian Standards. This may result in some internal reconfiguration and changes to parking numbers and layout, yet maintaining the same general configuration and access. However, the resulting total parking shall be within the range of 90-94 spaces, excluding 8 motorcycles. Full details are to be included in documentation for a Construction Certificate.

Proposed Condition:

On-site parking accommodation is to be provided for 97 vehicles, including 5 designated disabled car spaces, 1 ambulance space, and excluding motorcycle spaces and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

New condition

22A

A bend, curve or other design element is provided in the walkway on the eastern side of the site to soften the change in pedestrian direction in the area of the sub-station. The pathway element is to be provided in conjunction with landscaping consistent with the Landscape Concept Plan. Details of the pathway element are to be included in documentation for a Construction Certificate application.

New condition

111A

The 'Seniors Housing' component of the development is to be managed by a Social Housing Provider in perpetuity, as defined by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

A relevant restriction is to be registered, before the date of the issue of the Occupation Certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*.

Amendments to Advice L

Note: Street numbering to be updated in accordance with amended plans.