

4 June 2018

Our Ref: N-17065/AW

Development and Building Manager

Newcastle City Council
282 King St
Newcastle NSW 2300

ATTENTION: Melissa Thomas

Dear Melissa,

RE: S96(2) APPLICATION TO MODIFY DA2016/00654 - 510 (FORMERLY 500) KING ST, NEWCASTLE WEST

In December 2017, City Plan Strategy and Development ("CPSD") lodged an application to modify the existing development consent for seniors housing at the subject address ("the application"). The application proposes several minor building alterations, including changes to the total number and configuration of Independent Living Units ("ILUs").

A detailed assessment report on the proposed modifications was prepared by Newcastle City Council ("Council") and presented to the Hunter and Central Coast Joint Regional Planning Panel ("the Panel") on 17 May 2018 for consideration. At that meeting, the Panel deferred their decision to enable additional information and justification to be provided in relation to the proposed number of car spaces and FSR requirements. The Panel have requested Council provide a supplementary assessment report to address these matters. **Section 1** of this letter contains additional information to assist Council in this regard.

The Panel's Record of Deferral describes additional matters raised by the Panel at the 17 May meeting which were proposed to be addressed through additional conditions of consent. These are briefly described below, detailed in the remainder of this letter, and are supported by **updated architectural plans** (attached separately).

- **Proposed ground level public domain (eastern site through link)** - The Panel considered the proposed public domain to the east of the building (to be incorporated into a future site through link) to be in the public interest. The Panel considers a modification is required to the approved Landscape Concept Plan to reflect a recommendation made by Council's Urban Design Consultative Group ("UDCG") to soften the bend in this walkway *"to create a less abrupt change in direction in the area of the proposed sub-station"*. Considerations with respect to consent conditions in this regard are detailed in **Section 2** of this letter.

- **Proposed studies in ILUs no. 74 and 75 (Level 13)** - The Panel considered the proposed internal studies of these ILUs to be inconsistent with the Apartment Design Guide ("ADG") and recommended *"removal of the wall and door between the study and living room...retaining part wall and part opening also to the kitchen"* as an appropriate solution to address this inconsistency. Rather than addressing this through a new condition of consent, the attached updated architectural plans have incorporated this recommendation. We note that the clouding has been removed from the attached architectural drawings and confirm the only changes made are as described.
- **Proposed new condition 111A** - The Panel recommended an amendment to the proposed new condition dealing with exemption from the payment of Section 94A on the basis that the development will be managed by a social housing provider. The Panel's recommended amendment would remove the proposed 10-year requirement for the development to be managed by a social housing provider to require the development to be managed in perpetuity. The applicant is accepting of this proposed amendment.

1. CONSIDERATION OF PROPOSED ADDITIONAL PARKING

Background

The approved architectural drawings provided 94 car spaces (including 2 designated disabled car spaces) plus 8 motorcycle spaces. We understand the Panel introduced consent Condition 6 to require the development to provide a minimum of 5 designated disabled car spaces. Noting this may require some internal reconfiguration and changes to parking numbers and layout, Condition 6 allowed for the approved development to provide a total number of parking spaces between 90-94 car parking spaces, plus 8 motorcycle spaces.

The approved and proposed development outcomes, as relevant to this matter, are summarised in **Table 1**.

Table 1: Summary of approved and proposed development outcomes

	As approved	As proposed
ILUs	74 total units, including: <ul style="list-style-type: none"> ▪ 72 two-bedroom units ▪ 2 three-bedroom units 	76 total units, including: <ul style="list-style-type: none"> ▪ 76 two-bedroom units
Parking	As per Condition 6: 90-94 car spaces, including 5 designated disabled car spaces 8 motorcycle spaces	97 car spaces, including 5 designated disabled car spaces 9 motorcycle spaces

The application did not seek to modify Condition 6 and, if approved, would exceed the number of car parking spaces allowed for in that Condition by 3 car spaces and 1 motorcycle space. This response addresses the impacts of the proposed changes with respect to parking.

Compliance with SEPP SH

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP SH") identifies the minimum parking standards that cannot be used to refuse development consent:

- Under clause 48(d) for residential care facilities, as relevant to the Aged Care Facility component of the proposed development; and

- Under clause 50(h)(ii) for self-contained dwellings where the applicant is a social housing provider, as relevant to the ILU components of the proposed development.

Table 2 demonstrates the proposed development is compliant with the SEPP SH parking standards.

Table 2: Compliance with SEPP SH parking standards

SH component	Measurement		SEPP SH Standard		No. spaces proposed	
			Rate	No. spaces		
Residential Aged Care Facility	60	Beds	0.1	6	6	Complies
	12	Staff	0.5	6	6	Complies
	-	-	-	1 Ambulance	1	Complies
ILUs	152	Bedrooms	0.2 ¹	31	82	Complies
	152	Bedrooms	0.5 ²	76	82	Complies
Notes:						
1. Rate applying where the applicant is made by or jointly with a social housing provider						
2. Rate applying where the applicant is not a social housing provider						

These standards are not relevant to considering the parking requirements arising from the residual (retail) component of the development, nor do they make any requirement for motorcycle spaces.

Compliance with Council's DCP

Section 7.03 of Council's Development Control Plan ("DCP") sets out development provisions with respect to Traffic, Parking and Access. Table 1 of this Part identifies the parking rates applying to specific developments, based on land use. As relevant to this proposal, Table 1 of Part 7.03 refers to the SEPP SH rates for "Housing for Seniors or People with a Disability". The retail parking rate of 1 space per 60m² would apply to the residual element of the proposed development, generating a requirement for an additional 4 car spaces above that identified as required by the SEPP SH (refer to Table 3 of this letter).

Council's assessment report of this application identifies the proposal otherwise complies with Council's DCP with respect to parking provision and layout.

Compliance with Council's LEP with respect to FSR

The Record of Deferral states Council advised the Panel of this at the 17 May meeting, and the Panel is now requesting additional information to consider whether this would result in a non-compliance with the FSR under Clause 7.10 of Council's Local Environmental Plan ("LEP").

The Floor Space Ratio ("FSR") development standard applying to the site is 5:1, noting FSR is calculated based on the Gross Floor Area ("GFA"). As defined in Council's Local Environmental Plan ("LEP"), "car parking to meet any requirements of the consent authority" are excluded from GFA. Section 7.03.02 of Council's DCP states parking in excess the "maximum rates" nominated in the DCP table are to be included in the GFA for the purpose of calculating Floor Space Ratio FSR.

While Council's DCP parking rates refer to the Seniors Housing SEPP for the seniors housing components of the development, we do not consider the SEPP SH rate to be a "maximum rate" for the purpose of calculating GFA. This recognises the SEPP SH provisions state development consent cannot be refused if "at least" the amount of parking specified is provided.

For the purpose of calculating GFA, maximum requirements are derived from the Parking Rates provided for comparable land uses in Table 1 of Section 7.03 of Council's DCP. These are described in **Table 3** below, providing a maximum 113 spaces.

Table 4 similarly describes the motorcycle rates applying to the proposed development based on comparable land uses in Table 1 of Section 7.03 of Council's DCP. Section 7.03.02.D of Council's DCP identifies Council may require greater provision of motorcycle parking than indicated. The original consent approved 8 motorcycle spaces, reflecting a total ratio of around 1 motorcycle space per 11 or 12 total car spaces. The additional motorcycle space proposed by this application is consistent with the ratio previously applied.

We consider all 97 proposed car spaces and 9 proposed motorbike spaces can be excluded from GFA and the proposal remains compliant with respect to FSR.

Table 3: Maximum DCP car parking rates applying, based on comparative uses

Component	Comparative DCP use	Measurement		DCP rate	No. spaces	
RACF	Hospital	60	Beds	0.3	20	visitors
		12	Staff	0.5	6	staff
ILUs	Newcastle City Centre Residential	76	2-bed units	0.9	68	residents
		76	Dwellings	1 + 0.2 ³	16	visitors
Retail	Retail	200 ⁴	m ² GFA	0.02	3	total
Total					113 ⁵	total
Notes:						
3. Visitor rate for residential uses is 1 space for the first three dwellings plus 1 space for every 5 thereafter or part thereof.						
4. GFA for retail excludes areas that will be utilised by the RACF.						
5. All total spaces rounded down to provide a conservative maximum.						

Table 4: DCP motorcycle parking rates applying, based on comparative uses

Component	Comparative DCP use	Measurement		DCP rate	No. spaces
RACF	Hospital	26	Car spaces	1 per 10	2.6
ILUs	Newcastle City Centre Residential	84	Car spaces	1 per 20 ⁶	4.2
Retail	Retail	3	Car spaces	1 per 20 ⁶	0.2
Total					7
Notes:					
6. No rate specified for Newcastle City Centre, assumed to be equivalent to City-wide rate for residential accommodation.					

Summary and request to amend Condition 6

The proposed development is considered compliant with:

- SEPP SH, noting it provides the minimum number and mix of spaces required;
- Council's LEP, noting the additional spaces proposed do not exceed the maximum rates applying and therefore do not impact on the FSR of the development; and
- Council's DCP with respect to other parking considerations.

We also note the car park has been redesigned to accommodate the minimum of 5 designated disabled car spaces required by Condition 6. On this basis, we request Condition 6 is amended to state:

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.

2. CONDITIONING OF LANDSCAPING CONSIDERATIONS

The proposed development was considered by Council's Urban Design Consultative Group ("UDCG") on 21 March 2018. The UDCG provided the following comments in relation to landscaping:

No revised landscape plan was provided to the Group for the s96, and it was noted that changes proposed to several of the external privacy screens occur adjacent to approved landscape planter beds. At A3 scale it was not possible to determine whether proposed screens are likely to interfere with the canopy of larger trees proposed for the corners of the trellised areas, but in any case, given the relatively narrow width of the planter provided for the six larger trees (2 trees proposed for Terrace 08 and 4 to trees for Terrace 05) it was suggested that there is more than enough room on the terraces for the perimeter garden bed to be widened in plan in the location of each of the trees to provide them with greater soil volume, and therefore some opportunity of achieving the canopy spreads indicated. (Note also ADG nominated minimum soil volumes).

It was recommended that the “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 sub-station.

While the Panel raised general concerns that there may be additional discrepancies between the proposed architectural drawings and the approved landscape concept plan, no additional updates to either the proposed architectural drawings or approved landscape concept plan was requested at this time. We note that subsequent correspondence with Council satisfied the UDCG concerns with respect to:

- the external privacy screens, noting none of these occur adjacent to approved landscape planter beds; and
- the size of planters proposed on Terrace 08 and Terrace 05 at Level 13 of the development, noting these provide sufficient soil volumes for their intended purpose.

A further review of the proposed architectural drawings has not revealed any added potential inconsistencies with the approved landscape concept plan elements. In our opinion Condition 22, requiring the preparation of a detailed comprehensive landscape design plan and specification consistent with the approved landscape concept plan and in accordance with Council's DCP suitably addresses the Panel's concerns in this regard.

The Panel raised specific concerns that the UDCG recommendation in relation to the walkway on the eastern side of the site, noting it is considered to be in the public interest. This recommendation was provided in response to the re-positioning of the proposed substation. In response to this concern, we request Condition 22A is provided as an additional condition to state:

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.

We also note the design team is actively responding to this recommendation and have separately provided in-confidence documentation showing the intended design elements for informational purposes. To clarify, these are working draft materials and not provided for assessment purposes.

3. SUMMARY AND CONCLUDING REMARKS

The above response addresses the reason for the Panel's deferral of their decision in relation to the application along with other matters of concern raised by the Panel at the 17 May meeting. In summary, it:

- Demonstrates the proposed parking complies with relevant matters for consideration, and requests a modification to Condition 6;
- Notes updated architectural drawings are provided separately that incorporate the Panel's request to remove the wall and door between the study and living room of ILU numbers 74 and 75 to ensure consistency with the ADG;
- Provides a recommended new Condition 22A to incorporate the UDCG recommendations for design and landscape treatments of the walkway on the eastern side of the site;
- Confirms no other discrepancies between the proposed architectural drawings and approved landscape concept plan require resolution; and

- Reaffirms the applicant's support to modify Condition 111A to require the development to be operated by a social housing provider in perpetuity, as described by the Panel.

Should you require any further clarification or information in respect to this application, please contact the undersigned on 4925 3286.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A Wetzel', is positioned above the printed name. The signature is fluid and cursive.

Amanda Wetzel
Regional Director | Newcastle