

MEMORANDUM

TO: Hunter and Central Coast Regional Planning Panel (HCCRPP)
FROM: Port Stephens Council (PSC)
DATE: 29 November 2023
FILE NO: 16-2023-259-1
PROPERTY: 36, 38 & 40 Elkin Avenue HEATHERBRAE
PROPOSAL: Alterations and additions to Educational Establishment (Hunter River High School)
SUBJECT: Disagreement regarding conditions - Section 7.12 Contributions

This Memorandum has been prepared to support the Council Assessment Report for this Development Application (DA). Specifically, the memorandum explains in detail one of the key assessment issues, relating to the imposition of a condition for Section 7.12 Contributions.

The proposal is a Crown DA, pursuant to Section 4.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and a consent authority must not impose a condition without approval of the applicant or the Minister. The applicant was provided with a draft set of conditions and in response the applicant requested a number of minor miscellaneous changes to conditions. The conditions the applicant requested to be modified are documented at **Attachment B**. The requested changes to conditions are acceptable to Council and have been incorporated in the recommended conditions at **Attachment A** with the exception of the request to delete the condition for Section 7.12 contributions. This is discussed in further detail in the key issues section. The applicants reasoning is as follows:

“Planning Circular D6 represents the consistently held view that the Department of Education, as a Crown authority, provides critical community infrastructure and that to levy any developer contribution on provision of public education facilities increases the cost of such infrastructure for all taxpayers in the State.”

However, Planning Circular D6 is a guideline published in 1995 and the applicant’s position is contrary to the Port Stephens Local Infrastructure Contributions Plan 2020 (LIC Plan). The LIC Plan provides that an educational establishment is not subject to Section 7.11 Contributions. The LIC Plan states that all development that is not subject to Contributions under Section 7.11 of the EP&A Act is subject to Contributions under Section 7.12, with the exception of development identified as exempt from requirements

to pay contributions under any applicable Ministerial Direction issued under Section 7.17 of the EP&A Act.

There is no Ministerial Direction that excludes educational establishments from the requirement to pay contributions and therefore it is considered that Section 7.12 contributions are applicable.

Further to this, local infrastructure contributions fund the facilities and services necessary to support growth. A shortfall in expected funding will impact Council's ability to deliver the planned infrastructure and upgrades in the works schedule of the LIC Plan such as shared paths and footpaths in the area surrounding the school. The applicable contribution for this DA would be a 1% levy on the estimated cost of the development, which at the time of the DA being lodged was \$9,689,184, equating to a \$96,892 contribution (subject to change based on the cost estimate at the time of payment).

Council has consistently applied contributions on educational premises, including recently for DA 16-2020-230-1 for a TAFE Crown development at 1 Central Avenue, Salamander Bay and DA 16-2022-97-1 for alterations and additions to St Michael's School at 12 Sproule Street Nelson Bay. Advice consistent with this approach was also recently provided in response to an enquiry from Schools Infrastructure NSW regarding Irrawang High School which requested a waiver to the Section 7.12 local infrastructure contributions associated with a Complying Development Certificate (CDC). In the letter response, Council advised that Section 7.12 contributions would be applicable to the CDC.

For these reasons, Council considers it appropriate for any approval of the DA to include a condition relating to the payment of local infrastructure contributions, consistent with the Port Stephens LIC Plan.

In accordance with Section 4.33 a consent authority must not impose a condition without approval of the applicant or the Minister. Whilst Council does not agree to removing the S.7.12 contributions condition, the discretion to refer the matter to the Minister lies with the HCCRPP as the consent authority.

Regards,

Dylan Mitchell
Principal Development Planner
Port Stephens Council

Attachments:

- Attachment A: Recommended Conditions of Consent
- Attachment B: Applicant's Response to Draft Conditions