COUNCIL ASSESSMENT SUPPLEMENTARY REPORT

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| **Panel Reference** | **PPSHCC-49** | |
| **DA Number** | **DA 2020-567** | |
| **LGA** | **Maitland** | |
| **Proposed Development** | **Residential aged care facility (168 beds, demolition of existing facility, tree removal, car parking, signage and associated site works)** | |
| **Street Address** | **7 Martin Close & 42 Stronach Avenue, East Maitland** | |
| **Applicant/Owner** | **Churches of Christ Community Care** | |
| **Date of DA lodgement** | 19 June 2020 | |
| **Total number of Submissions**  **Number of Unique Objections** | * Four (4) * Three (3) | |
| **Recommendation** | **Approval** | |
| **Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011** | **Schedule 7 – Part 2 General Development over $30 million.**  The estimated capital investment value is $36,737,968. | |
| **List of all relevant s4.15(1)(a) matters** | * State Environmental Planning Policy 55 – Remediation of Land * State Environmental Planning Policy 64 – Advertising and Signage * State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 * State Environmental Planning Policy (Infrastructure) 2007 * State Environmental Planning Policy (State and Regional Development) 2011 * State Environmental Planning Policy (Koala Habitat Protection) 2019 * Maitland Local Environmental Plan 2011 * Maitland Development Control Plan 2011 | |
| **List all documents submitted with this report for the Panel’s consideration** | * Appendix A – Draft Schedule of Conditions * Appendix B – Development Plans * Appendix C – General Terms of Approval * Appendix D – Ausgrid Comments * Appendix E – Submissions | |
| **Clause 4.6 requests** | Not applicable | |
| **Summary of key submissions** | Appropriate reuse of materials from the demolition, privacy/overlooking, noise, lighting impacts, excessive bulk and scale, adequacy of the documentation lodged with the application and public interest. | |
| **Report prepared by** | **Kristy Cousins – Senior Development Planner Maitland City Council** | |
| **Report reviewed by** | **Cindy Littlewood, Manager Development & Compliance** | |
| **Report date** | 16 November 2020 | |
| **Summary of s4.15 matters**  Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? | | **Yes** | |
| **Legislative clauses requiring consent authority satisfaction**  Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?  *e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP* | | **Yes** | |
| **Clause 4.6 Exceptions to development standards**  If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? | | **Not applicable** | |
| **Special Infrastructure Contributions**  Does the DA require Special Infrastructure Contributions conditions (S7.24)?  *Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions* | | **No** | |
| **Conditions**  Have draft conditions been provided to the applicant for comment?  *Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council’s recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report* | | **Yes** | |

**SUPPLEMENTARY INFORMATION**

**State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

In addition to the relevant clauses within this SEPP, an assessment against the following is provided:

| Requirement | Compliance |
| --- | --- |
| Clause 29 – Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply | |
| A consent authority in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25(5)(b)(i), the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development. | The subject site is located adjacent to Two Mile Creek and a significant bushland corridor that runs from the south west to north east. Two Mile creek is not mapped as being flood prone land, however has been subject to localised stormwater events. The land is identified as being bushfire prone land, and has demonstrated that it can be designed, constructed in accordance with Planning for Bushfire Protection. No vegetation is required to accommodate the development and APZ clearing within the riparian corridor. The development has been designed with due consideration of the environmental values and hazards.  The subject site is well located adjacent the Greenhills Shopping Centre precinct, Maitland Private Hospital and the new Maitland Hospital.  It is identified within the Greater Newcastle Metropolitan Plan 2036 as an emerging health precinct around the new Maitland Hospital. It recommends that Council aligns local plans to:  - Increase the potential for medium density housing, including seniors housing, and  - facilitate the development of complimentary public and private health service facilities that support the Maitland Private Hospital and the new Maitland Hospital, and are compatible with surrounding residential areas. |
| (iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision | The site is within close proximity to the Stockland Greenhills Shopping centre which has recently undergone a major expansion and provides a range of retail and commercial services. There are numerous banks, retail outlets and a medical centre located within the centre. The surrounding commercial precinct also provides for dental, retail, and professional services. This is capable of accommodating the proposed development.  Given the nature of the facilities residents they may not always wish to leave the site to seek relevant services. In this regard, the RACF will provide for a café, hair salon, allied health services, provision of meals and cleaning services.  The site is adequately serviced with public transport, with a bus stop located on Stronach Avenue. It is proposed to install a footpath to the bus stop location. The Greater Newcastle Metropolitan Plan 2036 also identifies that improved public transport services and corridors to residential areas is a desired outcome.  The site is serviced with reticulated water and sewer. Hunter Water have provided a Notice of Formal Requirements for the proposed development. Given the nature of the development, connections will be required to be to the 150 DICL in Martin Close and not via the 80 PVC watermain. The developer will be responsible for this infrastructure. |
| (v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development. | The proposed new RACF is fundamentally different in scale to the adjacent free-standing domestic dwellings. The building form has broken up and articulated to reduce the bulk of the building, this allows for a less intrusive design and will aid in the application of solar access.  The application demonstrates that as the building is centrally located on the site there are no issues with overshadowing on the adjoining properties.  As identified above the subject site is identified within the Greater Newcastle Metropolitan Plan 2036 as an emerging health precinct around the new Maitland Hospital. It recommends that Council aligns local plans to:  - Increase the potential for medium density housing, including seniors housing, and  - facilitate the development of complimentary public and private health service facilities that support the Maitland Private Hospital and the new Maitland Hospital, and are compatible with surrounding residential areas.  This will likely see a change in the character of the area with increased medium density housing and health services. This development is compatible with the identified intended future uses of the area. |
| Clause 55 - Residential care facilities for seniors required to have fire sprinkler systems | |
| A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system. | The Building Code of Australia Assessment Report prepared by City Plan dated 20 May 2020 identifies that “*all parts of the building are required to be served by an automatic sprinkler system + monitored stop valve in accordance with AS2118.1 and be permanently connected to an approved monitoring system to a fire dispatch centre and must comply with Specification E1.5”*  Council’s building surveyor has included conditions in regard to BCA Compliance and Fire Safety Certificate prior to occupation. |

**Submission One**

Council has been in discussion with the applicant and the submitter who raised the concerns regarding the Circular Economy. It is noted that in a broader context the Council is starting work on the Environmental Sustainability Strategy which includes the Circular Economy and Resource Management Strategy. This strategy work will then feed into amending Council’s DCP to provide further guidance to developers in the future.

The applicant has been responsive to incorporating additional measures into the construction including the use of recycled materials. They have suggested that draft condition 45 be amended as follows:

*45. Prior to the commencement of demolition and construction works, a plan shall be prepared and submitted to Council identifying opportunities for reuse and recycling of materials including the reuse of excavated sandstone. The Plan should detail appropriate areas for the storage of materials, recycling and disposal. Demolition material shall be recycled as far as is practicable and any demolition waste disposed of only at an authorised landfill facility.*

**Submission Four**

A further submission has been received dated 26 November 2020 in relation to the impact on 44 Stronach Ave, East Maitland.

It is noted that the submission dated 24 August 2020 was sent to the General Manager as a Code of Conduct Compliant. Council’s General Manager provided a response in relation to this.

Matters of Concern

1. MCC fails to acknowledge exceptional burden to my property by the proposed development.

It is acknowledged within the report that there will be a change to the outlook from the surrounding properties as a result of the development. It is considered however that the development has incorporated appropriate measures with the setbacks, design and landscaping to assist with mitigating these impacts.

1. MCC fails to address with the necessary detail the annihilation of my property’s amenity of privacy and the visual impact that will overwhelm occupants of my property.

Noted. The assessment of the development has considered that amenity, visual and privacy impacts. Additional measures have been included by the applicant to mitigate any potential privacy issues. The development does incorporate an area for functions, activities and upper ground floor terrace that interfaces with 44 Stronach Ave. The acoustic assessment demonstrates that the development can achieve compliance with the noise requirements for traffic, vehicle movements, outdoor community areas without any additional mitigation measures.

It is acknowledged that the privacy blades will not completely inhibit direct views of the adjoining properties, this is only intended to assist with mitigating potential overlooking. The development also incorporates landscaping, as well as the existing vegetation on 44 Stronach Ave also assisting with providing visual privacy.

Reference in the report to the visual impact assessment providing additional weight to attractive landscape features (such as the Opera House) is in regards to the Planning Principles from the Land & Environment Court that provides guidance when considering issues such as privacy and views. 44 Stronach Ave currently has views of a single storey RACF at the rear. It is acknowledged that the views that they currently enjoy of the vegetation on this site will be altered as a result of this proposal, however it does retain a portion of the existing vegetation as well as proposed additional plantings between the development and the rear of 44 Stronach Ave.

1. MMC has not required the Applicant to submit a substantially amended Social Impact Assessment that identifies, in good faith, the true social impacts of the proposed development to adjoining properties and their occupants.

Noted. Council has not required the applicant to submit an amended Social Impact Assessment. It is not a legislative requirement to have a SIA for this type of development. It is considered that the development will have a broader social benefit.

1. The MCC erroneously asserts in the CAR that there will be no social impacts from the applicant’s proposed development of an existing use.

The Council assessment report does not conclude that there will be no social impacts as a result of the intensification of development on the site, just that the impacts from the development are not considered to be significant. The predominate impact identified that will require mitigation is during the construction phase.

1. The SIA mentions, but fails to acknowledge the serious social impact implications of the Coronavirus Pandemic posed by the high number of beds of the proposed development.

The development has been designed with arms that radiate outward from the central lift and service core. A third lift is provided and has the potential to be used as the designated infection control lift for the transfer of unwell patients. There is sufficient space provided to allow for social distancing where required. In the event of a Coronavirus or other infection disease outbreak, the design of the building will enable each arm to function as a separate bubble of space to allow for infection control when required. It is not considered appropriate to deferring determination of the application pending the outcome of the Royal Commission.

1. The proposed development breaches the Maitland LEP and the DCP for the area.

Clause 1.2(j) of the Maitland LEP states *to enourage orderly, feasible and equitable development whilst safeguarding the community’s interests, environmentally sensitive areas and residential amenity.* The submission also references Clause 8 of the DCP with regards to safeguarding amenity.

It is contended that the assessment report adequately demonstrates that the proposed development will not have a significant detrimental impact on the amenity of the neighbouring property given the separation distance, vegetation and proposed mitigation measures.

1. The Applicant’s Urban Design Report for the DA is misleading, fails to acknowledge the existence of my property and has not been rectified nor sought to be rectified by the MCC.

The Urban Design Report has been lodged to assist with Council’s assessment of the proposal, and is only one aspect of the assessment. It is noted that Council staff are aware of the dwelling on 44 Stronach Avenue and have considered this as well as the other surrounding properties during the assessment. Sufficient information has been provided to enable adequate assessment of the proposal and it was not considered warranted to request an updated UDR.

1. MCC simply dismissed my expert report, without giving due, detailed and reasoned consideration in the CAR.

The expert report referenced in this comment was from a property valuer, generally the issues raised in this report also were included in the submission. The assertions of proposed impacts the proposed development will have on property values in the area are not a relevant matter for consideration under section 4.15 of the *Environmental Planning & Assessment Act.*

1. The MCC erroneously and misleadingly suggests that the proposed development comprises of “households” and that the findings of the Royal Commission into Aged Care Quality and Safety is not a relevant matter to assessment of the DA.

Council is required to assess the proposed development in it current form and cannot based the assessment on the potential findings of the Royal Commission.

1. The CAR fails to respond to my submission that the Emergency and Maintenance Road, sought to be positioned adjacent to my property, should wind back to the main exit point on Martin Close, rather than exit to Stronach Avenue.

Consideration of this access track was undertaken during the assessment process. Council did request that the track be located away from the boundary of 44 Stronach Avenue, to which the applicant provided a 1.5m landscape buffer. Council further went back and requested that the access track be located further away from the boundary, and the applicant has agreed to a 3m setback. Given the infrequent use of this track, not being a public access, this is considered to be adequate.

1. In the CAR, the Council asserts that the development is compliant with the provisions of the SEPP (Housing for Senior’s or People with a Disability) 2004. Unfortunately this is not in fact the case in three important respects:

Clause 30 – Site Analysis

Clause 33 – Neighbourhood Amenity and Streetscape

Clause 34 – Visual and Acoustic Privacy.

This has been addressed within the Assessment Report.

1. Non-compliance with applicable DCP in relation to height

There is no height limit within the Maitland LEP for the subject site and the DCP does not specify a maximum height limit for Residential Aged Care Facilities. It is acknowledged that this development will incorporate a height not currently provided for on this side of Stronach Avenue, however the development will not create any significant overshadowing or privacy issues and the proposed height is not significant enough to warrant refusal of the application.

1. MCC misleads the Panel by stating in the CAR that the proposed development is compliant with the DCP requirement of “External Appearance in character with the area”

See comment 12 above. As detailed above this area is identified within the Greater Newcastle Metropolitan Plan 2036 as an emerging health precinct around the new Maitland Hospital. It recommends that Council aligns local plans to:

- Increase the potential for medium density housing, including seniors housing, and

- facilitate the development of complimentary public and private health service facilities that support the Maitland Private Hospital and the new Maitland Hospital, and are compatible with surrounding residential areas.

This will likely see an increased density in this locality.

1. In relation to the DCP, statements in the CAR mislead the Panel with respect to the visual and acoustic privacy of adjoining properties to the proposed development.

This has been addressed with the assessment report and supplementary report. Relevant conditions have been placed on the consent to ensure that the development operates within the acceptable acoustic requirements.

1. In the section of the CAR entitled “Privacy”, sweeping generalisations are made about the protection of privacy which have not been substantiated with any specificity or appropriate detail and with conclusions that do not apply to the interface to my property.

The development is to be located approximately 29.35m from the rear of 44 Stronach Avenue, this separation distance is generally considered sufficient to afford appropriate privacy. In addition to this the applicant has incorporated screening to assist with limiting overlooking of the adjoining properties. It is not asserted that this will provide complete privacy, as this is not a realistic expectation.

**Conditions**

Condition 16 states “*All driveways, parking areas and vehicles turning areas shall be constructed with a segmental paver surface (on a concrete sub-base), or as reinforced concrete excluding the permeable paving surfaces as indicated on the Landscape Plans prepared by Arterra”.*

The applicant has requested that this condition be amended to enable the driveway to be constructed of asphalt as identified on the plans:

*All driveways, parking areas and vehicles turning areas shall be constructed with a segmental paver surface (on a concrete sub-base), or as reinforced concrete (or as asphalt for the driveway) in accordance with Council’s Manual of Engineering Standards, excluding the permeable paving surfaces as indicated on the Landscape Plans prepared by Arterra.*

Council does not object to this amendment.

**Plans**

The Privacy Analysis Plans are to be included within Condition 1 as follows:

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| **Plan Ref No.** | **Sheet**  **No.** | **Revn**  **No.** | **Revision**  **Date** | **Prepared by:**  **(consultant)** |
| Privacy Analysis No 44 Stronach Ave | A1002 | A | 4/09/2020 | Calderflower Architecture |
| Privacy Analysis for Erin Close Houses | A1003 | A | 4/09/2020 | Calderflower Architecture |
| Privacy Analysis for Martin Close House | A1004 | A | 4/09/2020 | Calderflower Architecture |