



planning consultants

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Our Ref: 6131Q.6ER_RFI

The Secretary
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Emma Butcher Emma.Butcher@planning.nsw.gov.au

Dear Emma

Response to submissions
S75W Modification of MP09_0180
Clusters 2, 3 and 4, 34-36 Memorial Avenue, Kellyville

DFP is assisting BaptistCare with regard to the proposed modification of the approval issued in relation to MP 09_0180 for a seniors housing development at 34 – 36 Memorial Avenue, Kellyville. The modification relates to Clusters 2, 3 and 4 of the approved development. Collectively, Clusters 2, 3 and 4 are known as Stage 3. This letter is provided in response to the matters raised by various authorities following notification of the application.

1.0 Office of Environment and Heritage (OEH)

Two submissions have been provided by OEH.

The first raised a number of issues with respect to tree protection and the remnant Cumberland Plain Woodland (CPW) endangered ecological community (EEC) on the site and the second related to flood risk management.

1.1 Cumberland Plain Woodland

OEH raised a number of issues in relation to tree removal and tree protection and the potential impacts the redesign of the building footprints of Clusters 2, 3 and 4 might have on the remnant Cumberland Plain Woodland EEC.

Attachment 1 to this letter is a detailed response prepared by Travers Bushfire and Ecology to the matters raised by OEH in their submission dated 26 February 2018.

Specifically, Travers advise:

- The modification to Clusters 2, 3 and 4 will only require a minor amendment to the CPW area.
- The development will require the removal of 5 trees. The removal of these trees was approved as part of the original approval and as part of the EPBC Act approval.

- The development will allow for the retention of a significant tree for which approval to remove had previously been issued.
- The provision of additional nest boxes is not supported due to the oversupply of nest boxes in the existing CPW reserve. However, the provision of additional natural modified hollows within the reserve is recommended. These will provide high quality nesting habitat which is not provided by the nest boxes.
- Offsetting the loss of 5 trees is a negligible outcome in terms of offset credits. Replacement of the trees elsewhere in the CPW reserve is recommended.
- The landscape plan allows for up to 28 new trees of CPW EEC species to be planted which is equivalent to an offset ratio of 5:1.
- The prior removal of T024 was supported as it was assessed as being a poor quality habitat tree that had no value of retention in its current form.
- It is recommended that the nest boxes and repurposed hollows be monitored for effectiveness, pest control and damage rectification.

In view of the OEH's submission, Travers make the following recommendations:

- Installation of 23 repurposed natural hollows instead of nest boxes which are already in high density with the reserve.
- To replace damaged or lost nest boxes within the reserve with repurposed natural hollows or nest boxes.
- Planting of a minimum 28 new CPW trees within the CPW open space reserve and 10m defendable zone which achieves a 5:1 offset ratio.
- Harvesting of up to 4 trunk sections 3-4m in length to be relocated onto the CPW reserve for on-ground habitat.
- Implement monitoring of the nest boxes and hollows.
- Update the Landscape Restoration Management Plan and landscape plans to reflect the above outcomes.

It is requested that appropriate conditions be imposed on any approval issued in relation to MOD 6 to MP09_0180 to reflect these recommendations.

1.2 Flood Risk Management

OEH also raised the following issues with respect to floodplain risk management in their letter dated 6 March 2018:

- Details of the overland flow path characteristics – volume, depth, extent, velocity and duration for the full range of events (up to PMF) have not been provided.
- Details of the overland flow (OLF) are required to be provided for the site of the development and adjacent areas for the full range of events up to the PMF.
- The Hills Council Urban Overland Flow Study should be utilised to provide details on OLF within the whole site for the developed scenario.
- OEH identify that Section 2.4 of The Hills development control plan (DCP) 2012 addresses development controls that are applied to 'Sensitive Uses and Facilities'. OEH recommends NSW Department of Planning and Environment (DPE) be satisfied that the development has had regard for NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 through the application of the DCP controls.

In response to the issues raised by OEH regarding overland flow and flood affectation, Wood and Grieve, consulting engineers, has prepared a revised Stormwater Management Report. A copy of this report is included at **Attachment 2** to this letter. The revised report includes DRAINS modelling for the overland flow path from Rutherford Avenue to Free Settlers Drive and this modelling confirms that the depth x velocity values for all rain events, including the PMF storm event is acceptable.

Specifically, Wood and Grieve advise:

- The Hills Shire Council has confirmed that the site is not flood affected. Sydney Water has also confirmed that the site is not flood affected.
- Council has advised that the flooding information noted in OEH's comments does not encompass the development area.

2.0 The Hills Shire Council

2.1 Planning Comments

2.1.1 Building Separation

The separations between the proposed buildings and the proposed buildings and existing buildings on the site is discussed in detail in Section 6.2.6 of the Environmental Assessment (EA) report submitted with the S75W application.

The building separations between the proposed Stage 3 buildings and existing buildings on the site comply with the recommended minimum separations as noted in the Apartment Design Guideline (ADG) up to the 4th storey of the buildings.

It is acknowledged that the building separations for the 5th storey of the proposed buildings do not comply with the minimum separations recommended in the ADG however there are a number of mitigating measures which ensure that privacy and solar access for existing and future residents is not impacted as a result of the reduced separation. Further, it is considered that the non-compliance with the recommended building separations for the 5th storey of the buildings is justified for the following reasons:

- Due to the topography of the site, there is a 2m height variation between the Cluster 2 and Cluster 3 buildings and between the Cluster 3 and Cluster 4 buildings. This means that the 5th storey of the higher building is more than half a level higher than the lower building. This is demonstrated in Figure 5 on page 21 of the EA report and in the architectural plan sections submitted with the S75W application.
- The buildings have been positioned to optimise view corridors through to the CPW from the majority of apartments, particularly those facing the inner courtyards.
- The buildings have been positioned having regard to the setback alignments other buildings addressing Free Settlers Drive and Rutherford Avenue, respectively. For instance, Cluster 2 adopts the setback of Cluster 1 (to the south), and then steps back further from the street to align more closely with the setback of the RACF building.
- As demonstrated on Drawing No. DA 215, the building separations for the upper level of the Cluster 3 and 4 buildings range from 12m up to 18.9m. The separations between the upper levels of the Cluster 2 and 3 buildings range from 12.8m to 19.9m. Therefore, there are instances where the building separations exceed the ADG minimum recommended separations.
- As demonstrated in Drawing No. DA 102 (Site Plan), the approved building footprints of the Cluster 2, 3 and 4 were such that, due to the U-shaped footprint, there was the potential for significant privacy issues between apartments within each building cluster.

The revised footprint will result in improvements in terms of privacy outcomes when compared to the approved development.

- The separation between the upper levels of Cluster 4 and the existing Cluster 5 building is 17.6m which is 5.6m more than the minimum 12m separation for the first 4 storeys and only 400mm less than the minimum separation for the upper storey. The larger than recommended separation between these two buildings has resulted in a better outcome in terms of solar access for residents in Cluster 5, compared to the approved building layout for the site, as demonstrated in the comparative shadow diagrams submitted with the application.
- Similarly, the separation between the Cluster 1 building and Cluster 2 building exceeds the recommended minimum of 12m for the first 4 storeys.
- For the 5th storey of the Cluster 2 building, although there are habitable room windows on the southern elevation of the Cluster 2 building, the balconies for the apartments on the southern side of the Cluster 2 building are oriented to the east and west. If required, privacy screens could be fitted to the south facing windows of apartments within Cluster 2.
- The separations between the buildings in Stage 3 and the existing development is sufficiently wide enough to provide dense landscaping, including tree planting, as demonstrated in the Landscape Concept Plan at Appendix 3 to the EA report.
- The building separations will ensure that the development results in an appropriate urban design outcome.
- The building footprints and separations have been largely determined by the objective of retaining existing trees (where possible) and providing larger deep soil areas to supplement the landscaping associated with enhancement of the Cumberland Plain Woodland EEC.

2.1.2 Building Height

As demonstrated in the comparative shadow diagrams at Appendix 2 to the EA report, the additional building height proposed for the Cluster 2, 3 and 4 buildings will not compromise solar access to the Cumberland Plain Woodland area or to residents within Clusters 1 and 5.

2.1.3 Solar Access

As discussed above, notwithstanding the additional height, whilst there will be a change in solar access available to some apartments within Clusters 1 and 5, overall there will be a slight improvement in terms of overshadowing of these buildings.

The comparative shadow diagrams at Appendix 2 to the EA also demonstrate that, overall, there will be a net improvement in terms of solar access to the lower level apartments within Clusters 2, 3 and 4 as a result of the shadow cast by the RACF building. Solar access to the balcony areas of apartments in these buildings will also be improved due to the east-west positioning of the balconies.

2.1.4 Acoustic Assessment

Noise transfer from the onsite waste storage and collection area can be managed by the installation of appropriate noise mitigation measures and materials during construction.

It is recommended that a condition to this effect be included on any approval issued in relation to this modification application.

2.1.5 Car Parking

The design of the basement car parking spaces is discussed in detail in Section 7.2.2 of the EA report.

2.1.6 S94E Direction

The Section 94E Direction issued by the then Minister for Planning on 14 September 2007, notes that development consents to carry out development for the purposes of any form of seniors housing as defined in State Environmental Planning Policy (SEPP) (Seniors Living) 2004, is not subject to a condition requiring payment of contributions under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Although the name of the SEPP has changed (now known as State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, and the references to the sections in the EP&A Act (to Section 94) have changed (as a result of the recent amendments to the Act that were published on 1 March 2018), the intent of the direction remains unchanged; that development of seniors housing undertaken by a social housing provider is not subject to a contribution towards public amenities or public services. BaptistCare is a registered social housing provider.

Furthermore, this application is a modification to a development which has already been approved. The appropriate time for Council to challenge whether the S94E Direction applied, was during the Department's assessment of the original application.

Notwithstanding, it is considered that the Direction does apply to the development and BaptistCare.

2.1.7 Population Density

The potential population density of the site as a result of this modification is discussed in Section 3.10 of Table 3 in the EA report.

Even based on Council's assessment, the density as a result of all development on the site, including this modification, will still be less than that which might be achieved if a standard residential development was undertaken on the site.

2.2 Engineering Comments

2.2.1 Conditions

No objection is raised to the imposition of conditions requiring:

- The basement access to be protected from flooding (as outlined in the stormwater report).
- All runoff being directed to the existing sag point in Free Settlers Drive (rather than being directed to Memorial Avenue).

2.2.2 Car Park Design

Drawing No. DA 308/P7 identifies that the minimum headroom clearance along the ramp from Free Settlers Drive to the waste collection area is 4.5m which has been assessed as being adequate clearance for a heavy rigid vehicle.

With respect to the blind aisle within the basement car park for Cluster 4, these spaces will be allocated spaces for apartments. Therefore, there is no need to provide a turning bay in this instance.

Access arrangements to the services area will be made with the waste collection provider. Appropriate signage will be provided at the Free Settlers Drive access advising that this access is for service vehicles only.

Access to the basement car park from Rutherford Avenue will be via a swipe card or intercom.

The site is owned and managed by BaptistCare. In the event of a mechanical breakdown of the security shutter, onsite management will have the ability to operate the screen manually.

With respect to the location of space no. 28, we assume that Council is referring to space no. 28 in Cluster 2 (refer Drawing No. DA217/A). We note that the distance to the lift is in the order of 25m in a straight line of travel which is not considered excessive.

2.2.3 Section 88B Instrument

It is acknowledged that the Section 88B instrument registered on the title of the property will need to be updated to reflect the changes to the boundary of the managed open space park.

2.3 Resource Recovery Comments

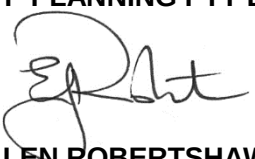
Further discussions have been undertaken with Council regarding the use of a turntable in order to facilitate manoeuvring of vehicles (and to allow service vehicles to enter and leave the site in a forward direction) and they have confirmed that no objection to the turntable solution is raised. An email to this effect is included at **Attachment 3** to this letter.

3.0 Conclusion

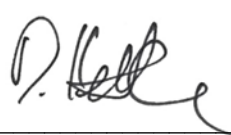
We trust the above responses to the matters raised in the submissions received during the exhibition period will assist DPE in their assessment of this application and look forward to receiving the determination in due course.

Should you have any questions regarding the application or this response, please do not hesitate to contact Ellen Robertshaw of DFP on 9980 6933.

Yours faithfully
DFP PLANNING PTY LTD


ELLEN ROBERTSHAW
PARTNER

erobertshaw@dfpplanning.com.au

Reviewed:  _____

Attachments:

1. Response to OEH submission regarding ecological matters
2. Response to OEH submission regarding flooding and stormwater management
3. Email correspondence with The Hills Shire Council regarding waste management