

16 July 2019

DEPARTMENT OF PLANNING AND ENVIRONMENT
GPO Box 39
SYDNEY NSW 2001

Attention : Karen Harragon – Social & Other Infrastructure Assessments

Dear Karen

Subject: SSD-9683 - Change Of Use - Educational Establishment
Lots 14 & 15 Sec L DP 8993
7 James Street, ARGENTON NSW 2284

Thank you for the opportunity to comment on the proposed change of use to an Educational Establishment on the above property. Council has reviewed the Environmental Impact Statement (EIS) and the following comments are provided for your consideration:

Legislative context

The site is zoned R2 Low Density Residential in Lake Macquarie Local Environmental Plan 2014. It is noted that proposal is facilitated by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP 2017), as Educational Establishments are prohibited in R2 zone. Therefore, in providing these comments, the proposal has been assessed against the design principles for schools in schedule 4 of SEPP 2017 and relevant controls in Lake Macquarie Development Control Plan (DCP) 2014.

Building works are not included in the proposal

The EIS states that the proposal does not involve building works; however, the Floor Plan prepared by Den-Ad Design & Co in support of the development has a different internal layout to the approved plan for the existing community facility under DA 2456/2007.

Changes to the configuration of a room, whether by removal of an existing wall, partition or other means are not exempt from development approval under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Clarification is required as to why building modification is not included in the proposal. If any unauthorised works exist on the site, they will need to be formalised via a building certificate prior to the use of the premises.

Unauthorised use of the premises

From a site inspection undertaken on 2 July 2019 and information received from the community, it is understood that the property is currently being used by Alesco Senior College (Alesco). Proponents are advised to refrain from using the premises until such time a

decision is made on this development. Unauthorised use of a site is subject to penalties under schedule 5 of Environmental Planning and Assessment Regulation 2000.

Suitability of the site for the proposed use

It is important to consider the physical, social and environmental context of the site while choosing the location for a school. The subject site is located in a residential area in close proximity to the rail corridor. There is minimum separation between the building on the site and the neighbouring dwellings, particularly the properties to the rear. It is to be noted that schools are generally provided with larger buffers to protect the amenity of surrounding uses. Accommodating up to 80 students on a relatively small site with an area of 1487m², compromises the quality of the development and establishes a conflicting land use within a sensitive residential area. The site is further constrained by its proximity to the rail corridor and lack of open spaces/ landscaped areas to enhance the learning environment. Council is therefore concerned about the site's suitability for adaptive reuse as an educational facility and its impact on the surrounding sensitive uses.

In view of the objectives of site analysis provided in Part 3, Section 2.1 of Lake Macquarie Development Control Plan DCP (2014), the development is not considered to be responsive to the site conditions and its relationship with the locality.

Non-compliance of the development with design principles in SEPP 2017

Whilst the provision of a school, particularly one that is aimed at young people who are unable to complete their education within a traditional setting, will have enormous social benefits, it is important to ensure that the school is designed to maximise these opportunities. A poor quality design of a school may expose the young people to health and safety risks, or may adversely affect their educational and developmental outcomes. This will lead to significant negative social outcomes for the young people, their families, and the wider community.

Therefore, it is essential that the design of the school is in accordance with the design quality principles outlined in Schedule 4 of the SEPP 2017.

Of particular concern is that the current proposal, as identified in the Environmental Impact Assessment, appears to take the view that these principles do not apply as the proposal is for a change of use of an existing building. For it states,

“This schedule is discussed below however in considering the developments [sic] compliance with the design criteria it is important to take into account that the school is to occupy an existing building

Many of these principles appear to make the assumption that a development for a new school would not take the form of a change of use of an existing premises.

The existing nature of the development needs to be considered when weighing up the merit of the proposal”

However, whether the proposal is for a new building or a change of use of an existing building, it is still essential that the design quality principles are met in order to maximise learning opportunities and ensure that the building is suitable for use as an educational establishment.”

Further to the above, a detailed assessment of the proposed change of use against the design quality principles for schools provided in Schedule 4 of SEPP 2017 has revealed that the development does not meet many of these principles, as discussed below:

Principle 1 – context, built form and landscape

Due to its size limitation, there is no opportunity to enhance the spatial quality of the building for use as an educational facility. Lack of adequate separation from neighbouring dwellings is likely to result in land use conflicts. The amenity of the site is further diminished by its proximity to the railway line. As a result, the proposed change of use to an Education Facility is not considered to be responsive to the site's setting or landscape.

Furthermore, the landscape is not integrated into the design to enhance on-site amenity, contribute to the streetscape (which is a car park beyond a fence) and mitigate negative impacts on neighbouring sites (which is not addressed by the design).

Principle 3 – accessible and inclusive

No detail has been provided to demonstrate that the building meets accessibility standards for people with a disability.

The building does not present as welcoming, with the main entrance being at the side of the building, down a walkway between a carport and the building. There is also no information regarding opportunities for the facilities to be shared with the community and cater for activities outside of school hours.

Principle 4 – health and safety

The proposal is deficient in outdoor space for the students. There are two small outdoor areas, totalling just 210m². For the 80 students proposed, this is approximately 2.6m² per student. (It is important to note that under the National Quality Framework for child care centres, they are required to provide a minimum of 7m² of unencumbered space per child.)

The lack of outdoor space will mean that students will not have the opportunity to participate in physical and outdoor recreational activities, which will have a significant detrimental effect on their physical and mental health, as well as their learning outcomes.

Principle 5 – amenity

The proposal includes 4 classrooms, totalling approximately 240m². This equates to just 3m² of space per student (which is less than what the National Quality Framework for child care centres requires – 3.25m²). This does not facilitate appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces. There is also no information provided as to whether these classrooms have access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas (which will reduce the amount of space provided even more).

Furthermore, as identified above, the outdoor space is inadequate to facilitate outdoor learning or encourage outdoor play/recreation.

Principle 6 – whole of life, flexible and adaptive

No information has been provided to demonstrate that the design delivers high environmental performance and that it is easily adaptable to suit a wide range of learning activities and will maximise multi-use facilities.

The above assessment provided by Council's Social Planner clearly indicates the site's inability to serve as an educational establishment. In particular, the lack of outdoor space (and to a lesser extent, the indoor space) will have a significant detrimental effect on the health of the students and their learning outcomes. This will lead to significant negative social outcomes for the young people, their families, and the wider community.

Contamination

The Preliminary Contaminated Site Investigation, prepared by Forum Consulting, dated 6 March 2019 has been reviewed and the following comments have been provided:

Limited lead in soil testing has been completed from four (4) separate locations as part of the investigation. Elevated levels (1500ppm) of lead in soil was identified at location TP1 A, which exceeded the, *National Environment Protection (Assessment of Site Contamination) Measure 1999 as amended April 2013 (NEPM)*, health Investigation Levels (HIL) 'A' & 'B'. The report indicates the cause of elevated levels is from the presence of black slag within mixed fill. Other samples from the site were below NEPM levels.

Remediation / management of the identified contamination is required via the preparation of a Remedial Action Plan (RAP), by a suitably qualified Contaminated Land Consultant.

The extent of elevated contamination has not been demonstrated to be clearly delineated. It is recommended that further detailed investigation be considered as part of the development of any remedial action plan (RAP), to ensure appropriate remedial strategies are provided to locations containing elevated contamination ("hot spot"). Final development and landscape plans will be required for the development of the RAP.

Section fourteen (14) of the report references possible remedial options. The first two points, take no action and Lead Abatement Strategy - are not considered suitable site remedial options, to render the site as remediated for the purpose of addressing SEPP 55 or 'National Environment Protection (Assessment of Site Contamination) Measure 1999 as amended April 2013', for the proposed use.

The preparation of a Long Term Environmental Management Plan (EMP) will be required for any onsite encapsulation or management of contaminated soil, at the completion of works.

A land use suitability statement should also be included within the report, which clearly states whether the land is suitable or can be made suitable with remediation strategies for the proposed use, in accordance with the NSW Environmental Protection Authority, Guidelines for Consultants reporting on Contaminated Sites.

Following site remediation, a suitably qualified and experienced Contaminated Land Consultant should provide a Validation Report in accordance with the *Guidelines for Consultants Reporting on Contaminated Sites* (NSW Office of Environment and Heritage 2011). The validation report should include a clear statement the consultant considers the site to be suitable for the approved use.

Noise

No acoustic report has been provided. An acoustic assessment prepared by a suitably qualified consultant in accordance with the Noise Policy for Industry 2017 by NSW Environmental Protection Authority, is required to determine the potential impact of the development on adjoining residential premises.

The acoustic assessment should also address the potential noise impact from the rail corridor to the development particularly to ensure the internal acoustic comfort levels of the building shall comply with the following:

- NSW Department of Planning Development Near Rail Corridors and Busy Roads – Interim Guidelines
- AS 2107 (Recommended design sound levels and reverberation times for building interiors)

Traffic Generation from the development

Vehicles accessing the site will use the intersection of Lake Road and Victoria Street. This intersection is under the care and control of Roads and Maritime Services (RMS). It is noted that the intersection only has a filtered right turn, in a shared traffic lane, for vehicles entering Victoria Street from the west. It is recommended to refer this development application to RMS for advice on any intersection upgrades requirements.

Furthermore, the EIS states that students are not permitted to drive to the site, however there are no details as to how this will be implemented and managed.

Pedestrians and Cyclists

From the information provided in the EIS, it would appear that that majority of students will utilise public transport. To facilitate connection from the transport stops on Lake Road, a 1.2m wide concrete footpath is required from the site, along the northern side of James Street and the eastern side of Victoria Street. These footpaths should connect to the existing footpath, which currently terminates at Robert Street. Kerb ramps are to be provided at all road-crossing points of the footpath.

Accessibility

The building should comply with Access to Premises Standards 2010. Additionally, a Disability Access Audit is required in accordance with Part 3, section 4.12 of DCP 2014, to demonstrate compliance with relevant standards and regulations to ensure non-discriminatory access and use. The audit needs to be prepared by an accredited access consultant and cover:

- Dimensions of accessible car parking bay and path of travel to link to building entry
- Gradients/width of path of travel to entry
- Measurements of doorways and circulation space around doors
- Dimensions of accessible and ambulant toilet facilities

Landscape Design

No detailed site-wide landscape strategy has been provided as per the NSW Government Planning Secretary's Environmental Assessment Requirements. The area allocated for landscape planting is approximately 10.6% of the site. Given the importance of external learning spaces to wellbeing and outlook from the school building, a Landscape Plan addressing the design quality principles in SEPP 2017 is required to demonstrate how the landscaping compliments the site as a learning environment. In this regard, it is noted that the site has limited capability to accommodate adequate landscaping.

Both outdoor spaces are bordered by 1800mm Colorbond fence which is a harsh and unsympathetic boundary definition. Minimum 1m wide planting areas are recommended for the establishment of soft landscape including trees that provide amenity, outlook, shade and create an attractive and pleasant learning environment.

The location of the existing tree to the rear is to be accurately identified and the landscape design should cater for the long-term viability of this tree.

It appears that the proposed disabled car park could be located in line with existing car park bays, allowing further space to be recovered for outdoor learning space.

Fire Safety Audit

A current Annual Fire Safety Statement will be required for the proposed change of use.

Stormwater Management

The stormwater from the site drains into a pit in the northern corner. Two of the outlets from this pit are directed towards the adjoining property to the rear (140 Montgomery St). It is recommended that legal rights to drain over this property be demonstrated.

Social Impact Assessment

Part 3, Section 2.17 of DCP 2014 requires a Social Impact Assessment(SIA) to be prepared in accordance with Council's SIA guidelines for Educational Establishments. For reasons mentioned previously, the proposal is considered to be in conflict with the locality and as such, a SIA is required to identify the impacts of the development on the community.

Safety and Security

There is limited information in the EIS to demonstrate how the development complies with the principles of Crime Prevention Through Environmental Design (CPTED). Section 4.13 in Part 3 of the DCP warrants a Crime Risk Assessment for Educational Establishments. Apart from the safety and security of the site, active surveillance and measures to minimise vandalism on adjoining residential properties should be duly considered in the assessment.

Council commends Alesco's initiative to empower youth who are not capable of attending mainstream schooling. However, in reviewing the proposal, it is noted that site's attributes and setting are not conducive to the establishment of a quality learning environment. Unfortunately, in this instance, Council is not convinced that the requirements outlined in this letter can be satisfactorily addressed by the development and therefore the proposal is not supported.

Should you require further information, please contact the undersigned on 4921 0175 or by e-mail on lsebastian@lakemac.nsw.gov.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Leena', with a horizontal line underneath.

Leena Sebastian
Development Planner
Development Assessment and Certification