

2.1.1. DEV - 28/11/2022 - DA256/21- Three Tree Lodge Alterations & Addition 2A Col Drewe Drive South Bowenfels - Request for Waiving of Contributions

Prepared by	Paul Cashel – Development Manager Matthew Trapp - Executive Manager - Water & Wastewater
Department	Development
Authorised by	Director of People & Services
Property Details	Lot 2 DP1068159, 2A Col Drewe Drive South Bowenfels
Property Owner	Three Tree Lodge Lithgow Limited
Applicant	Three Tree Lodge Lithgow Limited

Reference

Min. No. 22-205 Ordinary Meeting of 31 October 2022. Resolution: Deferred.

Summary

To consider a request from an applicant for development consent which seeks to waive the associated developer contributions, headworks fees and application fees for Development Application DA256/21 being for additions to Three Tree Lodge Aged Care Facility at Lot 2 DP1068159, 2A Col Drewe Drive South Bowenfels.

The determination report for DA256/21 is a separate recommendation report to the Council.

This report identifies that there is no current adopted Council policy basis for waiver, and nor has a legal or merits-based case been made by the applicant. The subject fees and contributions are publicly known (to applicants) and are consistently applied with all development applications to ensure an equitable approach for all. The fees have the effect of the beneficiaries of the various services paying a reasonable fee toward the cost of delivering those services (user pays). Waiving the fees will shift these costs from the applicant onto the general public.

Commentary

Council is in receipt of Development Application DA256/21 for additions to the residential aged care facility on land known as Lot 2 DP 1068159, 2A Col Drewe Drive, Bowenfels. The development includes alterations and additions that increases the overall use of the aged care facility by five (5) new rooms and an additional seven (7) new beds (eight (8) new / one (1) removed/demolished), being a total of 73 beds for the facility.

As part of the development assessment (and any consent) the following contributions and fees are applicable:

- **Development Application Fees (Council's Fees & Charges 2021/2022)**
 Archival Fee: \$57
 Concurrence Fee: \$140
 DA Fee: \$4062.2
 Integrated Development Fee: \$140
 Fees paid for DA256/21 = \$4399.20
- **Section 7.12 (former94A) ((Section 7.12) Development Contributions Plan 2015)** is applicable to the development having an estimated cost of development of \$2,004,471.70 with a 1% levy applicable. A contribution of \$20,044.71 is applicable.

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- **Water & Wastewater Development Servicing Plan Contributions (Council's DSP & Fees & Charges 2021/2022)**
 Charge applicable for intensification of use – category Aged Care Facility:
 Sewer- 5(beds) x discount 0.75(ET) x \$15,308.81 (charge) = \$57,408.05
 Water- 5(beds) x discount 0.5(ET) x \$3,146.34 = \$7,865.85
 Total charges = \$65,273.90

Three Tree Lodge Lithgow Limited have requested that the above contributions and fees be waived in full, with their arguments for in their submission attached to this report. A summary of the justification is provided as below with management comments provided:

Applicant's Justification	Assessment comments
The previous version of the Section 94A Development Contributions Plan applied an exemption to privately funded community infrastructure.	Council's 94A Plan was updated in 2015. This included an amendment to Clause 7 to accord with the Ministerial Directions issued under (then) S94E. The Council adopted the changes which saw the removal of privately funded community infrastructure. Assessment of this application can only be undertaken under the current Section 94A Development Contributions Plan which does not provide an exemption for community development.
The development will provide significant community benefit with high demand for community residential aged care in the community.	Noted. The fact that an aged care facility has some demand for its services is not a matter for consideration when applying S94A, or a request for waiving of the contribution.
Council has required the applicant to provide new potable water and fire hydrant facilities to be separated from the hospital which is a significant cost.	This requirement was applied to the property under a previous development consent. The applicant did not challenge that condition at the time. It is reasonable for council to require compliance with approvals that have been issued. It is not a requirement as part of this proposal.
An increase of 7 additional beds would not place significant burden on ratepayers.	Addition of beds and floor space under Council's adopted policies is calculated as an increase in loading on Council's services. The calculations relating to this development application are in accordance with the contribution plans.
Three Tree Lodge is a community based (not-for-profit) organisation that is also a registered charity governed by a voluntary community-based Board and provides employment to more than 80 local staff.	Noted. There are no exemptions that are applicable for non-for-profit developments in relation to contributions. The S94A Plan considers the increase in employment numbers to generate a demand on Council's infrastructure and facilities.
Council has previously waived the entire contributions for similar development proposals.	Waiving of the fees or precedents of such (under a former policy or through a decision of the elected Council at that time) is not a consideration for development assessment in relation to the processing of an application and its contributions. This is a consideration that only the elected Council can apply.
Three Tree Lodge has received grant funding for a significant portion of the development and	Increase in construction costs is not a consideration for development assessment

<p>will need to commit further significant funds for completion of the proposed infrastructure. Recent updates on construction costs since advice of the successful grant application have risen 60%, causing further pressure on costs.</p>	<p>and changes to calculations of contributions.</p>
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Development Application lodgement & assessment Fees - Council's Fees & Charges 2021/2022

The Development Application Fees and Charges were adopted by Council for 2021/2022 and apply as per the *Environmental Planning & Assessment Act 1979 & Environmental Planning & Assessment Regulation 2021*. Therefore, the Development Application fees paid for this proposal have been correctly applied.

All Development Application (DA) assessment fees are, on average for a year, subsidised by general revenue, i.e. the fees collected do not cover the full cost for service. The processing of this application has not been a simple or quick assessment and has, for example, included protracted negotiations with the NSW RFS and liaison with Council's Property & Legal Services Officer (for the use of Council's land). This DA also required reporting to the Council which adds to processing times/labour costs.

The Council is currently only waiving DA fees for 2019/2020 bushfire effected properties.

Section 94A (Section 7.12) Development Contributions Plan 2015

The Section 94A Plan specifies developments that are exempt from payment of the contributions under Clause 7 as below:

- a) *Development by or on behalf of Lithgow City Council;*
- b) *Development by or on behalf of NSW Government for public infrastructure such as hospitals, police stations, fire stations, education facilities and public transport infrastructure;*
- c) *Development that involves rebuilding or repair after natural disasters such as flooding or bushfires;*
- d) *Development involving alterations and additions to an existing single dwelling;*
- e) *Development involving the demolition of an existing dwelling;*
- f) *Development involving the rebuilding of an existing dwelling;*
- g) *An application for an industrial, retail or commercial development where there is no intensification of use or increase in floor space of an existing building.*

The proposed development does not meet the above exemption/s therefore Section 94A Contributions are applicable. The S.7.12 Development Contributions Plan does not provide the flexibility for Council on a case-by-case basis to reduce or exempt development from the plan. The Three Tree Lodge development is not exempt unless it is on behalf of the NSW Government.

Further, 94A Plans do not rely on the application of a direct nexus between the demands of the development (generally an increase in population and/or staff) and the community infrastructure required to support it. That is reserved for Section 7.11 (former S94 Plans) or VPAs. The applicant has indicated that the drafting of a VPA is expensive, and it is desirable to be avoided. Therefore, a Planning Agreement has not been volunteered. Council staff agree that the administration involved in the drafting, advertising, signing and lodging of a VPA of such relatively small magnitude outweighs the expense of the effort of the exercise.

Water & Wastewater Development Servicing Plan Contributions

The Development Servicing Plan (DSP) requires contributions for water & sewer for the intensification of development of 'Aged Care Facilities' and has been applied as per the Plan.

Council can consider levying lower charges depending on social and environmental factors which has been assessed by Council's Executive Manager - Water & Wastewater with comments provided below:

- The development will increase the load onto the water and sewerage system in the South Bowenfels catchment area;
- The charges have been calculated as per the Council adopted Development Servicing Plan for Water and Wastewater;
- These charges are applied for both future capital works that are required to service current and future development in the area; and
- Not levying charges on development creates a cross-subsidisation of fees to service the development onto water and wastewater customers.

The contributions as set by the DSP should be applied to this proposal.

The administration can however liaise with the developer to create a 'payment plan' to enable the timely payment of these fees. The payment of fees can be subject to the Occupation Certificate being issued or with conditions of payment to be received prior to a specified date.

Policy Implications

As stated above.

Financial Implications

- Budget approved - \$75,000
- Cost centre – 800104 - 63301 Consultants – Development Applications. A budget exists for planning consultants to assist with staff shortages and peer reviews, as required.
- Expended to date – for DA256/21 - \$1,320.00 for a draft Assessment Report only.
- Future potential impact – Nil for this DA. Currently 2 other DAs are with a consultant to draft the assessment reports for a similar cost, approximately - \$2,640.

The total contributions and headworks fees sought through this application are \$85,318.61 being \$20,044.71 under the Section 94A Development Contributions Plan 2015 and \$65,273.90 under the Water & Wastewater Development Servicing Plan. Council will surrender the contributions towards services and facilities if the contributions are waived as part of this Development Application and will instead need to draw those funds from general revenue and be subsidised by other customers.

The Development Application fees applicable to DA256/21 Alterations & Additions have been paid at a total of \$4399.20 as per Council's Fees & Charges 2021/2022. Council will surrender these monies if the fees and charges are waived as part of this Development Application and will instead need to draw those funds (mainly being for staff salaries and administration) from general revenue. These fees are typically included in the overall development/construction costs associated for any project and application for grant funding.

Legal and Risk Management Implications

Nil.

Attachments

1. Contributions Waiver Request - Three Tree Lodge Lithgow Limited [2.1.1.1 - 6 pages]

Recommendation

THAT

1. That the Council decline the request by Three Tree Lodge Lithgow Limited to waive contributions and fees applicable under DA256/22, as outlined in this Report, for Three Tree Lodge - alterations and additions.



THREE TREE LODGE
AGED CARE SERVICE

27 October 2022

Mayor and Councillors
Lithgow City Council
PO Box 19
180 Mort Street
LITHGOW NSW 2790

Dear Mayor and Councillors,

**Re: Application for Exemption from Any Fees/Charges Payable under
Development Application No.256/2021 including:
Section 7.12 (former S94A) or Water/Sewer (Section 64 Headworks) levies
Redevelopment for Extended Residential Aged Care Services
Three Tree Lodge Lithgow Limited, 2A Col Drewe Drive, Bowenfels**

Three Tree Lodge Lithgow Limited (Three Tree Lodge) lodged a Development Application with Lithgow City Council on Monday 15 November 2021 for the redevelopment (alterations and additions) to the existing residential aged care facility adjacent to Lithgow Hospital in Col Drewe Drive. This includes a new extension to the 'Wattle Building'.

Three Tree Lodge wishes to apply for an exemption to any contributions/levies/fees payable for the above development including, but not limited to:

- Section 7.12 Contributions levy as set out in the Lithgow City Council (LCC) *Section 94A Development Contributions Plan*;
- Section 64 of the *Local Government Act 1993* or Council's *Development Servicing Plans for Water Supply and Sewerage 2018* ('DSP2018') or the *Water Management Act 2000*;
- Development Application Fees payable under Council's *Fees and Charges 2021/2022*.

Contributions Plan

Under the former 2012 Contributions Plan - *Section C7 – Are there any exemption to the levy?* - an exemption could be sought where it is:

- (k) An application for privately funded community infrastructure, such as education facilities, university, private hospital etc., or
- (n) Any other development for which Council considers an exemption is warranted, where the decision is made by formal resolution of Council at an Ordinary Council meeting.

Unfortunately, subsections (k) and (n) appear to have been removed from the 2015 Contributions Plan. However, we suggest that Council may still have a discretion to waive contributions where the proposed development provides a significant community benefit, such as high-demand community residential aged care.

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The Applicant would prefer not to have to expend additional funds pursuing a Voluntary Planning Agreement (VPA) or site-specific Contributions Plan as a means to reach this conclusion.

DSP2018 Headworks Charges

Council has required that the Applicant provide a new potable water and fire hydrant to the entire facility that separates it from the hospital. This separation did not occur at the time the land was subdivided as is the common practice so it has now fallen to the current provider to pay for this significantly and expensive upgrade.

Under DSP2018 Section 8.6 – Levying Lower Charges – it states that Council ‘*may consider financial, social and environmental factors to determine a level of developer charges that is balanced, fair and meet Council’s objectives*’.

We suggest that as per previous approvals, that the Headworks charges should be waived in full for the provision of essential aged care beds (7 additional) without placing a significant burden on existing rate-payers.

Council may apply an exemption to water supply and sewerage special rates under *Section 558 of the Local Government Act 1993* for public hospitals and public charities but it is unclear if Council’s Policy 8.10 overrules this.

In summary, the proposed development:

- a) Is the minor demolition of the existing Wattle Wing (unit) (removal of one bed/room) to allow for a new construction that will create an additional five (5) rooms to facilitate an additional seven (7) new residential aged care places and expanded communal spaces including a domestic style kitchenette and dining area and enhanced indoor and outdoor living spaces (see details below);
- b) Is the creation of an additional two (2) parking spaces, including one (1) which is accessible;
- c) Is separation of potable water supply and fire hydrant system from the Lithgow Hospital system and new connection to Col Drewe Drive;
- d) Is an important addition to existing community health and aged care infrastructure in the Region;
- e) Builds on the existing health, aged care, and education precinct to make Lithgow a premier example of strategic industry co-operation and synergy;
- f) Meets a growing demand for aged care services for an ageing population. It allows more people to remain in their local community (‘age-in-place’) whilst providing a high standard of quality care and amenity for people living with dementia and those who are financially disadvantaged and new models to adapt to changing needs and opportunities. It is a fundamental community service that makes a significant contribution to the viability of the local regional community;

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- g) Creates new employment positions plus increased demand for other services at the facility and multiplier effects for local services and employment;
- h) Is construction 'ready' i.e., it has BOTH approved bed licences for the additional seven (7) places PLUS approved grant funding for construction of the new building;
- i) Recognises that TTL is a community based (not-for-profit) organisation that is also a registered charity. The organisation is governed by a voluntary community-based Board and provides employment to more than 80 local staff;
- j) Is consistent with the broader strategic plan by Three Tree Lodge and the master site plan aimed at the upgrade and redevelopment of the site to maximise local services and adapt to changing expectations and needs in the aged care sector;
- k) Council has previously recognised the important role and the benefits that aged care providers provide to the local community and have previously waived the entire contributions for similar development proposals.

Overview of Proposed Development



Proposed view of south elevation to new building (Source: IDG Architectural Plans).

a) The Wattle Wing (unit) Extension

The proposal provides the potential to create an additional seven (7) places as part Wattle Wing increasing the total to 17 places in this Wing and an overall increase in approved places from 66 (62 constructed) to 73 approved places. It is proposed to provide two (2) new single bedrooms and three (3) new shared (two single beds) rooms, providing additional options for couples or those seeking accommodation who are financially or socially disadvantaged whilst maintaining amenity and safety. The proposed building will also create additional indoor and outdoor communal spaces relieving pressure in other Wings on the site therefore enhancing amenities for both residents and their visitors.

The increased number of approved places will enhance the overall efficiency and sustainability of the facility whilst also adding additional services and communal spaces.

The proposed development will also provide for the separation of potable water supply and hydrant water supply from the Lithgow Hospital system and create two (2) additional parking spaces near the main entrance, including one that is accessible.

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Additional Benefits to the Community

In addition to the above benefits the proposed extension will create additional direct employment in the new building. Indirectly, there will also be additional demand for professional medical, pharmaceutical, and care staff who visit the facility and provide local services and other local services and personal care needs. Overall, the employment and subsequent economic multiplier effects will be a significant contributor to the local economy.

Three Tree Lodge is also strategically located to take advantage of its proximity and links with the Lithgow Health Service, Bowenfels Medical Centre adjacent in terms of emergency health care and the adjacent TreeView Estates (retirement village). The facility also has links with Notre Dame University. In this way a key strategic aged care, seniors living, health and education cluster is being reinforced that creates an excellent example of developing industry synergies to other regions.

Grant Funding & Bed Licences

Three Tree Lodge has approved grant funding from the Australian Government - Department of Social Services for the provision of the significant core of the proposed application. This Grant was lodged in early 2021 as part of the '*Aged Care Approval Round 2020*' and subsequently approved to substantially contribute to the construction of the proposed extension of Wattle Wing and construction of the existing approved Melaleuca Wing extension (Stage 2) (DA200/16). The grant also saw the allocation of the additional seven (7) residential places. While the Grant will provide a significant proportion of the funds for the construction of these projects, Three Tree Lodge will be required to make a significant contribution.

Background to Three Tree Lodge

Three Tree Lodge is a community based (not-for-profit) organisation that is also a registered charity. The organisation is governed by a voluntary community-based Board and provides employment to more than 80 local staff. The service has grown from its initial inception to presently care for 62 residents.

Three Tree Lodge is committed to the ongoing provision of innovative, flexible, high quality care and services to ensure older people living in the Lithgow region can remain connected to family and their community through the provision of local services that are tailored to meet the individual needs of each person. In addition, the proposed expanded Three Tree Lodge facility will be a significant piece of community infrastructure, will support the sustainable development of our local government area and meet the growing demand for aged care services.

While Three Tree Lodge has received grant funding for a significant proportion of the development, it will need to commit significant sums of money for the completion of the proposed infrastructure. Three Tree Lodge is also acutely aware of the escalating construction costs since advice of the successful grant application. Recent updates to the original quotations that formed the basis of the grant application have risen by over 60%. This will place a significant additional pressure on project costs for the organisation and

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therefore as a small community based not-for-profit aged care provider Three Tree Lodge is pursuing all avenues to reduce the total costs associated with the project, through waiver and/or reduction of fees and charges.

On behalf of Three Tree Lodge Board of Directors we look forward to a positive response to this submission.

Yours sincerely



Garry Brown

Chair, Three Tree Lodge Board of Directors

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