

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday
15 February 2016

**PE1 – Application to Modify Development Consent No.
010.2003.00050952.008 – Menangle Retirement Village**

EXECUTIVE SUMMARY

- This report provides an assessment of the application to modify conditions relating to shared pathways required to service the retirement village located at 153 Menangle Road, Menangle.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirement extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that the consent be modified to delete the requirement to construct a shared pathway along St James Avenue to the Menangle Anglican Church, along Riversford Close to Station Street and along Station Street from Menangle Store to the railway station.

REPORT

BACKGROUND

On 16 February 2004, Development Consent (I615-03) for Menangle Retirement Village was granted subject to conditions of consent. The development was originally approved in two stages being:

Stage 1: A maximum of 28 dwellings in the north-west corner of the site, including all site access and intersection works.

Stage 2: The remainder of the development, which may be completed through staged Construction Certificates provided that all road works, community facilities and services, landscaping and drainage works relevant to the particular Construction Certificate are completed prior to the occupation of the dwellings in that stage.

The original Consent (I615-03) requires the following:

“7.5 The applicant shall construct a 2.5m wide shared pathway along Menangle Road between the development site and Menangle Store prior to the occupation of any of the units in stage 1 of the development”.

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On 22 December, 2004, approval was granted for the modification of this condition to read as follows:

“7.5 The applicant shall construct a 2.0m wide shared pathway along Menangle Road between the development site and the Menangle Store prior to any occupation of any of the units in stage 1 of the development. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council’s Engineers. The footpath shall be of a decorative surface and the residents are to be consulted prior to construction”.

On 15 May, 2005, approval was granted for the further modification of this condition to read as follows:

“7.5 The applicant shall construct a 2.0m wide shared pathway along Menangle Road between the development site and the Menangle Store. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council’s Engineers. The footpath shall be of a decorative surface and the residents are to be consulted prior to construction.

The footpath shall be constructed from the development to Haines Place prior to the release of the Occupation Certificate for any of the dwellings in stage 1. The footpath shall be constructed from Haines Place to Menangle Store prior to the release of the Occupation Certificate for more than 50 dwellings or within 2 years of the date of the engineering Construction Certificate”.

It should be noted that the above condition incorrectly referred to Haines Place. The correct reference should have been St James Avenue.

On 19 June 2008, approval was granted for the further modification of this condition to read as follows:

“7.5 The applicant shall construct a 2.0 metre wide shared pathway along Menangle Road between the development site and the Menangle Store. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council’s Engineers. The footpath shall be a decorative surface and the residents are to be consulted prior to construction.

A shared pathway shall also be constructed from Menangle Road through to St James Avenue and along Riversford Close to Station Street via Lot 37 DP 830297 and Lot 5 DP 829190 prior to the release of Occupation Certificate for any of the dwellings in stage 1, or within 2 years of the date of the Engineering Construction Certificate, whichever is earlier”.

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Separate to the above requirements, on 22 December 2004, approval was also granted for the modification of Condition 7.6 to read as follows:

"7.6 The applicant shall construct a 2.0m wide footpath along Station Street from Menangle Store to the railway station prior to the occupation of any units in Stage 1. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council's Engineers. The residents are to be consulted prior to construction."

On 12 May 2005, approval was granted for the further modification of this condition to read as follows:

"7.6 The applicant shall construct a 2.0m wide footpath along Station Street from Menangle Store to the Railway Station prior to the occupation of any dwellings in Stage 2. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council's Engineers. The residents are to be consulted prior to construction."

CONSULTATION

The application was referred to the following internal and external parties and their comments are summarised below

Party		Comment
Internal	Development Engineer	Has recommended that conditions 7.5 and 7.6 be amended.
External	Heritage Advisor	No response at time of writing report.
External	NSW Rural Fire Service	Response received without any specific conditions imposed

1.1 DESCRIPTION OF SITE AND SURROUNDING AREA

The site is a regularly shaped allotment located on the eastern side of Menangle Road and has an area of 8.9 hectares. The sites eastern boundary adjoins the Great Southern Railway line, while the northern boundary adjoins the southern side of the Menangle residential area. The site is mostly developed as Housing for Seniors Living and does not contain any significant stands of vegetation.

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1.2 DESCRIPTION OF DEVELOPMENT

Consent is sought for the following modifications to Development Consent I615-03:

- **Amend condition 7.5 as modified on 19 June 2008 by deleting the second paragraph.**

The applicant is proposing to have this condition amended to read as follows:

“7.5 The applicant shall construct a 2.0 metre wide shared pathway along Menangle Road between the development site and the Menangle Store. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council’s Engineers. The footpath shall be a decorative surface and the residents are to be consulted prior to construction.”

Applicant’s Justification

The following summarise part of the Applicant’s justification for the requested modification:

- a) St James Avenue has a reasonable incline from west to east, as the road climbs the hill. Elderly people seeking to walk along St James Avenue must climb that part of the hill.
- b) The land at the top of the grade in St James Avenue (Lot 37 DP 830297 and Lot 5 DP 829190) features a concrete path, skirting around the edge of the hill on which the Menangle Anglican Church is located.
- c) That pathway terminates at a high point approximately 40-50m from Riversford Close. At that point the concrete pathway changes to a rough broken track, down a steep incline. The continuation of the Council constructed pathway in this area, to provide access suitable for older persons, would require significant works, and possibly a zigzag or switchback type construction.
- d) A pathway or access way which followed the route identified in the second paragraph of third modified Condition 7.5 would introduce a much less desirable path of travel for older people (including residents of the Village) than the level pathway previously constructed from the development site along Menangle Road to the Menangle Store and in all probability would never be used by the residents of the Village.

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▪ **Deletion of condition 7.6 as modified on 22 December 2004:**

Applicant's Justification

The following summarise part of the Applicant's justification for the requested modification:

- a) A concrete footpath has been constructed from the Village to the Menangle Store. This footpath provides solid all-weather access from the Village to the Menangle Store, and to the bus stop adjacent to the store, for residents who require that access.
- b) Busabout provides a regular bus service from Menangle to Macarthur Station and to Campbelltown, and also provides a regular return trip.
- c) In addition to the Busabout service highlighted above, Durham Green Retirement Village operates Nurses2U from within the Village. Nurses2U is offered to all residents of the Village and the residents have access to this service for transport to and from, but not limited to private appointments, medical appointments and shopping appointments. Nurses2U provides transport to any resident of the Village upon request.
- d) The total distance from the Village to the railway station is approximately 1.4km. Very few elderly people, including residents of the Village, would walk that distance, particularly when a bus service is available at the entrance to the Village.
- e) Menangle Railway Station does not comply with the relevant requirements for accessible access. The station is not an accessible station.

1.3 SECTION 79C ASSESSMENT

Section 96(1a) Assessment

- **Is the proposal substantially the same development as that previously approved?**

The approval was for a retirement village and this remains the case. The proposal is therefore considered to be substantially the same development and thus the proposal can be considered under Section 96(1a) of the Act.

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- **Is consultation with the Minister, public authority or other approval body required?**

No such consultation is required in respect of this application.

- **Relevant Environmental Planning Instruments**

The recommendations in this report are consistent with the requirement of the Wollondilly Local Environmental Plan 1991 (LEP 1991).

The original retirement village was assessed under the provisions of SEPP 5 – Housing for Older people and People with Disability. This SEPP has since been repealed and replaced by the Seniors Living SEPP. The transitional arrangements however require consideration of the provisions in SEPP 5.

Clause 12 of SEPP 5, requires residents to have access to retail and commercial services, community and recreational facilities and a general medical practitioner. Alternatively the development must be located within 400m of public transport that provides access to these services /facilities.

The above provision suggests that a pedestrian link is required to a public transport service. In terms of the public transport, Menangle benefits from a train and bus service. The only relevant local facilities include the Menangle Store, Catholic Church and Anglican Church.

- **Wollondilly Local Environmental Plan (WLEP) 1991**

It is considered that the proposed modifications recommended in this report are not contrary to the zone objectives in Council's planning instrument.

Assessment Officer's Comments

An inspection of the existing pathway located on the eastern side of the Anglican Church has confirmed that extension of the path along Riversford Close to Station Street is problematic given the change in grade. The requirement is not a viable or safe option for use by residents of the village and it is considered appropriate to modify condition 7.5 by deleting the second paragraph.

It is recommended that condition 7.5 be amended as follows:

"7.5 The applicant shall construct a 2.0 metre wide shared pathway along Menangle Road between the development site and the Menangle Store. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council's Engineers.

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The footpath shall be a decorative surface and the residents are to be consulted prior to construction."

With regard to Condition 7.6, it is recommended that any modification of the consent should reflect the requirements of SEPP 5. In this regard the retirement village should have access to relevant services and facilities or to public transport located within 400m of the site.

The site is located approximately 450m from the bus stop adjacent to Menangle Store. The developer has completed approximately 630m of shared pathway from the Retirement Village to Menangle Store.

The non-compliance in terms of the distance between the site and the bus stop is not considered significant. Construction of pathway to Menangle railway station is not required under SEPP 5. Accordingly it is recommended that condition 7.6 be deleted.

1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

See comments made elsewhere in this report.

1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

The proposed amendments, the subject of this application, will have no impact on the strategies of the Greater Macarthur Land Release Investigation.

1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS

Development Consent No. I615-03 was assessed with regard for the provision of Development Control Plan No. 41 - Menangle Village (DCP 41). It should be noted that DCP 41 does not apply to the site and only applies to the area marked as the Menangle Heritage Conservation Area. The site, however, adjoins the southern boundary of the Conservation Area and the retirement village was designed to continue the existing character of the Menangle Village in respect for its heritage significance.

The DCP 41 has no provisions for design and material requirements for construction of footpaths within the verge area in respect to being sympathetic to the heritage significance.

1.6 SUBMISSIONS

The application was advertised in accordance with the requirements of Wollondilly Development Control Plan 2011 and two (2) submissions were received and all of these submissions were against the application. The content of the submissions is considered below:

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Concern	Comment
Linkage for pedestrian access to Menangle Railway Station.	Proposed amendment to Condition 7.6 will achieve pedestrian linkage to Menangle Railway Station. Future subdivisions resulting from rezoning of the adjacent land will provide the final link involving works in Stevens Road.

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1.7 THE PUBLIC INTEREST

It is considered that the proposed modification is in the public interest subject to condition 7.6 being amended for the footpath to be extended along the northern side of Station Street and the condition not deleted.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council’s adopted budget or forward estimates.

ATTACHMENTS

No attachments.

RECOMMENDATION

That Council determine Application to Modify Development Consent No. 010.2003.00050952.008 to amend Development Consent I615-03 relating to shared pathways to service the Retirement Village at Lot 1 DP 270706 No. 153 Menangle Road be determined in the following manner:

Condition 7.5

The applicant shall construct a 2.0 metre wide shared pathway along Menangle Road between the development site and the Menangle Store. The width may be reduced for short sections to retain existing trees and hedges along the footpath but only with the written agreement of Council’s Engineers. The footpath shall be a decorative surface and the residents are to be consulted prior to construction.

Condition 7.6

Deleted.