

Joint Regional Planning Panel

(Sydney East Region)

Meeting Date: 11 June 2013

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| JRPP Number: | 2012SYE118 |
| DA Number: | DA-2013/164 |
| Local Government Area: | ROCKDALE |
| Proposed Development: | Demolition of existing structures and construction of an aged care facility with basement parking for 37 vehicles, associated facilities, boundary fencing and lot consolidation |
| Street Address: | 1-7 Eddystone Road & 17 Rye Avenue & 104-110 Stoney Creek Road Bexley |
| Applicant/Owner: | Martin Morris & Jones Pty Ltd / Kenna Investments Pty Ltd |
| Number of Submissions: | Five (5) submissions to the amended application. Fourteen (14) submissions and two(2) petitions containing 95 signatures to the original application |
| Recommendation: | Approval |
| Report by: | Marta Sadek – Senior Development Assessment Planner |

Precis

The proposal is for the demolition of existing structures, including an existing nursing home building at 3 Eddystone Road and the construction of an aged care facility comprising 145 beds, basement parking with capacity for 37 vehicles, and additional services within the basement such as therapy pool, staff facilities, laundry and kitchen. The proposal also includes landscaping works, boundary fencing and consolidation of lots.

The land is zoned R3 under Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as seniors housing and is permissible with development consent.

The proposal generally complies with the requirements in relevant State policies, including State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP). The proposal complies with the relevant controls under Rockdale Local Environmental Plan 2011 (RLEP 2011) and Rockdale Development Control Plan 2011 (DCP 2011). However, the proposal involves a non compliance with clause 40(4)(b) of the SEPP, which restricts the height of the building to a maximum of 2 storeys. Other non compliance issues have been identified in regard to the FSR and landscaped area.

The non compliance with the number of storeys is confined to an area of the basement on the north western corner of the building protruding between 1.06 metres and 1.5 metres above ground level. In accordance with the definition of storey in the SEPP, this part of the basement is considered a storey. Therefore the building in this area is considered a three (3) storey building. A request has been provided by the applicant justifying the variation to clause 40(4)(b) of the SEPP. The request has been assessed against the criteria in clause 4.6 of RLEP 2011. Based on the justification provided by the applicant and taking into account the relationship of the proposal with the surrounding properties and compliance with the objectives of the height control and R3 zone, the proposed variation is supported.

In addition to the above, and in response to submissions by residents concerned with the impact of the proposal on street parking in Rye Avenue, the applicant has amended the basement plan by replacing some storage areas with car parking areas. As the provision of on site parking is higher than what it is required under the policy, this parking area is considered gross floor area (GFA) for the purposes of calculating the floor space ratio (FSR). As a result, the total FSR proposed is 1.026:1, which represents an additional 178sq.m. of GFA. As such the proposal does not comply with the density provisions under clause 48(b) of the SEPP requiring a maximum FSR of 1:1. As further stated in this report, the additional parking on site is supported and this additional area in the basement is not considered to create any additional impacts. As such the variation to the FSR requirement is supported.

The proposed landscaped area requirement of the SEPP (25sq.m. per bed) is not achieved. The development achieves 18.41sq.m. landscaped area per bed. However, there is ample outdoor area and planting within the site, which compensates for the reduced overall landscaped area. The proposal is considered to comply with the objectives of this control and is supported in this instance.

The proposal has been assessed by the Design Review Panel and the recommendations of the Panel have been incorporated into the amended design. The proposal is considered to provide a positive contribution to the area and is in the public interest.

The development application has been notified in accordance with Council's DCP 2011. The original application attracted fourteen (14) submissions and two(2) petitions containing 95 signatures. The amended application attracted five (5) submissions. The issues raised in the submission have been considered in the assessment of the application. The details are explained in the body of this report.

The proposal has a Capital Investment Value greater than \$20 million (i.e. approx. 21 million) and as such the development application is subject to State Environmental Planning Policy (State and Regional Development) 2011. The development application is referred to the Joint Regional Planning Panel (JRPP) for determination. The recommendation is for approval.

Officer Recommendation

1. That the JRPP support the variation to the height control contained in clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 in accordance with the request under clause 4.6 of RLEP 2011 submitted by the applicant.
2. That development application DA-2013/164 for the demolition of existing structures and construction of an aged care facility with basement parking for 37 vehicles, associated facilities, boundary fencing and lot consolidation be APPROVED.

3. That the NSW Department of Planning and Infrastructure be advised of the JRPP decision.
4. That the objectors be advised of the JRPP decision.

Report Background

PROPOSAL

The proposal is for the demolition of the existing nursing home at 3 Eddystone Road and dwellings at No 1 and 7 Eddystone Road, 104-110 Stoney Creek Road and 17 Rye Avenue and the construction of an aged care facility with capacity for 145 beds in 113 rooms with basement level. The main pedestrian access is from Eddystone Road.

The ground floor contains 'high care' rooms comprising 32 two bedroom suites and 24 single bedroom suites. The first floor provides accommodation for 'low care' patrons totalling 57 beds in single rooms.

The basement level contains carparking, kitchen, therapy pool and amenity facilities for staff and patrons as well as garbage and storage areas. The total number of carparking spaces is 37. Vehicular access to the site is proposed via a driveway in proximity to the northern boundary in Rye Avenue.

An ambulance bay is located at basement level. In addition, a covered drop off area is provided in the Eddystone Road entrance to allow the pick up and drop off of patrons by an ambulance.

A total of 35 staff will be on site at any time.

The proposed building is an irregular shaped building addressing the three street frontages. It provides three internal open courtyards. The main outdoor space is located towards the rear of the site. The maximum building height as measured to the ceiling of the top floor is approximately 8 metres.

Open form boundary fencing is proposed on the front boundaries. The proposed fencing is formed of powder coated steel rails to a maximum height of 1.65 metres.

Significant trees such as the Lemon Scented Gum (*Corymbia citriodora*) located within the front yard of 1 Eddystone Road and Council street trees in Stoney Creek Road and Eddystone Road are to be retained and protected throughout all stages of the project. All other trees will be removed.

Consolidation of lots is also part of this application.

EXISTING AND SURROUNDING DEVELOPMENT

The site is described as Lots 11 and 14, Section 6 DP 1878, Lot 2 DP 864823 and Lots 13 to 17 DP 5207. The site is known as 1-7 Eddystone Road, 17 Rye Avenue & 104-110 Stoney Creek Road Bexley. The total site area is 6,067.6sq.m.

The site is an irregular shape having three(3) street frontages to Stoney Creek Road, Eddystone Road and Rye Avenue Bexley. The frontage to Eddystone Road is 111.25 metres. The site has a frontage to Stoney Creek Road and Rye Avenue of 44.5 metres and 58 metres, respectively.

An existing nursing home occupies the lot known as 3 Eddystone Road, Bexley. All other lots are occupied by single dwelling houses. The topography of the site is irregular, having a slope towards the northern boundary of approximately 2 metres.

Stoney Creek Road is a classified road. Opposite the site in Stoney Creek Road is Bexley Park, which is listed in RLEP 2011 as an item of heritage significance. The surrounding area is characterised by low density residential developments, except for the sites adjacent to the subject site in Eddystone Road and Rye Avenue, which are zoned R3 medium density residential.

The adjacent site at 11-15 Eddystone Road is a medium density development containing 11 villas. Rockdale Council's utility depot is located in proximity to the site at 10 Rye Avenue, Bexley.

PLANNING CONSIDERATION

The proposed development has been assessed under the provisions of the Environmental Planning and Assessment Act, 1979. The matters below are those requiring the consideration of the Joint Regional Planning Panel.

Section 79C (1) Matters for Consideration - General

Provisions of Environmental Planning Instruments (S.79C(1)(a)(i))

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

Clause 101 of the ISEPP requires consideration of the impact of the development on the effective and ongoing operation and function of a classified road and potential impacts of road noise on the proposed development.

The clause recommends the provision of vehicular access via an alternative road other than the classified road, as well as consideration of the impacts of the development on the classified road in regards to the design of the vehicular access, emission of smoke and dust from the development, the nature and volume of vehicles using the classified road to gain access to the land and whether the proposal incorporates measures to ameliorate potential traffic noise and vehicle emissions.

The application, including the submitted traffic report, has been considered by the Roads and Maritime Services (RMS) and Council's Traffic Development Advisory Committee (TDAC). RMS recommends conditions consistent with the objectives of clause 101.

Furthermore, the acoustic report submitted with the application makes recommendations to attenuate traffic noise. The recommendations include the use of Rw rating glazing, treatment of wall ventilators and exhaust openings in external walls and appropriate mounting arrangements for windows to ensure sealing of gaps between joints.

The recommendations of the RMS, TDAC and acoustic report have been included in the draft Notice of Determination attached to this report.

Subject to compliance with these conditions, the proposal is satisfactory in regard to the objectives of clause 101.

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

The proposal is defined as a residential care facility in the SEPP. The relevant clauses of the SEPP applying to the proposal are outlined below.

Clause 26 – Location and Access to Facilities

Comment: The site has a frontage to a main road. Access to public transport (regular bus service to Rockdale and Hurstville town centres) is available in proximity to the site in Stoney Creek Road. Additional conditions of consent are proposed requiring a new pedestrian crossing and new footpath including pram crossings to ensure suitable access to the bus shelters in Stoney Creek Road in accordance with the requirements of this clause.

Clause 28 – Water and Sewer

Comment: Water and sewer facilities are available on site.

Clause 29 – This clause requires consideration of matters listed in clause 25(5) (b) (i), (iii) and (v) when a Compatibility Certificate is not required. The matters listed refer to compatibility of the development with surrounding land uses in terms of the natural environment, the services and infrastructure available to meet the demand of the development and 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.

Comment: Refer to comments under clause 32 below. The proposal meets the requirements listed in clause 25(5) (b) (i), (iii).

Clause 30 – Site analysis

Comment: The application has been accompanied by a site analysis in accordance with this clause.

Clause 32 – Design of Residential development

Comment: The proposal is to comply with the design principles set out in Division 2, clauses 33-39. Refer to comments below.

Clause 33 – Neighbourhood amenity and streetscape

Comment: The site has three street frontages. The proposed side setbacks with adjoining residential properties are 3 metres in Eddystone Road and 11.13 metres with the property at 15 Rye Avenue. The front building setbacks are generally consistent with the predominant street setbacks. The proposal was considered by the Design Review Panel. Comments from the Panel included issues relating to the scale and character of the proposal. The amended proposal has addressed the issues raised by increasing the setback of the building on the north-western corner in Rye Avenue, improving the façade composition in Rye Avenue by creating a ‘cottage style’ articulation and changing the roof form and colour scheme. The proposal includes appropriate screen planting along the boundaries and the retention of a significant tree in the Eddystone Road frontage as well as street trees in Stoney Creek Road and Eddystone Road. The proposal as amended is considered satisfactory in regards to its relationship with the streetscape and the amenity of the neighbourhood.

Clause 34 – Visual and Acoustic Privacy

Comment: In addition to the dense landscaping proposed along the northern boundary, the balconies at first floor level will be provided with operable screen panels to minimise privacy impacts to adjacent residential properties. It is noted that the closest first floor balcony to a boundary is 10 metres (i.e. balconies in rooms 2.21 – 2.26). The balconies in rooms 2.37-2.40 are setback from the side boundary approximately 19 metres. It is also noted that the windows in rooms 2.55, 2.56 and 2.57 may create privacy impacts to the private open space

of adjoining villas. Subject to compliance with a condition requiring adequate privacy screens for balconies in rooms 2.21 – 2.26 and suitable windows in rooms 2.55, 2.56 and 2.57, visual impacts are not considered unreasonable. However, the first floor terrace is considered to be in close proximity to the rear boundary of 15 Rye Avenue. It is estimated that this terrace will be used by low care residents of the first floor, having a higher potential for visual and acoustic impacts. As such it is recommended that this terrace be deleted. Subject to this, the visual and acoustic impacts from the proposal are not unreasonable. Also refer to assessment under cl 40(4)(c) below in regard to ground floor requirement at the rear 25% area of the site.

Clause 35 – Solar access and design for climate.

This clause requires adequate daylight to main living areas of neighbours and residents and adequate sunlight to substantial areas of private open space.

Comment: The applicant has provided shadow diagrams showing there is no impact on solar access to adjacent properties. This is achieved given the generous setbacks, the scale of the proposed building and the orientation of the site. An assessment of solar access to the proposed three internal courtyards and a communal open space area at the rear has been carried out. While solar access to the internal courtyards is minimal during winter, the main area of private open space is located towards the north of the site and achieves maximum solar access. Adequate solar access is also achieved in the main living areas as they are oriented towards the north. The proposal incorporates skylights in some of the bathrooms at first floor level, which will improve solar access and amenity of the rooms. The proposal is satisfactory in regard to solar access and design for climate.

Clause 36 – Stormwater

Comment: The stormwater design involves the installation of an on site detention system. The proposal complies with Council's DCP 2011 in regards to water management.

Clause 37 – Crime prevention

Comment: The proposed development provides access control and other measures in line with safer by design principles such as secured boundary fencing and CCTV facilities. Passive surveillance of the street and front garden is achieved by having rooms and balconies fronting the streets. The proposed measures will be included as conditions of consent. The proposal is satisfactory in regards to safety and security.

Clause 38 – Accessibility

Comment: An Access Review Report has been submitted. The report makes recommendations to achieve compliance with relevant standards. The recommendations are to be incorporated in the construction certificate documentation and implemented during construction. A condition of consent is proposed to achieve compliance with the recommendations of the report. The proposal is satisfactory having regard to this clause.

Clause 39 – Waste Management

Comment: The applicant has submitted a Waste Management Plan in accordance with Council's DCP 2011. During demolition and construction, waste will be transported off-site to a waste depot and/or recycling plant. The existing sandstone on site will be reused in the landscaping. To ensure that a more detailed waste management is implemented on site, a condition of consent is proposed requiring the submission of an updated Waste Management Plan prior to commencing of operations.

The on going waste will be managed within a garbage room proposed at basement level. Waste will be collected by private contractors. Council's Waste Services Coordinator has no objections to the proposed management of waste. Conditions of consent are proposed to ensure that waste collection is carried out with minimal impacts on surrounding properties.

Clause 40 – Development standards

Clause 40(2) – Site size

The minimum site area required is 1000sq.m. The total site area is 6067.60 sq.m. The proposal complies with this requirement.

Clause 40(3) – Site frontage

'The site frontage must be at least 20 metres wide measured at the building line.'

Comment: The frontage to Eddystone Road is 111.25 metres. The frontage to Stoney Creek Road and Rye Avenue is 44.5 metres and 58 metres, respectively.

Clause 40(4) – Height in zones where residential flat buildings are not permitted

Comment: This clause requires a maximum of 2 storeys, a maximum building height of 8m and the building being single storey in the rear 25% area of the site. Each of these components is addressed below.

Cl 40(4)(a) Maximum of 2 storeys – The proposal is a maximum of two storeys for most of the building area. However on the north western corner, the building is considered a three storey building. In this area the ground levels vary between RL41.51 and RL 41.91. The ground floor level is RL 43. As the difference in level between the ground and the floor above the basement is more than 1m, the area of the basement below is considered a storey. Therefore the building in this area does not comply with this clause. This issue has been considered within the parameters of clause 4.6 of RLEP 2011 and the proposed variation is supported. Refer to Cl 4.6 variation justification under RLEP 2011 below.

Cl 40(4)(b) Maximum 8m building height - Building height is defined in the SEPP as 'the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point'.

The overall proposed ceiling height is RL 49.4. The lowest natural ground level is RL 41.5 (existing) on the corner next to the driveway. Based on these estimates, the building height is calculated as 7.9 metres maximum. As such, the building complies with the max height stipulated in the SEPP.

Cl 40(4)(c) Single storey in the rear 25% area of the site – Given the irregular shape of the land, the rear 25% area of the site is considered to be the furthestmost area from the streets, and in particular the area adjacent to the rear of the lots at 11-15 Eddystone Road and 15 Rye Avenue. The proposal satisfies this requirement except for the area occupied by the enclosed terrace at first floor level. While the terrace does not meet the definition of storey, it is perceived as a two storey element in proximity to the rear boundary of 15 Rye Avenue and adds bulk to the building. There is potential for privacy and acoustic impacts to surrounding residents. As such a condition of consent is recommended to remove this terrace from the plans prior to the issue of the construction certificate. Subject to compliance with this condition, the proposal is satisfactory in regard to this clause.

Clause 48 of the SEPP refers to standards that can not be used to refuse development consent for residential care facilities as outlined below.

Clause 48(a) – Building height

A maximum building height of 8m is required. This issue has been addressed above under cl 40(4).

Clause 48(b) – Density and Scale

The maximum floor space ratio (FSR) shall be 1:1. The proposed FSR is 0.99:1 (6045 sq.m. gross floor area (GFA)), when excluding the additional parking proposed within the

basement level. However, in an attempt to address issues raised by residents in regard to on street carparking deficiency in Rye Avenue, the applicant has converted some of the storage area originally proposed at basement level into five(5) additional car spaces.

In accordance with the definition of GFA in RLEP 2011, only parking and associated area required to meet the requirements of the consent authority is excluded from the calculation of GFA. As such, when including the 5 additional parking spaces, the GFA increases by 178sq.m. As such the total proposed gross floor area is 6223sq.m. or 1.026:1 FSR.

In addressing this issue, the applicant states:

- The proposed additional parking is in response to concerns by residents and provides a public benefit,
- The additional parking does not impact on the previous footprint as it occupies an area previously identified as storage area.
- There is no impact on the bulk and scale of the building,
- The additional parking will improve the provision of infrastructure within the site with no impact to the development aboveground,
- The proposal still achieves the aims and objectives of the SEPP.

I concur with the statement provided by the applicant and as such the proposed variation to the FSR is supported in this instance.

Clause 48(c) – Landscaped area

A minimum of 25sq.m. of landscaped area per residential care facility bed is to be provided. Landscaped area is defined as 'that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas'. The proposal provides 2670sq.m. total landscaped area on site, which represents 18.41sq.m landscaped area per bed and as such does not comply with this requirement.

CI 48(c) landscaped area requirement is not a development standard; however it provides a guide as to what the policy deems to be acceptable.

The applicant states that the proposal is a significant improvement to the existing facility, which provides 4.2sq.m. landscaped area per bed. In addition the interface of the site with the Bexley Park opposite will enhance the outlook and amenity of the residents.

The Department of Planning Guide for the application of the landscaped area control under the SEPP is relevant in this instance, which states:

'A potential conflict arises in relation to landscaping. The re-development of many residential care facilities or even new residential care facilities in established areas will be on sites that would not allow much land to be set aside for landscaping while achieving a 1:1 fsr. The most important external issues for these sites are the impacts on streetscape and neighbours. High amenity for residents can be achieved within the building without meeting a high landscape area standard. The clause 70 [now48] landscape standard of 25sq.m. per bed, i.e. a standard that cannot be used to refuse consent, is not a minimum standard per se, that must be met. It is possible and reasonable for consent to be given to facilities that have less than 25sq.m. per bed landscaped area if they take other issues such as streetscape and impact on neighbours into account.'

The objectives of the landscaped area requirement are considered to be to provide a high level of amenity, to enhance the streetscape and to provide scale and density of planting that

is appropriate to the surrounding built form. The proposal includes generous landscaped areas surrounding the site. Further, the size and amenity of the principal communal area on the northern side of the site will ensure a high level of amenity to the residents and minimal impact on neighbouring properties. In addition to communal areas, most rooms are provided with a balcony, which further enhances amenity.

Based on the above, the proposed variation to the minimum landscaped area requirement is supported.

Clause 48(d) – Parking for residents and visitors

Comment: Based on the number of beds and staff employed and on duty at any one time, the proposal requires the provision of 32 carparking spaces and one(1) ambulance bay on site. The proposal provides 37 carparking spaces, an area for motorbike/pushbike parking and an ambulance bay at basement level. In addition, there is a drop off bay with access to an ambulance in Eddystone Road. As such the proposal complies with clause 48(d).

Rockdale Local Environmental Plan 2011 (RLEP 2011)

The site is zoned R3 – Medium density residential under Rockdale Local Environmental Plan 2011 (RLEP). The proposal is permissible with development consent. The proposal is consistent with the objectives of the zone.



Fig 1 – Zoning Map

The relevant clauses that apply to the proposal are below.

Clause 4.3 - Height of buildings

The maximum permitted height under this clause is 8.5 metres. In accordance with the RLEP definition, height is measured from the top most elements in the roof to the ground level immediately below. The proposed height is below 8.5m for most of the perimeter of the building. However on the north-western corner of the site, where the land is the lowest, the height of the building is 9.1m. The estimated height of other elements in the roof such as

stair access, lift overrun and acoustic screens is 11.3m, 9.78m and 10.61m respectively. It is noted that the proposed structures encroaching onto the building height are located towards the centre of the site and will only be marginally visible from the street. Despite this non compliance, the proposal meets the 8m maximum height requirement under the SEPP. In regard to building height, the provisions of the SEPP prevail. Based on this and the minimal impacts on the streetscape and amenity of the neighbourhood, the variation to the height requirement does not warrant refusal of the application and is supported in this instance.

Clause 4.4 – Floor Space Ratio (FSR)

A maximum FSR of 0.6:1 is permitted on the site under this clause. However, the FSR provisions of the SEPP prevail. Refer to assessment under the SEPP above.

Clause 4.6 – Exceptions to development standards

The proposal does not comply with Cl40 (4) (b) of the SEPP requiring a maximum of two (2) storeys. As previously stated, the proposal is a maximum of two storeys for most of the building area. However on the north western corner, the basement protrudes between 1.06 metres and 1.5 metres above ground level. In accordance with the definition of storey in the SEPP, this part of the basement is considered a storey. Therefore the building in this area is considered a three (3) storey building.

Clause 4.6 of RLEP2011 allows exceptions to development standards. The objectives of this clause are (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

In allowing a variation to a development standard under clause 4.6, the consent authority is required to consider a written request from the applicant justifying a variation to the standard by demonstrating:

- (3)(a) that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and
- (3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Furthermore, clause 4.6(4) requires that prior to granting consent, the consent authority is satisfied that:

- (a)(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3);
- (a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

This clause also requires the concurrence of the Director-General.

In accordance with clause 4.6, the applicant has submitted a written request justifying the variation to the development standard. In the justification, the applicant states:

- *The proposed development will not impact on the streetscape as the proposal complies with the maximum building height of 8 metres therefore the basement does not generate an unacceptable building height and the development is consistent with the scale and character of two storey residential buildings. In addition, the boundary setback to the adjacent property is 11 metres which will allow an appropriate visual transition between the developments;*

- *To fully comply with the development standard, a small section of the basement would need to be lowered creating a difference in ground floor level. For operational purposes, the floors in an aged care facility should be at the same level throughout the site. Furthermore, it is not practical to lower the ground floor level for the total site given the existing topography.*
- *The proposal is consistent with the objectives of the zone.*
- *The variation to the development standard will not generate any unacceptable environmental impact within the locality nor detrimentally affect public benefit.*
- *Compliance with the development standard is unreasonable and unnecessary and the development as proposed will achieve the objectives of clause 4.6 of RLEP 2011.*

In assessing the proposed variation, the following has been considered:

The objectives of the height controls as specified in the SEPP and RLEP 2011 as follows:

- To avoid an abrupt change in scale of development in the streetscape (from the note in clause 40(4) (b) of the SEPP).
- To provide an appropriate transition in built form and land use intensity (from RLEP 2011).
- To encourage high quality urban form (from RLEP 2011).

Furthermore, the underlying objectives of the height control are considered to be:

- To ensure development does not have an unreasonable impact on adjacent residential properties in terms of building size and scale, sunlight access and visual privacy.
- To ensure the scale, bulk, height, form and architectural character of the development is compatible with the building type as well as adjacent residential properties.

The relevant objectives of the R3 zone are:

- To provide for the housing needs of the community within the residential zone
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed variation to the development standard is confined to a small area of the site where the topography is at its lowest point. To balance the difference in ground level throughout the site and achieve a level floor plate, the building has been lowered below footpath level on the Eddystone Road frontage. The proposal has been reviewed by the design review panel and has been amended in response to the recommendations of the panel. The relationship of the proposal with the streetscape is acceptable. The proposal complies with all other standards relating to density and scale.

The proposal is consistent with the objectives of the zone and the height controls as the proposal achieves a gradual transition in built form in Rye Avenue by providing a generous setback with the adjacent residential property and dense landscaped areas along the boundaries. Impacts on adjacent properties are not unreasonable.

The submission provided by the applicant is satisfactory and the proposal is in the public interest. The variation does not create an undesirable outcome and the objectives of clause 4.6 have been met. The proposal still meets the objectives of the SEPP. As such the strict application of the number of storey requirement is considered unreasonable and unnecessary in this case and the proposed variation to clause C140 (4) (b) of the SEPP is supported.

Clause 5.9 – Preservation of trees or vegetation

The site contains significant trees. The Arborist report identified 34 trees on and adjoining the site. Two of these trees have been assessed as having high landscape value, a Brush Cherry, magenta Lilli Pilli and a Lemon Scented Gum. Twelve(12) trees have been assessed as moderate to moderate-high landscape significance, including a Weeping Bottlebrush, Blueberry Ash, Illawarra Flame Tree and a Forest Oak. The report identifies four(4) existing trees to be considered for removal given their classification as weeds and their potential for structural failure. Sixteen (16) trees have been assessed as having moderate to good health, however they are not considered to warrant 'specific design consideration due to their low landscape significance and/or short predicted life expectancy'.

Based on this assessment, the report concludes that 30 trees will require removal to facilitate the proposed development and four(4) trees are proposed for retention in the vicinity of the proposed works, however they may be potentially impacted, these being the Weeping Bottlebrush, Black Tea Tree, Dwarf Apple and Lemon Scented Gum. The Weeping Bottlebrush and Black Tea Tree are located on the adjacent site at No.15 Rye Avenue.

The report recommends measures to be implemented during construction to minimise potential impacts on the trees identified for retention.

Council's tree management officer has reviewed the information provided in the Arborist report and advised that 'the Lemon Scented Gum (*Corymbia citriodora*) located within the front yard of 1 Eddystone Road and the Council street trees at the front and side of the site in Stoney Creek Road and Eddystone Road are to be retained and protected throughout all stages of the project. Conditions of consent are recommended to ensure the protection of these trees and the ones located within neighbouring properties.

Subject to compliance with these conditions, the proposal is satisfactory in regards to the objectives and requirements of clause 5.9.

Clause 5.10 – Heritage conservation

The site is opposite Bexley Park, at 95 Stoney Creek Road, Bexley, identified in RLEP 2011 as an item of heritage significance (I159). The potential impacts of the proposal on the significance of the item have been addressed by the applicant. The proposal is distanced from the heritage item and is separated from the item by Stoney Creek Road. Adverse impacts are not anticipated. As such a heritage management document was not considered necessary in this instance. The proposal is satisfactory in regards to the heritage provisions of clause 5.10.

Clause 6.1 – Acid Sulfate Soils

The site is within an area classified as Class 5 in the acid sulfate soils map. The geotechnical report by JK Geotechnics submitted with the application indicates the existing soils have low sulphate and chloride contents. Further, the site is not adjacent to land classified 1,2 and 3. As such the proposal is satisfactory in regards to clause 6.1.

Clause 6.2 – Earthworks

The proposal involves extensive excavation within the site to accommodate the basement level. Environmental impacts of the proposed excavation have been considered in the assessment. The stormwater management of the proposal is in accordance with Council's controls. Additional conditions of consent are proposed to further minimise impacts to the environment and neighbouring properties requiring the implementation of dilapidation surveys prior to demolition and construction and sediment controls measures during

construction. Subject to compliance with these conditions, the proposal is satisfactory in regards to the objectives and requirements of this clause.

Clause 6.3 and 6.4 – Development in areas affected by aircraft noise and Airspace operations

The site is not affected by aircraft noise nor does the proposed height exceed the height restriction provisions of Sydney Airport.

Clause 6.6 – Flood Planning

The site is not affected by flooding.

Clause 6.7 – Stormwater

The proposed stormwater system has been approved by Council's development engineers and is consistent with the requirements of this clause and Council's DCP 2011.

Clause 6.12 – Essential Services

Services such as water, sewer, electricity and telecommunications are available on the site. The proposal requires the relocation of the existing sewer service line to facilitate the construction of the basement. Further, the proposal involves the construction of an electricity substation and fire hydrant on the Eddystone Road frontage. Additional conditions of consent are proposed requiring consultation with relevant utility providers to ensure appropriate provision of services on the site and compliance with their requirements.

Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (S.79C(1)(a)(ii))

Draft Rockdale Local Environmental Plan 2011 (Amendment No. 1) - Housekeeping was on public exhibition from 28 June 2012 until 27 July 2012. The proposal is consistent with the draft LEP.

There are no other Draft Environmental Planning Instruments applying to this proposal.

Provisions of Development Control Plans (S.79C(1)(a)(iii))

Development Control Plan 2011(DCP 2011)

The proposal has been assessed against the objectives and controls under DCP 2011 and associated documents being the Technical Specifications for Parking, Technical Specifications for Stormwater, Waste Minimisation and Management and Landscaping.

There are no specific controls for this development type and the DCP relies on the density and other requirements of the SEPP. Issues such as site planning and streetscape have been considered under the SEPP and previously addressed in this report.

The proposal is consistent with the setback requirements for developments in the low and medium density zones. The interface of the development with the public domain is considered satisfactory, particularly the proposed fencing, street activation by the location of balconies at the front and proposed setbacks. When applying the landscaping requirements of the DCP for low and medium density developments, the proposal is required to provide a

minimum of 25% of the site area as landscaping. The proposal provides a total of 2665sq.m. landscaped area, which represents 40% of the total site area. As such the proposal complies with this requirement.

In regard to the energy efficient requirements of the DCP, the applicant has submitted a BCA report addressing sections J1 Building Fabric and J2 Glazing. In addition, the proposal incorporates sustainable measures consistent with the recommendations of the DCP such as natural lighting in bathrooms with the provision of skylights at first floor level, re-use of building materials, water management principles etc.

The applicant has provided a waste management plan, stormwater plan and landscape plan in accordance with the requirements of DCP 2011.

Subject to the imposition of additional conditions, the proposal is satisfactory in regard to compliance with DCP 2011.

Any Planning Agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F (S.79C(1)(a)(iii))

The proposal is not subject to a Voluntary Planning Agreement (VPA).

Provisions of Regulations (S.79C(1)(a)(iv))

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 - Demolition of Structures when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard.

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

Impact of the Development (S.79C(1)(b))

Character / Streetscape / Density / Bulk / Scale

The proposal is in compliance with the planning controls relating to density, bulk and scale, except for the minor variation to the building height on the north western corner of the site, which is supported within the parameters of cl 4.6.

In regard to character and streetscape, the proposal was considered by Council's Design Review Panel. The recommendations of the Panel have been incorporated into the amended design. The character of the proposed building in Rye Avenue has been improved by creating a cottage style pattern more sympathetic to the single dwelling pattern predominant in Rye Avenue. In addition, the colours and roof form have been reviewed and provide a better response to the context.

The proposal is supported in regard to character/streetscape and density.

Visual Privacy

Impacts to surrounding residents have been addressed satisfactorily with the provision of generous setbacks and extensive planting along the boundaries. Privacy screens will be

installed on balconies to further minimise impacts. As indicated in this report, the terrace at first floor level is considered to encroach onto the rear 25% of the site and has a high potential for overlooking neighbours' private open areas. As such a condition is proposed requiring the removal of this terrace. Treatment of first floor windows to avoid overlooking the private open space of adjacent villas in Eddystone Road is also proposed. Subject to compliance with these conditions, the proposal is satisfactory having regard to visual privacy.

Overshadowing

The proposal does not result in unreasonable overshadowing impacts on neighbouring properties.

Safety and Security

The operation of the facility requires a high degree of access control and other security measures to protect the residents. Physical measures such as secure boundary fencing and installation of CCTV throughout the building will assist in enhancing security. Conditions of consent have been recommended in line with the safer by design principles. Subject to compliance with these conditions, the proposal is satisfactory having regard to safety and security.

Traffic/Parking

The application has been accompanied by a Traffic Report and subsequent traffic statement to clarify issues raised by Council's development engineer. Traffic issues have also been assessed by the Rockdale Traffic Development Advisory Committee (RTDAC). The recommendations of the RTDAC have been considered and conditions of consent are proposed in line with the recommendations.

The proposal provides on site parking beyond the requirements of the SEPP. As such the proposal is satisfactory in regard to traffic and parking.

Noise

An acoustic report addressing traffic noise has been submitted and the recommendations of the report have been included as conditions of consent. Unreasonable noise generated by the operation of the facility is not anticipated. Nevertheless a condition of consent is proposed requiring the submission of a Plan of Management for the operation of the facility where measures should be proposed to attenuate noise.

The proposal is satisfactory in regard to noise impacts.

Impacts during construction

A construction management plan will be required as part of the conditions of consent to ensure minimal disruption to the function of the neighbourhood in regard to traffic, construction noise, hours of construction etc. Subject to compliance with the Management Plan, construction of the proposal will not create unreasonable impacts.

Building Code of Australia

The BCA report submitted with the application concludes:

On the basis of the contents of this report, on satisfaction of the matters identified above it is

considered that the design of the proposed building works is capable of complying with the applicable requirements of the Building Code of Australia without variation to the plans submitted with the Development Application.

In addition, the applicant has submitted a BCA compliance report against sections J1 Building Fabric and J2 Glazing. The report concludes that the proposed building is able to achieve the deemed to satisfy requirements of the BCA. However, the report is based on the original scheme and has not addressed the proposed skylights and other changes shown on the amended submission. An updated report to show compliance is to be submitted to the certifying authority prior to the issue of the construction certificate. A condition of consent has been included to this effect.

Suitability of the Site (S.79C(1)(c))

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

Public Submissions (S.79C(1)(d))

The development application has been notified in accordance with Council's Development Control Plan 2011. The original application attracted fourteen (14) submissions and two(2) petitions containing 95 signatures. The amended application attracted five (5) submissions. The issues raised are addressed below.

Issue: Increased noise, traffic congestion and air pollution. Traffic in Rye Avenue is already at peak with RCC depot, Nurses on Wheels and residents. Roads may need to be upgraded as a result of this development.

Comment: The traffic impacts of the proposal have been previously addressed in this report. In regard to noise impacts, unreasonable impacts from the development are not anticipated. A condition of consent is proposed requiring the implementation of a management plan to ensure any noise from patrons is managed appropriately.

The issue of impacts on air pollution has not been substantiated. The proposal is a permissible development on the land and is a low traffic generating development. The proposal incorporates a large area of landscaping that would assist in mitigating noise and air pollution impacts.

Issue: The driveway should be located in Eddystone Road, which is the main entrance to the development. This will improve the amenity in Rye Avenue. Another commercial driveway in Rye Avenue is unfair on the residents.

Comment: This issue has been considered by the RTDAC and the RMS. The proposed location of the driveway is supported on traffic grounds. It is noted that there is a drop off area in front of the facility in Eddystone Road, which will provide alternative access to the site and would reduce the intensity on the use of the Rye Avenue driveway for ambulance and other users of the facility.

Issue: Impact on on-street parking. Parking proposed for 34 vehicles is inadequate for staff.

Comment: The on site parking provision is 37 spaces plus motorbike, pushbike and ambulance bay. This represents 5 additional car spaces to those required under the SEPP. The proposal is satisfactory in regard to the provision of parking.

Issue: Parking in Rye Ave should be made 'resident only' with a 1 hour restriction. Council to enforce this policy.

Comment: The proposal has been considered by the RTDAC and Council's development engineer. Such recommendation has not been proposed as part of this development application. However, this issue has been forwarded to Council's traffic section for consideration. The resident will be advised of Council's position in due course.

Issue: 'The proposed development will make a "right turn" from Rye Ave extremely difficult and dangerous.

Comment: Based on the information submitted and assessment of the proposal by Council and RMS, the resultant traffic generation due to the development will be minor and the surrounding roads will not be compromised in terms of traffic flow efficiency or road safety.

Issue: A few comments have been made in regards to the submitted traffic report as follows: 'McLaren Traffic Engineering make no mention of increased traffic and parking and what impact this will have, there are no figures for this expected increase. Traffic engineering should take into account "traffic" and not just deal with the development and its compliance.'

Traffic report failed to recognise impact of Council's depot in Rye Ave. The additional traffic will impact the local environment including traffic and parking conditions.

Section 2.3 of traffic report indicates junction of Eddystone Rd and Stoney Creek Road is left in/left out only. This is not correct.

The traffic report does not recognise that the existing traffic generated by the nursing home is in Eddystone Road and not Rye Avenue.

Comment: The submitted traffic report has been considered by RTDAC, RMS and Council's development engineer. The statements made by the residents are noted. However, following a detailed consideration of the proposal and subject to the imposition of conditions for improvements to the road, the proposal is considered satisfactory in regards to traffic and parking.

Issue: The proposal will change the vista and amenity of Rye Avenue.

Comment: The proposal is a different land use to the existing predominant low density uses in Rye Avenue and the one envisaged under RLEP 2011 for a medium density zone. The design of the building in Rye Avenue has been changed in response to the advice of the design review panel to create a less institutionalised character and better respond to the context. The proposal is satisfactory in regards to character and streetscape. Unreasonable amenity impacts are not anticipated.

Issue: Impacts on property value.

Comment: This claim has not been substantiated. It is considered that the proposed development can not be held solely responsible for impacts on property values as property values are subject to various socio-economic factors.

Issue: It is not clear the total number of beds and carparking proposed.

Comment: The total number of beds is 145. The total number of on site carparking spaces is 37 in addition to an ambulance bay. A condition of consent is proposed to ensure that the number of beds is not increased without prior development consent.

Issue: The submission by the planner that there is ample parking available in Rye Avenue is not correct as 'residents have to compete with Council employees constantly just to park near their own home'. From experience working in a nursing home, all on site carspaces are

always full. The parking is not sufficient for the 54 low care residents, some of which will still be able to drive.

Comment: The proposal provides on site parking beyond the requirements of state and local policies. The proposal is satisfactory in regards to parking.

Issue: The time of deliveries is unknown. This will impact on the amenity of adjacent house as the bedrooms are located next to the proposed driveway.

Comment: The proposed driveway is setback from the side boundary approximately 3metres by a landscaped area. Unreasonable impacts are not anticipated. Nevertheless a condition of consent is proposed to ensure the amenity of adjacent property is not compromised.

Issue: Impact on safety and wellbeing of children living in Rye Avenue.

Comment: The proposal is considered a low traffic generating development. While it is acknowledged the intensity of traffic in Rye Avenue will increase, traffic measures will be incorporated to improve safety, including a dedicated pedestrian path from the site to the bus stop and pedestrian crossing on Stoney Creek Road. Bexley Park, located opposite the site and Rye Avenue, offers ample opportunities for local children to play in a safe environment.

Issue: The proposal does not fit into the residential character of the area. This size of the development is more suited to an area where there are medical suites, hospitals and the like.

Comment: The proposal is permissible in the zone. The amended proposal has addressed the issues raised by Council and the Design Review Panel by reducing the institutionalised character of the Rye Avenue elevation. The colour scheme has also been improved. The proposal meets the density provisions of the SEPP. The additional GFA proposed at basement level is supported as it provides a benefit to the residents in Rye Avenue by creating additional on site parking. Further, the slight variation to the height is supported under clause 4.6. The proposal is supported by local and state policies.

Issue: 'The proposed building and surrounding fencing looks harsh'. Landscaping should be used to try to blend with the residential area.

Comment: The character of the building as amended responds satisfactorily to the low and medium density context and site's location. The proposed fencing is an open form fence and is an improvement to existing fencing on the corners of the site at Rye Avenue and Eddystone Road. Materials used on the fence complement the character of the building. Further the proposed landscaping between the fence and building will complement the front garden character, predominant in the area.

Issue: Privacy impacts

Comment: The privacy impacts of the proposed development have been previously addressed in this report. The proposal is not considered to create unreasonable privacy impacts on neighbouring properties.

Issue: Lights from vehicles exiting the facility will shine directly into bedroom windows.

Comment: Impacts such as this are unavoidable and the proposal is permissible in the zone. The estimated frequency of vehicles exiting the basement at night time is not considered to create unreasonable impacts.

Issue: Transportation of dead bodies should not be seen from a residential street such as Rye Avenue. The entrance should not be in Rye Avenue.

Comment: The operator of the current facility has advised that the deceased are always transported by professional undertakers in unmarked, discrete vehicles. The transportation of the deceased is not an unknown activity in residential streets in cities as it is very common that funeral homes, for instance, are located in residential streets.

Issue: Safety concerns if dementia patients leave the premises. What security measures will be implemented?

Comment: The plans show that the dementia area is provided with access control. The protection of residents is paramount in the operation of an aged care facility and should be incorporated as part of the management of the facility.

Issue: Construction works and extra traffic on completion of the facility will impact on shift workers residing in Rye Ave.

Comment: Approved construction hours are in accordance with Council's policies and have been included as a condition of the consent. Subject to compliance with these hours, the proposal will not create unreasonable impacts on residents during construction. Traffic impacts have already been addressed previously in this report.

Issue: Currently, screaming from patients being showered or being attended to is being heard. This is very disturbing for children. What measures will be put in place to ensure noise will be reduced. Will windows be double glazed?

Comment: Windows will be treated to achieve compliance with the standards in regard to traffic noise. Noise from the operation of the facility should be managed by the staff to ensure minimal impacts on neighbours. A condition of consent is proposed requiring the submission of a Management Plan outlining appropriate measure to mitigate noise impacts.

Issue: Drainage issues – Overflow of stormwater into adjacent properties.

Comment: The proposed stormwater system is in compliance with Council's requirements.

Issue: Any installation of traffic lights at Rye Ave and Stoney Creek Road intersection would frustrate residents and Council workers.

Comment: The proposal does not involve the installation of traffic lights on this intersection.

Public Interest (S.79C(1)(e))

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls and specific requirements. The proposal involves a variation to a development standard contained in the SEPP in regard to number of storeys and FSR and landscaped area requirements. However, the proposed variations do not create unreasonable impacts to surrounding properties and are supported by cl 4.6 in RLEP 2011 and the objectives of the respective clause. The proposal provides additional housing for seniors and is supported by federal and state policies. The proposed use of existing services and infrastructure is also supported. As such it is considered that approval of the development application would be in the public interest.

CONCLUSION

The proposed development has been considered under S79C(1) of the Environmental Planning and Assessment Act, 1979. The development application involves the demolition of existing structures and the construction of an aged care facility. The proposal is consistent with the objectives of the controls under the relevant SEPPs, RLEP 2011 and DCP 2011. The proposal is compatible with the surrounding environment and does not create unreasonable impacts to neighbours. The proposal is in the public interest. As such, the application DA-2013/164 is recommended for approval.