

JOINT REGIONAL PLANNING PANEL

(Western Region)

JRPP No	JRPP Reference Number: 2016WES001 DA
DA Number	2016/0030
Local Government Area	Bathurst Regional
Proposed Development	Residential Aged Care Facility containing 146 rooms, associated rooms, landscaping and car parking.
Street Address	93 Stanley Street, Bathurst
Applicant/Owner	Opal Aged Care Pty Ltd (applicant) Principal Healthcare Finance Pty Ltd (owner)
Number of Submissions	1
Recommendation	Approval with Conditions
Report by	Lucie Clifton, Development Control Planner

RECOMMENDATION AND ASSESSMENT REPORT

Development Application Information

Application No: 2016/0030

Applicant: Opal Aged Care Pty Ltd

Property: Lot 2, 3, 4 & 5 DP 1089380, and Lot 103, 104, 105 DP 1198864.
93 Stanley Street, Bathurst

Proposal: 146 room aged care facility, associated rooms and facilities,
landscaping and car parking.

Purpose of Report

The purpose of this report is to seek determination from the Western Joint Regional Planning Panel of the subject development application for a residential aged care facility at Lot 2, 3, 4 & 5 DP 1089380, and Lot 103, 104, 105 DP 1198864, 93 Stanley Street, Bathurst.

Recommendation

That the Western Regional Joint Regional Planning Panel grant consent to Development Application 2016/0030 for:

RESIDENTIAL AGED CARE FACILITY CONTAINING 146 ROOMS, LANDSCAPING AND CAR PARKING

Subject to conditions included in the Draft Notice of Determination (see **Appendix 1**) with any further conditions or amendments as determined by the Acting Director Environmental Planning & Building Services pursuant to Section 80 (A) of the Environmental planning and Assessment Act 1979, as amended.

Executive Summary

Council has received a Development Application submitted on behalf of Opal Specialist Aged Care Pty Ltd for a Residential Aged Care Facility with associated landscaping and car parking at 93 Stanley Street, Bathurst.

The subject site is 93 Stanley Street and legally defined as Lot 2, 3, 4 & 5 DP 1089380, and Lot 103, 104, 105 DP 1198864. The site is zoned as R1 General Residential under the Bathurst Local Environmental Plan 2014. Council considers the proposed development to be *seniors housing* which is permissible with consent in the R1 General Residential Zone.

The applicant is Opal Specialist Aged Care and the owner is listed as Principal Healthcare Finance Pty Ltd.

The subject site has an area of 1.68ha. The site is currently undergoing bulk earthworks pursuant of approval granted by Bathurst Regional Council (2014/0407).

The Development Application has been referred to NSW Police under the requirements of CPTED. NSW Police did not raise any significant issues that would preclude approval. Refer to **Appendix 2**.

The Development Application was advertised in accordance with the requirements of Bathurst Regional Council Development Control Plan. The Development Application was exhibited between 15th February to 29th February 2016 in the Western Advocate and also notified to surrounding neighbours during this time. Council received one (1) submission, attached as **Appendix 3**.

A Council Discussion Forum was held between Council officers, the applicant and those persons who lodged submissions. The minutes of that Discussion Forum are attached at **Appendix 4**.

Proposed Development

The proposal is for the construction of a residential aged care facility consisting of a two storey building containing 146 rooms with associated landscaping and car parking. A total of 164 beds will be provided. The proposed development has been designed to accommodate residents with dementia (19 beds) and high care needs.

The ground floor of the proposed development will contain the following:

- 72 bedrooms (78 beds) and ancillary sitting areas;
- dining rooms and servery areas;
- staff offices and other administration facilities (including holding room);
- foyer/reception area;
- back-of-house facilities including laundry, kitchen, utilities, amenities, loading dock, storage areas, and garbage rooms (access to which is restricted to staff only);
- hair salon;
- activity areas for residents (including lounge rooms);
- nurse stations;
- a non-commercial and wholly ancillary café for use by residents, staff and visitors;
- outdoor decking and terraces (including a read terrace to each resident bedroom);
- lift cores and fire stairs;
- secure passive recreation areas;
- substantial landscaping;
- maintenance shed/men's shed; and
- porte-cochère.

The first floor of the proposed development will contain the following:

- 74 bedrooms (86 beds) and ancillary sitting areas;
- resident amenity areas (including television room, quiet areas, and lounges);
- administration facilities (including archive storage, communications room, hot desk, and clinic manager's office room);
- dining rooms and servery areas;
- male and female bathrooms;
- multi-purpose room;
- outdoor balcony; and
- nurse stations.

The development has been supported by a number of specialist plans and reports as noted below:

- architectural plans prepared by Group GSA (Appendix 5)
- landscape plans prepared by Taylor Brammer Landscape Architects (Appendix 6)

- Statement of Environmental Effects prepared by BBC Consulting Partners (Appendix 7)
- stormwater management plan, sediment and erosion control plan, civil and engineering drawings and flood advice and concept drainage plans prepared by Henry + Hymas (Appendix 8)
- BCA compliance report prepared by Blackett Maguire + Goldsmith (Appendix 9)
- Acoustic assessment prepared by Acoustic Logic (Appendix 10)
- Contamination investigation prepared by Douglas Partners (Appendix 11)
- Traffic report prepared by Colstun Budd Hunt and Kafes (Appendix 12)
- Accessibility report prepared by Morris Goding (Appendix 13)
- Response to submissions request prepared by BBC Consulting Planners (Appendix 14)

It is noted that some of the documentation refers to 164 bedrooms as opposed to 164 beds as illustrated on the submitted plans. This discrepancy does not materially affect the assessment.

It is further noted that the applicant had foreshadowed a Clause 4.6 variation to Clause 26 of SEPP (Seniors Living). The applicant now proposes to provide an on site bus to enable access to services. A Clause 4.6 variation is therefore no longer required.

During the assessment process Council has allocated a new street number for the property (93 Stanley Street) to remove any confusion with the adjoining Oak Tree site which is also known as 105 Stanley Street.

Existing Development

The subject land was historically held in conjunction with the adjoining land currently occupied by the Milestones Child Care Centre (81 Stanley) and the Oak Tree seniors living site (105 - 111 Stanley).

The original holding included an area that was historically used as an extractive industry. The former pit has been filled with various materials. That pit extends onto part of the development site.

Council has previously consented to bulk earthworks (site filling) on the site in 2015. The bulk earthworks are a precursor to this development.

There is currently no infrastructure on the subject site. The subject site will need to connect into water, sewer and drainage infrastructure.

The subject land

The subject site is 93 Stanley Street and legally defined as Lot 2, 3, 4 & 5 DP 1089380, and Lot 103, 104, 105 DP 1198864. The total site collectively comprises an area of 1.68ha.

The site has frontage to Stanley Street and Peel Street.

The locality comprises a mixture of residential and commercial uses.

The subject site directly adjoins a seniors living development currently under construction to the west, being undertaken by Oak Tree. The Oak Tree seniors living development will contain 52 detached dwellings, a community centre and bowling green. The former extractive industry pit on the Oak Tree site is in the process of being remediated as part of that development under the supervision of a site auditor.

To the immediate east of the site is a childcare centre, Milestones, in operation since 2013.

South of the site are established residential dwellings, mostly single storey.

The Macquarie River is north of the site. A levee has been constructed that protects the site from potential flood events. The levee provides protection from flooding from the Macquarie River for a 1%AEP flood event plus freeboard.

An open channel runs parallel to Peel Street along the boundary of the land.

Notification

The development application was notified under the requirements of the Bathurst Development Control Plan 2014, Chapter 2.

The development application was placed on public exhibition for 14 days, between 15 February 2016 to 29 February 2016 in the Western Advocate. The development application was notified in writing to surrounding landowners. One (1) submission was received and a discussion forum was held at Bathurst Regional Council with the objector and the applicant.

External Referrals

The development application was externally referred to the local NSW Police under the requirements of Crime Prevention Through Environmental Design. The NSW Police have made comments and recommended design alterations to be included in the conditions of consent.

Planning Controls

The relevant planning controls applicable to the development application are as follows:

1. State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
2. State Environmental Planning Policy No.55 – Remediation of Land
3. State Environmental Planning Policy No.64 - Advertising and Signage
4. Bathurst Local Environmental Plan 2014
5. Bathurst Development Control Plan 2014

Legislative Requirements

(i) Joint Regional Planning Panel (JRPP)

The development has a capital investment value of \$26.5 million. The Joint Regional Planning Panel is the consent authority for the determination of the subject Development Application, by virtue Schedule 4A of the Environmental Planning and Assessment Act 1979.

(ii) S79C Assessment

S79C(1)(a)(i) Environmental planning instruments (State Environmental Planning Policies and Local Environmental Planning Policies)

SEPP (Housing for Seniors and People with a Disability) 2004

The ‘Seniors SEPP’ applies to the development. The Seniors SEPP aims to increase supply of housing that meets the needs of seniors people or people with a disability. The Seniors SEPP has a focus on quality design that is prepared for people as they age. A detailed assessment of the proposed development has been carried out in relation to the Seniors SEPP.

It is noted that the proposed development is defined as a “residential care facility” under Clause 11. A residential care facility is “*residential accommodation for seniors or people with a disability that includes:*

- a. Meals and cleaning services, and*
- b. Personal care or nursing care, or both, and*
- c. Appropriate staffing, furniture, furnishings and equipment for the provisions of that accommodation and care,*

not being a dwelling, hostel, hospital or psychiatric facility”

The Seniors SEPP provides requirements for the eligibility of persons to reside at such facility. It is proposed to impose this as a condition of consent.

Part 2 Site Related Requirements and Part 3 Design Requirements provides criteria for the site and its appropriateness for seniors people or people with a disability. Relevant Clauses pursuant to Parts 2 and 3 are detailed.

Clause 26 Location and access to facilities

Clause 26 of the Seniors SEPP is repeated below:

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*
 - (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
 - (b) community services and recreation facilities, and*
 - (c) the practice of a general medical practitioner.*
- (2) Access complies with this clause if:*
 - (a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*
 - (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
 - (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
 - (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, or*
 - (b)*
 - (c) in the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division—there is a transport service available to the residents who will occupy the proposed development:*
 - (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
 - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*

that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).

(3) For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
- (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
- (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.*

(4) For the purposes of subclause (2):

- (a) a **suitable access pathway** is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and*
- (b) distances that are specified for the purposes of that subclause are to be measured by reference to the length of any such pathway.*

(5) In this clause:

***bank service provider** means any bank, credit union or building society or any post office that provides banking services.*

The nearest designated bus route (523) currently runs along Durham Street to the south west of the subject site. Whilst there are a number of designated stops along the route the system operates on a “hail and ride” basis along its length. The bus route, at the closest point, is located 410 metres to the south west being the corner of Durham and Peel Street.

The application, as originally lodged argued that Clause 26 of the Seniors SEPP, was satisfied as the services and facilities would be provided on site due to the frail and aged nature of the residents.

It is noted that the Sydney East JRPP have under similar circumstances advised that this approach to Clause 26 is unacceptable (2014SYE130 & 2014SYE113).

The applicant had subsequently proposed a Clause 4.6 variation to Clause 26. This approach has since been abandoned in favour of the operators providing a mini bus with 12 seats and a driver for residents, refer **Appendix 15**. A second and perhaps longer term option would be to alter bus routes to be located within closer proximity to the subject site. For the purposes of assessment the former option is used.

The resolution to provide a 12 seat mini bus service is considered appropriate given not all residents will need to utilise the service each day, and it is a private services

enhancing the safety and comfortability of the residents. In this instance, it is considered that the requirements of Clause 26 *Location and access to facilities* have been met. It is also noted that a similar arrangement is proposed for the adjoining Oak Tree site

Clause 27 Bushfire prone land

Not relevant to the proposal.

Clause 28 Water and Sewer

Bathurst Regional Council is the water supply authority.

Reticulated water and sewer is available in the immediate vicinity of the site on the Peel Street side of the site. Due to the depth of the sewer mains in the vicinity it will be necessary to fill the site to enable fall. The finished floor level following fill is 651.90m

It is noted that the adjoining Oak Tree site is also being filled to enable the site to gravitate to the Council sewer main near the corner of Stanley and Hope Street. The finished floor level of the Oak Tree site (adjoining the development site) varies from 651.7 m at the Stanley Street end through to 652.8m at the rear of the site.

Water and sewer headworks charges would apply to the development.

Clause 33 Neighbourhood amenity and streetscape

The locality typically consists of lower density residential type which is reflective of its historical status as flood prone land. Following completion of the levee system there has been an increasing number of residential units being constructed in the area.

This section of Stanley Street was only recently rezoned as part of the 2014 LEP from rural to residential purposes. Since that time Council has approved the construction of 52 residential units to the north (Oak Tree). The adjoining Child Care Centre was approved in 2013.

The proposed development is considered to be of high design and incorporates quality landscaping features that will improve the amenity of the streetscape. Further, the proposed development will be setback to limit any adverse impact of the two storey building.

Clause 34 Visual and acoustic privacy

The development is to be 2 storey and will be located at its closest point approximately 2.5 from the common boundary with the child care centre and approximately 2.5 metres from the common boundary with the Oak Tree site.

Whilst there will be views from the upper levels of Wing 1 into the rear of the child care centre these are not considered significant. Visual privacy was not a direct concern raised by the owners of the child care centre.

The part of the Oak Tree site most directly affected by potential overlooking would be where it adjoins Wing 4. At this point the Opal building will be located 2.5 metres from the common boundary. As noted above the finished floor level of the Oak Tree site will be approximately 900mm higher than the Opal site with a 1.8 metre fence on top of the retaining wall. The top of the fence (being 2.7 metre above the FFL of Opal site) will therefore obscure views from the lower level. The Oak Tree residential units are generally located 3 metres at their closest point to the common boundary, whilst the 11 beds on the upper floor will have views into the Oak Tree site this has not been raised as concern by the owners of the Oak Tree site.

A preliminary acoustic assessment has been submitted with the application. The areas of the development which have the potential to generate noise are typically associated with vehicle movements and mechanical plant.

The acoustic assessment concludes that the noise generated will be within accepted limits subject to truck deliveries being restricted between 10pm and 7am and a detailed acoustic review of all plant/equipment at Construction Certificate stage.

Clause 35 Solar access and design for climate.

The issue of potential overshadowing to the adjoining childcare centre was raised in the public submissions. The principal concern relates to the “farmyard” area of the child care centre which is located in the rear yard adjoining the aged care centre.

Following the internal discussion forum the applicant provided shadow diagrams illustrating the shadows at ½ hour intervals during the winter solstice. The shadow diagrams illustrate that shadow will be cast onto part of the rear yard of the child care centre during the morning period before being wholly clear of the property by 1.30pm. Shadows will not be cast onto the child care centre building itself beyond 9.30am.

Whilst the SEPP does not provide any numerical standards the Planning NSW “*Seniors Living Policy – Urban design guidelines for infill development*” suggest the following “rules of thumb”:

- Living rooms of neighbouring dwellings should receive a minimum 3 hours direct sunlight between 9.00 – 3.00 in mid winter neighbouring dwellings.
- Solar access to the private open space of neighbouring dwellings should not be unreasonably reduced.

The SEPP also refers to the AMCORD guidelines as a means of establishing adequate solar access and dwelling orientation appropriate to climatic conditions.

In temperate and cool-temperate climate zones, sunlight to at least 50% (or 35 m² with minimum dimension 2.5 m, whichever is the lesser area) of the principal area of ground level private open space of adjacent properties is not reduced to less than two hours between 9 a.m. and 3 p.m. on June 21. Where existing overshadowing by buildings and fences is greater than this, sunlight is not further reduced by more than 20%.

In this respect the proposal will not restrict direct sunlight to less than 3 hours to any neighbouring buildings and would not unreasonably reduce solar access to the adjoining private open space.

The ventilation throughout the building is considered sufficient given each room contains a window. The building has been designed to ensure no windows are blocked by architectural features to enhance solar access. Further, the dining lounge and sitting rooms, where patients are expected to spend a lot of time, contain north facing windows. The materials selected and landscaping incorporated are anticipated to be appropriate to maximise solar access.

Clause 36 Stormwater

An open drain runs parallel to the property along Peel Street. The open drain forms part of the Council's stormwater system. A Council piped stormwater system also exists in Stanley Street.

The preliminary stormwater concept plans indicate a mixture of piped and open stormwater systems that will be discharge to both these systems. The majority will however be piped to the Peel Street channel.

The proposal is for the piped stormwater system to accommodate stormwater events up to and including the 1 in 20 ARI event.

The issue of stormwater management was raised in the public submission. The principal concern raised relates to stormwater runoff from the child care centre. At present the stormwater from the rear yard of child care centre is discharged under the fence onto the aged care centre land. The underlying concern is that construction of fences, swales and retaining walls would impede this in the future.

Following the discussion forum the applicant has provided further detail in relation to stormwater management in this area of the site, refer **Appendix 14**. It is proposed to include a grass swale in this area of the site which will discharge to the open channel. Stormwater from the child care centre will continue to discharge under the fence and will be captured by the grass swale.

Clause 37 Crime Prevention

The proposed development has incorporated Safer By Design principals into the planning and design. The development application was referred to NSW Police who have identified the proposed development as a "Low Crime Risk". The NSW Police

referral recommended design alterations, such a lighting, speed humps, amendments to landscaping heights and territorial reinforcement that are proposed to be included as conditions of consent.

Clause 38 Accessibility

The application was accompanied by an access report prepared by Morris Goding. The accessibility report concluded there are adequate pedestrian accessways provided and the provision of accessible car parking spaces. Within the building, a lift, ramps and independent assistance mechanisms are provided.

Clause 39 Waste Management

The development includes the provision of a garbage room for recyclable and general rubbish bins. The proposed garbage room is located on the south-facing wing and would be properly ventilated.

Clause 40 Development Standards – minimum sizes and building height

The site complies with the requirements of Clause 40 in that:

- The site is greater than 1,000 square meters,
- The site has a site frontage greater than 20m,
- The building is less than 8m in height when measured vertically from any point on the ceiling of the topmost floor of the building to the ground level, in accordance with the definition of height of the Seniors SEPP.

Based on the above assessment of the proposed development against the Seniors SEPP, it is considered the proposed residential aged care facility is consistent with the aims and relevant provisions.

State Environmental Planning Policy 64 – Advertising and Signage

State Environmental Planning Policy 64 – Advertising and Signage (SEPP 64) applies to the development application.

The proposed development seeks consent for the erection of facility signage and directional signage at the entrance to the property and has provided general parameters governing its size which are in accordance with Council's adopted Development Control Plan. The facility signage will be approximately 2.2 metres in height by 0.76 m wide.

In accordance with Clause 8 of SEPP 64, the signage must satisfy the assessment criteria in Schedule 1 which is considered below.

1 Character of the area

- *Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*

The locality is dominated by residential development with limited signage at other commercial buildings within the vicinity. The proposed signage is not considered to have an adverse impact on surrounding dwellings given it will not be illuminated and will be contained wholly within the site.

- *Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

The proposed signage is considered to be consistent with the design and scale of existing advertising signage along Stanley Street.

2 Special areas

- *Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?*

The proposed sign is relatively small scale and does not visually dominate and is considered compatible within the streetscape.

3 Views and vistas

- *Does the proposal obscure or compromise important views?*

The proposed signage will be located at the entrance to the site and is unlikely to have any adverse impacts on views.

The proposal signage will be visible from nearby dwellings although it will not obscure or compromise any views.

- *Does the proposal dominate the skyline and reduce the quality of vistas?*

The proposed signage will not visually dominate the skyline and considered appropriate for the scale of the proposed development.

- *Does the proposal respect the viewing rights of other advertisers?*

The proposed signage is contained wholly within the site, having no adverse impact on other viewing rights.

4 Streetscape, setting or landscape

- *Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?*

The proposed signage is considered to be compatible with surrounding signage schemes and land uses currently or developing within the streetscape. The signage is designed to be wayfinding and not intended to have an adverse impact on the landscape.

- *Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*

While the proposed signage does not contribute to the visual interest of the landscape, it does not necessarily detract from it.

- *Does the proposal reduce clutter by rationalising and simplifying existing advertising?*

There is no existing signage on the subject site and the proposed signage is directly related for the proposed use. It is intended to be directional and wayfinding signage only.

- *Does the proposal screen unsightliness?*

The proposed signage is not considered to screen unsightliness.

- *Does the proposal protrude above buildings, structures or tree canopies in the area or locality?*

The proposed signage will not extend above existing buildings or trees on the subject site.

- *Does the proposal require ongoing vegetation management?*

No, the proposed signage will be positioned on a cleared area.

5 Site and building

- *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*

The design and scale of the proposed signage is considered to be appropriate for the scale of the proposed development and the surrounding streetscape. The signage will be contained wholly within the site and is intended for wayfinding and business identification.

- *Does the proposal respect important features of the site or building, or both?*

The proposed signage is appropriately setback and positioned within the landscaped area to respect the important features of the building. The proposed signage is considered appropriately sized and respectful of the residential nature of the streetscape.

- *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

The proposed signage is consistent with the design and scale of existing signage of nearby commercial premises.

6 Associated devices and logos with advertisements and advertising structures

- *Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?*

The signage scheme is considered appropriate for the proposed development and does not contain platforms, safety devices or lighting devices.

7 Illumination

- *Would illumination result in unacceptable glare?*

The proposed signage will not be illuminated.

- *Would illumination affect safety for pedestrians, vehicles or aircraft?*

The proposed signage will not be illuminated.

- *Would illumination detract from the amenity of any residence or other form of accommodation?*

The proposed signage will not be illuminated.

- *Can the intensity of the illumination be adjusted, if necessary?*

The proposed signage will not be illuminated.

- *Is the illumination subject to a curfew?*

The proposed signage will not be illuminated.

8 Safety

- *Would the proposal reduce the safety for any public road?*

The signage structure itself will be located within the boundary of the subject site and will therefore unlikely to have an adverse impact on road safety.

- *Would the proposal reduce the safety for pedestrians or bicyclists?*

The proposed signage will be wholly containing within the boundary of the site and away from pedestrian paths to limit any obstruction to pedestrians or bicyclists.

- *Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?*

The proposed signage will not obscure sightlines from public areas.

State Environmental Planning Policy No.55 Remediation of Land

Historically part of this site was used as a quarry. The quarry extended onto the adjoining Oak Tree site. The quarry has over the years been filled.

The depth of fill in the old quarry area varies between 1.4m and 3.2m below ground level. This area has been overlaid by an upper fill layer between 0.2m and 0.8m. The fill within the old quarry area contained significant quantities of building/demolition waste (concrete, brick, plastic, wood, tiles, lead flashing, asphalt, fibrous materials).

The depth of fill over the remainder of the site varies between 0.1m and 0.8m.

Testing was undertaken on the site for the presence of potential contaminants including TRH, BTEX, PAH, OCP, OPP, PCB, phenols and asbestos.

The only contaminant of concern noted on the site was the presence of asbestos in the deeper areas of fill associated with the old quarry.

The applicant proposes the preparation of a Remediation Action Plan for the site incorporating the following:

- An unexpected finds protocol
- Surface inspection of the western, southern and central parts of the site (in the area of shallower filling) following stripping of the grass coverage and removal of the sheds and fly tipping
- Remediation of the asbestos impacted filling at the rear of the site
- Validation of remediation works by an appropriately qualified environmental consultant.

A Site Management Plan and a Site Audit Statement are to be prepared for the site as a Conditions of Consent. Management measures where asbestos impacted filling is to remain on site will generally involve the construction of a physical barrier and marker layer between the filling and site users. Commonly this comprises hardstands or 500mm thick VENM layers.

The adjoining Oak Tree site has likewise been investigated as part of that approval process. The Oak Tree site is currently undergoing remediation under the supervision of an EPA accredited site auditor. The remediation is generally following the capping process proposed for this development.

Bathurst Regional Local Environmental Plan 2014

The following clauses of Bathurst Regional Local Environmental Plan 2014 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 2.1 Land Use Zones

The subject site is zoned R1 General Residential. The objectives of the zone are as follows;

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide housing choice and affordability by enabling opportunities for medium density forms of housing in locations and at densities that complement the surrounding residential environment.*
- *To protect and conserve the historic significance and scenic quality of the urban villages of Eglinton, Raglan and Perthville.*
- *To enable commercial development that is compatible with the amenity of the area and does not prejudice the status and viability of the Bathurst central business district as the retail, commercial and administrative centre of Bathurst.*

The proposal is consistent with the objectives of the R1 General Residential zone. The proposal will increase the housing supply and provide housing that meets the needs of the elderly and disabled members of the community. The proposed development is considered compatible with the surrounding residential development and will meet the day-to-day needs of future residents.

Seniors Housing is permissible with consent in the R1 General Residential zone.

Clause 4.3 Height of Buildings

The relevant height of building control is:

- (1) *The objectives of this clause are as follows:*
 - (a) *to establish the maximum height limit to which buildings may be erected in certain locations.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum height of building permissible for the site under the Bathurst LEP 2014 is 9 metres.

Building height under the LEP *means the vertical distance between ground level (existing) and the highest point of the building including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposed buildings have a maximum height of 11.2m above the existing ground levels.

As noted above the heights of buildings is also controlled by Clause 49 of SEPP Seniors Living as follows:

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a hostel on any of the following grounds:

*(a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),*

This definition of height of building as defined in the SEPP differs from the LEP and is as follows

***height** in relation to a building, means 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 maximum height as defined under SEPP Seniors Living is 7.56m at the highest extent.

Under the Clause 5(3) of the SEPP it would prevail over any inconsistency between the non-permissible height limit under the LEP and the permissible height limit under the SEPP.

Clause 7.1 Flood Planning

The objectives of this Clause are as follows:

- *to minimise the flood risk to life and property associated with the use of land,*
- *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- *to avoid significant adverse impacts on flood behaviour and the environment.*

Whilst the land is identified as being in the flood planning area it is protected by a levee from the 1% AEP from the Macquarie River. The open channel located in Peel Street provides localised flood storage when the levee penstocks are closed.

Council has identified a flood level for the open channel of 650.38. Council's usual standard would be to ensure floor levels at least 0.5m above the identified flood level

i.e. 650.88. The proposed floor level is 651.9 or 1.02m above the identified flood level.

Clause 7.3 Airspace Operations

While the subject site is within the Bathurst airport environs the proposed development will not exceed the *Limitation or Operations Surface*.

S79C(1)(a)(ii) Draft environmental planning instruments

Nil.

S79C (1)(a)(iii) any development control plan

The following parts of the Bathurst Development Control Plan 2014 (DCP) are relevant to this proposal:

Chapter 2 Exhibition and Notification of Development Applications

The development application was exhibited and notified for 14 days, during which time one (1) submission was received. Refer to **Appendix 3**.

Chapter 4 Residential Development

4.4 General Siting Considerations

The development complies with the General Siting Considerations contained in Chapter 4 of Council's DCP. Notably the building is setback further than the DCP standard for setbacks from the side boundary of 1.5m.

Overshadowing onto 81 Stanley Street was raised in the public submission. It is understood a small garden and farm animals contained at the rear of this site would be adversely impacted by significant overshadowing. As a result, the applicant submitted more detailed shadow drawings that indicated the overshadowing is substantially gone by 10am on June 21st.

Chapter 11 Outdoor Lighting

Security lighting and residential unit development lighting are relevant to the proposal. It is proposed to mitigate any adverse effects of lighting through conditions of consent.

Chapter 12 Signage and Colour Schemes

Directional and wayfinding signage is considered appropriate and consistent with the DCP.

Chapter 13 Landscaping and Greening

It was identified that the landscape plan originally submitted was inconsistent with the bulk earthworks and the site plan. The applicant submitted a revised landscape plan that aligned with the proposed development. Slight amendments were made to landscaping in the southern corner of the site for improved stormwater management and reduced overshadowing impacts on 81 Stanley Street, Bathurst. The revised landscape plan submitted is considered appropriate.

Comments received from NSW Police referred to planting more mature trees and reduce the number of shrubs as they have potential to create a barrier. This is proposed to be imposed through the conditions of consent.

Maintenance of landscaping is proposed to be imposed as conditions of consent.

Chapter 14 Parking

It is considered the proposed parking supply is appropriate for the development. A total of 46 car parking spaces are provided, meeting the requirement of the Seniors SEPP and the Bathurst Regional DCP. An ambulance bay is not shown on the architectural plans but is proposed to be imposed as a condition of consent.

Chapter 15 Crime Prevention

The development application was referred to NSW Police and assessed against the Safer By Design. NSW Police classified the proposed development as Low Crime Risk and provided recommendations to further reduce the likelihood and risk of crime. It is considered the development application meets the requirements of this chapter of the DCP. Design elements to improve crime prevention are recommended to be imposed through conditions of consent.

Chapter 16 Earthworks

Council has previously granted consent to bulk earthworks on the site (approved December 2015, 2015/0407). The earthworks generally consist of cut and fill of no more than 1 metre in depth with some full depths to 1.2m in isolated locations.

S79C(1)(a)(iia) any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F

Council is not aware of any planning agreements or draft planning agreements in relation to the proposed development.

S79C(1)(a)(iv) the regulations

The Regulations prescribe several development consent conditions that are provided as part of the recommended development consent conditions.

S79(1)(a)(v) any coastal zone management plan

Not relevant.

S79C(1)(b) Environmental (natural and built), social and economic impacts

The development is unlikely to have any significant negative impacts on adjoining and surrounding properties.

The delivery of housing diversity and the provision of appropriate services for high need residents is considered to have a positive social impact. The proposed development, inclusive of a high care dementia ward, is not yet available within the Bathurst area having a positive social impact.

The surrounding road network is considered to have sufficient capacity to accommodate the proposed development. Traffic generation as a result of the proposed development is not considered to substantially increase the traffic levels within the vicinity. The Traffic Report submitted with the Development Application noted traffic generation is 30-35 vehicles per hour during weekday periods and is considered a low generation.

S79C(1)(c) Suitability of the site for the development

The proposed development is a form of residential development which is a permissible use for the subject site. The proposed development is for the construction of a residential aged care facility with associated car parking and landscaping. Adjacent to the site is a seniors living development currently under construction and an existing childcare centre. The site is within an existing residential area of Bathurst and is considered compatible with the surrounding land.

The issues raised in the submissions by the adjoining properties are considered to be resolved through mitigation measures and the lodgement of more detailed plans providing information of detailed design elements. The applicant responded to the issues raised in the submissions.

Therefore the subject site is considered suitable for the proposed development.

S79C(1)(d) any submissions made in accordance with this Act or the regulations,

The Development Application was advertised in the local newspaper, The Western Advocate, for a period of 14 days from the 15 February to 29 February 2016. Adjoining property owners were also notified in writing of the proposed development.

The Development Application and accompanying documentation was made available to the public during the exhibition period at the Bathurst Regional Council office. Council received one (1) submission during the notification period.

The submission referred to stormwater management, overshadowing, setbacks of Wing 1 and site fill impacting height in the southern corner of the site that immediately adjoined the Child Care Centre of 81 Stanley Street.

On 21 March 2016 a discussion forum was held between the applicant, the persons who made a submission and Council officers. The issues raised by the submission were discussed.

It was requested the applicant submit amended plans to illustrate the stormwater management inclusive of grass swales to transfer water off site and sparse planting to allow overland flow.

Site filling as part of the bulk earthworks was raised in the submission as a concern that the 1m deep fill would significantly reduce height of the existing fence on the boundary of 81 Stanley Street and 93 Stanley Street. It was clarified the proposed development includes battering and the extent of the fill does not extend to the site boundaries.

The discussion surrounding the setback of Wing 1 to the boundary is 2.5m from the eave line is compliant with the setback requirement of 1.5m under the Bathurst DCP 2014.

The minutes of the meeting are attached in **Appendix 4**. The applicant has provided a detailed response to all the issues raised in the submissions. The response has been forwarded to the adjoining owner with no further correspondence received.

S79C(1)(e) the public interest

This development is considered to be within the public interest. It is consistent with the objectives of the relevant Seniors SEPP, Bathurst LEP and DCP planning and development controls. The proposed development will increase housing supply for seniors people, people requiring specialised dementia care, or people with a disability. It is therefore considered within the public interest.

Internal Referrals

The proposed development was referred internally within Council to the following officers:

- Development Assessment Engineer;
- Health and Building Surveyor;
- Plumbing Inspector;
- Environmental Officer; and
- Development Assessment Planner.

Conditions have been recommended by the following officers, which have been included within the Draft Notice of Determination attached in **Appendix 1**.

CONCLUSION

The Development Application seeks consent for the construction of a two-storey residential aged care facility with associated landscaping and car parking.

The proposed development is considered suitably located within a residential area of Bathurst. Subject to conditions, the proposed development is unlikely to have any adverse effects on the surrounding residential neighbourhood, existing childcare centre and developing seniors living complex.

The issues that arose from the notification and exhibition period have been adequately addressed.

The development application has been assessed against the Seniors SEPP, Bathurst LEP and DCP and is considered consistent with the planning controls.

It is considered that the development warrants conditional development consent.