

25 September 2017

OUR REF: 5588

The General Manager
Lake Macquarie City Council
Box 1906
HRMC NSW 2310

ATTENTION: CARLOS FERGUSON

Dear Sir,

**RE: PROPOSED RESIDENTIAL AGED CARE FACILITY
87 TORONTO ROAD BOORAGUL (LOT 1 DP 1226922) – SEPP 1 VARIATION**

1. INTRODUCTION AND BACKGROUND

We refer to the proposed Residential Aged Care Facility (RACF) at 87 Toronto Road, Booragul (the site). The proposed development involves a new purpose built RACF for 126 beds at an existing aged care site. It is understood that the Joint Regional Planning Panel (JRPP) was briefed on the proposed development by Council on 31 August 2017.

One of the issues discussed at the meeting was the *Clause 4.6 variation* to the height development standard in *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD). This variation has been prepared under *State Environmental Planning Policy No1 – Development Standards* (SEPP1) to request a variation to the height development standard.

2. DESCRIPTION OF THE DEVELOPMENT

The subject DA relates to the following works:

- 126 bed residential aged care facility
- demolition of C A Brown and Fred Lean buildings
- Basement level – 20 car parking spaces (including 2 accessible) and plant and equipment
- Ground floor – Administration, Day Therapy Centre, gymnasium, kitchen, laundry management, staff amenities, 30 single bed rooms, 6 premium rooms, dementia ward including 18 beds, lounge and dining
- First floor – 30 single bed rooms, 6 premium rooms, dementia ward including 18 beds, activities area, servery, lounge, sitting area and staff facilities
- opportunities to interact with external environment including terraces, café and deck
- driveway and access
- external landscaping and water features
- associated infrastructure and services.

3. DEVELOPMENT STANDARD TO BE VARIED

Clause 40(4) of SEPP HSPD states:

If the development is proposed in a residential zone where residential flat buildings are not permitted:

(a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

Clause 48(a) of SEPP HSPD states:

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 residential care facility 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).

In the SEPP height of building means:

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.

SEPP 1 enables Council and the JRPP to consider a variation to a development standard including height limits. The application is submitted under SEPP HSPD and this correspondence aims to satisfy the requirements of SEPP1 to facilitate a variation of the 8 metre height limit in SEPP HSPD. A height of between 8.7 metres and 10.7 metres is proposed (natural ground to ceiling). It should be noted that the ground floor to ceiling height is between 6.2 metres and 7.05 metres

4. SEPP1 VARIATION

Section 6 of SEPP1 states that where a development could, but for any development standard, be carried out under the *Environmental Planning and Assessment Act 1979* (EP&A), a written objection may be submitted in support of the application. The written objection needs to provide evidence that compliance with the development standard is unreasonable or unnecessary. Section 7 states that the consent authority needs to be satisfied that the objection is consistent with the aims of SEPP1. Section 8 identifies matters to be taken into consideration in deciding whether concurrence should be granted.

Table 1 provides justification for the objection to the height development standard and relevant parts of SEPP1.

Table 1 – SEPP 1 Objection

SEPP1 Section	Justification for Variation
Section 3 Aims, objectives etc	
Unreasonable or unnecessary	
Objects of EP&A Act 5(a)(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.	<p>The site is unique in terms of its substantial size, configuration and frontage to two roads and Booragul train station. In addition, its history of providing aged care at the site provides an opportunity for ongoing positive social impact.</p> <p>One of the key constraints is movement of flood waters west to east across the site toward York Street. A demonstration of the high quality nature of the development is that the proposal has adopted a constraint (flooding) and created opportunity for improved visual outcome by creating a water feature and allowing movement of waters under the building. This combination of engineering and architecture will result in a distinctive and unique building that will enhance the area and improve internal and external amenity for residents. In order to achieve this distinctive outcome a variation to the height standard is required and compliance with this standard is therefore unreasonable and unnecessary.</p> <p>The proposed development will not adversely impact on natural and artificial resources and will have a positive impact on the surrounding environment. The combination of building design, landscaping, vehicle management and stormwater will provide positive outcomes and a new purpose built aged care facility for a better outcome for the community.</p>
Objects of EP&A Act 5(a)(ii) the promotion and co-ordination of the orderly and economic use and development of land.	<p>The best way to achieve orderly and economic use and development of the land is allowing development in keeping with the zoning and associated land uses. The development is permitted with consent in the zone and aged care has occurred at the site for over 40 years. The proposed development will provide a high quality purpose built facility that seeks to enhance the site and surrounds while respecting attributes of the site and integrating them into the development. It is reasonable to argue that development that strictly adheres to the height limits will not be feasible, result in greater cut and fill or not achieve the primary goal that is to provide high quality care for a significant portion of the community.</p> <p>Additionally, ongoing use of the site for aged care will provide positive economic outcomes for the community and minimise associated impact by utilising existing site services and infrastructure.</p>
Section 8 Concurrence	

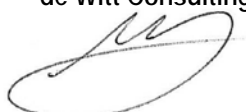
(a) matters of significance for State or regional environmental planning	<p>The Hunter Regional Plan (2016) states that By 2036, the percentage of people aged over 65 years is projected to increase from 19 per cent to 25 per cent. The proposed development will provide housing for a significant cohort of the population that is likely to grow over the next 20-30 years and as such is in keeping with matters of significance for State and regional planning.</p> <p>There are no State Environmental Planning Policies that would be adversely impacted by the proposed development.</p>
(b) public benefit of maintaining the planning control	<p><u>Variation to 8 metre height (Clause 40(4)(a) and 48(a))</u></p> <p>The premise of the restriction appears to be to protect surrounding heritage features and views to the site from the Lake. However, the proposal demonstrates that these objectives can still be achieved with a variation in height and therefore the standard is unreasonable and unnecessary in the circumstances. The site has been used for aged care for more than 40 years. Ongoing use of the site for aged care coupled with a high quality development that respects the site and its setting is a positive outcome that highlights compliance with the development standard is unreasonable and unnecessary.</p> <p>The proposal demonstrates that the variation to height limits responds to, and achieves, the objectives of the standard by creating a high quality development that will enhance the site and surrounds that will provide a positive public benefit.</p> <p><u>Variation to buildings adjacent to a site boundary</u></p> <p>The proposed building is not considered to be adjacent to a site boundary. A new entry road and associated landscaping will be provided to the York Street frontage. The proposed building will be set 6.190 metres from the York Street frontage. Extensive landscaped space coupled with large setbacks will ameliorate potential visual impact. The architecturally designed building provides a positive impact to continued residential aged care at the site.</p> <p>Furthermore, Teralba colliery is located north of the site, York Street to the east, vacant land to the south and Booragul train station to the west and as such the proposed development would not create abrupt changes in the scale of the development in the streetscape.</p> <p><u>Variation to a building located in the rear 25% of the site</u></p> <p>The proposed building is not proposed to be located in the rear 25% of the site.</p>

5. CONCLUSION

This correspondence presents a summary of key issues relating to the development and in association with the Statement of Environmental Effects and associated documents highlights that compliance with the height development standard from SEPP HSPD is unnecessary and unreasonable. Council has issued numerous consents that have allowed ongoing use and extension of a Residential Aged Care Facility over many years and ongoing use of the site for an important cohort of the community. The proposed development will provide a new purpose built building at an existing site to meet current standards and community expectations.

We request that Council and the JRPP confirm the proposed development is permissible through a variation to the height development standard of SEPP HSPD. If you require further information please do not hesitate to contact me on (02) 4942 5441.

Yours sincerely,
de Witt Consulting

A handwritten signature in black ink, appearing to be 'Mark Maund', is written over a light blue horizontal line.

Mark Maund
Town Planner

A handwritten signature in black ink, appearing to be 'Matthew de Witt', is written in a cursive style.

Matthew de Witt
Town Planner